



DIVORCE IN THE VIEW OF LAMPUNG PEPADUN CUSTOMARY LAW: A MAQASID SHARIA PERSPECTIVE

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Abstract: The people of Lampung have a paradigm that marriage is life and death. At the same time, a divorce is a taboo because it will separate the two prominent families according to custom. The study's objective is to examine the paradigm of the Lampung indigenous people regarding the prohibition of divorce from the perspective of *maqasid syariah*. This study is non-doctrinal research with a socio-philosophical approach. The primary data is by interviewing Lampung's traditional leaders and people. In contrast, the secondary data includes documents, books, and scientific articles discussing the prohibition of divorce in the Lampung indigenous people. This study found that philosophically, the people of Lampung have a life philosophy of *piil pesenggiri* (self-esteem) to maintain the sanctity of the Lampung Pepadun traditional marriage, which is carried out according to religion and custom. Thus, divorce becomes a disgrace because it lowers the family's self-esteem. However, then it does not mean that it is absolute that divorce is a way out (emergency exit) even though it is taboo for custom. Meanwhile, socio-historically, this customary prohibition law has been passed down from generation to generation. It has been preserved as a custom by the indigenous people of Lampung to protect their offspring (*hifdzu nasl*).

Masyarakat Lampung memiliki paradigma bahwa perkawinan adalah sehidup semati, sedangkan perceraian adalah pantangan dan terlarang karena akan memisahkan dua keluarga besar secara adat. Penelitian ini bertujuan menelaah paradigma masyarakat adat lampung tentang larangan perceraian dalam perspektif *maqasid al-syari'ah*. Penelitian ini merupakan penelitian non-doktrinal dengan pendekatan sosio-filosofis. Adapun data primernya adalah dengan wawancara kepada tokoh dan masyarakat adat Lampung, sedangkan data sekundernya adalah berupa dokumen, buku dan artikel ilmiah yang

berbicara tentang larangan perceraian pada masyarakat adat Lampung. Penelitian ini menghasilkan temuan bahwa secara filosofis, masyarakat Lampung memiliki filsafat hidup *piil pasenggiri* (harga diri) dan demi menjaga kesakralan perkawinan adat Lampung pepadun yang dilakukan secara agama dan adat, sehingga perceraian menjadi hal yang *aib*, karena akan menjatuhkan harga diri keluarga. Namun kemudian bukan berarti bersifat mutlak bahwa perceraian adalah sebagai jalan keluar (*emergency exit*) walaupun pantangan bagi adat. Sedangkan secara sosio-historis bahwa hukum larangan adat ini telah diwariskan secara turun temurun dan telah dilestarikan menjadi adat oleh masyarakat adat Lampung demi menjaga keturunan (*hifdzu nasl*).

Keywords: Prohibition of marriage; customary law; Lampung Pepadun

INTRODUCTION

A paradigm is a view based on a particular theory¹. In this context, the Lampung Pepadun indigenous people have a paradigm of the prohibition of divorce rooted. Marriage is sacred and must be upheld and maintained always to achieve a family goal, a *sakinah* family². However, that marriage is a solid bond (*mitsaqan ghalidhan*), which means that marriage must be carried out based on adhered beliefs, relying on religion and custom³.

In this modern era, there have been many studies on marriage law, especially concerning the rights and obligations of husband and wife, often side by side with interdisciplinary studies. Therefore, aspects of culture, society, anthropology, and other social sciences enrich the perspective of the study. Based on this diversity of paradigms, researchers will explore the philosophical and historical meanings of a particular tradition developed in society, creating a new paradigm, especially concerning the rules or norms in society⁴. This effort is to trace whether these developing values conflict with *syara'* law or not to apply local wisdom values

¹ Siti Tatmainul Qulub and Ahmad Munif, "Rancangan Peraturan Daerah Kabupaten Ponorogo Tentang Larangan Perceraian Bagi Tenaga Kerja Indonesia Perspektif Hukum Islam," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (September 19, 2017): 57-86, <https://doi.org/10.15642/ad.2017.7.1.57-86>.

² Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Bandung: Mandar Maju, 2013), 3; Agus Hermanto, "Rekonstruksi Konsep Hak Dan Kewajiban Suami Isteri Dalam Perundang-Undangan Perkawinan Indonesia," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 15, no. 1 (December 29, 2018): 49-86, <https://doi.org/10.21154/justicia.v15i1.1455>.

³ Rahmat Pulungan, "Tradisi Merasi Dalam Adat Perkawinan Melayu Riau (Studi Analisis Terhadap Penentuan Kafaah Calon Pengantin Di Kelurahan Bagan Batu)," *Islam Realitas: Journal of Islamic and Social Studies* 2, no. 2 (December 20, 2016): 184-99, https://doi.org/10.30983/islam_realitas.v2i2.188.

⁴ Nafi' Mubarak, "Living Law Dan 'Urf Sebagai Sumber Hukum Positif Di Indonesia," *Islamica: Jurnal Studi Keislaman* 11, no. 1 (September 1, 2016): 135-58, <https://doi.org/10.15642/islamica.2016.11.1.135-158>; Ayman Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of 'Urf and 'Adah in the Islamic Legal Tradition*. (Basingstoke: Palgrave Macmillan, 2010), <http://www.myilibrary.com?id=306681>.

properly as long as the legal *illat* used as an argument does not conflict with normative-theological or normative-judicial supports.

The Lampung Pepadun indigenous people have their customary law structure. Because customary law is, of course, significantly different from one another, including Lampung customary law⁵, what is very prominent in Lampung's customary marriage law is the prohibition of divorce because the indigenous people of Lampung have the paradigm that marriage is a sacred and spiritual bond, and must be carried out according to religion and custom. Thus, divorce in a marriage can break the relationship between two prominent families⁶.

People custom of Lampung is divided into two groups; First, the customs of the Pepadun community, namely the people of Lampung who live in areas far from waters; second, the indigenous people of Peminggir (*sai batin*), namely the indigenous people of Lampung who live in seaside areas. The indigenous people of Pepadun include the Way Kanan, Tulang Bawang, Central Lampung, Mesuji, Pringsewu, and Tulang Bawang areas, which locates in the middle of the area far from the coastal area⁷.

Discussing Lampung customary law, there have been several relevant studies, including Zuhraini's work, *Forms and Dynamics of Customary Law Community Unity as Social Capital in Village Government*. This research examined some local wisdom in Indonesia, one of the unique cultures that must be preserved⁸. Next is Damanhuri Fattah, titled "*Piil Pasenggiri; Modal Budaya Dan Strategi Identitas Ulun Lampung*," discussing etherification or the process of marginalizing residents as a result of migration in Lampung causing *ulun Lampung* to become a minority amid cultural heterogeneity of immigrants⁹.

Rimanto's writing titled "*Examining Piil Pesenggiri Philosophy of Life Concept in the Context of Religious Moderation*" stated that the values contained in the philosophy of life of *Piil Pesenggiri*, have a considerable influence on the Islamic style

⁵ Ahmad Isnaeni and Kiki Muhamad Hakiki, "Simbol Islam Dan Adat Dalam Perkawinan Adat Lampung Pepadun," *Kalam* 10, no. 1 (June 30, 2016): 193–222, <https://doi.org/10.24042/klm.v10i1.341>.

⁶ Suslina Rosidi, "Da'wah Messages on Pi'il Pesenggiri's Life Philosophy And Its Relevance With Religious Moderation of Lampung Community," *Journal of Positive School Psychology* 6, no. 2 (March 3, 2022): 5518–26.

⁷ Farida Ariyani, Ronaldo Fisda Costa, and Mohammad Ridwan, "Ngejuk - Ngakuk dalam bingkai adat perkawinan (Lampung - Jawa)," *Kejawen* 1, no. 2 (November 1, 2021): 116–25, <https://doi.org/10.21831/kejawen.v1i2.46281>; Hilman Hadikusuma, *Masyarakat Dan Adat Budaya Lampung* (Bandung: Mandar Maju, 1990).

⁸ Zuhraini, *Kesatuan Masyarakat Hukum Adat Dalam Dinamika Politik Hukum Indonesia* (Bandar Lampung: Harakindo Publishing, 2014), <http://repository.radenintan.ac.id/12194/>.

⁹ Damanhuri Fattah, "Filsafat Piil Pesenggiri Dan Relevansinya Bagi Pembangunan Daerah Lampung" (Disertasi, Universitas Gajah Mada, 2010), <http://etd.repository.ugm.ac.id/penelitian/detail/172716>.

of the people in Lampung, which is moderate and can maintain the values of balance between reason and morality continuously¹⁰. From some of this research, the perspectives studied are certainly not the same because the previous research discussed the life philosophy of the Lampung indigenous people, while the study focused on Lampung's customary marriage law and the prohibition of divorce.

The distinction of this research is related to the views of *maqasid sharia* in addressing the paradigm of the prohibition of traditional marriage in Lampung society regarding the prohibition of divorce. This study is non-doctrinal research with a socio-philosophical approach to reviewing *maqasid sharia*. The primary data is from interviews with Lampung indigenous people about the prohibition of divorce. In contrast, the secondary data uses documents, books, and scientific articles regarding the prohibition of divorce in Lampung indigenous people. This study contributes to the study of marriage law. It is interesting to study and analyze, to explore the factors and causes that influence the formation of this paradigm, as it is understood that normatively Islam does not prohibit divorce as an emergency exit, a way out, and a solution, whereas customary law blocks it.

THE CONCEPTION OF DIVORCE IN LAMPUNG CUSTOM

Divorce is a disgrace to the indigenous people and is contrary to the *piil pesenggiri* philosophy of life¹¹. For Lampung pepadun customary law figures, divorce is a big problem and a significant social problem¹². Divorce is inappropriate and entirely undesirable for the Lampung indigenous people. In normative law, a marriage can break up due to death or divorce. Still, the Lampung Pepadun customary law community, especially the Lampung Pepadun traditional leaders, considers that marriage can only break up because of death. They consider marriage a sacred event, so the marriage must be lasting and harmonious until death separates the two couples¹³.

¹⁰ Rimanto Rimanto et al., "Examining Piil Pesenggiri Philosophy of Life Concept in the Context of Religious Moderation," *Analisis: Jurnal Studi Keislaman* 22, no. 1 (June 30, 2022): 133-52, <https://doi.org/10.24042/ajsk.v22i1.12445>.

¹¹ Fitra Endi Fernanda and Samsuri Samsuri, "Mempertahankan Piil Pesenggiri Sebagai Identitas Budaya Suku Lampung," *Jurnal Antropologi: Isu-Isu Sosial Budaya* 22, no. 2 (December 13, 2020): 168-77, <https://doi.org/10.25077/jantro.v22.n2.p168-177.2020>; Fachruddin, *Falsafah Piil Pesenggiri Sebagai Norma Tatakrama Kehidupan Sosial Masyarakat Lampung* (Lampung: Kanwil Depdikbud Propinsi Lampung, 1996).

¹² Diah Rizki Nur Kalifah and Nurul Hidayah, "Pendekatan Antropologi Pada Piil Pesenggiri Masyarakat Islam Lampung Pepadun," *Zawiyah: Jurnal Pemikiran Islam* 7, no. 2 (December 31, 2021): 55, <https://doi.org/10.31332/zjpi.v7i2.3116>.

¹³ Ahmad Cholil Ismail, *Pengetuha Adat, Interview*, January 2, 2019.

Lampung Pepadun traditional leaders consider divorce a disgrace, not only for the husband and wife but also for the entire family, both husband and wife. This will result in the breaking of the kinship ties that have been established. Divorce is strictly prohibited by Lampung Pepadun custom. This causes the Lampung Pepadun traditional leaders to believe that in Lampung Pepadun customary law, the term divorce does not recognize a household and that divorce is a disgraceful thing. It is considered to violate Lampung customary law¹⁴.

The view of the Lampung Pepadun traditional leaders, in this case, is that they do not recognize the term divorce, which means they do not recognize divorce in a household, only divorce because of death, that the only thing that separates husband and wife is death. Even though someone divorces during their life with specific considerations and has gone through the peaceful process, it is still considered that the person is recognized as divorced because of death or is considered dead according to custom.

Philosophically, what appears on the surface of the Lampung people assumes that there is no divorce in a household. Some say that the only cure for shame is death, so instead of living with shame, it is better to die and not feel shame. This is the paradigm in the Lampung Pepadun indigenous people when it is connected with divorce in the family, meaning that they (husband and wife) have failed to build a household¹⁵.

In any case that occurs because of divorce, the husband and wife are considered to have failed to build a harmonious household, even with *sharia* reasons. Failure to build a harmonious household is a disgrace for the litigants and the families concerned. Lampung people who adhere to their philosophy (*piil pesenggiri*) say that dying is better than living in shame¹⁶. Therefore, the parties concerned (husband and wife) are usually removed from the adat and considered divorced and dead after a divorce.

The reasons for not recognizing the term divorce in the household are as follows: First, *Piil Pesenggiri*. The Lampung Pepadun indigenous people feel ashamed of doing disgraceful behavior in religion and have self-esteem called *piil*

¹⁴ Ahmad Cholil Ismail, *Pengetuaha Adat, Interview*, Januari 2, 2019.

¹⁵ Gandhi Liyorba Indra, "Pergeseran Paradigma Perceraian Pada Masyarakat Adat Lampung Pepadun Dalam Perspektif Maqasid Al-Syari'ah" (Disertasi, Lampung, UIN Raden Intan, 2020), <http://repository.radenintan.ac.id/>.

¹⁶ Bunyana Sholihin et al., "The Basic Values of Pi'il Pusenggighi in the Kuntara Rajaniti Jugulmuda Law', *Tsaqafah* 18, no. 1 (1 March 2022): 1-18, <https://doi.org/10.21111/tsaqafah.v18i1.6778>.

*pesenggiri*¹⁷. Everything related to self-esteem, behavior, and attitude to life that can maintain and uphold a good name and dignity both individually and as a group is always maintained. Divorce is a disgrace to the family, not only for the husband or wife but also for the two extended families concerned. Their kinship ties will automatically be cut off. Unfortunately, as a consequence, anyone who violates this stipulation when he keeps doing it, i.e., divorces, is traditionally considered divorced and dead.

Second, a strong kinship. The Lampung Pepadun customary law community has a powerful family bond in maintaining the kinship among their community of Lampung customs, especially in their families. Both are formed due to blood relations or marriage ties. When they already have a kinship relationship or kinship by marriage (both from the husband's and wife's families), the family becomes one in their extended family. At the same time, the customary title is given to the married party, and the extended family strengthens their kinship ties¹⁸.

This is one of the arguments of the Lampung Pepadun, and traditional leaders argue that the Lampung Pepadun customary law does not recognize the term divorce in the household. Divorce is considered a disgrace, not only for the husband and wife but also for all families, both the wife's family and the husband's relatives who have divorced. Therefore, the possibility of divorce is minimal¹⁹.

As for the procedures for reconciliation among cases that occurred in a Lampung family household, especially Lampung Pepadun, namely in the case of a *nuzus* wife, is by advising, separating beds, then hitting. Likewise, when a husband is *musyuz*, the wife must try to fix the problem with her husband with patience and reconcile to perpetuate a strong and well-maintained family relationship²⁰.

Whereas if a husband and wife alternately disagree and no one wants to give in to make peace, they have to ask for help from the family. Lampung customary law is known as *mewarai*, meaning to adopt a child if one of the parties (the prospective husband/wife) is not from Lampung. Therefore, the family, who can try to reconcile, is not only from the extended family, the hereditary husband/wife, and the results of the divorced family.

¹⁷ Rosidi, "Da'wah Messages on Pi'il Pesanggiri's Life Philosophy And Its Relevance With Religious Moderation of Lampung Community."

¹⁸ Sholihin et al., "The Basic Values of Pi'il Pusenggighi in the Kuntara Rajaniti Jugulmuda Law." 1-18

¹⁹ Buyung Syukron and R Rusmadi, "Piil Pesenggiri as Peace Culture: A Local Wisdom Based Resolution of Land Conflicts In Mesuji, Lampung," *Walisongo: Jurnal Penelitian Sosial Keagamaan* 26, no. 1 (July 29, 2018): 95, <https://doi.org/10.21580/ws.26.1.2103>.

²⁰ Ramlie Rahim, Sekretaris Umum Adat, *interview*, January 6, 2019

If this stage can not reach any solution, the family asks for the help of counterweights to reconcile the husband and wife. In the customary environment, the role of counterweight is crucial, especially if he is the elder in the village. However, if this doesn't work, then this issue has become a common problem in the Tiyuh village, and the head of Tiyuh village (traditional administrator) has the authority to reconcile the husband and wife.

Suppose a divorce is required for specific reasons from the counterweight custom, such as adultery or being caught having an affair that damages the customary environment. In that case, the parties are indirectly subject to sanctions by being expelled from the customary environment. This was done by counterweights or traditional Lampung Pepadun leaders, especially those who do not accept the term of divorce in the household because they only accept divorce caused by death, and those who are divorced are considered dead in the traditional environment²¹.

Customary sanctions are a reaction by custom to the actions of indigenous people who deviate from or violate these custom rules. In everyday life, several rules of customs usually are inherent and live in society. Mostly, new cases are rigid according to customary law.

Forms of sanctions by customs or reactions generally to something considered to deviate from customary law include, First, payment of "uang adat" or customary fines in the form of money as compensation for the religious loss. Second, *Selamatan* (sacrifice) to cleanse society from all filth (disgrace). Third, *Penutup Malu*, an apology. Fourth, various forms of corporal punishment. Fifth, exile from society and being placed outside the customary law system.

In general, the Lampung Pepadun customary sanctions are in written form, but some are unwritten. This is due to recent developments and problems that have just appeared on the surface of society and are not specified in their written rules. These rules and sanctions, both written and unwritten, are acknowledged by them and are binding for each indigenous person concerned. In the Lampung Pepadun customary law community, written customary sanctions are contained in the *Kitab Kuntara Raja Niti*, while customary unwritten sanctions are contained in the *Ketekhom*²².

²¹ Ramlie Rahim, Sekretaris Umum Adat, *interview*, Januari 6, 2019.

²² Deni Eko Setiawan, Hermanu Joebagio, and Susanto Susanto, "Piil Pesenggiri : Kearifan Lokal Kultur Islam Lampung Sebagai Sumber Belajar Toleransi," *Jurnal Ekonomi, Sosial & Humaniora* 1, no. 04 (November 30, 2019): 27-35.

This *Ketekhom* results from deliberations or a joint agreement by the customary mediators regarding a new problem arising in society. The levels of *ketekhom* also vary. The tone of the *ketekhom tiyuh* (based on the mediators who are in the *tiyuh*) and the even higher tone, the *ketekhom marga* (based on the deliberation of the customary mediators of several *tiyuhs* within the community).

The goal of a marriage is to achieve a *sakinah, mawaddah wa rahmah*. This can be easily achieved when the rights and obligations between the two can run in harmony and balance without significant friction.

In general, customary sanctions aim to maintain order in the customary environment against deviations or violations of customs committed by these indigenous people. If there is a divorce in the household, the person is subject to customary sanctions. This aims to prevent divorce and not ease a divorce in household affairs.

Forms of customary sanctions in a household's divorce are considered a customary deviations. First, the person concerned is automatically expelled from the customary environment concerned. Second, the *kebumian* (earthly) concerned is considered collapsed or damaged. Third, the person concerned cannot participate in traditional events. Fourth, *cepala* (tergantung tak tertali) affects the offspring concerned. It means that the offspring of this divorce is considered by customary law not to be accepted before the person completes the obligation to clean themselves according to Pepadun customary law, *nguruk kebumian*. Fifth, the person concerned is subject to a customary fine in the form of money, whose nominal value is based on the decision of the customary mediators in the *tiyuh*. This is usually done by slaughtering a buffalo and inviting *datu kampong / tiyuh*, and some even inviting one clan from several *tiyuh*. This is done to cleanse themselves from the disgrace that occurred and give the concerned *kebumian* an earthly person. However, this does not immediately re-enter the customary environment, which has been assessed beforehand by indigenous peoples and approved by traditional mediators.

The indigenous people of Lampung Pepadun, especially the *Pubian marga balau* are not familiar with the term divorce in the household. Thus, the customary mediator is as follows; First, so as not to facilitate divorce in the household. Second, so that the brotherhood/kinship that has been established is no longer easily broken. Third, children from the descendants of the families of the parties can be maintained psychologically-physically²³.

²³ Ramlie Rahim, Sekretaris Umum Adat, *interview*, January 6, 2019.

If we fully notice, the shift in values in Lampung Pepadun customary law, primarily related to the prohibition of divorce, includes four factors, firstly, mixed marriages; secondly, educational factors; thirdly, the increasingly advanced information or technological advances; and the last, the religious factor, which will also color the ingrained customs.

First is the mixed marriage factor. In principle, the Lampung Pepadun custom strictly prohibits divorce after the marriage contract has been made. This has become a binding and sacred paradigm among the indigenous Lampung Pepadun tribes. Even if a divorce occurs, the kinship ties between husband and wife will be severed. Even if a conflict occurs, it requires immediate mediation between the families to avoid slander between them and the families between them.

Philosophically, the argument about the prohibition of divorce in indigenous peoples is considered patent and standard. Rigid, so that if there is a marriage bond which is a sacred thing to do, then it leads to divorce, then the decree of divorce is not only for the husband and wife but also has an impact on the end of the relationship between the two families. Undeniably, the indigenous people of Lampung are familiar with the term *piil*, which in Arabic is known as *haibah*, meaning self-esteem upheld by the community, which makes their commitment very strong, glorified, and preserved²⁴.

If considered from a sociological point of view, the indigenous people of Lampung Pepadun are the majority and are even said to be 100% Muslim. None of them adhere to religions other than Islam. This commitment is firm and rarely found in other tribes whose indigenous peoples adhere to a particular religion as amounted to 100 %.

Anthropologically, the Lampung area is the southernmost region of the island of Sumatra. Initially, this community or region was part of the Southern Palembang region, but later separated from the region and formed an independent province based on ethnic and customary similarities. Meanwhile, the customary area of Lampung Pepadun is not the only tribe in Lampung, but Lampung also has two tribes, i.e., Lampung Pepadun and coastal Lampung.

A divorce is disgraceful for the adherents of Lampung Pepadun because it is a pride belittled if a divorce occurs, even if the family cannot mediate between the

²⁴ Hermanto, "Rekonstruksi Konsep Hak Dan Kewajiban Suami Isteri Dalam Perundang-Undangan Perkawinan Indonesia"; Nur Kalifah and Hidayah, "Pendekatan Antropologi Pada Piil Pesenggiri Masyarakat Islam Lampung Pepadun."

two, it must be brought to a traditional leader to be resolved amicably and according to custom.

However, in the reality of Lampung society, primarily based on data from the religious court in Lampung, divorce cases are common in the Lampung Pepadung community. One of the problems is due to the existence of mixed marriages. Because if viewed from an anthropological perspective, the people of Lampung consist of several tribes, including Javanese, Lampung, Padang, Sundanese, Batak, Semendo, and many other tribes domiciled and even settled in Lampung.

Cross-marriage between the Lampung and Javanese tribes is, for example, in which any tribe, in principle, should not underestimate divorce because marriage is sacred and preserved; marriage is a physical and spiritual bond, *mitsaqan ghalidha*. However, the traditional Javanese tribe does not prohibit divorce, even though it is an “emergency exit” because Islam itself does not prohibit the existence of a divorce in a household, which is under certain conditions, even though divorce is not an alternative solution in Islam.

As stated by Susyadi below, “In Lampung customary law, that principally there is a paradigm ingrained, difficult to fade away, but it is undeniable that in modern times many shifts in these values are the result of mixed marriages.”

Divorce is an unwanted thing for those who have built a household because this is one thing hated by religion. However, divorce can be done either by the husband to his wife or *nusyuz* from the wife to her husband, according to Article 8 of the Law on Marriage. In this context, that divorce can be filed in the Religious Courts, whereas for non-Muslims, divorce can be carried out in the District Court.

The second is Education Factor. Education is part of the things that affect a person’s character. Due to with high education will illuminate the truth and help us understand the essence of this life. Socio-anthropologically and local wisdom, it is in line with a rule regarding legal change as stated by Ibn Qayyim al-Jauziyyah, which reads: “Changes and differences in law are due to differences in place, time, conditions, motivation, and culture.” Changes and shifts in law are very natural at the level of Islamic law studies, especially in the study of customary law, which is made in such a way that it is then believed and becomes a guideline carried out by specific communities from year to year.

Related to this, Zuhraini said, “The education factor for Lampung indigenous people is increasingly advanced and developing, so often this educational factor can change all paradigms that are not following true Islamic teachings.”

In Islamic family law *ijtihad*, two theories can be used: intra-doctrinal reform, an internal change by changing the paradigm using the correct religious understanding. The second is extra doctrinal reform, a new theory based on the Qur'an and Sunnah. However, there must be another assessment of the elements of human rights²⁵.

Of the three forms of changing family law in the Islamic world, four ways are commonly conducted. First, *Taghyīr* is a form of change by reconstruction, namely eliminating the initial construction and building a new legislation concept. Second is *Talfīq*, a legal change by combining several opinions of the Imams of Schools and prioritizing those more beneficial under socio-anthropological changes and local wisdom in each country. Third is *siyāsah syar'iyah* (for the public interest), the form of changing the law through legal legislation. Fourth is reinterpreting the text of *nas* to suit modern needs and demands.

And this cannot be separated from the consideration of the causes of the need for a new law that is following the purpose of establishing the law itself, in line with the rules of *fiqhiyah*: "The law circulates in its 'illat, whether there is a law or not." However, 'illat is not the only legal reference. However, the rule states that legal reference is beneficial. As the rules below: "The law follows a stronger benefit."

The definition of the form change above, Indonesia is a form of legal *talfiq*, which combines several *madhabs* (schools of thought). *Muqāranah* is carried out and viewed from the perspective of benefit. Suppose the madhabs are more actual and beneficial. In that case, it is prioritized, even though initially, Indonesia was a country with the majority of adhering to the al-Syāfi'ī school (*mazhab*), in contrast to Jordan, which is even more moderate compared to Indonesia. It is because Jordan tends to adhere to the Hanafi school, although it later carried out legal reforms by maintaining the school and adding to it with benefit considerations.

It is from this education factor that the people of Lampung Pepadung are literate in law. Thus, they know that the customs applied are part of what must be maintained. On the one hand, it is due to a part of *sad al-zari'ah*, which covers the gap for more considerable harm (*mudharat*). On the other hand, the prohibition on divorce will bring harm. Suppose it happens to a couple building a household, but there is no more compatibility, and it is no longer possible to continue. In that case, customary law prohibits it without a solution, which will also bring harm from a *mashlahat* (benefit) that should be achieved.

Third, progress in access to information and technology. The advancement of information will make it easier for the public to get information quickly and efficiently, but sometimes our society is not ready for this. With lots of incoming information, a person will gain a lot of experience and insight, but often lousy information too, which will bring great *mudharat* (harm).

²⁵ Khoiruddin Nasution, *Hukum Perkawinan Dan Warisan Di Dunia Muslim Modern* (Yogyakarta: ACAdemia, 2012). 6

For example, torrents of information sometimes cause slander happened to us. It could be that this uncertain information affects the household relationship of a couple who have been harmonious becoming divorced due to a slander that befalls them. Marriage is a *mitsaq ghalidza* (strong bond) and is part of the great Sharia laws, according to which having intercourse with a woman becomes *halal* (lawful), rights are stipulated in the form of dowry and inheritance, their children also by way of marriage will be attributed to their father, and so forth. With a divorce, a woman becomes *haram* (unlawful) for her husband, nor is she entitled to inheritance.

Like marriage law, divorce law in Islam often causes misunderstanding, as if Islamic teachings give men greater rights than women, even though Islam is cautious in regulating divorce. According to Sayyid Sabiq, if a marriage occurs, divorce must be avoided, even though divorce is part of the law of the existence of the marriage itself. Divorce brings harm, while something that causes harm must be abandoned because it is not only the husband and wife who become victims but the children and families of both parties who initially stayed in touch with each other can suddenly be separated. Divorce can only be done if it contains benefits.

Even though *talak* (divorce) is permissible, even though it is detested by religion, divorce is part of an emergency exit, a way out of a marriage. The purpose of marriage is to build a *sakinah, mawaddah wa rahmah* family, and everyone married will perform a marriage contract which is a *mīsāqan ghalīzan*, a severe and solid bond. Still, suppose something undesirable happens in the marriage because they don't understand each other. In that case, they no longer love each other because they have an incurable, impotence, contagious disease. So on, in conditions like this, religion will provide a solution²⁶. This solution is called the *al-Syātibī* principle, facilitating and not complicating.

ANALYSIS OF MAQASID SHARIA ON THE PARADIGM OF LAMPUNG CUSTOM DIVORCE LAW

Philosophically, the goal of Islamic law is *lijalb al-mashālih wa lidaf'i al-mafāsīd* (i.e., taking benefit and eliminating harm). Thus, the concept to be achieved by the two countries is to maintain the five principles in the goals of sharia, including protecting religion, the soul, the mind, lineage, and assets by looking at it from the purpose of establishing Islamic law, both *dharuriyat*, *tahsiniyah*, and *hajjiyat*. In *maqasid al-*

²⁶ Lukman Santoso and Muhamad Fauzi Arifin, "Terobosan Hukum Hakim Terkait Pencabutan Surat Penolakan Perkawinan Dalam Masa Iddah," *Jurnal Yudisial* 12, no. 3 (2020): 381-98.

shari'ah, five basic principles must be obeyed to avoid becoming null and void, namely:

1. Protecting Religion

In the study of *maqasid sharia*, protecting religion must be considered, and all rules made must not conflict with *syara* law. However, the law can change according to certain situations and conditions. Let's consider a benefit, according to Ghazali. It is divided into *mu'tabarah maslahat*, *mu'tabarah maslahat*, and a *maslahat* (benefit) that will bring greater *mudharat* (harm) prohibited in the religion called *maslahat mulgha*. It is likewise in the case of the prohibition of divorce carried out by Lampung Pepadun customary law, which assumes that divorce is prohibited by custom. It is not prohibited as long as it does not conflict with religious principles. As for a shift occurring, perhaps because that benefit is *mansukh* with the arrival of a religious understanding, that divorce is permissible as long as it brings benefit. Allah swt., said (QS. al-Nur: 32)²⁷.

In the context of the Lampung Pepadun, indigenous people who have a paradigm regarding the prohibition of divorce, principally, they are not rigid and good, but relatively elastic, that the marriage of the Lampung Pepadun indigenous people is carried out normatively, something religious teachings, but also traditional events are also held inviting traditional leaders in it, as well as involving all parties in the family, both men, and women. Thus, divorce is a disgrace (*piil*) and embarrassing for the extended family because a divorce, if carried out, means that it has separated the two extended families in front of religious leaders, while religious teachings also always consider that divorce is an emergency exit, as a way out, and not an open suggestion, to minimize the occurrence of divorce because it is part of efforts to protect religion.

2. Protecting the Soul

Having a prohibition in marriage will subconsciously bring enormous harm. How can it not be a household that can no longer be maintained and is forced to continue will be destroyed? Having under pressure will eventually become psychological pressure, and physical violence against the wife will almost happen. Moreover, there is no possibility of greater *mudharat* (harm) when there is a murder due to enormous pressure. There is no solution except having to stay in a marriage bond.

²⁷ Yusuf Al-Qaradhawi, *Fiqih Maqashid Syariah: Moderasi Islam Antara Aliran Tekstual Dan Aliran Liberal* (Pustaka Al-Kautsar, 2017).; Dadang Hawari, *Al-Qur'an Ilmu Kedokteran Jiwa dan Kesehatan Jiwa*, (Jakarta: PT. Dana Bhakti Prima Yasa, 2000), 770-803

In this context, the prohibition of divorce carried out by the Lampung Pepedun, indigenous people are the legacy of their ancestors which has been preserved for generations and has become an understandable habit (*al-adah muhakkamah*), which precisely if this is prohibited or this paradigm shifts, it will make a bloodbath between them because the stipulation of the prohibition on divorce is an agreement that so far has not raised pros and cons. However, in *syara'* the prohibition on divorce is also not absolute. Likewise, maintaining wise habits is noble because it will minimize problems that cause long debates and damage the soul if bloodshed occurs due to a paradigm that should not be debated. If this is done, it means trying to protect the soul from all the bad possibilities that will occur.

3. Protecting Mind

When a household can no longer be maintained, it survives because the customary law forbids it. This, of course, will cause damage to the mind. What then happens in some cases, for example, infidelity is really due to the absence of a solution²⁸. In this context, the form of divorce prohibition that has become the paradigm of the Lampung Pepadun, indigenous people is an *ittiyat* (carefulness) to reach *mitsaqan ghalidzan* bond in the household built always be lasting. Thus, divorce is just a shortcut if no solution is found. Meanwhile, the Lampung indigenous people, who have instilled values regarding the prohibition of divorce, consider this to be very acceptable by common sense that marriages are carried out in such a way, witnessed by the two extended families of the bride and groom, cold in a firm promise, and also witnessed by religious and community leaders so that divorce is undesirable

4. Maintaining Nasab

When viewed from one side, the principle of the prohibition of divorce is very appropriate because it is a standard and *sad al-zari'ah* for the sake of maintaining offspring. Because a marriage also requires offspring, a husband and wife have built a household and have children from both of them, then when a divorce occurs, it will become a new problem that must be resolved. Because the consequences of divorce usually will be resulted in child neglect and lack of attention. It will damage the child's *nasab* (lineage) because the role of a guardian does not play the role as it should²⁹.

²⁸ Abu al-Husain Ahmad ibn al-Faris Ibn Zakariyya, *al-Mu'jam al-Maqayis fi al-Lughah*, (Beirut: Dar al-Fikr, 1994), 95

²⁹ Agus Hermanto, "Konsep Maslahat dalam Menyikapi Masalah Kontemporer (Studi Komparatif al-Tûfi dan al-Ghazali)," *Al-'Adalah* 14, no. 2 (December 27, 2017): 433–60, <https://doi.org/10.24042/adalah.v14i2.2414>.

In the context of the prohibition of divorce, in the paradigm of the Lampung indigenous people, it does not only refer to the bride and groom but also protecting the *piil* (honor)³⁰ of the extended family must be a primary consideration. Therefore, it is not easy for someone to experience problems in a household, not to find a solution, but instead to break a bond built. If this is done with awareness and sincerity, the value of *maslahah* (benefit) for the family and even children will become victims of divorce by both parents.

5. Maintaining the Assets

Assets must be considered in Islam because it is what everyone is looking for, especially married ones. Nevertheless, if it is dismissed, then money or assets will be given to their offspring, and this is what is meant by inheritance in Islam. If there is a divorce, it will cause enormous harm, especially in the distribution of inheritance. There will often be a dispute between the two because they have been united and separated for specific reasons. If we look back at the problem, the goal of a marriage is to create a family with *sakinah, mawaddah wa Rahmah*, as the explanation analyzes the existing paradigm shift³¹.

In this context, the indigenous people of Lampung have a patrilineal kinship system. Thus, when a marriage is built in such a way, it experiences household separation. It will make it challenging to determine assets because the assets left by parents are heirlooms that must be maintained and preserved together. In contrast, if a marriage becomes separated, it becomes difficult to determine the distribution of these assets.

The implementation of the law regarding the prohibition of divorce in the Lampung Pepadun people in terms of the sharia's purpose that the Lampung Pepadun people do not prohibit absolutely, but the initial purpose is that they respect a *mitsaqan ghalizani* bond which, in this case, must be maintained because protecting it is part of protecting religion, the soul, the mind, lineage, and assets. As long as this is good, beneficial, and not conflicted with *Sharia* law and has definite arguments, and with the principle of facilitating and not complicating and for the

³⁰ Syukron and Rusmadi, "Piil Pesenggiri as Peace Culture."; Agus Hermanto, et al. "Prinsip Piil Pasenggiri Dan Moderasi Dai Kamtibmas Wilayah Lampung." *JAWI* 5.1 (2022): 63-88.

³¹ Yunasril Ali, *Tasawuf Sebagai Terapi Derita Manusia*, (Jakarta: Serambi, 2002), h. 200. 'Ali bin Muhammad al-Jarjani, *Kitab at-Ta'rifat*, (Jakarta: Dar al-Hikmah, t.th), 120; M. Quraish Shihab, *Secerah Cahaya Illahi-Hidup bersama Al-Qur'an*, (Bandung: Mizan, 2007), 184;

public interest, the rules can change according to the situation, conditions, culture, intentions, and habits³².

In reality, Lampung Pepadun customary law regarding the prohibition of divorce has experienced a shift, and several factors can influence it. They, First, the existence of mixed marriages. For example, the Lampung Pepadun indigenous people marry Javanese people, so customs will automatically shift. Second, the educational factor, which is increasingly advanced education, will continually add insight and knowledge to drive both partners to know what to do. Third, advances in technology and information, which will be able to influence the amount of information, will change the lifestyle of a society with the development of the times. Fourth, the religious factor, with the deepening of the teachings of the religion one adheres to, becomes a new thing that can change a custom to be relevant or contrary to religion. Considering these several factors of divorce, prohibition for the Lampung Pepadun indigenous people is an attempt to realize sacred values in marriage. Thus, a marriage cannot be tarnished.

According to the explanation of the paradigm of the divorce prohibition in the Lampung Pepadun indigenous people above, philosophically, it is still relevant to the objectives of *syara'* law, i.e., for the sake of prudence (*ittiyat*) and of maintaining dignity (*piil*), to not conflict with *syara'* law, because in the context of normative law itself, divorce is an emergency exit, so it is not something that should be disputed if it does not cause harm that can threaten religion, soul, mind, lineage, and assets. As for the other context, the paradigm regarding the prohibition of divorce then shifted. Of course, it cannot be separated from the many factors influencing it. For example, because of the increasingly changing development of the community, marriages with indigenous peoples outside Lampung, knowledge about religion is increasingly established, and technological advances are increasingly developing. Therefore, a deeply rooted custom will constantly shift as needed.

CONCLUSION

From the arguments instilled by the Lampung indigenous people in the context of the prohibition of divorce, it can be argued that the Lampung Pepadun indigenous people have a life philosophy of *piil pasenggiri*, an honor that must be maintained.

³² Indra, "Pergeseran Paradigma Perceraian Pada Masyarakat Adat Lampung Pepadun Dalam Perspektif Maqasid Al-Syari'ah"; Abi Sofyan, Iskandar Syah, and Muhammad Basri, "Tradisi Majau Dalam Perkawinan Adat Lampung Pepadun Di Kampung Kartajaya," *PESAGI (Jurnal Pendidikan Dan Penelitian Sejarah)* 2, no. 5 (August 20, 2014), <http://jurnal.fkip.unila.ac.id/index.php/PES/article/view/6197>.

While a divorce is a disgrace, it will damage the relationship between the husband and wife, parties, and customary families. Therefore, a divorce is considered a death divorce (divorce because of death). Meanwhile, the values of marriage prohibition at this time in some Lampung indigenous peoples have begun to fade due to mixed marriages, religious understanding, education, and technological advances.

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