

Imam al-Ghazali's Concept of *Masalih Mursalah* in Informal *Talaq Ta'liq*: A Critical Study of Selected Selangor Syariah Court Cases

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Abstract

The issue of informal *talaq ta'liq* occurs when a husband states specific conditions towards his wife which imply performing or refraining from certain actions. Thus, this study explains the concept and discussion of the theory of *masalih mursalah* according to Imam al-Ghazali, aiming to apply it to women who are disadvantaged due to the verbal declaration of informal *talaq ta'liq*. The study also clarifies the concept of *talaq ta'liq*, as practised in Malaysia, referring to several cases from Syariah Court in Selangor. This study is a qualitative research methods. Data for this research was collected using descriptive methods and content analysis from books on usul fiqh, Islamic family law manuals, court case surveys, and previous studies, including articles, journals, and theses related to this topic. The data collected were analyzed using Atlas.ti version 9 software to examine the correlation between theory and the issue of informal *talaq ta'liq*, producing findings aligned with the study's objectives. The findings indicate that the theory of *masalih mursalah* from Imam al-Ghazali is seen as relevant in the issue of informal *talaq ta'liq*. It is hoped that this study will improve the management of issues surrounding informal *talaq ta'liq* for both husbands and wives, fostering synergy in maintaining marital relationships.

Keywords: Concept of Maqasid, Theory of *Masalih Mursalah*, Imam al-Ghazali, Informal *Talaq Ta'liq*, Women's Rights

Introduction

Maslahah (public interest) plays a fundamental role in Islamic jurisprudence, guiding the interpretation and application of Islamic law in contemporary issues. *Masalih mursalah*, in particular, refers to public interests which are not explicitly mentioned in the *Qur'an* or *Sunnah* but are derived from established principles in *fiqh* (Al-Ghazali, 1997). In the context of *talaq ta'liq*, an issue that significantly impacts women's rights, this article examines the implementation of *masalih mursalah* through the perspective of Imam Al-Ghazali. *Talaq ta'liq* occurs when a husband issues a conditional divorce, often in moments of emotional distress,

without the immediate intention of enforcing it. This practice can lead to legal and psychological uncertainty for women, placing them in a state of insecurity. Furthermore, *talaq ta'liq* may also be considered a form of psychological or emotional abuse, as it enables a husband to exert control and intimidation through the threat of divorce (Al-Zaqili, 2009).

The issue of divorce pronouncement through informal *talaq ta'liq* is not new and frequently occurs in society. The issue of informal *talaq ta'liq* has been acknowledged by authorities, as seen in the practice of reading the *ta'liq* declaration after the marriage contract, known as the formal *talaq ta'liq*. This practice serves as evidence and an official document for verification in the event of a formal *talaq ta'liq* divorce. The wife has the right to make claims in court. Therefore, the purpose of the formal *talaq ta'liq* document is to protect women's rights. However, this differs from the *talaq ta'liq* pronouncement made by the husband, which may include conditions not specified in the informal *talaq ta'liq* document (Najibah, 2007; Ibrahim, 2006). Thus, this issue needs serious attention to reduce the frequency of cases, as it can impact women's rights. The selection of the *masalih mursalah* theory as the scope of this study is appropriate for examining the welfare that should be emphasized concerning women's rights. It encompasses the five fundamental concepts of *maslahah* (welfare): protecting religion, self or life, intellect, lineage, and property.

An issue as serious as the practice of informal *talaq ta'liq* requires a multifaceted approach. Combating the culture of informal divorce also includes educating women about their rights and the laws surrounding these informal *talaq ta'liq*. Improving women's rights in the process of divorce, particularly in the context of informal *talaq ta'liq* practices, is absolutely critical. In addition to this, increasing awareness of counseling services may enable couples with marital problems to resolve their differences in a nonviolent manner in order to avoid an abrupt and ill-advised decision to divorce. Addressing women's concerns and empowering them will help in alleviating the negative effects of informal *talaq ta'liq* and contribute towards a better and fairer society (al-Ghazali, 1997). Imam al-Ghazali (1997), a renowned Islamic scholar, emphasized the significance of *masalih mursalah* in interpreting Islamic law. He argued that jurists should consider the public interest when applying legal principles, especially in cases where the explicit texts of the al-Quran and al-Sunnah may not provide a clear-cut answer. In the context of informal *talaq ta'liq*, this approach suggests that the courts should prioritise the well-being of women and the stability of the family unit when making decisions.

The Concept of Masalih Mursalah

Ibn Manzur (1995) and Al-Zabidi (1969) define the word *masalih* linguistically as derived from *salaha*, the opposite of *fasada* (corruption). It also stems from the word *islah*, meaning to eliminate harm. *Masalih* is the plural of *maslahah*, which signifies goodness and the removal of harm. Al-Ghazali (1997) defines *masalih mursalah* within *usul fiqh* as a principle initially intended to bring benefits and prevent harm. Al-Ghazali (1997), Al-Zuhaily (1986), and Abu Zuhrah (1987) assert that *maslahah* should be recognised as true *maslahah* and should be based on the five foundational goals of *maqasid shariah*, consisting of the preservation of religion, self or life, intellect, lineage, and property. These foundations are essential for the well-being and harmony of human life (Muslim, 2023).

The first foundation, preserving religion, means preventing worldly trials, misguidance, and corruption. The second foundation, preserving life or self, implies a good quality of life for all societal layers, human dignity, freedom to work, and freedom of thought and opinion. The third foundation, preserving intellect, serves to prevent anything harmful to the mind, helping it grow and avoid corruption, such as by prohibiting alcohol and intoxicants to safeguard intellect. The fourth foundation, preserving lineage, involves building a healthy, active body and nurturing strong family ties to produce good generations. Lastly, preserving property involves growing wealth in lawful ways, benefiting from it without injustice or misuse against others. If a criterion fulfills one of these five foundations, it can be considered as *maslahah* (Khattak, 2022). *Masalih mursalah*, also known in *usul fiqh* as *istislah*, refers to *maslahah* that aligns with Islamic *maqasid shariah* but is not explicitly stated in any *shariah* texts, whether specific or general. If it is explicitly stated, it falls under general analogy (*qiyas*). However, if something clearly contradicts *shariah*, it is deemed invalid (Abu Zuhrah, 1987).

Maslahah is a dynamic concept that allows for flexibility and adaptability in Islamic jurisprudence. It means considering the public interest and the principles of Islamic law, which enables the capability of addressing issues and challenges that may be at variance with what the Quran and Sunnah have addressed. However, it is important to note that *maslahah* must always be employed within the framework of Islamic law principles and never in a way to contradict any clear textual evidence (Suyaman, 2024).

Evidence of Legislation

Islamic law was introduced with the purpose of ensuring the welfare in humanity. The role of the Prophet was to convey commands and prohibitions revealed by Allah SWT, as stated in the word of Allah:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

"And We have not sent you, [O Muhammad], except as a mercy to the worlds."

(Al-Anbiya, 21:107)

وَلَوْ أَتَّبَعَ الْهَوَاءَ هُمْ لَفَسَدَتِ السَّمَوَاتُ وَالْأَرْضُ وَمَنْ فِيهِنَّ بَلْ أَتَيْنَهُمْ بِذِكْرِهِمْ فَهُمْ عَن ذِكْرِهِمْ مُعْرِضُونَ

"And if the truth had followed their desires, the heavens and the earth and whoever is in them would have been ruined. But We have brought them their reminder, and they are turning away from it in aversion."

(Al-Mu'minun, 23:71)

This principle of *maslahah* (welfare or public interest) serves as a fundamental objective in Islamic teachings to maintain a just and righteous society. It ensures that human actions and decisions align with divine guidance, as provided in the Quran and Sunnah. The Quran, as the direct word of Allah, and the Sunnah, which comprise the sayings, actions, and approvals of Prophet Muhammad (peace be upon him), offer a comprehensive framework for moral and ethical living. By adhering to these divine sources, *maslahah* safeguards society from harmful practices, promoting justice, fairness, and well-being. It acts as a mechanism to interpret and apply Islamic principles in ways that address contemporary challenges while staying true to the essence of divine revelation. This ensures that laws and rulings derived from Islamic jurisprudence (*fiqh*) serve the best interests of individuals and the community

without deviating from the core values of Islam (Remiswal, R. & Angraini, A. & Boti, A. & Nazar, Z., 2021).

Biography of Imam al-Ghazali

Imam al-Ghazali's full name is Muhammad bin Muhammad bin Ahmad al-Ghazali. He was a prominent Shafi'i jurist, a skilled speaker, and counted among poets. He was born in Tabiran in 1058 CE (450 AH). Al-Ghazali was highly regarded for his wisdom and extensive mastery in various fields of knowledge, such as Shafi'i jurisprudence, *usul fiqh*, creed, *tasawwuf* (spirituality), ethics, and philosophy. Among his works are *al-Wasit*, *Tahafut fi al-Falsafah*, *al-Iqtisad fi al-I'tiqad*, *al-Mustasfa*, and many more. He passed away in 1111 CE (550 AH) (Al-Zuhaily 2010).

The Theory of Masalih Mursalah According to Imam al-Ghazali

Ab Latif, & Saidon, (2024); Al-Ghazali (1997) and Al-Zuhaily (1986) state that *masalih mursalah* relates to matters that provide benefit and prevent harm. It must align with the five fundamental objectives (*maqasid shariah*): safeguarding religion, life, intellect, lineage, and wealth. Al-Ghazali categorized *maslahah* into three sections: The first category of *maslahah* is something acknowledged by shariah based on its affirmation. This means it is validated by shariah and can serve as evidence, often referenced in analogy (*qiyas*). For example, all intoxicating foods and drinks are prohibited by analogy to alcohol, whose prohibition is stated in the Quran to protect the intellect. Thus, the prohibition of alcohol is intended to safeguard the welfare of the mind. The second category of *maslahah* is something acknowledged by shariah through nullification, such as the requirement for a husband who has intercourse with his wife during the day in Ramadan to fast for two consecutive months as a corrective measure to prevent such actions. The third type is *maslahah* without direct acknowledgment or cancellation based on any specific text. Additionally, *maslahah* can vary in strength by its essence. In reality, *masalih mursalah* is not a specific textual or direct proof but is discussed within the scope of analogy (*qiyas*) (Muslim, 2023; Al-Ghazali, 1997; Al-Zuhaily, 1986).

The three levels of *maslahah* are *dharurat* (necessity), the highest level, meant to protect the five essentials: religion, life, intellect, lineage, and wealth. The second level is *hajiyyat* (needs), where *maslahah* arises from specific circumstances, such as prohibiting a minor from marriage until they meet the criteria of compatibility and the dowry. The third level is *tahsiniyyat* (enhancements), referring to additional benefits, either in customs or transactions. Imam al-Ghazali outlined several conditions for practicing *masalih mursalah*. First, the *maslahah* must be aligned with shariah laws, serving as a measure for acceptance or rejection. Secondly, it must not contradict any shariah texts, a core requirement for acting upon *masalih mursalah*. Third, the *maslahah* must be a necessity, whether for an individual or general need (Al-Ghazali, 1997) and (Al-Zuhaily, 1986). Summarizing these three conditions, Imam al-Ghazali emphasized that *maslahah* must conform with shariah; if it contradicts, it is invalid and cannot serve as shariah evidence. According to Imam al-Ghazali, *masalih mursalah* is not established by shariah at its origin but rather aims to fulfill *maqasid shariah* aspects, as indicated in the Quran, Sunnah, and *ijma'* (consensus) of scholars. *Masalih* is also viewed in terms of compatibility with shariah in a general sense, as any *maslahah* lacking Quranic or Sunnah guidance is considered unusual (Muslim, 2023).

The Issue of Oral Conditional Divorce Declarations in Malaysia

In reality, conditional divorce declarations (informal *talaq ta'liq*) are common issues within the Malaysian society (Romli & Ahmad, 2014). Conditional divorce in Malaysia is categorized into two types: formal *talaq ta'liq* and informal or oral *talaq ta'liq*. Formal *talaq ta'liq* refers to a conditional statement mandated by the authorities in Malaysia, which the husband reads aloud after the marriage contract is completed. This document emphasizes four main points: abandoning the wife for four consecutive months, neglecting financial support, causing harm to the wife in any form, and reconciling without the wife's consent, as practised in Selangor. In Perlis, for example, the *talaq ta'liq* document specifically aims to protect women's rights. If the husband breaches this condition, it allows the wife to file a complaint in court. This demonstrates that women can claim their rights if they suffer mistreatment by their husbands (Urus, 2024).

The second category is informal *talaq ta'liq*, also known as oral *talaq ta'liq*, which refers to conditional statements made by the husband beyond the contents of the formal *talaq ta'liq* document. This involves the husband verbally addressing certain conditions to his wife (Urus, 2024; Zin, 2007; Lembut, 2006). This form of *talaq ta'liq* allows the husband to declare conditions at will (Mutalib, 1999). When there is a breach of such conditions, it is challenging to provide evidence unless the wife has recorded it or the husband cooperates. Legal procedures require proof of the conditional statement made. Both husband and wife should document the declaration in any form as evidence for court complaints. According to Aznan's (2014) study in Perak, informal *talaq ta'liq*, also known as additional *talaq ta'liq*, can be documented and registered in front of responsible authorities such as district religious administration officers to safeguard the wife's rights and interests. This is a good step towards addressing issues related to women's neglected rights. Therefore, effective measures should be taken to address this issue, as it affects a wife's rights related to the *talaq ta'liq* declared by the husband. Authorities should also provide specific provisions for cases involving unofficial conditional divorce declarations to streamline court procedures for verifying such statements (Sitiris, Miszairi, et. al, 2021).

Imam al-Ghazali's theory posits that *masalih mursalah* (public interest) relates to matters that bring benefit and prevent harm. This principle must align with one of the following foundations: safeguarding religion, protecting life, preserving intellect, ensuring lineage, and securing wealth. It must also conform to Islamic law and be considered a necessity, even if it only concerns an individual's rights (Ab Latif, L., 2020; Al-Ghazali, 1997; Al-Zuhaily, 1986). Accordingly, there are several verses in the Qur'an that can be associated with the protection of women's rights, as expressed in Allah's words:

وَعَايِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

Translation: "And live with them in kindness. Then if you dislike them, (be patient), for perhaps you dislike something in which Allah has placed much good." (Al-Nisa', 4:19)

According to Al-Thabari's interpretation (2001), this verse means that a husband should cherish his wife, fulfill her rights as commanded by Allah, and treat her kindly. If the husband intends to divorce his wife, he should do so graciously, without harshness or oppression, as the wife brings goodness and mercy by bearing children to continue one's

lineage. Children are a source of sustenance for both husband and wife. According to Ibn Kathir's (2000) commentary, the verse explains that a husband should treat his wife well, with respectful behavior, to the best of his ability, just as he would like her to treat him well. This aligns with a hadith narrated by Urwah from his father, from Aisha (RA), where the Prophet Muhammad (SAW) said: "The best of you is the one who is best to his family, and I am the best to my family." (Sunan Tirmidhi, hadith no. 3895, chapter on virtues, 667). Thus, the Prophet Muhammad (SAW) serves as an exemplary role model, as mentioned in Allah's words:

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِّمَن كَانَ يَرْجُوا اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ كَثِيرًا

Translation: "Indeed, in the Messenger of Allah, you have an excellent example for whoever hopes in Allah and the Last Day and remembers Allah often." (Al-Ahzab, 33:21)

وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Translation: "And their husbands have more right to take them back during the waiting period (*iddah*), if they desire reconciliation. And women have rights similar to those over them in an equitable manner, but men have a degree [of responsibility] over them. And Allah is Almighty and Wise." (Al-Baqarah, 2:228)

According to Al-Thabari's interpretation (2001), this verse indicates that if a husband wishes to reconcile with his wife after divorcing her, he must do so within her *iddah* period, which may last three menstrual cycles, three months, or until she delivers if she is pregnant. Al-Thabari further explains (2001) that the wife is entitled to kind treatment, support during difficulties, and protection from harm by the husband, as Allah commands that the wife remains loyal to her husband. Allah also states that husbands hold a higher rank and have certain rights over their wives. According to Ibn Kathir (2000), this verse clarifies that a husband may reconcile with his wife, but only in cases of a single or double divorce. In the case of a triple divorce, reconciliation is not permitted. Husbands are also expected to treat their wives well, as indicated in a hadith from Jabir bin Abdullah: "Indeed, during his Farewell Pilgrimage, the Prophet Muhammad (SAW) advised, 'O husbands! Fear Allah regarding your responsibilities as husbands. You have taken wives as a trust, and you may be intimate with them by Allah's command. If you dislike something about your wife's behavior, then strike her lightly without causing injury, as they are a source of sustenance for you.'" (Sahih Muslim, hadith no. 2137, chapter on pilgrimage, 890).

Several Qur'anic verses and hadiths of the Prophet Muhammad (SAW) emphasize that women should be treated well as wives. They possess rights that must be upheld to prevent the neglect of these rights. This is because *talaq ta'liq* declarations with certain conditions impact the wife; when these conditions are breached, divorce takes effect as declared. Consequently, rights concerning financial support, a wife's freedom, child custody, and other matters are also affected. From a legal perspective, a wife filing a complaint in court bears the burden of proof if the husband is uncooperative or refuses to give legal testimony (Sitiris, Miszairi, et. al, 2021; Mohd Zin, 2007), especially if the husband does not take responsibility for the *talaq ta'liq* declaration. Some husbands make *talaq ta'liq* declarations out of anger or

dissatisfaction (Nawi, 2003) or as a means of disciplining their wives, contributing to cases of informal *talaq ta'liq* (Lembut, 2006). Therefore, the theory of *masalih mursalah* (public interest) is necessary and relevant in addressing such conditional declarations, considering their impact on a wife's rights due to the *talaq ta'liq*. Husbands should exercise caution and rationality during marital conflicts to avoid making conditional statements that affect both parties' relationship. Since *talaq ta'liq* declarations bind certain conditions, breaching them results in divorce, impacting the wife. Husbands who deny making these statements place the burden of proof on their wives (Sitiris, Miszairi et al., 2021).

Research Methodology

This study adopts a qualitative approach to explore the relationship between Imam al-Ghazali's theories of *masalih mursalah* (public interest), using content analysis of their *usul fiqh* (Islamic jurisprudence) texts. The theories of *masalih mursalah* from this scholar are collected and analyzed to highlight similarities and differences in their concepts. The findings are applied to assess the impact on women's rights in cases of informal *talaq ta'liq* declarations. Cases of informal *talaq ta'liq* are gathered through analysis of documents from Shariah court case files and legal journals. This research employs descriptive analysis to provide an in-depth understanding of the connection between the *masalih mursalah* theoretical approach and the practical issues arising from informal *talaq ta'liq* declarations, demonstrating the importance of this issue and appropriate actions needed. The study also aims to identify the effects on women's rights due to conditional divorce declarations and the relevance of applying the *masalih mursalah* theory as an indicator for addressing these issues. All data and information are analyzed using Atlas.ti software version 9. Data sources include various *usul fiqh* books, articles, working papers, theses, legal manuals, and court cases.

This study employs a case study methodology, analyzing multiple real-life cases to uncover patterns, themes, and contextual factors influencing judicial outcomes in *ta'liq* divorce rulings. Through content analysis, the study examines the language and context of *ta'liq* pronouncements, identifying recurring themes that highlight the power dynamics, intent, and implications of such statements. Additionally, thematic analysis is used to explore the underlying social, emotional, and legal factors that contribute to the enforcement or dismissal of *ta'liq* conditions, shedding light on the motivations of both husbands and wives in these disputes. Furthermore, comparative analysis is conducted to assess variations in judicial reasoning, comparing different cases to understand how courts interpret and enforce *ta'liq* based on legal principles and circumstantial evidence. By integrating these qualitative research methods, the study provides a comprehensive insight into the complexities of *ta'liq* divorce and its broader implications within the framework of Islamic family law.

Discussion and Findings

Case 1 (10010 – 054 – 0987 – 2019)

In this case, the wife applied for confirmation of an out-of-court divorce pronouncement. The husband made a **ta'liq** (conditional divorce pronouncement) because he did not allow his wife to attend a meeting without his permission. The **ta'liq** was pronounced on February 24, 2012, at 6 PM:

"If you go to the meeting, a divorce will take effect." In March 2012, the wife left the house in the morning for a meeting. As she violated the **ta'liq**, the court ruled that a divorce had taken

effect. The main factor behind the **ta'liq** and the wife's violation was their lack of mutual understanding. At the time of the **ta'liq**, the husband was in a sound state of mind, fully aware, and not under any duress. Furthermore, the wife deliberately violated the **ta'liq** because she was frustrated with her husband's attitude and infidelity. She acknowledged remembering the **ta'liq** pronouncement and understanding its consequences. Therefore, the court ruled that the **ta'liq** conditions were met, and the **Talak Ta'liq** (conditional divorce) was executed.

Case 2 (10003 – 054 – 2327 – 2016)

In this case, the husband applied for confirmation of an out-of-court divorce pronouncement. The **ta'liq** was pronounced on November 21, 2016, at around 6:30 PM: *"If you step out of this house, I pronounce a divorce."* The case was heard in court on December 14, 2016, but was postponed due to certain reasons. The case was rescheduled for May 25, 2017, at 9 AM. The judge ruled that the wife had violated the **ta'liq**. This case demonstrates that the husband was dissatisfied with his wife's actions of leaving the house at will without his permission. The husband issued the **ta'liq** as a threat. However, the wife knowingly and deliberately violated the **ta'liq**, understanding its consequences. Ultimately, the court confirmed their divorce.

Case 3 (10003 – 054 – 1423 – 2016)

In this case, the wife applied for confirmation of an out-of-court divorce pronouncement. The husband pronounced **talak** (divorce) on August 9, 2011, around 3 PM: *"With this, I divorce you (wife's name) with a divorce."* Additionally, the husband also pronounced **ta'liq** on March 6, 2014, at around 4 PM: *"If you step out of the house, I will divorce you."* The husband received a court summons. The plaintiff's hearing was scheduled for July 26, 2016, at 2:30 PM, and the defendant's on July 31, 2016, at 8 PM. The case was heard in court on August 4, 2016. However, based on the judge's decision on August 4, 2016, the case was postponed due to insufficient evidence. This case shows that the husband was dissatisfied with his wife frequently leaving the house without his permission. As a result, he issued the **ta'liq** as a threat in hopes that she would change and repent.

Case 4 (10010 – 054 – 0224 – 2019)

In this case, the wife applied for confirmation of an out-of-court divorce pronouncement. The husband pronounced **ta'liq** on December 26, 2018, at around 10:30 PM in their bedroom: *"I will find a house and we will move. If you refuse to move, I apologize, but I will let you go."* On January 7, 2019, at 3 PM, the husband moved to a new house, but the wife refused to follow him. The case was heard in court on March 18, 2019. However, it was postponed because the husband was unable to attend. The second hearing was held on April 8, 2019. The court ruled that the pronouncement did not constitute a valid **ta'liq**. This case highlights a misunderstanding between the husband and wife. The husband demanded that his wife obey him and issued a **ta'liq** as a threat. Although the wife did not comply with his demand, the court ruled that the **ta'liq** pronouncement was unclear and incomplete. Thus, the court confirmed that they remained legally married, as the pronouncement did not meet the conditions of a **ta'liq**.

Case 5 (10010 – 054 – 0245 – 2019)

The husband filed an application for the confirmation of an out-of-court divorce pronouncement. On March 25, 2019, at 6:30 PM, the husband uttered a *ta'liq* (conditional divorce) statement: *"If you leave my house, the divorce will take effect."* The husband made

this *ta'liq* pronouncement during an argument caused by a phone call. On April 10, 2019, the case was heard in court. The court found that the *ta'liq* pronouncement was valid, as the husband was in a conscious state and made the declaration of his own free will. Meanwhile, the wife deliberately and knowingly violated the *ta'liq*, fully understanding its meaning. As a result, the *Talak Ta'liq* (conditional divorce) was executed. According to this case, a dispute arose between the husband and wife, leading the husband, in a state of anger, to pronounce *ta'liq*, meaning: "If the wife leaves the house, she will be divorced." The court determined that the husband was in a conscious and rational state when making the pronouncement and was not coerced into doing so. Therefore, the court confirmed that the couple was officially divorced, in accordance with Islamic law.

This analysis employs qualitative research methods to explore patterns and themes across five cases of *ta'liq* (conditional divorce) in Islamic family law. The study uses a **case study approach** by examining real-life judicial rulings, allowing for an in-depth understanding of the underlying factors leading to *talak ta'liq*. Thematic analysis is applied to identify key themes emerging from the cases.

There are 5 themes that had been identified from the 5 cases stated above:

1. Power Dynamics and Gender Roles

In each case, the *ta'liq* pronouncement reflects a power imbalance, where the husband exerts control over the wife's actions, particularly regarding mobility and obedience. In Case 1, Case 2, and Case 3, the husbands issued *ta'liq* as a means of restricting their wives from leaving the house or attending meetings. This demonstrates the enforcement of traditional gender roles, where a wife's autonomy is often subjected to the husband's approval.

2. Emotional Reactivity in Divorce Pronouncements

A recurring pattern in these cases is the emotional impulsivity of husbands in issuing *ta'liq*. In Case 5, the pronouncement occurred during an argument triggered by a phone call, and in Case 4, it was made in response to the wife's refusal to relocate. The use of *ta'liq* as a reaction to disputes rather than a deliberate, well-thought-out decision suggests that many of these pronouncements are made under emotional distress rather than rational judgment.

3. Intention and Awareness in Legal Proceedings

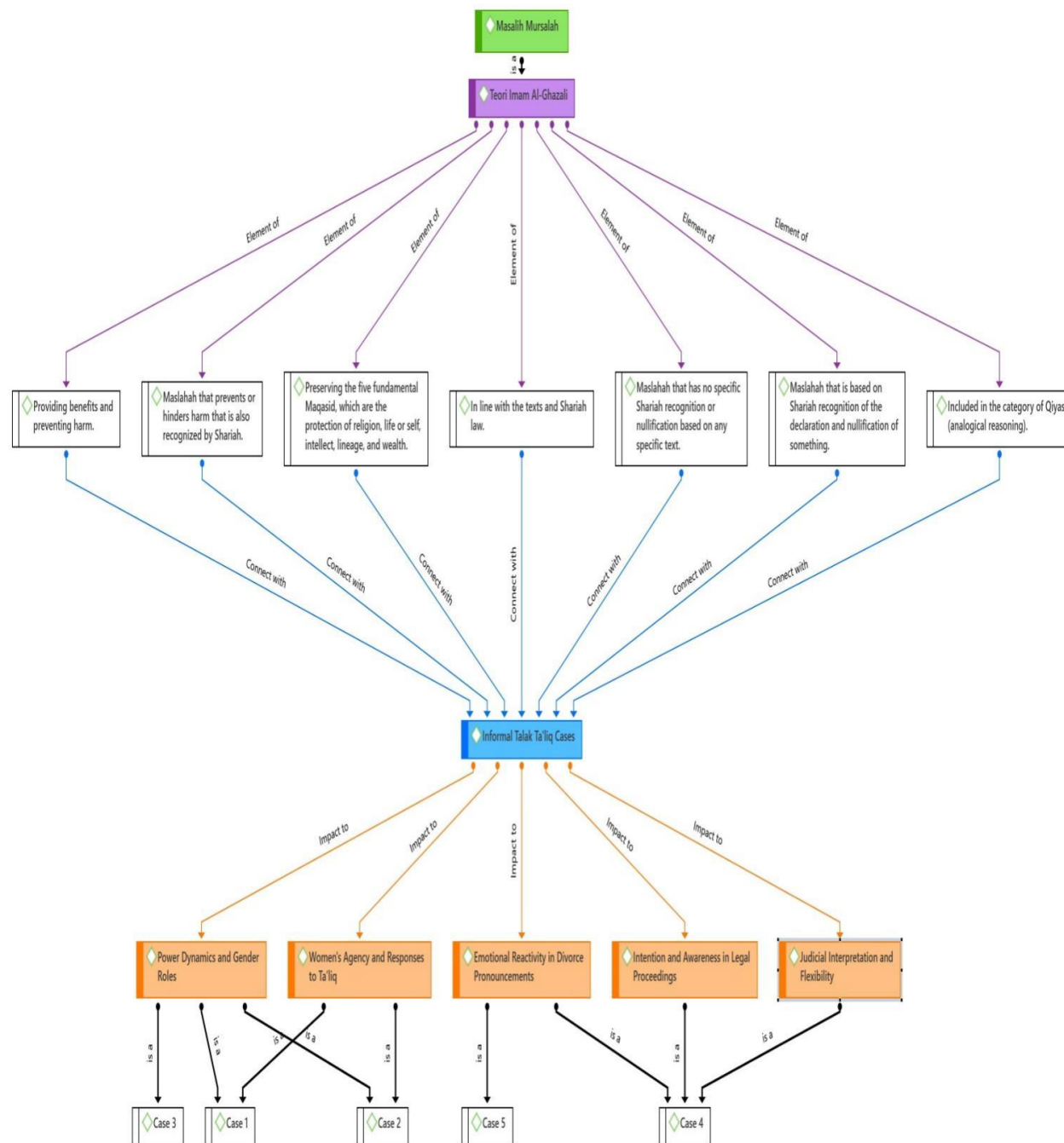
The legal validity of *ta'liq* is dependent on intent, awareness, and voluntary action. In all cases except Case 4, the courts confirmed that the husbands were in a sound state of mind and had made the pronouncement of their own free will. In contrast, Case 4 was dismissed because the court deemed the *ta'liq* statement too ambiguous to be enforceable. This highlights the importance of clarity in legal pronouncements and judicial interpretation in determining the validity of *talak ta'liq*.

4. Women's Agency and Responses to *Ta'liq*

Despite the restrictive nature of *ta'liq*, the wives in these cases demonstrated agency by either deliberately violating the conditions or seeking legal confirmation of the divorce. In Case 1, the wife violated the *ta'liq* out of frustration with her husband's infidelity. Similarly, in Case 2, the wife knowingly defied her husband's restriction by leaving the house without permission. These actions suggest that some women view *ta'liq* as an opportunity to assert control over their marital situation rather than simply complying with restrictive conditions.

5. Judicial Interpretation and Flexibility

The judicial outcomes in these cases reflect the court’s role in interpreting and enforcing Islamic family law. In most cases, the courts upheld the ta’liq pronouncements, reinforcing the idea that verbal conditions imposed by the husband carry legal weight. However, Case 4 stands out, as the court ruled that the pronouncement was too vague to constitute a valid ta’liq. This demonstrates the flexibility in Islamic legal interpretation, where the court has the discretion to determine whether a ta’liq meets the required legal criteria.



The varying court decisions in ta’liq cases highlight the interpretational flexibility within Islamic family law. While some rulings confirm the divorce based on clear pronouncements and deliberate violations, others dismiss it due to ambiguity or incomplete conditions. This variation underscores the need for standardized legal frameworks to ensure

consistency and fairness in judicial outcomes. Additionally, these cases demonstrate the importance of judicial discretion in considering intent, state of mind, and contextual factors when interpreting ta'liq pronouncements.

The cases reveal power dynamics within marriages, where husbands often use ta'liq as a means of control over their wives' actions. This raises concerns about gender equity, particularly when ta'liq is issued as a threat rather than a mutual agreement. Moreover, these rulings affect women's rights and social security, as abrupt divorces may leave them vulnerable—especially if financial and custodial matters are not properly addressed. The study highlights the need for greater awareness and legal literacy among women regarding their rights in marriage and divorce.

The emotional impact of ta'liq divorce is profound, affecting both spouses' mental well-being. Cases where ta'liq is pronounced in anger or frustration suggest that temporary emotions can have lasting consequences, leading to irreversible marital breakdowns. For wives, the uncertainty of ta'liq rulings can result in emotional distress, anxiety, and a sense of instability in the marriage. Conversely, for husbands, regret or unintended consequences may follow, emphasizing the need for counseling and conflict resolution mechanisms before resorting to divorce.

The study underscores the need for policy reforms to regulate ta'liq pronouncements more effectively. Establishing clear legal guidelines on ta'liq conditions, incorporating pre-marital counseling, and promoting alternative dispute resolution methods could prevent unnecessary divorces and protect marital harmony. Additionally, empowering women with legal knowledge and providing psychological support for affected individuals can mitigate the adverse effects of ta'liq divorce, fostering a more equitable and just family law system.

Thus, the qualitative analysis of these cases demonstrates that verbal informal talaq ta'liq is frequently used as a reactionary measure rather than a deliberate legal step. The recurring themes of gender control, emotional impulsivity, and judicial interpretation highlight the complexities surrounding talaq ta'liq. Moving forward, legal reforms and social awareness initiatives are necessary to protect the rights and well-being of women involved in such cases. The findings of this research present several *masalih mursalah* theories from the works of Imam al-Ghazali, illustrating that the *masalih mursalah* theory is pertinent to addressing women's rights in cases of verbal conditional divorce.

Conclusion

This study has critically examined Imam al-Ghazali's concept of *masalih mursalah* and its application in the context of informal *talaq ta'liq* cases within the Selangor Syariah Court. By analyzing selected cases, this research has illuminated the judicial considerations involved in determining the validity and enforcement of *talaq ta'liq* declarations. The study has also highlighted the balance between legal formalism and the necessity of ensuring justice and fairness in marital dissolution cases. Ultimately, the findings contribute to the broader discourse on Islamic legal theory and its practical implications in contemporary family law.

This research also enhances existing knowledge by bridging the classical Islamic legal principles articulated by Imam al-Ghazali with their modern judicial application in Malaysia.

By situating *masalih mursalah* within the framework of informal *talaq ta'liq*, this study provides a nuanced understanding of how Islamic jurisprudence can be adapted to contemporary legal contexts while maintaining its doctrinal integrity. Furthermore, the study underscores the importance of contextualizing Islamic legal maxims within specific socio-legal environments, particularly in addressing issues related to women's rights and access to justice in marital disputes. The findings serve as a valuable reference for scholars, legal practitioners, and policymakers seeking to refine the application of *masalih mursalah* in family law, ensuring that legal decisions uphold both Islamic ethical considerations and contemporary societal needs.

This study significantly contributes to the existing body of knowledge by demonstrating the applicability of *masalih mursalah* in resolving contemporary issues of marital dissolution in Selangor Syariah Court. It highlights the dynamic nature of Islamic jurisprudence in addressing modern legal challenges while preserving foundational Islamic principles. By examining case studies from the Selangor Syariah Court, this research provides empirical evidence of how *masalih mursalah* is interpreted and applied, thereby offering valuable insights for judicial authorities and legal scholars.

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