



## Legal Pluralism and Divorce Practices in the Baduy Indigenous Community: Negotiating Customary and Islamic Law in Indonesia

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**Abstract:** This study aims to analyze legal pluralism in divorce practices among the Baduy indigenous community in Kanekes Village, Lebak Regency, Banten, by comparing the Inner Baduy, Outer Baduy, and Islamic Baduy communities. The research focuses on the dynamics of the relationship between customary law and Islamic law in shaping patterns of acceptance of divorce within the indigenous community. This study is a field study employing a qualitative socio-legal approach. Data were collected through in-depth interviews, observations, and documentation of traditional leaders, religious figures, and the Baduy community. Analysis was conducted using a descriptive-interpretive approach to understand divorce practices within the context of traditional values, religion, and social change in the Baduy community. The results indicate varying levels of acceptance of divorce among the three communities. The Inner Baduy strictly uphold the prohibition against divorce as part of maintaining customary and communal harmony. The Outer Baduy demonstrate a more flexible pattern of adaptation through mediation and limited accommodation in divorce cases. At the same time, the Islamic Baduy are more inclined to follow Islamic legal principles that permit divorce as a last resort to avoid harm. Nevertheless, all communities continue to prioritize the integrity of the household as a core value. This study contributes to strengthening research on legal pluralism by demonstrating that the relationship between customary law and Islamic law is one of negotiation and adaptation rather than merely conflict.

**Keywords:** Legal pluralism; Divorce; Baduy Community.

**Abstrak:** Penelitian ini bertujuan menganalisis pluralisme hukum dalam praktik perceraian pada masyarakat adat Baduy di Desa Kanekes, Kabupaten Lebak, Banten, melalui perbandingan antara komunitas Baduy Dalam, Baduy Luar, dan Baduy Islam. Fokus penelitian diarahkan pada dinamika hubungan antara hukum adat dan hukum Islam dalam membentuk pola penerimaan terhadap perceraian di masyarakat adat. Penelitian ini merupakan penelitian lapangan dengan pendekatan kualitatif socio-legal. Data diperoleh melalui wawancara mendalam, observasi, dan dokumentasi terhadap tokoh adat, tokoh agama, serta masyarakat Baduy. Analisis dilakukan secara deskriptif-interpretatif untuk memahami praktik perceraian dalam konteks nilai adat, agama, dan perubahan sosial masyarakat Baduy. Hasil penelitian menunjukkan adanya perbedaan tingkat penerimaan terhadap perceraian di antara ketiga komunitas. Baduy Dalam mempertahankan prinsip larangan perceraian secara ketat



sebagai bagian dari harmoni adat dan komunal. Baduy Luar menunjukkan pola adaptasi yang lebih fleksibel melalui mediasi dan akomodasi terbatas terhadap perceraian, sedangkan Baduy Islam lebih cenderung mengikuti prinsip hukum Islam yang memperbolehkan perceraian sebagai jalan terakhir untuk menghindari kemudharatan. Meski demikian, seluruh komunitas tetap menempatkan keutuhan rumah tangga sebagai nilai utama. Penelitian ini berkontribusi dalam memperkuat kajian pluralisme hukum dengan menunjukkan bahwa relasi antara hukum adat dan hukum Islam bersifat negosiatif dan adaptif, bukan semata-mata konflikual.

**Kata Kunci:** Pluralisme hukum; Perceraian; Masyarakat Baduy.

## Introduction

Marriage is a fundamental institution with religious, social, and legal dimensions in people's lives. In a normative perspective, marriage is interpreted as a bond of birth and mind between a man and a woman that aims to form a happy and eternal family based on the One Godhead.<sup>1</sup> This conception is affirmed in Law Number 16 of 2019, an amendment to Law Number 1 of 1974, which establishes religious and belief laws as the basis for the legitimacy of marriage and requires the registration of marriages in accordance with the provisions of laws and regulations.<sup>2</sup> This shows the state's recognition of the existence of legal pluralism in family life arrangements.

In the practice of domestic life, the ideal goal of marriage cannot always be fully realized. The dynamics of family relationships, economic pressures, interpersonal conflicts, and changes in social values often give rise to disharmony that ultimately leads to divorce.<sup>3</sup> Juridically, Article 38 of Law Number 1 of 1974 opens the possibility of divorce if there is a valid and accountable reason.<sup>4</sup> In line with that, Islamic law also allows divorce as a last resort under certain conditions, although normatively it is seen as the most hated halal act by Allah SWT. This view affirms that divorce is a legal act, but it should ideally be avoided to maintain the integrity and well-being of the family.<sup>5</sup>

In contrast to state law and Islamic law, which open up space for divorce under certain conditions, some indigenous peoples actually view marriage as a permanent and unbreakable bond. This view is reflected among the Baduy indigenous people

<sup>1</sup> Yohanes S. Lon, "The Legality of Marriage According to Customary, Religion and State Laws: Impacts on Married Couples and Children in Manggarai," *Jurnal Dinamika Hukum* 19, no. 2 (2019): 302-17, <https://doi.org/10.20884/1.jdh.2019.19.2.2429>.

<sup>2</sup> Law No. 1 of 1974 Concerning Marriage; Munadi Usman et al., "The Role of Customary Law in Family Resilience and Divorce Prevention: Phenomenological Studies in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 823-40, <https://doi.org/10.29240/jhi.v9i2.9685>;

<sup>3</sup> Azmi Abubakar, "Alasan Kemiskinan Sebagai Penyebab Perceraian Pada Masyarakat Pidie," *Posita: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 32-38, <https://doi.org/10.52029/pjhki.v1i1.135>.

<sup>4</sup> Achmad Husaini, "Analisis Hukum Perceraian Dalam Perspektif Kompilasi Hukum Islam," *'Aainul Haq : Jurnal Hukum Keluarga Islam* 4, no. 1 (2024), <https://ejournal.an-nadwah.ac.id/index.php/ainulhaq/article/view/712>.

<sup>5</sup> Al-Hafizh Ibnu Hajar Al-Asqalani et al., *Bulughul maram*, Cet. 1 (Pustaka Al-Kautsar, 2015); Dendi Ramdani Muslim et al., "Legal and Traditional Construction in Wedding Ceremonies: A Sociological Legal Perspective," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 17, no. 1 (2025): 122-35, <https://doi.org/10.32505/jurisprudensi.v17i1.10229>.

in Banten Province, who make marriage part of customary provisions that must be maintained across generations. Geographically, the Baduy community lives in the foothills of the Kendeng Mountains, precisely in Kanekes Village, Leuwidamar District, Lebak Regency, Banten.<sup>6</sup> The Baduy community is divided into two main groups: *Baduy Tangtu (Baduy Dalam/Inner Baduy)* and *Baduy Panamping (Baduy Luar/Outer Baduy)*, each with its own residential area. This division is based on social history and adherence to customs, in which the Baduy Luar are generally a group that left the Baduy Dalam due to violations of customs or because they embraced Islam and formed their own villages.<sup>7</sup>

In their social life, the Baduy people adhere to the *A Custom Arrangement*, a set of values and customary rules inherited from ancestors and believed to be a binding guideline for life that cannot be changed under any circumstances. *Custom Pikukuh* is understood as an ancestral trust (ancestor) that regulates the Baduy people's way of life to maintain harmony with the social and natural order.<sup>8</sup> Although juridically, A Custom Arrangement is an unwritten law that lacks universal legal certainty, sociologically, the rule is accepted and believed as a means of protecting indigenous peoples from external influences considered capable of damaging the value order.<sup>9</sup> One of the important principles in the Baduy traditional *pikukuh* is the prohibition on divorce, known as the "divorce-immunity marriage" concept. This principle views marriage as a lifelong commitment. However, during its development, the influence of modernization and interaction with Islamic law and state law began to foster the practice of divorce, especially among the Outer Baduy and the Islamic Baduy. This phenomenon highlights the existence of social dynamics and shifts in the meaning of divorce that warrant study.

Previous studies on the Baduy community have generally focused on the preservation of customs, the resilience of legal culture, and resistance to modernization, while studies on divorce as an arena of interaction among customary law, Islamic law, and state law remain relatively limited. In addition, most previous research still treats the Baduy community as a homogeneous entity, so it has not shown differences in legal orientation between the Inner Baduy, the Outer

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<sup>6</sup> Siti Muhibah and Rt Bai Rohimah, "Mengenal Karakteristik Suku Baduy Dalam Dan Suku Baduy Luar," *Jurnal Pendidikan Karakter JAWARA* 9, no. 1 (2023), <https://jurnal.untirta.ac.id/index.php/JAWARA/article/view/19960>; Mohamad Abduh et al., "Implementasi Gaya Hidup Berkelanjutan Masyarakat Suku Baduy Banten," *Jurnal Citizenship Virtues* 3, no. 2 (2023): 607–14, <https://doi.org/10.37640/jcv.v3i2.1879>; Merry Roseline Pasaribu and Rizki Rizki, "Problematics of The Influence of Islamic Law on The Order of Life of The Badui Community," *Jurnal akta* 12, no. 1 (2025): 12–22, <https://doi.org/10.30659/akta.v12i1.43613>.

<sup>7</sup> Jaro Samii, Traditional Leader Inner Baduy, Interview, September 7, 2025; Jaro Hanipah, Traditional Leader Outer Baduy, *Interview*, September 8, 2024.

<sup>8</sup> *Pikukuh* is a set of customary rules, ancestral teachings, moral values, and guidelines for living that form the foundation of Baduy society.

<sup>9</sup> Elfa Murdiana et al., "Kesadaran Hukum Masyarakat Baduy Banten Pada Pikukuh Adat, Dan Moderasi Hukum: (Kajian Sosiologi Hukum Pada keberadaan Living Law Masyarakat Adat Baduy)," *Istinbath: Jurnal Hukum* 18, no. 1 (2021): 124–41, <https://doi.org/10.32332/istinbath.v18i1.3383>; Thandabantu Nhlapo, "Customary Marriage: Missteps Threaten the Constitutional Ideal of Common Citizenship," *Journal of Southern African Studies* 47, no. 2 (2021): 273–89, <https://doi.org/10.1080/03057070.2021.1880750>.

Baduy, and the Islamic Baduy in interpreting divorce. Therefore, this study seeks to fill a gap in the study of the dynamics of the relationship between customary law and Islamic law in the Baduy community's divorce practice.

Research by Kiki Muhamad Hakiki discusses the Baduy people's monogamous marriage system as a form of local wisdom that emphasizes loyalty, social balance, and obedience to *pikukuh karuhun*, an effort to maintain the social balance of customs.<sup>10</sup> However, the study has not examined divorce from the perspective of legal pluralism, particularly the relationship among customary law, Islamic law, and state law in the Baduy community. Meanwhile, research by Muhamad Muslih examines the interaction among customary law, Islamic law, and state law in the practice of marriage registration among the Baduy community, particularly regarding population administration and state recognition of believers.<sup>11</sup> However, the study has not examined divorce from a legal pluralist perspective, particularly the dynamics of legal relations in the inner Baduy, Outer Baduy, and Baduy Islam communities. Thus, a gap remains in the study of the Baduy people's divorce practice as an arena of interaction among customary law, Islamic law, and state law.

Based on this background, this study aims to examine the practice and meaning of the prohibition on divorce among the Baduy indigenous people amid social changes and their interaction with Islamic law. This study not only places the integrity of the household at the center of the Baduy customary norms but also examines the dynamics of the relationships among customary law, Islamic law, and state law in the community's social practice. In this context, the research is not intended to conclude from the outset that harmonization exists between legal systems, but to understand how relationships, interactions, and negotiations between legal systems occur in the lives of the Baduy people. Therefore, this study uses the legal pluralism approach, particularly John Griffiths' view that in a society, more than one legal system can coexist. In the context of the Baduy community, this approach analyzes the relationships among customary law, Islamic law, and state law in responding to divorce practices among indigenous peoples. The term "Baduy Islam" in this study refers to a community with genealogical and cultural ties to the Baduy people, but that has embraced Islam and is no longer fully bound to the Baduy Dalam traditional beliefs. Meanwhile, the concept of marriage, which is understood as "infertile", is placed as a form of traditional idealization regarding the importance of maintaining family integrity in the social structure of the Baduy community.

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<sup>10</sup> *Pikukuh karuhun* refers to the teachings or traditions passed down by ancestors that all members of the community are required to follow. *Pikukuh* governs nearly every aspect of life, ranging from social relationships, marriage, environmental stewardship, and a simple way of life, to humanity's relationship with nature and spirituality. Muhamad Muslih, "The Effectiveness Of Government Regulation Concerning Marriage Recording For Baduy Banten Believers," *Nurani Hukum* 4, no. 1 (2021): 65, <https://doi.org/10.51825/nhk.v4i1.9622>; Nurkholis Kholis, "Implikasi Hukum Praktik Perkawinan Adat Suku Baduy Dalam Perspektif Hukum Islam Dan Hukum Positif," *Jurnal Pengabdian Masyarakat Dan Penelitian Thawalib* 1, no. 2 (2022): 127–43, <https://doi.org/10.54150/thame.v1i2.80>.

<sup>11</sup> Kiki Muhamad Hakiki et al., *Local Wisdom in Monogamous Marriage: Lessons on Gender Relations from the Baduy Tribe in Banten*, 2025.

Based on this framework, this research is focused on: (1) how the Baduy people interpret divorce in the perspective of customary law and Islamic law; (2) how the practice of divorce takes place in the Inner Baduy, Outer Baduy, and Baduy Islam communities; and (3) how are the dynamics of the relationship between customary law and Islamic law in maintaining family integrity.

## Method

This study is a field study employing a qualitative socio-legal approach that seeks to understand divorce practices within Baduy society through the interplay of legal norms, customary traditions, and religious values that are alive within the community.<sup>12</sup> This approach examines divorce not only as a formal legal issue but also as a social reality shaped by tradition, customary structures, and the dynamics of social change within the Baduy community. Thus, this study positions the community as the primary subject in understanding the contextual development of legal frameworks.

Data collection was conducted through in-depth interviews, field observations, and documentation of traditional leaders, religious figures, and members of the Baduy community involved in divorce practices.<sup>13</sup> The data obtained was then analyzed descriptively and interpretatively to uncover the meanings, patterns, and socio-cultural considerations underlying these practices. This analysis aims to provide a comprehensive understanding of how the Baduy community interprets divorce within the framework of customary values, religious teachings, and ongoing social change.

## Prohibition of Divorce in Indigenous Peoples

This study analyzes the prohibition on divorce among the Baduy indigenous people and compares the pattern of its application across the Inner Baduy, Outer Baduy, and Baduy Islam communities. This focus is important to show that legal practice in the Baduy community does not operate in a singular, uniform manner, but rather reflects the dynamics of legal pluralism through the interaction among customary law, Islamic law, and social change. Thus, divorce is not only understood as a family issue but also as an arena for negotiating norms that demonstrate how customary authorities are maintained, negotiated, and adapted amid the social transformation of the Baduy community.<sup>14</sup>

Among the Baduy indigenous people, the marriage bond is understood as a relationship that is sacred and can only end with death. On this basis, the Baduy

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<sup>12</sup> Siddharth de Souza and Lisa Hahn, *The Socio-Legal Lab: An Experiential Approach to Research on Law in Action* (Open Press Tilburg University, 2022), <https://doi.org/10.26116/2ckw-gd47>.

<sup>13</sup> Naomi Creutzfeldt et al., eds., *Routledge Handbook of Socio-Legal Theory and Methods*, Routledge Handbooks (Routledge, Taylor & Francis Group, 2020).

<sup>14</sup> Jaro Samii, Traditional Leader Inner Baduy, Interview, September 7, 2025; Jaro Hanipah, Traditional Leader Outer Baduy, Interview, September 8, 2024.

people expressly reject the practice of divorce in marriage. This divorce ban is part of the Baduy customary law system, which has been in effect and observed for generations. The rule is derived from the teachings and heritage of the ancestors and is believed to serve as a guideline for life, maintaining social order and family harmony. Buddhists have embraced Buddhist beliefs. Therefore, they cling to the *pikukuh karuhun* as a system of customary rules inherited from their ancestors.<sup>15</sup> Even though it is not written, *pikukuh karuhun* is understood, recognized, and collectively obeyed by the entire Baduy community and serves as a guideline for daily life.

Stiff ancestor, understood by the Baduy people as an ancestral mandate to be inherited, taught, and obeyed from generation to generation. The values it contains not only serve as moral guidelines but also provide a normative foundation for organizing the social life of the Baduy indigenous people. According to Jaro Samii, the spokesperson for *Pu'un* (traditional head) of Cibeo Village, one of the main mandates in *stiff* Baduy emphasized the community's obligation to comply with the customary law established by the ancestors fully.<sup>16</sup> The mandate is reflected in the Baduy traditional philosophy, which reads:

*"The mountains will not be moved.  
The shoe is not to be missed.  
Prohibitions are not to be overturned.  
Grandparents have not been able to change their minds.  
Lois was not to be missed.  
The house is not connected."*

This philosophy holds that all customary rules entrusted by ancestors may not be altered, added to, or subtracted from under any circumstances. The value of consistency and absolute compliance with customs is the main principle in the enforcement of Baduy customary law. Every act must be assessed objectively, so that the wrong is still declared wrong and the right is declared right, without compromise or deviation.<sup>17</sup> In the view of the Baduy people, everything that has been united cannot be separated again. Therefore, domestic life is seen as a bond that must be accepted in its entirety, in both joy and sorrow. The prohibition against divorce, polygamy, and other forms of customary violations is part of the principle.

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<sup>15</sup> Mohamad Sutisna et al., "Eksistensi Pikukuh Adat Sebagai Kontrol Sosial Pada Masyarakat Baduy di Desa Kanekes," *Jurnal Citizenship Virtues* 3, no. 2 (2023): 600–606, <https://doi.org/10.37640/jcv.v3i2.1880>; Muhyidin Muhyidin and Budi Setyawan, "Legal unification and pluralism in customary marriage registration: lessons from the baduy indigenous community," *Masalah-Masalah Hukum* 54, no. 3 (2025): 462–85, <https://doi.org/10.14710/mmh.54.3.2025.462-485>.

<sup>16</sup> Jaro Samii, Traditional Leader Inner Baduy, Interview, September 7, 2025; Jaro Hanipah, Traditional Leader Outer Baduy, Interview, September 8, 2024.

<sup>17</sup> Yona Syahtiwati Putri and Nursyirwan Effendi, *Eksistensi Pikukuh pada Komunitas Baduy Tangtu dalam Menghadapi Tantangan Modernisasi*, 2025; Miftakhul Huda et al., "Development of Progressive Islamic Law in Indonesia Regarding 'Apostasy' as Grounds for Divorce: Insights from Maqasid Sharia," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 1 (2024): 73–85, <https://doi.org/10.30659/jua.v6i1.36754>.

Violating customary prohibitions is seen as an act of "Connecting the Hut", that is, adding or changing rules that the ancestors have finally determined.

Consequently, every violation of *pikukuh karuhun*, including the practice of divorce, is categorized as a serious violation of customs. If a Baduy couple is found to be divorcing, it will be subject to customary sanctions according to applicable regulations. These sanctions serve not only as punishment but also as a mechanism to maintain traditional values, ensuring they remain sustainable and respected by all members of the community.<sup>18</sup>

### **The Difference Between Internal and External Sanctions in the Implementation of the Sanctions Prohibition on Divorce**

In principle, the divorce ban applies to all Baduy indigenous peoples, both Inner Baduy and Outer Baduy. These provisions are part of the Baduy customary law system, which is not codified but transmitted through traditions and social practices passed down from generation to generation. Although unwritten, these customary norms have a strong and effective binding force in regulating community behavior and maintaining the social order of the Baduy community.<sup>19</sup>

Although Baduy customary law normatively prohibits divorce and views that the marriage bond can only end in death. In practice, there are still several couples who choose to divorce, especially among the Outer Baduy community. This phenomenon shows a limited deviation from customary provisions, which is ideally accompanied by legal consequences, such as sanctions. However, in some cases, divorce in Baduy Luar is not always followed by the application of customary sanctions, thus giving rise to its own dynamics in the enforcement of customary law.

In the Outer Baduy community, the practice of divorce is still found, even though the frequency is relatively low.<sup>20</sup> This group shows a degree of leniency in applying customary rules, including in divorce cases, provided the reasons are considered strong and socially acceptable. This relaxation has been ongoing for a long time, given Outer Baduy's position as a companion to Inner Baduy and as an intermediary for interaction with the outside world. Although in principle the Outer Baduy remains bound by the customary orders and prohibitions that apply in the

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<sup>18</sup> Apriyaldo, "Sistem Hukum Pidana Adat Baduy," *Prosiding Seminar Nasional Komunikasi, Administrasi Negara Dan Hukum* 1, no. 1 (2023): 263–68, <https://doi.org/10.30656/senaskah.v1i1.122>; Neng Eri Sofiana, "Honoring Women in the Prohibition of Divorce: An Exploration of Legal Pluralism in Marriage Among the Indigenous People of Cireundeu, Indonesia," *SETARA: Jurnal Studi Gender dan Anak* 7, no. 02 (2025): 184–94, <https://doi.org/10.32332/jsga.v7i02.art02>.

<sup>19</sup> Raisya Aliya Putri and Hidayatusshibyan Hamamy, *Eksistensi Hukum Adat Baduy Dalam Menjaga Harmonisasi Komunal Melalui Praktik Silih Hampura*, 2 (2025); Rena Yulia et al., "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 803–54, <https://doi.org/10.15294/jils.v8i2.72283>.

<sup>20</sup> Jarkasi Anwar and Muhamad Muslih, "Efektifitas Pikukuh Baduy Tentang Perkawinan Kebal Cerai Bagi Masyarakat Adat Baduy," *Madinah: Jurnal Studi Islam* 8, no. 1 (2021): 22–32, <https://doi.org/10.58518/madinah.v8i1.1331>; Sodikin Sodikin and Abdul Kahar Maranjaya, "Preserving tradition: the adat law system of the baduy community and its constitutional relevance," *Kanun Jurnal Ilmu Hukum* 27, no. 1 (2025): 45–66, <https://doi.org/10.24815/kanun.v27i1.32056>.

Inner Baduy, in practice, there is a certain flexibility, such as in the use of transportation facilities and the acceptance of the influence of modernization, which also affects the dynamics of the application of customary law in daily life.

In contrast to the Outer Baduy community, the Inner Baduy community imposes an absolute ban on divorce. Divorce is not permitted in the Inner Baduy area. However, in practice, couples are still found who choose to divorce. However, the divorce was not carried out in the Inner Baduy area, but outside the customary territory. Thus, married couples who want to divorce must first leave the Inner Baduy area to comply with customary provisions that prohibit divorce there. This practice demonstrates the strong role of customary law in regulating the space and social practices of the Inner Baduy community.<sup>21</sup>

The implementation of customary sanctions and the mechanism for enforcing the divorce ban reveal differences between the Outer Baduy and the Inner Baduy, both in procedures and in the level of strictness.

#### a. Divorce Settlement Mechanism in the Outer Baduy Community

The implementation of customary sanctions and enforcement of divorce regulations among the Baduy people reveal significant differences between the Outer Baduy (Baduy Luar) and the Inner Baduy (*Baduy Dalam*) communities. These differences are reflected not only in the procedural mechanisms used to resolve marital conflicts but also in the degree of rigidity in enforcing customary law. In general, both communities regard marriage as a sacred institution that must be preserved in accordance with the mandate of *pikukuh karuhun* (ancestral customary teachings). Divorce is therefore considered an undesirable act because it is believed to threaten social harmony and the stability of customary life. Nevertheless, the Outer Baduy community tends to adopt a more adaptive, flexible approach, whereas the Inner Baduy community maintains a highly conservative, strict interpretation of customary norms.

Within the Outer Baduy community, divorce is not strictly prohibited, but it is strongly discouraged and may occur only after all customary reconciliation efforts have failed. The customary authorities play an important role in ensuring that every marital dispute is resolved peacefully before divorce becomes an option. The settlement process begins within the nuclear family through a kinship-based approach aimed at restoring harmony between husband and wife. If the conflict cannot be resolved internally, the mediation process continues by involving extended family members or *sabahans*, who act as witnesses and mediators in the reconciliation process. This gradual approach reflects the communal character of Baduy customary law, where family problems are regarded as collective social concerns rather than purely private matters.

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<sup>21</sup> S, T, and E, Community, Inner Baduy, *Interview*, September 7, 2025; J, L, A, and U, Community, Outer Baduy, *Interview*, September 8, 2024.

If mediation at the family level does not produce an agreement, the dispute is escalated to *Kakolot Lembur*, involving RT/RW leaders and respected customary figures. At this stage, deliberation and consensus-building become the primary methods for resolving the conflict. The goal is not merely to determine fault, but to restore social balance and preserve family integrity. Should these efforts remain unsuccessful, the case is then brought before the village customary authorities through the *Jaro Pamarentah* and other traditional leaders who possess greater authority in customary decision-making. Only after all these stages have been exhausted may divorce be permitted within the Outer Baduy community.<sup>22</sup>

Even when divorce is eventually allowed, customary sanctions may still be imposed if the reasons for divorce are considered insufficient or inconsistent with customary values. In such cases, the husband is required to provide a customary fine known as *malik jasa* or “returning services.” This sanction consists of ten bundles of glutinous rice, two black-feathered roosters, and a set of women’s clothing. The sanction symbolizes moral responsibility toward the wife and serves as a social reminder that marriage should not be dissolved carelessly. Thus, although Outer Baduy society demonstrates greater flexibility than Inner Baduy society, the customary system still serves as a mechanism for controlling individual behavior and maintaining communal stability.

#### b. Customary Enforcement and Divorce Prohibition in the Inner Baduy Community

In contrast to the Outer Baduy community, the Inner Baduy community regards divorce as a serious violation of customary law and social morality. Divorce is strictly prohibited within the Inner Baduy territory because marriage is considered a sacred and lifelong bond that reflects obedience to ancestral teachings. The preservation of marital unity is closely related to the broader objective of maintaining the purity of Baduy customs and protecting the harmony of communal life. Consequently, couples who insist on divorcing are not permitted to carry out the process within the customary territory and must leave the Inner Baduy area to proceed with the separation.

Before such a decision is finalized, the couple undergoes a lengthy and hierarchical mediation process involving multiple layers of customary authority. Initially, advice and reconciliation efforts are conducted by parents and close family members. If the conflict persists, the process continues through RT/RW leaders, *Kakolot Lembur*, *Jaro Pamarentah*, and ultimately *Pu’un*, the highest customary authority within Inner Baduy society. The involvement of *Pu’un* demonstrates the seriousness with which divorce is viewed in the Inner Baduy customary system. Every stage of mediation is intended to restore harmony and prevent the dissolution

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<sup>22</sup> Jaro Hanipah, Traditional Leader, Outer Baduy, *Interview*, September 8, 2024; J, L, A, and U, Community, Outer Baduy, *Interview*, September 8, 2024.

of marriage, emphasizing that personal interests must remain subordinate to communal and customary values.<sup>23</sup>

When all reconciliation efforts fail, and the couple remains determined to divorce, they must leave the Inner Baduy territory and undergo a customary sanction process. This process includes placement in a customary detention house located in designated areas such as *Dangka Cipatik* for the *Cibeo* community, *Dangka Padawaras* for the *Cikeusik* community, and *Dangka Inggung* or *Panyaweuyan* for the *Cikertawarna* community. During this period, the couple must undergo forty days of customary coaching, reflection, and self-evaluation. The purpose of this sanction is not merely punitive, but also educational and spiritual, encouraging individuals to contemplate the consequences of violating customary norms. Only after completing this process may the customary divorce be formally conducted outside the Inner Baduy territory. This practice illustrates the highly conservative and disciplined character of Inner Baduy customary law in preserving ancestral traditions and social order.

**Table 1.** Comparison of Divorce Practices Between the Outer Baduy and the Inner Baduy

Comparative Aspect	Outer Baduy (Baduy Luar)	Inner Baduy (Baduy Dalam)
<b>Position of Divorce</b>	Permitted on a limited basis under certain conditions	Strictly prohibited within customary territory
<b>Nature of the Prohibition</b>	Relatively more flexible	Highly strict and conservative
<b>Divorce Practice</b>	Still occurs, although relatively rare	Still occurs, but must take place outside customary territory
<b>Influencing Factors</b>	Interaction with the outside world and modernization	Preservation of customary purity and traditional values
<b>Settlement Mechanism</b>	Gradual mediation through family, Sabah, RT/RW, Jaro Pamarentah, and Kokolot	Tiered mediation through family, RT/RW, Jaro Pamarentah, Kokolot, and ultimately Pu'un
<b>Location of Divorce</b>	Can be conducted within the Outer Baduy area after customary procedures	Must be conducted outside the Inner Baduy territory
<b>Customary Sanctions</b>	Customary fines if the reason for divorce is considered insufficient	Expulsion from Inner Baduy territory and 40 days of customary guidance
<b>Character of Customary Enforcement</b>	More adaptive and compromise-oriented	Very strict in maintaining customary norms
<b>Social Orientation of Customary Law</b>	Limited adaptation to social change	Strong preservation of traditional and customary values

Source: Authors, 2026.

<sup>23</sup> Jaro Samii, Traditional Leader, Inner Baduy, *Interview*, September 7, 2024; S, T, and E, Community, Inner Baduy, *Interview*, September 7, 2025.

## The Islamic Brotherhood's Views on Divorce

The beliefs of the Baduy indigenous people are based on the teachings of *Sunda Wiwitan*,<sup>24</sup> a belief system that holds that transcendental forces are the source of life and protection from God. Although it shares similarities with Islam in recognizing God Almighty, *Sunda Wiwitan* differs from Islam in its religious practices and obligations. In Islam, faith in Allah is manifested through the implementation of normative worship obligations, such as prayer, zakat, and fasting, as a form of obedience to religious teachings.<sup>25</sup>

Meanwhile, *Sunda Wiwitan* is a belief system that contains elements of ancient monotheism and emphasizes the firmest belief in the One Creator.<sup>26</sup> The Baduy people have great respect for the mandate of their ancestors, or *karuhun* (ancestors or forebears), as they have upheld their customs for generations. In its development, some Baduy people chose to embrace Islam. Based on information from respondents in the Baduy Muslim community, the conversion affected the exit of individuals from the Inner Baduy and Outer Baduy indigenous communities, which were administratively administered under customary law. However, they were still socially accepted within the Baduy community. As a consequence, they no longer live in the core customary territory and live outside the Baduy area.

Nevertheless, the Baduy people view Islam as having a close relationship with *Sunda Wiwitan*, especially in the principle of monotheism. On that basis, individuals who embrace Islam are still allowed to return to being part of the indigenous community as long as they meet the applicable customary provisions. This condition shows the Baduy people's social adaptation to religious changes without completely abandoning their cultural identity.

The similarities between *Sunda Wiwitan* and Islam are reflected in several traditional practices, including the marriage procession, which includes the recitation of two sentences of the *shahada*.<sup>27</sup> In the context of Baduy customs, the pronunciation of the *shahada* is not merely a formal recitation of the pillars of Islam. Still, it is also interpreted as a recognition of the Creator's monotheism. However,

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<sup>24</sup> *Sunda Wiwitan* is a traditional belief system of the Sundanese people rooted in the teachings of their ancestors (*karuhun*) and a reverence for the balance between humans, nature, and spiritual forces. The term *Sunda Wiwitan* literally means "original Sundanese" or "the first Sundanese teachings," referring to the indigenous beliefs of the Sundanese people prior to the arrival of major religions such as Islam, Hinduism, and Christianity.

<sup>25</sup> Amrizal Siagian and Fika Rahmanita, *Potret Budaya Hukum Masyarakat Sederhana Indonesia dalam Merawat Kebhinnekaan*, 3, no. 1 (2020); Moch Ichwan Kurniawan et al., "Hambatan Pelaksanaan SEMA No. 2 Tahun 2019 Terhadap Pemenuhan Hak-Hak Perempuan Pasca Cerai Gugat Di Pengadilan Agama Kabupaten Kediri," *Al-Syakhsiyah: Journal of Law and Family Studies* 4, no. 1 (2022): 101-101, <https://doi.org/10.21154/syakhsiyah.v4i1.3962>.

<sup>26</sup> Sumedho Tenggara Setiawan et al., "Analisis Pengaruh Sunda Wiwitan Terhadap Gaya Hidup Masyarakat Suku Baduy," *Moderasi: Jurnal Kajian Islam Kontemporer* 1, no. 01 (2022), <https://journal.forikami.com/index.php/moderasi/article/view/685>; Rena Yulia et al., "Conflict resolution patterns in indigenous communities of Indonesia: a comprehensive study of the customary laws of baduy, kajang, and anak dalam in jambi," *Indonesia Private Law Review* 6, no. 2 (2025): 159-76, <https://doi.org/10.25041/iplr.v6i2.4671>.

<sup>27</sup> *Shahada* is the declaration of faith in Islam that serves as the primary basis for a person's conversion to Islam. The term "Shahada" comes from the Arabic word *shahādah* (الشهادة), which means "testimony" or "witnessing."

the implementation of other Islamic Sharia obligations depends on each individual's choice and commitment.<sup>28</sup> This situation illustrates the relationship and negotiation between traditional values and religious teachings in the community's life.

In the matter of divorce, the Muslim Baduy community views divorce as an act that should be avoided, in line with Islamic teachings that place divorce as a *halal* act but hated by Allah. However, Islamic law still allows for divorce if it is seen as a last resort to avoid greater harm. This condition differs from Baduy customary law, especially in the Inner Baduy community, where divorce is considered a serious violation of customary beliefs. These differences show that customary law and Islamic law differ in how they view divorce. Baduy customary law emphasizes the collective integrity and social stability of the community, while Islamic law provides a framework for the formal resolution of domestic conflicts under certain conditions.<sup>29</sup>

In practice, the Baduy Islamic community follows the divorce procedure as regulated in Islamic law and state law through official mechanisms. Meanwhile, Baduy customary law maintains a settlement mechanism based on deliberation, customary mediation, and community social control to prevent divorce. These differences in mechanisms reveal the dynamics of legal pluralism in the Baduy community, where customary law, Islamic law, and state law interact to respond to social changes and community needs. Although both place divorce as "hated" or best avoided, the procedure is formally and practically different.

### **Harmonization of Customary Law and Islamic Law related to Divorce**

For the Baduy indigenous people, divorce is in principle prohibited, and marriage is seen as only able to end due to death. However, there is a difference in the application between the Inner and Outer Baduy Buddha. Inner Baduy strictly enforces a ban on divorce, while Outer Baduy offers limited leeway through complex, layered procedures. This mechanism is designed to make divorce more difficult, thereby empirically contributing to the low divorce rate and reflecting the Baduy people's strong commitment to maintaining the sustainability of marriage in accordance with customary values.<sup>30</sup>

The prohibition of divorce in the Baduy society is rooted in the mandate of the ancestors, which is reflected in the expression "the one who is united does not win in separation", as well as the customary principle of "the great-grandfather does not

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<sup>28</sup> Murdan Murdan, "A Judge's Response to the Phenomenon of Indonesian Legal Pluralism: The Compartmentalization of Law on Divorce Case of Sasaknese Marriage," *Justicia Islamica* 22, no. 1 (2025): 49–70, <https://doi.org/10.21154/justicia.v22i1.9818>.

<sup>29</sup> A, B and S, Community, Islam Baduy, *Interview*, September 8, 2024.

<sup>30</sup> Aulia Diningrum and Rahmad Efendi, "Unregistered Divorce Practices in Rural Indonesian Muslim Communities: Legal and Cultural Dimensions," *Diktum: Jurnal Syariah Dan Hukum* 24, no. 1 (2025): 39–50, <https://doi.org/10.35905/diktum.v24i1.14747>; Ridwan Nurdin et al., "The Role of Customary Leaders as *Hakam* in Resolving Divorce: A Case Study in Kuta Alam Subdistrict, Banda Aceh City," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 430–43, <https://doi.org/10.22373/ujhk.v6i2.12710>.

get changed". This principle holds that marriage is a sacred bond that must be maintained, so that divorce is seen not only as a social offense but also as a deviation from traditional values inherited from generation to generation.

Divorce in the Outer Baduy and Baduy Islam communities shows both similarities and fundamental differences. In both communities, divorce is carried out orally, similar to the practice of *talaq* in Islamic law, namely through the husband's statement to the wife. However, the main difference lies in the post-divorce arrangement. In Baduy Islam, the *iddah* period is known. The *iddah* period not only maintains the clarity of the *nasab* but also serves as a social instrument that provides space for reconciliation, preventing divorce from occurring in haste, as explained in studies of Islamic jurisprudence and supported by the Qur'an.<sup>31</sup>

The concept of *'iddah* in Islamic law is a normative mechanism that encompasses theological, biological, and social dimensions. The provisions regarding the waiting period for women following divorce or the death of a husband demonstrate that Islamic law not only regulates family relationships administratively but also provides protection for the clarity of lineage, the psychological stability of women, and respect for the marital bond that has been established. The classification of types of *'iddah* based on a woman's biological condition demonstrates the flexibility of Islamic law in responding to diverse circumstances. This indicates that Islamic law is founded on the principle of public interest (*maqāṣid al-sharīah*), taking into account humanitarian aspects and the social realities of women.

First, a pregnant woman undergoes the *'iddah* period until she gives birth, as stated in Surah Al-Thalaq, verse 4. This provision indicates that the law's primary focus is on protecting the fetus and ensuring the certainty of the child's lineage. From a *fiqh* perspective, pregnancy serves as the clearest biological indicator to confirm the lineage connection with a husband who has divorced her or has passed away. Additionally, this provision carries psychological and social dimensions, as pregnant women require emotional stability and social support throughout the pregnancy process. Thus, the *'iddah* for pregnant women is not merely understood as a ritual obligation but also as a form of protection for the rights of women and children within the Islamic family system.

Second, women who are still menstruating are required to observe the *'iddah* for three *qurū'*, as mentioned in Surah Al-Baqarah, verse 228. This provision demonstrates a close connection between Islamic law and the biological cycle of women. Scholars differ in their interpretation of *qurū'*—whether it refers to the

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<sup>31</sup> J, L, A, and U, Community, Outer Baduy, *Interview*, September 8, 2024; A, B and S, Community, Islam Baduy, *Interview*, September 8, 2024; Nurmayani Nurmayani et al., "Tinjauan Literatur Mengenai Perceraian Dalam Hukum Islam: Sebab dan Konsekuensinya," *Jurnal Riset Rumpun Agama Dan Filsafat* 4, no. 1 (2025): 16–27, <https://doi.org/10.55606/jurrafi.v4i1.4319>; I. Ketut Ardhana and Ni Wayan Radita Novi Puspitasari, "Adat Law, Ethics, and Human Rights in Modern Indonesia," *Religions* 14, no. 4 (2023): 443, <https://doi.org/10.3390/rel14040443>.

period of purity or the menstrual period—but the legal substance remains the same: to provide a waiting period before a woman may remarry. This waiting period serves an important function in ensuring there is no pregnancy while also providing space for reflection and the possibility of reconciliation between husband and wife, particularly in the case of a revocable divorce (*talak raj'i*). Thus, the *'iddah* also functions as a social instrument to preserve family unity and prevent divorces made impulsively or out of emotional distress.

Third, for women who have reached menopause and no longer menstruate, Islamic law prescribes an *'iddah* period of three months, as explained in Surah al-Thalaq, verse 4. This provision demonstrates that when biological indicators such as menstruation can no longer be relied upon, Islam replaces them with a fixed duration of time. This reflects the principle of legal certainty in Islamic law, ensuring women have clear guidelines for observing the *'iddah* period. Furthermore, the three-month period indicates that the purpose of the *'iddah* is not solely related to the possibility of pregnancy but also concerns respect for the ended marital relationship and the psychological transition period before entering a new life.

Fourth, a woman who is divorced before consummation of the marriage is not required to observe the *'iddah*, as stated in Surah al-Ahzab, verse 49. This provision indicates that the obligation of the *'iddah* is closely tied to the possibility of pregnancy and the biological consequences of the marital relationship. Since no biological relationship has occurred, there is no legal basis to establish a waiting period. Nevertheless, the verse still emphasizes the importance of providing *mut'ah* and a gracious release (*tasrih bi ihsan*), indicating that Islam upholds ethics and respect for women even when a marriage ends before sexual relations occur. In this context, Islamic law emphasizes not only legal-formal aspects but also moral and humanitarian values in resolving divorce cases.

The classification of the *'iddah* based on the woman's condition demonstrates that Islamic law possesses an adaptive and contextual character. These provisions cannot be understood merely as rigid normative rules, but rather as a system of protection for women, children, and the family structure. By taking into account biological, psychological, and social aspects, the concept of *'iddah* reflects the objectives of Islamic law in preserving honor, lineage, and the welfare of humanity.

Meanwhile, among the Baduy indigenous people, the concept of a post-divorce waiting period is known as *iddah*, lasting 40 days and applying to both men and women. However, in practice, this provision is not consistently implemented. Exceptions apply to women who are pregnant, because in these conditions, divorce is not allowed. Another significant difference is evident in the referral mechanism. In Islamic law, reference can be made orally without a remarriage contract as long as it is still in the category of *talak raj'i*. In contrast, in *talak bain*, reference is not possible without a new contract. On the other hand, in Baduy customs, couples who

want to get back together after divorce are required to remarry, along with traditional rituals like the first marriage.<sup>32</sup>

From the perspective of Islamic law, divorce is not accompanied by formal sanctions, such as fines or specific punishments, and there is no special ritual governing the referral process.<sup>33</sup> Nevertheless, divorce is still seen as an act that is not recommended and is only justified as a last resort in resolving domestic conflicts. A similar principle is also found in Baduy customary law, which places deliberation and mediation as the main stages before divorce is decided. Kaidah fiqhiyah holds that preventing harm must take precedence over achieving a benefit.

The fiqh principle *dar'ū al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*, which means “preventing harm takes precedence over seeking benefit,” is one of the fundamental principles of Islamic law, particularly in the resolution of family matters and divorce. This principle affirms that when an action has the potential to cause greater social, psychological, or moral harm, preventive measures must take precedence over the pursuit of individual interests or benefits. In the context of divorce in Indonesia, this principle serves as the normative basis that divorce is not a recommended option, even though it is legally permitted. This is because divorce often has far-reaching consequences, such as emotional instability for the couple, disruption of children’s development, conflicts within the extended family, and post-divorce economic issues.<sup>34</sup>

In the practice of Islamic family law in Indonesia, this principle is reflected in various mechanisms that make instant divorce difficult, such as the obligation of mediation in religious courts, reconciliation efforts by judges, and the requirement of strong grounds for filing for divorce. The state, through the legal system, strives to preserve the integrity of the household to protect the family institution. Thus, preventing divorce is prioritized over merely fulfilling emotional impulses, personal egos, or the fleeting desires of a couple. This perspective demonstrates that Islamic law considers not only individual rights but also the collective impact on family resilience and societal stability. Therefore, divorce is positioned as a last resort

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<sup>32</sup> Yohanes Dandi et al., “The Intersection of Dayak Tarangk Customary Divorce Practices and Canon Law,” *Jurnal Hukum Magnum Opus* 8, no. 1 (2025): 1–15, <https://doi.org/10.30996/jhmo.v8i2.11005>; Nur Kasim, “Customary Law Aspect on the Role of Religious Judge in the Case of Divorce,” paper presented at Proceedings of the 1st International Conference on Environmental Science and Sustainable Development, ICESD 2019, 22-23 October 2019, Jakarta, Indonesia, March 3, 2020, <https://eudl.eu/doi/10.4108/eai.22-10-2019.2291462>.

<sup>33</sup> Febriani Yuianti Seran and Purnawan D. Negara, “Juridical Analysis of the Position of Joint Property After Divorce (A Study in Review of National Law and Customary Law in Timor Tetun Tribe),” *Widya Gama Law Review* 1, no. 1 (2024): 26–35, <https://doi.org/10.31328/wglr.v1i1.578>; Muhammad Aulia Rahman et al., “Dayak Ngaju Customary Fines in Pre-Marriage Agreement to Minimize Divorce in The Perspective of Masalah Mursalah Ramadhan Al-Buthi,” *El-Mashlahah* 13, no. 1 (2023): 57–75, <https://doi.org/10.23971/el-mashlahah.v13i1.5623>.

<sup>34</sup> Jefry Tarantang et al., “Unification of Law in the Marriage and Divorce Processes of the Dayak Ngaju Muslim Communities in Central Kalimantan,” *Mazahib* 23, no. 2 (2024): 529–54, <https://doi.org/10.21093/mj.v23i2.6940>; Itok Dwi Kurniawan et al., “Ramifications of Divorce by Dayak Customary Law: Exploring Legal Consequences in Indonesian Legal System,” *Journal of Law and Legal Reform* 5, no. 1 (2024): 53–74, <https://doi.org/10.15294/jllr.vol5i1.2091>.

(*ultimum remedium*) after all efforts to repair the relationship have proven impossible.<sup>35</sup>

Divorce in the Indonesian legal system is regulated under Article 38 of Law Number 1 of 1974, which provides that marriage may end by death, divorce, or a court decision. This provision affirms that divorce is an individual right protected by the state as a human right. Therefore, the state is obliged to guarantee citizens' freedom to determine the sustainability of their marriage in accordance with applicable law.<sup>36</sup> The implementation of the marriage law in Indonesia is pluralistic. Tutik Triwulan Tutik explained that three systems of marriage law apply, namely Western civil law (*Burgerlijk Wetboek*) for certain citizens, Islamic law for Muslims, and customary law for people who still uphold customary traditions. Consequently, divorce law, as part of marriage law, is also applied in various ways through the general court, religious courts, and customary mechanisms operating within customary law societies.<sup>37</sup>

The diversity of law in Indonesia demonstrates the existence of legal pluralism, as described by Werner Menski, in which state law, religious law, and customary law are interrelated.<sup>38</sup> In the Baduy community, this condition is reflected in the persistence of customary law as the dominant system for regulating marriage and divorce, so that customary norms not only function as social traditions but also serve as normative authorities that are collectively lived and obeyed. According to John Griffiths, legal pluralism is a condition for the presence of more than one legal system in a single social space that interacts with each other and affects people's practices of life, in the forms of state law, customary law, and religious law.<sup>39</sup> This is also similar to the practice of law among the Baduy indigenous people, where the interaction between Baduy customary *pikukuh* and Islamic law is evident in the meaning of divorce. Inner Baduy tends to maintain strong customary law authority. At the same time, Outer Baduy and Baduy Islam show the process of law

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<sup>35</sup> H. A. Djazul, *Kaidah-kaidah fikih: kaidah-kaidah hukum islam dalam menyelesaikan masalah-masalah yang praktis* (Kencana, 2006); Dinda Difia Madina et al., "Aligning Islamic Law and Customary Law: Legal Dialectics in the Tradition of Forced Marriage in Jambi," *Justicia Islamica* 20, no. 1 (2023): 1-16, <https://doi.org/10.21154/justicia.v20i1.4720>.

<sup>36</sup> Zubir Zubir and Alimuddin Alimuddin, "The Authority of Adat Institutions in Resolving Marital Disputes in Aceh: A Legal Review," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 1 (2025): 174-84, <https://doi.org/10.32505/qadha.v12i1.11149>.

<sup>37</sup> Titik Triwulan Tutik, *Konstruksi hukum tata negara Indonesia pasca-amendemen UUD 1945*, Ed. 1., cet. 1 (Kencana, 2010); Kirsty Button et al., "South Africa's System of Dispute Resolution Forums: The Role of the Family and the State in Customary Marriage Dissolution," *Journal of Southern African Studies* 42, no. 2 (2016): 299-316, <https://doi.org/10.1080/03057070.2016.1148390>.

<sup>38</sup> Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, 2. ed (Cambridge University Press, 2009); Nyoman Sujana, "The Implication of the Divorce of Unregistered Marriages for Divorcees' in Bali: Assessing Status, Right and Duty," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 3 (2023): 261-74, <https://doi.org/10.25041/fiatjustisia.v17no3.3096>.

<sup>39</sup> Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 398-415, <https://doi.org/10.22373/sjhk.v4i2.7052>; Taufiqurohman Taufiqurohman and Nelli Fauziah, "The Evaluation of Maqāṣid Asy-Syari'ah on Discourses of the Islamic Family Law," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (2023): 81-90, <https://doi.org/10.22373/ujhk.v6i1.13035>.

harmonization through limited adjustments between customary values and Islamic teachings to maintain family integrity.<sup>40</sup>

From the perspective of Islamic law, divorce is fundamentally viewed as an act that should be avoided, even though it is normatively permitted. This view is reflected in a hadith of the Prophet Muhammad (peace be upon him), which states that “the lawful act most detested by Allah is divorce.” This hadith indicates that divorce is not the primary goal of a marital relationship, but rather a last resort when the objectives of marriage—such as the establishment of tranquility (*sakinah*), affection (*mawaddah*), and the continuity of the family—can no longer be achieved in a balanced manner. Thus, Islamic law prioritizes the integrity of the household, while divorce is positioned as an emergency solution to prevent greater harm to family life.<sup>41</sup>

In the context of indigenous communities, the relationship between Islamic law and local traditions can be understood through the concept of *urf* or social customs that gain legal legitimacy as long as they do not contradict the principles of Sharia. The fiqh principle *al-ādah muḥakkamah* affirms that customs or traditions can serve as a basis for establishing law.<sup>42</sup> According to Abdul Wahab Khallaf, *adat* and *urf* share the same substance because both are living social practices, widely known, and collectively accepted by society. Therefore, the existence of customary law is not always positioned as conflicting with Islamic law, but can instead serve as a social instrument in supporting the objectives of Sharia if its values align with the principle of public interest.<sup>43</sup>

The Baduy community’s tradition of rejecting divorce can be categorized as *urf ṣaḥīḥ*, that is, a valid and acceptable custom from the perspective of Islamic law. This is because the social practices that have developed within the Baduy community do not contradict sharia evidence but are oriented toward maintaining family unity, domestic harmony, and the clarity of lineage. In Baduy society, divorce is viewed not merely as an individual matter between husband and wife, but also as a matter concerning social stability and the honor of the traditional community. Therefore, the prohibition on divorce serves as a collective mechanism to safeguard family resilience and the continuity of the community’s social order.<sup>44</sup>

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<sup>40</sup> S, T, and E, Community, Inner Baduy, *Interview*, September 7, 2025; J, L, A, and U, Community, Outer Baduy, *Interview*, September 8, 2024; A, B and S, Community, Islam Baduy, *Interview*, September 8, 2024.

<sup>41</sup> Al-Asqalani et al., *Bulughul maram*; Dahlia Haliah Ma’u et al., “The Construction of Cerai Manis (Preferred Divorce) on the Border of Indonesia and Malaysia Communities,” *Al-Adalah* 20, no. 1 (2023): 19–34, <https://doi.org/10.24042/adalah.v20i1.16518>.

<sup>42</sup> H. A. Djazul, *Kaidah-kaidah fikih*; Tetty Melina Lubis et al., “Paradox of Justice in Baduy’s Customary Law: Bridging Tradition, Human Rights, and Modernization in the Context of Indonesian Legal Pluralism,” *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025): 4624–36, <https://doi.org/10.31941/pj.v24i2.6310>.

<sup>43</sup> Abu Yasid, *Logika Ushul Fiqh* (IRCiSoD, 2019); Doni Azhari et al., “Beseang (customary divorce) in sasak society from the perspective of maqasid al-shariah,” *Malaysian Journal of Syariah and Law* 12, no. 3 (2024): 574–82, West Nusa Tenggara, Indonesia, <https://doi.org/10.33102/mjssl.vol12no3.932>.

<sup>44</sup> Dar Nela Putri, “Konsep Urf sebagai Sumber Hukum dalam Islam,” *El-Mashlahah* 10, no. 2 (2020): 14–25, <https://doi.org/10.23971/maslahah.v10i2.1911>; Muchamad Coirun Nizar, “The Religious Court’s Decisions

Baduy customary principles also have a strong connection to the concept of *maqāṣid al-sharīah*, particularly *ḥifẓ al-nasl* (protection of lineage) and *ḥifẓ al-‘ird* (protection of honor). This is reflected in customary adages such as “gunung teu meunang dilebur, lebak teu meunang diruksak,” which describe the obligation to uphold the legacy of ancestors and the continuity of cultural values. This adage holds not only symbolic meaning but also reflects the Baduy community’s ethical orientation toward preserving family integrity, social honor, and communal identity. Thus, custom functions not merely as a social rule but as a moral mechanism that strengthens marital stability and community solidarity.<sup>45</sup>

The findings of this study indicate that Baduy customary law and Islamic law are not in conflict but are complementary within the framework of legal pluralism in Indonesia. The prohibition on divorce in Baduy tradition essentially aligns with the objectives of Islamic law, namely, safeguarding the welfare of the family and preventing social harm resulting from the disintegration of the household. In this context, customary law serves as a socio-cultural instrument that reinforces the implementation of Sharia values in community life. This harmony between custom and Islam demonstrates that legal pluralism can function synergistically when it shares a common orientation toward family protection and social welfare.

## Conclusion

The practice of divorce among the Baduy indigenous people at least reflects the dynamics of legal pluralism that occur through the interaction among customary law, Islamic law, and state law. Divorce is not only understood as a matter of family relations but also as a way in which society maintains social order, customary authority, and communal values inherited from generation to generation. In this case, marriage in the Baduy community is positioned as a social and moral bond ideally maintained throughout life. However, in practice, there are differences in application and meaning across the Inner Baduy, Outer Baduy, and Baduy Islam communities.

These differences show that there is variation in the level of attachment to customs in responses to social change. Inner Baduy maintains a strict ban on divorce as part of its compliance with *pikukuh karuhun* and to protect communal harmony. Meanwhile, Outer Baduy shows a more adaptive pattern through mediation mechanisms and limited accommodation to divorce under certain conditions. The Baduy Islam tends to follow the principles of Islamic law and state law that give

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on Divorce: A Maqāṣid Shari‘a Perspective,” *Ulumuna* 24, no. 2 (2020): 398–416, <https://doi.org/10.20414/ujis.v24i2.408>.

<sup>45</sup> Denti Amaliya, *Maqashid syariah: konsep dan implementasinya dalam hukum Islam kontemporer*, 2023; Kartini Kartini, “Maqasid Al-Shari‘ah Perspectives in Solution of Divorce Cases for Early Marriage,” *International Journal of Health Sciences* 6, no. S5 (2022): 8685–97, <https://doi.org/10.53730/ijhs.v6nS5.11775>.

room for divorce as a last resort to avoid greater harm. Nevertheless, the three communities still consider family integrity the primary value to be maintained.

The relationship between customary law and Islamic law in the Baduy community here does not occur solely in a conflictual manner, but rather through a process of negotiation and adaptation influenced by social changes and people's interactions with the outside world. Legal pluralism in this context not only reveals the existence of several legal systems within a single social space, but also shows how societies strike a balance between preserving indigenous identities and responding to evolving social needs. Therefore, the practice of divorce in the Baduy community reflects how customary law, Islamic law, and state law interact to shape people's understanding of family, honor, and the sustainability of communal life.

### **Generative AI Usage Statement**

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