

ABSTRAK

M.Hanafi Ridhani; Konsep *Takhbîb* Menurut ‘Illisy al-Mâliki Terhadap Legalitas Pernikahan Dalam Kitab *Fathu al-‘Ali al-Mâlik*. di bawah bimbingan: I. Prof. Dr. H. A. Fauzi Aseri, MA dan II. Dr. H. Anwar Hafidzi, Lc.,MA, pada Pascasarjana Universitas Islam Negeri Antasari Banjarmasin (2024).

Kata Kunci: *Takhbîb*, Pernikahan Hasil *Takhbîb*, *Sadd al-Dzarî’ah*.

Pernikahan seharusnya adalah institusi yang membawa kebahagiaan dan kemaslahatan. Namun, dalam beberapa kasus, pernikahan dapat terganggu oleh tindakan *takhbîb*, yaitu upaya pihak ketiga untuk merusak atau menghancurkan hubungan suami istri. Para ulama kemudian berupaya untuk merumuskan hukum terkait tindakan *takhbîb* dan dampaknya terhadap hukum pernikahan yang dihasilkan dari tindakan *takhbîb*.

Di antara empat madzhab, Madzhab Mâliki adalah yang paling keras pendapatnya. Salah satunya adalah fatwa Syekh ‘Illisy, seorang ulama madzhab Mâliki pada abad ke-19 M, yang berpandangan bahwa tindakan *takhbîb* dapat berdampak terhadap legalitas pernikahan sebagaimana diuraikannya dalam kitab *Fathu al-‘Ali al-Malik fi Fatwa ‘ala madzhab al-Imam Mâlik*. Maka, melalui analisis terhadap pemikiran Syekh ‘Illisy al-Mâliki dalam kitab *Fathu al-‘Ali al-Malik fi Fatwa ‘ala madzhab al-Imam Mâlik* akan dieksplorasi bagaimana konsep *takhbîb* dan dampaknya terhadap legalitas pernikahan dipahami dalam madzhab Mâliki, sebagai upaya preventif, dan menjadi tawaran solusi dalam mengatasi maraknya perilaku *takhbîb*.

Jenis penelitian ini adalah penelitian hukum normatif, dengan menggunakan pendekatan *conceptual approach*, dan *analytical approach*. Untuk bahan hukum yang digunakan terdiri dari bahan hukum primer, sekunder dan tersier. Ketiga bahan hukum tersebut dikumpulkan dengan teknik studi dokumenter, setelahnya akan dianalisis secara kualitatif. Untuk menjawab rumusan masalah akan digunakan teori *ushul fiqh*, *istinbâth hukum*, konsep *takhbîb*, teori *i’tibar al-maâl* dan *sadd al-dzarî’ah*.

Hasil penelitian menunjukkan, pendapat Syekh ‘Illisy dalam kitab *Fathu al-‘Ali al-Mâlik fi Fatwa ‘ala madzhab al-Imam Mâlik* tentang dampak tindakan *takhbîb* terhadap legalitas pernikahan sejalan dengan prinsip *saad al-dzarî’ah*, ia menyatakan bahwa pernikahan yang dihasilkan dari tindakan *takhbîb*, hukumnya haram, akad nikahnya rusak (*fasid*), dan apabila terlanjur menikah, maka harus dibatalkan (*fasakh*). Sedangkan dari perspektif *saad al-dzarî’ah*, pernikahan hasil *takhbîb* termasuk kriteria *al-dzarî’ah* sebab hal itu berpotensi menimbulkan mafsadat dan pelanggaran syari’at, karenanya untuk menutup dan mencegah hal tersebut, pernikahan hasil dari tindakan *takhbîb* sebaiknya dibatalkan (*fasakh*) dengan pertimbangan *sadd al-dzarî’ah*.

ABSTRACT

M. Hanafi Ridhani; The Concept of *Takhbîb* According to 'Illisy al-Mâliki Regarding the Legality of Marriage in the Book *Fathu al-'Ali al-Mâlik*. Under the supervision of: I. Prof. Dr. H. A. Fauzi Aseri, MA and II. Dr. H. Anwar Hafidzi, Lc., MA, at the Postgraduate Program of Antasari State Islamic University Banjarmasin (2024).

Keywords: *Takhbîb*, Pernikahan Hasil *Takhbîb*, *Sadd al-Dzarî'ah*.

Marriage should be an institution that brings happiness and benefits. However, in some cases, marriage can be disrupted by *takhbîb*, which is an attempt by a third party to damage or destroy the relationship between husband and wife. The scholars then attempted to formulate the law regarding *takhbîb* and its impact on the law of marriage resulting from *takhbîb*.

Among the four madhhabs, the Maliki madhhab is the most adamant in its opinion. One of them is the fatwa of Sheikh 'Illisy, a Maliki scholar in the 19th century, who was of the view that the act of *takhbîb* could have an impact on the legality of marriage as he explained in the book *Fathu al-'Ali al-Malik fi Fatwa 'ala madhhab al-Imam Malik*. Therefore, through an analysis of Sheikh 'Illisy al-Maliki's thoughts in the book *Fathu al-'Ali al-Malik fi Fatwa 'ala madhhab al-Imam Malik*, an exploration will be made of how the concept of *takhbî* and its impact on the legality of marriage is understood in the Maliki school of thought, as a preventive measure, and as a solution to overcome the prevalence of *takhbîb* behavior.

This type of research is normative legal research, using a conceptual approach and an analytical approach. The legal materials used consist of primary, secondary and tertiary legal materials. The three legal materials are collected by documentary study technique, after which they will be analyzed qualitatively. To answer the problem formulation, *ushul fiqh* theory, *istinbâth hukum*, the concept of *takhbîb*, *i'tibar al-maâl* theory and *sadd al-dzarî'ah* theory will be used.

The results of the study show that the opinion of Sheikh 'Illisy in the book *Fathu al-'Ali al-Mâlik fi Fatwa 'ala madhhab al-Imam Mâlik* on the impact of the act of *takhbîb* on the legality of marriage is in line with the principle of *saad al-dzarî'ah*. He states that a marriage resulting from the act of *takhbîb* is haram, the marriage contract is invalid (*fasid*), and if one is already married, it must be annulled (*fasakh*). Whereas from the perspective of Saad al-Dzarî'ah, a marriage resulting from *takhbîb* is included in the criteria of *al-Dzarî'ah* because it has the potential to cause harm and violate sharia. Therefore, to prevent and avoid this, a marriage resulting from *takhbîb* is annulled (*fasakh*) with the consideration of *sadd al-dzarî'ah*.