

# A Critical Review on The Law of Cina Buta (Chinese Blind) According to Shaykh Abdul Qadir Bin Abdul Muthalib Al Mandili Al Indonesia Al Shafi'i

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### ABSTRACT

Through the fiqh ideas of Shaykh Abdul Qadir bin Abdul Muthalib Al Mandili Al Indonesia Al Syafi'i, which are found in his book Al-Asadul Ma'ar Liqatil Taisil Musta'ar: on China Buta Law, this research seeks to understand how the law of marriage with the phrase nikah cina blind works. Additionally, the authors proposed that the difficulty in this study is First, how Shaykh Abdul Qadir Bin Abdul Muthalib Al Mandili Al Indonesia saw China Buta Law from a fiqh perspective. Second, how is the law's application handled when there is a china blind legal issue. This research employed library research as the primary method of investigation. and use a qualitative strategy. This is so because word descriptions serve as both the data source and the research output in the research library. The findings of this study were drawn from a study of the book Al-Asadul Ma'ar Liqatil Taisil Musta'ar: On China Buta Law, which was conducted by Shaykh Abdul Qadir bin Abdul Muthalib Al Mandili Al Indonesia Al Syafi'i. Therefore, it can be stated that Sheikh Abdul Qadir rejected and forbade the practice of Chinese blind marriages by providing a very clear justification in this regard.

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### 1. Introduction

Islam is an all-encompassing religion that regulates every aspect of life, from the moment humans close their eyes to the moment they open them to engage in life.



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Similarly, Islam regulates matters deemed significant enough to be brought to the surface. For instance, the marriage regulations contain numerous laws that must be investigated. (Ghazaly, 2019) . The origin of marriage is the Arabic equivalent, namely *nikahuun* which is in the *masdar form* of the verb *nakaha* (Yunus, 1989) . Consequently, the tazawwaja equation translates to matrimony. Marriage is a common term because it is utilized in ordinary communication. Marriage translates to adh-dhammu wattadaakhul (overlapping inserts) in Pali. In various contexts, the word marriage is synonymous with adh-dhammu waljam'u (overlapping and assembling). The most common usage of the term marriage pertains to the contract. And it is true that this is the understanding of the fuqaha. No Even though the definition of the holy book and the meaning of the marriage contract are identical, distinct senses exist. Regarding a term in the discipline of Jurisprudence, marriage denotes a contract (agreement) that permits husband and wife relations through the use of the words (lafazh) for marriage or tazwi (Judge, 2000).

Marriage is essential to both individual and social existence. (Abdurrahman, 1995) . Through legal marriage, a man and a woman's relationship is governed by the Shari'a and functions as social life. Spirit of sakinah fosters the atmosphere of existence within the family. Harmony between spouse and wife will naturally result in proud offspring and Allah's SWT's favor. Two things must exist neatly and proportionately to his physical and spiritual requirements in physical and non-physical form in order to meet his needs. When these two needs are met, it will run in harmony with the continuity of a decent life, and if they are not met, it will disrupt the order of an individual's or a group's life (Atabic, 2014) . Therefore, in Among these relationships is marriage. In the Marriage Law the word "bond physically and spiritually", gives view Constitution hinted marriage That No regardless from attachment physical and spiritual needs to be maintained (Rusdaya Basri, 2016) .

The purpose of marriage is to procreate and control the desire for sexual activity. Allah has therefore established rules and boundaries to ensure that everyone can discover love and marriage. Religion Islam teaches that the marital bond should always be strengthened, unlike non-Islamic religions, but Islam does not address the dissolution of the marriage bond. With a notation that when a marriage has indeed reached the point of bankruptcy, and even more so when it continues to cause misery in the domestic order, so that it violates Allah's law, the bond must be dissolved, and a space is created for divorce.

Scholars concur that when a husband divorces his wife through talak ba'in qubra or triple divorce, it is no longer permissible for him to remarry her unless she has remarried another man (Choirunnisa Nur Novitasari, Dian Latifiani, 2019) .

As an initial basis, Allah says in surah QS al-Barqarah verse 230, if a man divorces his wife again after the second divorce, then he has no chance of getting the right of reference to his ex-wife, unless the wife is already married and is in contact with another man who legitimate. Thus, nowadays some parties are trying to get around the verse above to still be able to return to referring to a wife with a loophole that looks as if it is in accordance with the Shari'a, but has violated it and fallen into what is forbidden. So the term blind Chinese marriage was raised, an ex-husband looking for a paid husband for his ex-wife to marry him and after that the paid husband divorced her, so that the ex-husband could return to his ex-wife, in other words the term blind Chinese marriage appeared.

## 2. Research methods

This method of investigation is library research. It is termed library research because the documents being reviewed are utilized. This study investigates Sayik Abdul Qadir Al Mandili Al Indonesi's views on blind Chinese law from the perspective of fiqh. There are two categories of sources for research data. The first source is the Book of Shaykh Abdul Qadir al Mandili, which is the primary source. In addition, other primary sources will also be included. Second, secondary sources, or research conducted by other scholars on

Shaykh Abdul Qadir al Mandili's book. Included among secondary sources are the works of blind Chinese law experts. Thus, the source of these research data is Shaykh Abdul Qadir al Mandili's writings on blind Chinese law thought. His works serve as the primary source for this investigation. In analytical activities, works related to Sayik Abdul Qadir Al Mandili Al Indonesi's fiqh reasoning in blind Chinese law are used as a supporting source, and these works are referred to as secondary sources.

### 3. Results and Discussion

#### a. Blind Chinese Marriage According to Islamic Perspective

The words *hallala*, *yuhallilu*, and *muhallilan*, all of which mean ratification, are the progenitors of *muhallil*, or blind Chinese marriage. This phrase refers to an agreement between a woman's first spouse (*muhallalah*) and a man (*muhallil*) who marries her prior to her divorce. The purpose of a blind Chinese marriage is to re-legalize a marriage after three divorces. This type of marriage was also prevalent before the advent of Islam. Sayyid Sabiq defines blind Chinese marriage in his book *Fiqh Sunnah* as having intercourse with a divorced woman, marrying her after her *iddah* expires, and then divorcing her so that she can remarry her ex-husband. According to Ibn Rushd's work, *Bidayah Mujtahid* defines blind Chinese marriage as a marriage to ratify an ex-wife who has been divorced three times. (Rusyd, 2013) .

The expression "blind chinese marriage" is used to describe a man who marries a woman who has gone through three divorces from her husband in the hope that the woman will be allowed to marry her first ex-husband after the second husband divorces her and her 'idid period has passed. This marriage is known as *nikah china* blind because the second husband wants to officially recognize the union of the first husband and his ex-wife. The practice of blind Chinese marriage, which is often referred to as *nikah tahlil*, involves a man marrying a woman who has gone through three divorces, then divorcing her so that the woman can be re-married by her first husband. (Mandili, 1979) .

This marriage occurs when an ex-husband who has divorced his wife three times wants to get back together with his wife, but because of the three divorces, he is not allowed to marry her unless she first marries another man. If a man divorces his wife three times in Islamic tradition, he is not allowed to remarry unless he has married another man. In Malay, a marriage is called *cina* blind if it depends on a woman waiting a certain period before divorcing to remarry her first husband, who has left her for a fee. While this marriage custom is known as *muhallil* in Arabic, it has been incorporated into *nikah tahlil*, which will be discussed in the next paragraph.

According to Asy-Syaukani in *Naillul Authar*, it is unlawful to marry a woman who has experienced three divorces with the aim that her first husband can marry her once again, because the curse given is an curse for a grave sin. Both husband and wife should be deeply disgusted by this kind of behavior. In fact, some people will offer a gift to a man who is willing to marry his ex-wife as long as she gets a divorce soon. This marriage is known as *nikah tahlil*, or Chinese blind marriage, because the second husband wants to formalize the relationship between the first husband and the ex-wife (Hasan, 203 CE) . The majority of scholars agree that Chinese Chinese marriage is haram and invalid, and highly discouraged in Islam. Islam mandates that until death separates husband and wife, their relationship in the marriage ark must be eternal and everlasting. Even in cases where divorce is appropriate, it is not mandated by Islamic law. Because Allah SWT hates divorce as a whole.

The custom of the "blind Chinese marriage," or "marriage *muhallil*," which combines forced marriage and forced divorce. When a husband and wife file for divorce three times, the community considers the divorce valid even without permission and a referral process

from the appointed party, namely the Sharia Court or KUA (Office of Religious Affairs) officials. Blind Chinese marriages are believed to be performed by women who wish to reconcile with their husbands (Maloko, 2019) .

If the first husband cannot fulfill the conditions of marriage, the woman must pay all associated costs, such as the dowry and promises to carry out the husband-wife interaction process, before finally divorcing. The iddah period, which lasts 3 months and 10 days, must also pass before the woman can return to be with her first husband. This is known as blind Chinese marriage because the woman is required to perform this marriage ritual .

This marriage is not valid, according to experts including Imam Malik, Imam Shafii in one opinion, Ahmad, Al-Laits, Ats-Tsauri, Ibn Mubarak, and others. Ustman bin Affan, Abdullah bin Umar and Umar bin Khathab shared this opinion. Attempts to legalize something that is illegitimate is the fundamental problem that makes this marriage invalid. That is, the marriage remains void even if a man stipulates in his marriage that the woman he marries must divorce in order to legally marry his ex-husband, or if he does not stipulate this but intends to do so. (Bin Sayyid Salim, 2007) .

The marriage contract is void if it contains a clause stating that he will divorce his wife. The majority of scholars, including Maliki, Shafii, and Hambali, are of the opinion that this is a case of mut'a marriage. Blind Chinese marriage, according to Hanafi, is legal, but the terms of the contract cannot be enforced. A marriage in which the marriage contract expressly states that the first husband will make lawful for her and will divorce her within a certain period of time is a marriage that mentions these conditions. (Ahmad Sanusi, 2020) . Regardless of whether the marriage is intended as a tahlil or not, Chinese blind marriages formally fulfill the criteria of a marriage contract. The marriage contract permits sexual relations, stipulates a dowry, maintenance obligations, and the right to divorce. It doesn't matter if there is a purpose for doing those things—for example, if someone confesses, "I did the marriage ceremony because I want to have sex"—or if there is no purpose at all.

A woman may not marry her first husband if she has the goal of doing tahlil because an act is judged based on her motivation. This is the correct opinion, which is held by Al-Hasan, An-Nakha'i, Qatadah, Al-Laits, and Ibnul Mubarak, as well as Ahmad, Ats-Tsauri, Ahlu Zahir, and other jurists (Khon, 2011) . Al-Mandili also quoted the views of experts, especially from the four schools of thought, who disagreed with the issue of blind Chinese marriage (marriage tahlil), on several occasions. The crux of the disagreement centers on questions about the motives and demands put forward by those involved in blind Chinese marriages (muhallil). The following statement summarizes the viewpoints of academics on genuine Chinese marriage.

Most religious leaders agree that tahlil marriages are fasid marriages, which can be seen from the strategy of prohibition and curses for the participants, or the strategy of mistakes in the contract, namely using conditions. Since it is permissible for women to care for their menstruating women by kissing them, which was previously considered unethical, this lawfulness is a very strong expression of Allah's favor on menstruating women, because it carries out the associated consequences without neglecting the impact. (Sharifuddin, 2006) .

### *b. Blind Chinese Marriage According to Islamic Perspective*

In addition, Rasulullah SAW has a number of traditions about blind Chinese marriage, as stated in the following hadith from Abdullah bin Mas'ud RA, which was narrated by Imam Tirmidhi::

عبدالله بن مسعود قال : لَعْنَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، الْمُحَلَّ وَالْمُحَلَّ لَهُ  
 (رواه الترمذى)

Meaning: "Abdullah bin Masu'd actually said, Rasulullah SAW cursed muhallil (men who make lawful) (men who are made lawful)". (HR. Tirmizi). (Aby Isya Ibn Muhammad Isha Ibn Saurah, 1968)

The hadith narrated by Uqbah bin Amir RA narrates that Rasulullah SAW said:

عَنْ عُقْبَةَ بْنِ عَمِّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَلَا أَخْبِرُكُمْ بِالْتَّيْسِ  
 الْمُسْتَعَارِ؟ قَالُوا : بَلَى يَا رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ : هُوَ الْمُحَلَّ ، لَعَنَ  
 الْمُحَلَّ وَالْمُحَلَّ لَهُ . (رواه ابن ما جه)

Meaning: "From Uqbah bin Amir that Rasulullah SAW said, "Shall I explain to you about the forest goat on loan?" The companions replied, "Yes, O Messenger of Allah." He continued "That is *muhallil* , Allah has cursed *muhallil* and *muhallalahu*" (HR. Ibnu Majah) (Abdullah bin Abdurrahman Al-Bassam, 2006) .

c. *Implementation of Blind Chinese Marriage Law: Opinions of Hanafiyyah Ulama and Malikiyyah Ulama*

Imam Abu Hanifah stated that even though a muhallil marriage under a conditional marriage contract is makruh, it is still valid. According to al-Mabsuth, marriage is valid if the marriage contract is complete. The terms of the contract are void. This shows that, as shown in the paragraph below, the conditions set in the contract to make the wife lawful for her ex-husband have no effect on the validity of the marriage.

Meaning: The prohibition of these conditions is addressed to something that is not marriage, so this kind of marriage may not be carried out by the first husband. Thus, we know that the prohibition is directed at something that is not prohibited, so it does not affect the conditions that cancel the marriage contract. Imam Abu Hanifah said that these conditions were in addition to the perfection of the marriage contract (Asy-Sarakhsy, 1989) . This is what is meant by something that hinders the validity of the marriage. Therefore, tahlil marriage is not haram or flawed, both in terms of prohibition and anathema to the performer, as well as from the side of mistakes in the contract, namely the use of conditions. Imam Abu Hanifah stated that tahlil marriage in general is valid and not prohibited in the Bidayatul Mujtahid book. A tahlil marriage that is carried out with conditions, whether the conditions are stated before the contract or the conditions are mentioned in the contract, is legal and is included in the word of Allah in QS al-Baqarah verse 230. If there is something required in the marriage contract to justify or forbid it. Imam Abu Hanifah considers the marriage valid if another man marries her only once with a conditional marriage contract. The former wife is no longer barred from marrying her first husband, and she is free to do so (Mas'ud, nd) .

if a man married a woman who has divorced by her husband , then wedding the lawful , according to Imam Abu Hanifah . Even , if man the want to unite return couples who have divorced , he will get reward ; however , if he wanted just satisfying his libido , the law makruh , and his marriage legitimate (Al-Jaziri, nd) . Regarding the law of makruh in this muhallil marriage, Imam Abu Hanifah explains it as follows in the book al-Fiqhi ala Mazahib al-arba'ah.

- 1) The second husband's marriage ( *muhallil* ) is solely to channel his lust ;
- 2) *Muhallil* , who is married to a wife who is divorced by three, works as a *muhallil* . He does this to elevate himself so that he will be known by people as being halal for wives who are divorced by three;

- 3) *muhallil* requires wages or asks for payment in carrying out the *tahlil marriage* , this is what equates to the curse of Allah, as the hadith of the prophet which explains the curse of Allah will be *muhallil* (the second husband who makes it lawful) and *muhallalah* (the first husband who makes it legal). Because requiring wages or payments is an immoral act and deserves to be cursed ; And
- 4) Muhallil requires *tahlil*, *such as saying, I marry you to make it lawful* for you, then such words are null and void and the contract is valid according to Imam Abu Hanifah, but something like that is punished with makruh *tahrim* .

So according to Imam Abu Hanifah, we can see the criteria for *muhallil marriage* as follows .

- 1) *Tahlil* marriage which is required for divorcing a wife so that she can remarry with her ex-husband, whether this condition is said before the contract is made or stated when the marriage contract is valid ;
- 2) *tahlil* marriage can get a reward, if the man who is married intends to reconcile the two divorced husband and wife; And
- 3) Makruh *tahrim* is punishable if a man who marries has a profession as a *muhallil*, his name is known and well-known as a *muhallil*, and the man receives wages to become a *muhallil* even once. That is *muhallil* who is cursed by Allah and His Messenger , as mentioned above in the hadith of the prophet S. A . W.

Principles philosophy of Imam Abu Hanifah and his approach to legal ijtihad about wedding muhallil . Imam Abu Hanifah affected by evolution law in Kufa , which was far away from Medina, when define law . As a result , Abu Hanifah tend picky the hadith that he thanks . Consequently , he often using al- ra'yi For solve situation actual . Imam Abu Hanifah push freedom think For overcome situation new yet \_ handled by the Koran or hadith . He also supports discussion open about these problems . Imam Abu Hanifah is very dependent on qiyas and basing decision the law on *istishan* and *istisab* (A'ziz, 1996) .

According to the Hanafi school of thought, if a man marries a woman who has undergone three divorces (ba'in kubra) with the aim that the woman can remarry her first husband, then the marriage is valid and gets a reward. The first is not to give vent to sexual fantasies, but to reunite ex-husbands and wives who have been divorced ba'in. The marriage is not valid if there is a sexual element. However, the woman is allowed to remarry to her first partner. The law of the man's work is makruh, even illegitimate, if he is only known as muhallil, because of that he is not liked.

Different with Hanafiyah , Malikiyah argue that wedding void and pair the must divorced If a man married a woman who has divorced ba'in with goal for women the can Marry Again with ex- her husband . Good condition the mentioned before marriage contract or during marriage contract , same rules apply If wedding the depend on the married woman with ex- her husband . They firmly believe that any kind of blind Chinese marriage (muhallil) that aims to legalize is illegal. However, if the marriage is not meant to be legally binding, they consent to it and the ex-husband may do so under the following circumstances:

- 1) The second husband must be *baligh* ;
- 2) The penis is believed to enter into the vagina during intercourse ;
- 3) The second husband must be a Muslim, even though the former wife of three divorced women is a *religious woman* ;
- 4) Do not have sexual intercourse when prohibited ;
- 5) The intercourse was not forced ;
- 6) The second husband is not a child who is unable to have intercourse with his wife ; And

7) Intercourse until you can feel the delicacy .

Marriage is still considered void even if the provision is stated explicitly before or during the marriage contract. The marriage is still considered void even though the terms of the tahlil are only intended by the perpetrator in his heart and are not disclosed at the time of the marriage ceremony. The purpose or requirement of allowing a divorced woman to remarry her ex-husband is related to the reason for the annulment of the marriage.

*d. Opinion of Shaykh Abdul Qadir Bin Abdul Muthalib Al Indonesi al Syafii*

This problem arose and was studied in a book he wrote with the title *Al Asadul Ma'ar Liqatil Taisil Musta'ar* , in which it was written that questions arose from the congregation , when Shaykh Abdul Qadir became a lecturer in a recitation. At the same time that the question that arises regarding *muhallil marriage* , in this study the author uses the term blind Chinese marriage, because this is a term for a man who becomes halal ( *muhallil* ). This blind Chinese marriage is developing rapidly as if a mushroom that has just been rained on will become fertile and appear fresh. This problem seems to be an ordinary practice without thinking that it is a grave sin.

With this trick behavior to be able to remarry a husband to his ex-wife who has been divorced three times ( *ba'in kubra* ). So in this study the author views that Shaykh Abul Qadir is more careful in establishing laws regarding the issue of blind Chinese marriage. Furthermore , to detect this act there is no definite data and it can be found either through official government data, in this case the Office U damaged The local religious religion (KUA) , of course, there are no state regulations that explicitly regulate marriage in such a process.

As an initial basis , the hadith is used by the *jumhur* as the legal basis for this *tahlil marriage* is

وَعَنْ أَبْنَى مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ لَعْنَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَحْلُ لَهُ (رَوَاهُ أَحْمَدُ وَالْتَّرْمِذِيُّ)  
 وَصَحَّهُ وَفِي عَنْ عَلَى الْخَرْجَةِ الْأَنْسَائِيِّ

Meaning: from Ibn Mas'ud RA, he said, Rasulullah SAW cursed muhallil (a person who married a woman who was divorced three times to make her first husband lawful) and muhalla'ah (a *former* husband who ordered other people to become *muhallil* ). “(Narrated by Ahmad, An-Nasa'i, At-Tarmidzi at the same time considers this hadith valid , from Ali narrated by the Four Iman hadiths ) .

The fuqaha use this as their main reference or legal basis when discussing tahlil marriage. The main reference or legal basis used by the jurists regarding tahlil marriage is Imam Malik, Syafii, Hambali, and other jurists. Through this hadith, Imam Malik, Syafii, Hambali, and other jurists stated that tahlil marriage was unlawful, but Imam Abu Hanifah determined that the law was legal but it was makruh. (Az-Zuhaili, 2006) .

According to Imam Abu Hanifah and as reported in the book al-Mabsuth, the prohibition and anathema in this hadith are not for prohibited items. According to Bidayah al-Mujtahid, this difference of opinion developed as a result of how the Prophet's words were understood. Fuqaha who understand the curse as a sin, argue that muhallil marriage is valid. Because anathema is associated with a prohibition which indicates the invalidity of the prohibited act, the fuqaha who interpret it as an annulment of the marriage contract argue that muhallil marriage is also not valid ( Ja'far, 2021) .

**4. Conclusion**

Chinese law is blind according to Shaykh Abdul Qadir bin Abdul Muthalib Al Indonesi Al Syafii in The Book of *Al Asadul Ma'ar Liqatil Taisil Musta'ar*), gives a very clear explanation in this regard, the tahlil marriage becomes void or invalid because there are

conditions in the contract that violate the prohibition and curse the perpetrator. Implementation of Blind Chinese Law According to Shaykh Abdul Qadir bin Abdul Muthalib Al Mandili Al Indonesian Al Syafi'i pleased with the continuity of one's household. House ladder becomes a serious concern when a marriage that is actually illegitimate but continues, and does not rule out the possibility that a child will be born as a result of this marriage . When this happens, it will be very sad that the child is the result of a troubled marriage, then how can we expect to give birth to a generation that is *Qur'anic* and has noble character. This should be a concern which is very serious us in the era of post-modern society .

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