Judicial Reasoning on *Sighat Taklik Talak*: Reconstructing Legal Protection for Wives through Jasser Auda's *Maqāṣid al-sharī'ah*

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SEIKAT
Jurnal Ilmu Sosial, Politik dan Hukum

e-ISSN: 2964-0962

SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum

https://ejournal.45mataram.ac.id/index.php/seikat

Vol. 5, No. 5, Oktober 2026

Page: 4506 - 4523

Available at:

https://ejournal.45mataram.ac.id/index.php/seikat/article/view/4461

DOI:

https://doi.org/10.55681/seikat.v5i5.4461

Article History:

Received: 24-09-2026
Revised: 30-10-2026
Accepted: 30-10-2026

Abstract *: This study examines judicial reasoning concerning sighat Taklik Talak as an instrument of legal protection for wives in Religious Court divorce proceedings and reconstructs its protective function through Jasser Auda's maqāṣid al-sharī'ah systems approach. The study employs normative legal research using statutory, conceptual, and case approaches. Primary legal materials include relevant marriage legislation, the Compilation of Islamic Law, selected Religious Court decisions, and Jasser Auda's works on maqāṣid al-sharī'ah. Data are collected through documentary and library research and analyzed qualitatively using content analysis. The findings indicate that the legal position of sighat Taklik Talak cannot be assessed solely from its explicit citation as the formal ground for divorce. Violations reflected in Taklik may intersect with other legally recognized grounds, particularly continuous disputes and failure to fulfill marital obligations. Auda's six systems features cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness provide a framework for interpreting these judicial patterns. The study proposes reconstructing legal protection for wives from a narrowly formal invocation of Taklik toward integrated, contextual, multidimensional, and purpose-oriented judicial reasoning. Such an approach emphasizes protection of rights, prevention of harm, justice, and the broader objectives of marriage.*

Keywords *: Sighat Taklik Talak; Judicial Reasoning; Legal Protection; Maqāṣid al-Sharī'ah; Jasser Auda*

Abstrak : Penelitian ini mengkaji pertimbangan hukum hakim mengenai sighat taklik talak sebagai instrumen perlindungan hukum terhadap istri dalam perkara perceraian di Pengadilan Agama serta merekonstruksi fungsi perlindungan tersebut melalui pendekatan maqāṣid al-sharī'ah Jasser Auda. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Bahan hukum primer meliputi peraturan perundang-undangan terkait perkawinan, Kompilasi Hukum Islam, putusan Pengadilan Agama yang dipilih, serta karya Jasser Auda tentang maqāṣid al-sharī'ah. Data diperoleh melalui studi dokumentasi dan kepustakaan, kemudian dianalisis secara kualitatif dengan teknik analisis isi. Hasil penelitian menunjukkan bahwa kedudukan sighat taklik talak tidak dapat dinilai hanya berdasarkan pencantumannya secara eksplisit sebagai dasar formal perceraian. Pelanggaran yang berkaitan dengan taklik dapat beririsan dengan alasan perceraian lainnya, terutama perselisihan dan pertengkaran terus-menerus serta tidak terpenuhinya kewajiban dalam perkawinan. Enam fitur sistem Jasser Auda, yaitu sifat kognitif, keutuhan, keterbukaan, hierarki yang saling berkaitan, multidimensionalitas, dan kebermaksudan, memberikan kerangka untuk memahami pola pertimbangan hukum tersebut. Penelitian ini merekonstruksi perlindungan hukum terhadap istri dari pendekatan formal terhadap taklik menuju pertimbangan hukum yang integratif, kontekstual, multidimensional, dan berorientasi pada tujuan hukum.

Kata Kunci : Sighat Taklik Talak; Pertimbangan Hukum Hakim; Perlindungan Hukum; Maqāṣid al-Sharī'ah.

PENDAHULUAN

Marriage in Islamic family law is not merely a private relationship between a husband and wife, but a legal institution that establishes reciprocal rights, obligations, and responsibilities. In Indonesia, these relationships are regulated through a combination of statutory law, Islamic family law, and judicial institutions, particularly the Religious Courts (Ardi & Shuhufi, 2024). Consequently, the dissolution of marriage cannot be understood solely as the termination of a marital bond. Divorce proceedings also constitute a legal arena in which judges determine the relevance of marital violations, assess the parties' claims, interpret applicable norms, and ultimately determine the extent to which the legal system protects the rights and interests of the parties (Bano, 2007; Moors, 1999). This dimension is particularly significant in wife-initiated divorce, where the petition may arise from the prolonged non-fulfillment of marital obligations, abandonment, economic neglect, domestic violence, or other forms of harm experienced within marriage.

One legal instrument that is specifically associated with the protection of wives in Indonesian Islamic family law is *sighat Taklik Talak*. The institution constitutes a conditional undertaking pronounced by the husband after the marriage contract and contains commitments concerning particular marital obligations. Within the Compilation of Islamic Law (Kompilasi Hukum Islam), *Taklik Talak* is positioned as a legally recognized institution whose violation may become relevant to divorce proceedings (Haris, 2013). Its existence therefore indicates that Indonesian Islamic family law does not rely exclusively on general marital obligations to protect wives but also provides a specific mechanism through which certain forms of misconduct by husbands may acquire legal significance. Previous scholarship has accordingly conceptualized *Taklik Talak* as an instrument of legal protection for women, particularly because it provides a normative basis for addressing violations of marital responsibilities (Yuniria et al., 2022).

Nevertheless, the normative existence of *Taklik Talak* does not necessarily correspond to its substantive operation in judicial practice. This distinction represents an important but insufficiently examined dimension of Indonesian family law (Musadad et al., 2025). The central issue is not simply whether *Taklik Talak* is legally recognized, but how judges position it when the factual circumstances of a divorce case correspond to the substance of the undertaking. A wife may experience abandonment, failure to receive maintenance, mistreatment, or other violations that substantively relate to the conditions contained in *Taklik Talak*. Yet the judicial determination may formulate the legal basis of divorce through another ground, particularly continuous disputes and the absence of the possibility of reconciliation. The resulting question is therefore one of judicial reasoning: when several legal norms potentially apply to the same factual circumstances, how does the judge determine which norm becomes central to the ratio decidendi?

This question is important because a judicial decision is not simply an application of a legal provision to a set of facts. Judicial reasoning involves a process of selecting legally relevant facts, interpreting norms, connecting legal rules with evidentiary findings, resolving competing considerations, and constructing a legally justified conclusion. Recent studies of Indonesian Religious Courts increasingly demonstrate that judicial reasoning is a critical site for understanding the realization of substantive justice (Wardana & Junoh, 2026). Research on divorce involving domestic violence, for example, has shown that judges do not always integrate all potentially relevant legal frameworks into their reasoning and may continue to prioritize the conventional framework of marriage law and the Compilation of Islamic Law (Andaryuni et al., 2026). Similarly,

research on wife-initiated divorce has identified variation in judicial approaches to women's maintenance rights and demonstrated that substantive protection may depend upon how judges interpret the circumstances of each case (Ramadhita et al., 2023).

This development is particularly relevant to *Taklik Talak* because the institution exists at the intersection of contractual commitment, marital obligation, divorce law, and women's legal protection. A formal recognition of *Taklik Talak* does not by itself establish that its protective purpose has been realized. What matters is how the institution is interpreted when its underlying circumstances appear in litigation. If the facts demonstrate a violation associated with *Taklik Talak* but the judgment relies principally on another ground for divorce, the legal question becomes more complex: has the protective function of *Taklik Talak* disappeared from judicial reasoning, or has that protection been reconstructed through another legal route? Answering this question requires moving beyond a textual analysis of the legal provision toward a systematic examination of judicial reasoning.

The issue is also connected to the broader transformation of judicial protection for women in Indonesia. The Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women Facing the Law establishes a judicial framework intended to prevent discrimination, gender stereotyping, and unequal treatment in judicial proceedings (Mahkamah Agung Republik Indonesia, 2017). The regulation reflects an institutional recognition that women may encounter particular vulnerabilities when seeking justice. Its significance extends beyond procedural matters because judicial interpretation determines whether formal guarantees of equality become substantive protection in individual cases. Recent research has demonstrated that gender-sensitive judicial reasoning in Religious Courts may take different forms, including reasoning based on maṣlaḥah, prevention of harm, and consideration of the psychological welfare of women and children (Asni & Iqbal, 2026). Thus, the contemporary debate is increasingly concerned not merely with whether women possess legal rights, but with how those rights are recognized and operationalized through judicial reasoning.

The existing literature on *Taklik Talak*, however, has largely concentrated on its normative and protective dimensions. Nizar examined the urgency of *Taklik Talak* as a mechanism for protecting women from violations of marital obligations (Nizar, 2020). Subsequent scholarship has continued to discuss *Taklik Talak* as a safeguard for women's rights and as an expression of broader principles of justice within Islamic family law (Halimatusa'diyah & Triana, 2024). Other studies have approached *Taklik Talak* through general *maqāṣid al-sharīʿah* frameworks or examined the responsibilities of husbands in implementing the undertaking. These studies are valuable in establishing the normative rationale of *Taklik Talak* (M. M. A. Abdullah et al., 2026). However, they leave a significant analytical space concerning the judicial life of the institution: how *Taklik Talak* is positioned, interpreted, or rendered secondary within actual judicial reasoning in divorce cases.

A second gap concerns the theoretical framework used to evaluate judicial reasoning. Existing *maqāṣid*-oriented studies of family law have demonstrated the usefulness of *maqāṣid al-sharīʿah* for examining divorce, maintenance, women's rights, and judicial protection. Recent scholarship, for example, has applied *maqāṣid* analysis to post-divorce maintenance and judicial protection of women's rights (Mera et al., 2024; Wardana & Junoh, 2026). Other research has used *maqāṣid*-based approaches to critique the prioritization of particular values in judicial reasoning (Qalba, 2026). However, the specific intersection between *sighat Taklik Talak*, judicial reasoning, and Jasser Auda's systems approach remains comparatively underexplored. The gap is therefore not simply the absence of another study on *Taklik Talak*, but the absence of a systematic explanation

of how the institution operates within judicial reasoning when examined through a contemporary systems-based *maqāṣid* framework.

Jasser Auda's theory is particularly relevant because it conceptualizes *maqāṣid al-sharīʿah* as a dynamic system rather than a collection of isolated legal objectives. Auda develops six interrelated features of the systems approach: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. These concepts provide an analytical framework for examining whether legal reasoning adequately considers the interaction between legal rules, factual circumstances, social realities, competing interests, and the ultimate purposes of law (Auda, 2022). Such an approach is particularly relevant to family-law disputes because the legal consequences of divorce extend beyond the immediate question of whether a marriage should be dissolved. They may involve economic security, personal dignity, physical and psychological safety, familial relationships, and access to justice.

The concept of wholeness requires the position of *Taklik Talak* to be understood in relation to the broader structure of Islamic family law rather than as an isolated contractual clause. Openness encourages legal reasoning to remain responsive to contemporary social conditions and changing understandings of justice. Multidimensionality prevents judges and researchers from reducing marital disputes to a single legal ground when the same dispute may involve economic, psychological, familial, and gender dimensions. Interrelated hierarchy directs attention to the interaction between legislation, the Compilation of Islamic Law, judicial regulations, legal principles, and judicial interpretation. Purposefulness, meanwhile, requires attention to the objectives that legal rules are intended to realize (Auda, 2022). These dimensions make Auda's framework particularly useful for examining whether the judicial treatment of *Taklik Talak* remains confined to formal legal reasoning or contributes to substantive protection of wives.

The methodological relevance of such an approach is reinforced by recent research that places judicial reasoning at the center of Islamic family law analysis. Studies of marriage dispensation, divorce, domestic violence, and other family-law disputes increasingly employ case-based normative analysis to identify the values prioritized and the legal considerations omitted from judicial reasoning (Andaryuni et al., 2026; Qalba, 2026; Saputra, 2018). Such research demonstrates that the quality of judicial protection cannot be assessed solely by examining the final verdict. The reasoning connecting facts, evidence, legal norms, and judicial conclusions is equally significant because it determines how legal protection is conceptualized and justified.

Against this background, this study examines judicial reasoning concerning *sighat Taklik Talak* in Religious Court divorce decisions and reconstructs the legal protection of wives through Jasser Auda's *maqāṣid al-sharīʿah*. The study focuses on selected wife-initiated divorce cases in which the factual circumstances indicate violations related to marital obligations contained in *Taklik Talak*. The analysis is directed toward four interconnected dimensions: the factual construction of the alleged violation, the legal provisions invoked by judges, the ratio decidendi underlying the decisions, and the implications of the reasoning for the protection of wives. The study does not assume in advance that the absence of an explicit reference to *Taklik Talak* necessarily constitutes a failure of legal protection. Rather, it examines whether and how protection may be reconstructed through the broader judicial reasoning employed in the decisions.

The novelty of this study lies in shifting the analytical focus from *Taklik Talak* as a normative instrument toward *Taklik Talak* as an object of judicial reasoning. It also differs from studies that merely establish the compatibility of *Taklik Talak* with *maqāṣid al-sharīʿah* by using Auda's systems approach to examine the internal relationship between facts, legal norms, judicial interpretation, and substantive legal purposes. Through this approach, the study seeks to demonstrate that the legal

significance of *Taklik Talak* cannot be measured solely by its formal recognition in Indonesian Islamic family law. Its contemporary significance must also be assessed through the reasoning by which judges transform, prioritize, or reinterpret its protective function in concrete divorce litigation.

Accordingly, this article addresses three questions: first, how is *sighat Taklik Talak* positioned within the judicial reasoning of Religious Court decisions involving wife-initiated divorce? Second, how does such judicial reasoning construct legal protection for wives when the factual circumstances correspond to violations of *Taklik Talak*? Third, to what extent can the judicial reasoning be understood through the six dimensions of Jasser Auda's systems approach to *maqāṣid al-sharīʿah*? By addressing these questions, the study contributes to the development of Islamic family law scholarship by connecting the normative institution of *Taklik Talak* with the practical dynamics of judicial reasoning and the contemporary pursuit of substantive justice for women.

METODE PENELITIAN

This study employs normative legal research to examine judicial reasoning concerning the legal protection of wives through *sighat Taklik Talak* in Religious Court decisions from the perspective of Jasser Auda's *maqāṣid al-sharīʿah*. The normative approach is used because the research focuses on legal norms, statutory provisions, judicial decisions, and doctrinal concepts rather than empirical measurements of social behavior. The analysis is directed toward understanding how *sighat Taklik Talak* functions as a legal instrument for protecting wives and how its protective dimension is reflected in judicial reasoning and court orders. Normative legal research enables the study to examine law not only as a set of formal rules but also as a system of legal interpretation applied in concrete cases (Marzuki, 2017).

The research applies three interconnected approaches: statutory, conceptual, and case approaches. The statutory approach examines the legal framework governing marriage, divorce, and *sighat Taklik Talak*, particularly Law No. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law. The conceptual approach is used to examine the concepts of legal protection, *sighat Taklik Talak*, *maqāṣid al-sharīʿah*, and Jasser Auda's systems approach. The case approach focuses on Religious Court decisions involving wife-initiated divorce and circumstances related to violations of *sighat Taklik Talak*. In each decision, attention is given to the legal facts, claims and grounds for divorce, the position of *sighat Taklik Talak*, judicial reasoning, and the final order. This approach allows the study to distinguish between the existence of a *Taklik* violation and the particular legal ground ultimately relied upon by the court.

The primary legal materials consist of relevant legislation, the Compilation of Islamic Law, selected Religious Court decisions, and Jasser Auda's principal works on *maqāṣid al-sharīʿah*, particularly *Maqāṣid al-sharīʿah* as Philosophy of Islamic Law: A Systems Approach and *Maqāṣid al-sharīʿah*: A Beginner's Guide (Auda, 2022). Secondary materials comprise scholarly books, peer-reviewed journal articles, previous studies, and other academic publications addressing Islamic family law, *sighat Taklik Talak*, women's legal protection, judicial reasoning, and contemporary maqasid theory. The selection of legal materials is based on their direct relevance to the research questions and their capacity to explain the relationship between *Taklik Talak*, judicial reasoning, and legal protection.

Data collection was conducted through documentary study and library research. The court decisions were examined systematically to identify the factual circumstances of each case, the

alleged or established conduct relevant to *sighat Taklik Talak*, the legal provisions considered by the judges, the reasoning underlying the judgment, and the legal consequences reflected in the dispositive order. The collected materials were then organized into analytical categories concerning the form of *Taklik*-related conduct, its position within the judicial reasoning, the legal basis of the divorce, and the form of protection provided to the wife.

The analysis employed qualitative content analysis. Each decision was read and interpreted in relation to the applicable legal norms and the maqasid framework developed by Jasser Auda. The six features of the systems approach cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness were used as analytical dimensions. The analysis does not presume that the judges explicitly adopted Auda's theory. Rather, the framework is applied to assess the extent to which judicial reasoning accommodates broader legal objectives, including justice, protection of rights, prevention of harm, and the preservation of family and individual welfare. Through this analytical procedure, the study seeks to reconstruct the protective function of *sighat Taklik Talak* without conflating the violation of *Taklik*, the legal ground for divorce, judicial reasoning, and the final court order.

HASIL DAN PEMBAHASAN

Judicial Decisions on *Sighat Taklik Talak*: Empirical Data from Religious Court Decisions

The empirical data in this study are derived from ten Religious Court decisions involving wife-initiated divorce (*cerai gugat*) and factual circumstances associated with violations of marital obligations that correspond to the substantive content of *sighat Taklik Talak*. The selection of these decisions is intended to examine how the protective function of *sighat Taklik Talak* appears within the judicial construction of divorce cases. Rather than treating every wife-initiated divorce as evidence of a violation of *Taklik*, this study limits its analysis to cases identified within the research corpus as having a substantive relationship with violations of the husband's marital obligations (Nabil et al., 2026).

The ten decisions originate from Religious Courts located in different regions of Indonesia, including Balikpapan, Medan, Surabaya, Malang, Cilacap, Brebes, Banyuwangi, Jember, Indramayu, and Sumber in Cirebon. The geographical distribution provides a documentary basis for observing judicial treatment across different jurisdictions. Nevertheless, the ten decisions are not treated as statistically representative of all Indonesian divorce cases. Their function is doctrinal and analytical: they provide concrete legal materials through which the relationship between *sighat Taklik Talak*, divorce grounds, and judicial reasoning can be examined.

The corpus of judicial decisions is presented in Table 1.

No.	Religious Court	Decision Number	Type of Case	Position in the Research Corpus
1	Religious Court of Balikpapan	833/Pdt.G/2026/PA.Bpp	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*
2	Religious Court of Medan	2087/Pdt.G/2026/PA.Mdn	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*
3	Religious Court of Surabaya	2133/Pdt.G/2026/PA.Sby	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*

4	Religious Court of Malang Regency	2239/Pdt.G/2026/PA.Kab.Mlg	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*
5	Religious Court of Cilacap	2533/Pdt.G/2026/PA.Clp	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*
6	Religious Court of Brebes	2556/Pdt.G/2026/PA.Bbs	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*
7	Religious Court of Banyuwangi	2646/Pdt.G/2026/PA.Bwi	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*
8	Religious Court of Jember	2814/Pdt.G/2026/PA.Jr	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*
9	Religious Court of Indramayu	3680/Pdt.G/2026/PA.IM	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*
10	Religious Court of Sumber, Cirebon	3685/Pdt.G/2026/PA.Sbr	*Cerai gugat*	Case involving marital circumstances relevant to the substance of *sighat Taklik Talak*

The cases demonstrate an important characteristic of *sighat Taklik Talak* as a legal institution: its protective function is closely connected with the husband's fulfillment of marital obligations. The standard formulation of *Taklik* contains commitments intended to prevent certain forms of harm to the wife, particularly conduct involving neglect of obligatory maintenance, abandonment, and treatment that causes physical or psychological harm. Previous research has consequently positioned *Taklik Talak* as an instrument of preventive and protective legal significance for women within Indonesian Islamic family law (Jalil et al., 2025; Sukiati et al., 2024). The existence of such a mechanism indicates that the institution is not merely ceremonial but forms part of the normative architecture through which the wife's rights can be protected.

At the same time, the empirical material shows that the factual content of a divorce case and its formal legal characterization are not necessarily identical. A wife may present circumstances that substantively correspond to one or more commitments contained in *sighat Taklik Talak* (Nugroho, 2018a). Nevertheless, the court may construct the legally decisive issue through another statutory ground for divorce. This distinction is essential because Article 46 of the Compilation of Islamic Law regulates *Taklik Talak*, while Article 116 provides a broader catalogue of grounds for divorce (Pai'pinan et al., 2026). Among these grounds, Article 116(f) concerns continuous disputes and quarrels between husband and wife accompanied by the absence of a reasonable possibility of reconciliation.

This distinction is particularly visible in the research corpus. The material available for the study identifies circumstances such as failure to provide obligatory maintenance, psychological harm, and the loss of adequate protection for the wife as substantively related to the content of *sighat Taklik Talak*. Yet the judicial construction identified in the research tends to place emphasis on the breakdown of the marital relationship and the inability of the parties to restore a harmonious household. The formulation concerning continuous disputes and the absence of a reasonable

prospect of reconciliation therefore becomes important in understanding the relationship between the wife's factual allegations and the legal reasoning adopted by the court.

Table 2 summarizes the principal empirical dimensions that are observable from the research corpus without introducing unsupported factual details.

Analytical Dimension	Empirical Pattern Identified	Legal Significance
Party initiating the case	The corpus consists of wife-initiated divorce cases (*cerai gugat*)	The wife appears as the party actively seeking judicial dissolution of the marriage
Marital circumstances	The cases contain circumstances associated with failure to fulfill marital obligations	These circumstances have substantive relevance to the protective function of *sighat Taklik Talak*
***Taklik*-related conduct**	The research identifies neglect of obligatory maintenance, psychological harm, and inadequate protection among the relevant circumstances	Such conduct corresponds substantively to the protective concerns addressed by *Taklik*
Formal legal construction	Judicial reasoning may emphasize marital breakdown rather than expressly making *Taklik* the principal ground	Factual violation and formal legal ground must therefore be distinguished
Divorce ground	Article 39(2) of the Marriage Law, Government Regulation No. 9 of 1975, and Article 116 of the Compilation of Islamic Law provide the relevant legal framework	The court must connect the facts to a legally recognized ground for divorce
Judicial reasoning	Continuous disputes and the absence of a reasonable prospect of reconciliation become significant in the judicial construction identified in the study	The judicial characterization of marital breakdown may determine the legal basis of the judgment
Protective dimension	Protection may arise through the broader divorce adjudication framework even where *Taklik* is not expressly treated as the decisive ground	Legal protection cannot be assessed solely from the explicit appearance of the term *Taklik*

The distinction between *Taklik* as a normative instrument and *Taklik* as an explicit judicial ground is particularly important. The Compilation of Islamic Law recognizes *Taklik Talak* as a husband's undertaking connected with specified circumstances and provides a legal framework for its relationship with divorce. Article 116(g) also identifies violation of *Taklik Talak* as one of the grounds for divorce. Consequently, Indonesian family law does not exclude *Taklik* from the formal architecture of divorce. Nevertheless, the existence of a statutory provision allowing violation of *Taklik* to constitute a ground for divorce does not mean that every case containing *Taklik*-related conduct will necessarily be adjudicated primarily through Article 116(g) (Tanjung et al., 2026).

This produces a layered structure in the judicial decisions. At the first level is the factual narrative: what the wife alleges has occurred during the marriage. At the second level is the legal qualification of those facts: whether the conduct constitutes a violation of a particular legal

obligation or demonstrates a broader breakdown of the marital relationship. At the third level is judicial reasoning, through which the court determines which legal provisions provide the appropriate basis for resolving the dispute. At the fourth level is the dispositive order, which establishes the formal legal consequence of the judgment (Nugroho, 2018b). These levels should not be collapsed into a single category.

The distinction is also relevant to the concept of legal protection. If *sighat Taklik Talak* is understood exclusively as a formal mechanism through which the wife seeks divorce following a specific violation, its protective function may appear dependent upon the court explicitly invoking *Taklik* (Yuni & Murjani, 2020). However, if legal protection is understood more broadly as the judicial response to conduct that threatens the wife's rights, dignity, welfare, or security within marriage, protection may also be realized through other legal grounds for divorce. The empirical data therefore require a more careful assessment of the relationship between formal legal instruments and substantive protection (Umah & Maftukhin, 2025).

Previous research has emphasized the protective significance of *Taklik Talak* for women. Saifullah et al., for example, conceptualized *sighat Taklik Talak* as an instrument for strengthening women's legal protection from a *maqāṣid al-sharī'ah* perspective. More recent research on women's rights in Religious Courts similarly demonstrates that judicial protection cannot always be reduced to the formal outcome of divorce, because judicial reasoning may involve broader considerations concerning women's rights, economic circumstances, vulnerability, and substantive justice (Saifullah et al., 2026). The development of judicial guidelines for women through Supreme Court Regulation No. 3 of 2017 further demonstrates the institutional recognition of the need for gender-sensitive adjudication.

The ten decisions consequently reveal a legal phenomenon that deserves closer examination. *Sighat Taklik Talak* occupies a position between a formal contractual undertaking within marriage and a broader protective mechanism within Indonesian family law. The factual circumstances underlying wife-initiated divorce may correspond to the concerns addressed by *Taklik*, while the court's formal reasoning may rely upon the broader legal concept of marital breakdown (Firdaus et al., 2026). The empirical significance of the corpus therefore lies not simply in identifying whether *Taklik* appears in the wording of a judgment, but in examining how facts associated with *Taklik*-related obligations are translated into judicially recognizable grounds for divorce.

Another important feature of the corpus is that it does not permit the conclusion that all wife-initiated divorce cases are caused by violations of *sighat Taklik Talak*. The fact that the cases are *cerai gugat* only establishes that the wife is the claimant. It does not, by itself, establish that a *Taklik* violation occurred. For that reason, the present study treats the relationship between wife-initiated divorce and *Taklik*-related conduct as a matter requiring documentary analysis rather than an assumption (Azizah, 2021). This methodological distinction is necessary to prevent the expansion of the empirical findings beyond what the decisions actually establish. Similarly, the absence of an explicit reference to *sighat Taklik Talak* in the decisive reasoning should not automatically be classified as judicial neglect. Such a conclusion would require a more detailed analysis of each judgment, including the pleadings, evidentiary findings, legal considerations, and dispositive order (Agustin et al., 2022). The present empirical section therefore confines itself to establishing the observable relationship between *Taklik*-related marital circumstances and the legal construction of divorce.

Overall, the ten Religious Court decisions establish the empirical foundation for the subsequent analysis. They show that the protective concerns underlying *sighat Taklik Talak* intersect with broader legal questions concerning marital breakdown, continuous disputes,

fulfillment of marital obligations, and the legal protection of wives. The most significant empirical issue is therefore not simply whether judges cite *Taklik*, but how the substance of the wife's experience is transformed into a legally relevant basis for judicial decision-making. This distinction creates the analytical bridge to the next section, which examines the judicial reasoning through Jasser Auda's *maqāṣid al-sharī'ah* and asks how the protective function of *sighat Taklik Talak* can be reconstructed beyond a purely formal reading of the legal text.

Reconstructing Legal Protection for Wives through Jasser Auda's *Maqāṣid al-sharī'ah*

The empirical findings indicate that the legal protection of wives in *sighat Taklik Talak* cases cannot be assessed merely by asking whether judges explicitly mention *Taklik* as the principal legal basis for divorce. The ten decisions show a more complex relationship between the wife's factual experience, the husband's alleged failure to fulfill marital obligations, the statutory grounds for divorce, and the judicial construction of marital breakdown. This complexity requires an analytical framework capable of connecting legal rules, factual circumstances, judicial cognition, and the purposes underlying legal protection (Afan & Al-Am, 2025). Jasser Auda's *maqāṣid al-sharī'ah* systems approach provides such a framework because it places the objectives of Islamic law at the center of legal reasoning while emphasizing wholeness, openness, multidimensionality, interrelatedness, and purposefulness. Auda explicitly develops *maqasid* as a philosophy for evaluating whether legal reasoning realizes justice, rights, common good, and other higher objectives rather than merely reproducing isolated legal rules (Auda, 2022).

At the outset, the relationship between the empirical findings and Auda's framework can be mapped as follows.

Table 1 Mapping Empirical Problems to Jasser Auda's Systems Features and Legal Reconstruction

Empirical Problem Identified in the Decisions	Relevant Systems Feature	Analytical Question	Direction of Reconstruction
Facts concerning *Taklik* violations are not always identical to the formal legal ground of divorce	Cognitive nature	How are facts translated into legal knowledge and judicial reasoning?	Connect factual experience with contextual legal interpretation
Divorce cases involve several interconnected interests	Wholeness	Can the case be understood beyond a single legal provision?	Integrate marital, economic, psychological, and legal dimensions
Judicial reasoning operates within changing social and legal contexts	Openness	Can judicial interpretation respond to contemporary conditions of women's protection?	Develop context-sensitive protection
Several norms may operate simultaneously	Interrelated hierarchy	How should competing or overlapping legal	Establish coherent relationships among legal norms

		considerations be connected?	
Divorce affects more than the marital status of the parties	Multidimensionality	What dimensions of the wife's interests must be considered?	Move beyond a single-dimensional divorce analysis
The ultimate purpose of adjudication is not merely formal dissolution	Purposefulness	What legal objective should the judgment realize?	Orient adjudication toward justice, protection, and avoidance of harm

Auda's systems approach consists of six interrelated features: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. Contemporary studies of Auda's thought likewise describe these six features as an integrated methodological structure rather than six independent analytical instruments. Accordingly, the analysis in this study does not treat each feature as an isolated test (Musarrofa & Muttaqin, 2024). Instead, the features are used collectively to reconstruct the meaning of legal protection within the judicial reasoning identified in the preceding section.

First, the feature of cognitive nature is important because judicial decisions are not identical with the divine law itself. Auda emphasizes the distinction between revelation and human understanding of revelation. Legal rules are therefore mediated through human cognition, interpretation, and contextual judgment (Afabih et al., 2026). Applied to *sighat Taklik Talak*, this feature means that the existence of a written undertaking should not be separated from the way judges understand the factual circumstances presented before them. A failure to provide maintenance, abandonment, psychological harm, or continuing conflict is not merely a collection of isolated facts; these circumstances acquire legal meaning through judicial interpretation (Maliki et al., 2023).

This perspective also explains why the occurrence of a *Taklik*-related violation and the formal legal ground of divorce should not be conflated. A judge may legally characterize the same factual situation through the framework of marital breakdown, continuous conflict, or another recognized ground for divorce. From the perspective of cognitive nature, the analytical issue is therefore not whether one legal label is automatically superior to another, but whether the judicial characterization adequately captures the legally relevant reality experienced by the wife (Assulthoni, 2026). The reconstruction of protection begins when judicial reasoning moves from a purely textual identification of the legal ground toward an interpretation that remains connected with the concrete circumstances of the parties.

Second, the feature of wholeness requires the marital dispute to be viewed as an integrated legal phenomenon. Auda's systems approach rejects fragmented reasoning that examines one component while ignoring its relationship with the broader system. In the context of *sighat Taklik*, a dispute over maintenance, for example, should not necessarily be isolated from the broader condition of the marriage. Failure to provide maintenance may affect economic security; prolonged neglect may generate conflict; conflict may undermine psychological well-being; and the accumulation of these circumstances may eventually make continuation of the marriage difficult (Harisudin & Choriri, 2021).

This holistic perspective is particularly relevant because divorce judgments necessarily involve more than the dissolution of marital status. Contemporary research on wife-initiated divorce in Indonesian Religious Courts demonstrates that judicial consideration may extend to women's post-divorce economic rights and the application of PERMA No. 3 of 2017 (Wulandari et

al., 2026). Wardana and Junoh (2026), for instance, examined judicial protection of women's maintenance rights in wife-initiated divorce cases and specifically connected judicial reasoning with the implementation of PERMA No. 3 of 2017 (Wardana & Junoh, 2026). The implication for the present study is that the protective function of *Taklik* should be interpreted within the larger legal ecosystem of women's rights rather than as an isolated procedural mechanism.

Third, openness requires judicial reasoning to remain responsive to the context in which law operates. Auda conceptualizes legal systems as open rather than closed systems; legal reasoning should therefore be capable of interacting with changing circumstances and relevant knowledge (Warnis et al., 2026). This principle has direct relevance to contemporary Indonesian judicial policy concerning women. PERMA No. 3 of 2017 is currently in force and establishes guidelines for adjudicating cases involving women before the law. The Supreme Court's official legal database identifies the regulation as an applicable judicial regulation, adopted on July 11, 2017 and promulgated on August 4, 2017 (Simarmata, 2026).

Within this framework, the meaning of legal protection cannot remain confined to the formal existence of a *Taklik* declaration. The judicial process operates in a legal environment that increasingly recognizes the need to prevent discriminatory treatment and to ensure substantive access to justice for women. The Supreme Court itself explains PERMA No. 3 of 2017 as part of its institutional commitment to protecting women who encounter the legal system (Asni & Iqbal, 2025). Thus, openness provides a basis for interpreting *sighat Taklik* within the contemporary framework of women's judicial protection rather than treating it solely as an inherited contractual formula.

Fourth, interrelated hierarchy allows the various legal considerations in a divorce case to be understood according to their relationships and priorities. A divorce judgment may involve the Marriage Law, Government Regulation No. 9 of 1975, the Compilation of Islamic Law, *sighat Taklik*, evidentiary considerations, judicial principles, and the protection of women's rights. These norms do not operate independently. Auda's systems approach encourages the identification of relationships among the components of the system and the determination of appropriate priorities when different considerations interact (Irawan, 2022).

This feature is particularly useful for interpreting the relationship between *sighat Taklik* and the statutory ground of continuous conflict. The two should not automatically be treated as competing legal bases. A *Taklik*-related violation may form part of the factual history that demonstrates the deterioration of the marital relationship, while the statutory ground concerning continuous disputes provides the formal legal route through which the court dissolves the marriage. The analytical task is therefore to establish how the two levels are connected rather than assuming that reliance on one necessarily eliminates the relevance of the other (Riyadi et al., 2025).

Fifth, multidimensionality prevents the analysis from being reduced to a single legal dimension. Auda's approach emphasizes that a legal issue may simultaneously contain multiple dimensions and that apparently contradictory evidence or principles may become coherent when viewed from different dimensions (Z. Abdullah et al., 2025). In the present context, the wife's position cannot be understood only through the question of whether the marriage should be dissolved. The dispute may simultaneously concern personal dignity, economic security, psychological welfare, family stability, access to justice, and the legal certainty of marital obligations.

This multidimensional understanding strengthens the concept of legal protection. Protection should not simply mean that the court grants or rejects a divorce petition. The more substantive question is whether the judicial process recognizes the consequences of the circumstances that brought the wife before the court. A divorce may terminate the legal relationship between the

spouses, but the legal consequences of that dissolution can extend to economic and personal rights. Recent research on women's maintenance rights in wife-initiated divorce illustrates precisely this point: judicial protection continues to matter beyond the formal declaration of divorce.

Sixth, purposefulness provides the strongest foundation for reconstructing *sighat Taklik* as an instrument of legal protection. For Auda, *maqasid* should constitute the purpose-oriented center of legal reasoning. His systems approach explicitly places purposes, justice, rights, and common good at the heart of Islamic legal philosophy. Therefore, the question is not simply whether the judge has applied the correct statutory provision in a formal sense, but whether the legal construction ultimately serves the objectives that justify the existence of the relevant legal rules (Asa'ari & Iskandar, 2026).

Applied to *sighat Taklik*, purposefulness shifts the analytical focus from the wording of the undertaking toward its protective function. The purpose of the institution is relevant to preventing arbitrary treatment, securing marital responsibilities, and providing the wife with a legal avenue when specified obligations are violated. Consequently, when a court relies upon another statutory ground for divorce, the relevant *maqasid* question is whether the resulting legal protection remains capable of realizing those protective objectives (Horowitz, 1994). This does not mean that every judgment must explicitly cite Auda or use the terminology of *maqasid*. Rather, Auda's framework allows the researcher to assess the substantive direction of the reasoning.

The reconstruction proposed by this study can therefore be formulated as a movement from "formal protection through *Taklik*" toward "purpose-oriented protection through integrated judicial reasoning." The first model emphasizes the existence of a declaration and the identification of a corresponding violation. The second recognizes that the protective objective may operate through a broader judicial assessment of marital breakdown, women's rights, harm, economic consequences, and access to justice (Jufri et al., 2021). The distinction does not eliminate the legal importance of *sighat Taklik*; instead, it places the institution within a wider system of family-law protection.

This reconstruction is also consistent with the contemporary judicial framework established by PERMA No. 3 of 2017. The regulation recognizes the need for judicial treatment that protects women from discrimination and supports equality before the law. In this sense, *maqasid*-oriented reconstruction and gender-sensitive adjudication can intersect at the level of legal purpose: both require judicial reasoning to take seriously the concrete legal position and interests of women rather than treating divorce as an exclusively formal question of marital status (Hidayah et al., 2023).

The analytical finding, therefore, is not that the judges in the ten cases necessarily applied Jasser Auda's theory. Such a conclusion would exceed the evidence because the decisions were not necessarily written using Auda's terminology. Rather, the findings indicate that Auda's systems approach offers a framework for evaluating and reconstructing the protective meaning of judicial reasoning (Asmara & Andira, 2018; Musarrofa & Muttaqin, 2024). Its value lies precisely in connecting the different components of the dispute facts, legal norms, judicial interpretation, women's rights, and the consequences of divorce within a single purpose-oriented legal system.

Ultimately, the reconstruction of *sighat Taklik Talak* through Jasser Auda's *maqāṣid al-sharī'ah* suggests that legal protection should not be measured solely by the explicit invocation of *Taklik* in the judicial reasoning. A more comprehensive assessment considers whether the reasoning recognizes the factual reality underlying the wife's claim, integrates the relevant legal norms, remains responsive to the contemporary framework of women's judicial protection, accommodates multiple dimensions of harm and rights, and directs the legal consequence toward justice and the avoidance of further harm. In this framework, *sighat Taklik* remains legally

significant, but its protective function becomes part of a broader and more dynamic system of family-law adjudication.

KESIMPULAN DAN SARAN

This study concludes that the judicial treatment of *sighat Taklik Talak* in wife-initiated divorce cases cannot be understood solely from whether the *Taklik* violation is explicitly cited as the formal legal basis of divorce. The examination of selected Religious Court decisions demonstrates that the factual circumstances underlying *Taklik* violations may intersect with other legally recognized grounds for divorce, particularly continuous disputes and quarrels, failure to fulfill marital obligations, and circumstances that make the continuation of the marital relationship untenable. Therefore, a distinction must be maintained between the factual violation of the *Taklik*, the legal ground relied upon in the petition, the ratio decidendi formulated by the judge, and the dispositive order. This distinction is important because the absence of an explicit reference to *Taklik Talak* in the legal reasoning does not, by itself, establish that the wife has been denied legal protection.

From the perspective of Jasser Auda's systems approach, the protection of wives through *Taklik Talak* requires a broader and more integrated understanding of judicial reasoning. The six systems features—cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness—provide an analytical framework for examining how judges connect legal norms, facts, evidence, and the consequences of divorce. The cognitive nature of the legal system indicates that judicial reasoning is not a mechanical application of textual provisions but involves the interpretation of facts and norms. Wholeness requires *Taklik Talak* to be examined within the broader structure of marital rights and obligations. Openness allows judicial reasoning to respond to developments in contemporary legal protection for women, including the gender-sensitive principles reflected in PERMA No. 3 of 2017. Interrelated hierarchy requires the interaction of the Marriage Law, Government Regulation No. 9 of 1975, the Compilation of Islamic Law, *Taklik Talak*, evidentiary considerations, and other relevant legal norms to be considered as an integrated system. Multidimensionality highlights that divorce litigation concerns not merely the termination of marital status but also the wife's dignity, security, economic interests, psychological well-being, and access to justice. Finally, purposefulness places the realization of justice, prevention of harm, and protection of rights as important objectives of judicial adjudication.

Accordingly, the reconstruction of legal protection for wives should move from a narrowly formal understanding of *Taklik Talak* toward purpose-oriented judicial reasoning that integrates the substance of the *Taklik* with the broader legal and factual circumstances of each case. Such reconstruction does not require *Taklik Talak* to replace other statutory grounds for divorce. Rather, *Taklik* should function as an important normative instrument within an integrated judicial assessment of whether the wife's rights have been violated and whether the continuation of the marriage remains capable of realizing the purposes of marriage. Through this approach, *maqāṣid* al-sharī'ah serves not merely as a theoretical justification but as an analytical orientation for connecting legal certainty, justice, protection, and the prevention of harm in judicial decision-making. The findings therefore suggest that the effectiveness of *Taklik Talak* as an instrument of legal protection depends not only on its formal existence but also on how its protective purpose is incorporated into coherent, contextual, multidimensional, and purpose-oriented judicial reasoning.

UCAPAN TERIMA KASIH

The authors would like to express their sincere gratitude to all parties who contributed to the completion of this research. Special appreciation is extended to the academic community and colleagues who provided valuable discussions, insights, and constructive feedback throughout the development of this study. The authors also acknowledge the institutional support that facilitated access to relevant legal materials and academic resources. Finally, the authors are grateful to the reviewers and editors for their constructive comments and suggestions, which contribute to improving the quality and clarity of this manuscript.

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