



RESEARCH ARTICLE

Honoring Women in the Prohibition of Divorce: An Exploration of Legal Pluralism in Marriage Among the Indigenous People of Cireundeu, Indonesia

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Abstract

State and Islamic law allow divorce as an alternative mechanism or way out of bad relations in marriage, in accordance with the rules. It is even referred to as an emergency exit. However, this is different from the Cireundeu traditional group, where divorce is prohibited. There is no divorce mechanism found in this traditional marriage. This article explores the philosophical and sociological reasons related to the phenomenon of divorce prohibitions, while viewing it through the lens of legal pluralism. The research method used is qualitative research with data obtained from interviews conducted with elders and public relations for traditional groups, as well as data from documentation in the form of written notes attached to the regulations. Therefore, philosophically and sociologically, the Cireundeu traditional group is an indigenous community that adheres to customs and respects women's rights. This is proven by prohibition of divorce as a form of loyalty, mutual protection and love until death do us part. In practice, the different legal arrangements for divorce illustrate Indonesia's legal pluralism.

Keywords: Divorce Prohibition, Cireundeu Traditional Village, Law Pluralism.

Abstrak

Hukum negara dan hukum Islam memperbolehkan perceraian sebagai mekanisme alternatif atau jalan keluar dari hubungan pernikahan yang buruk, sesuai dengan aturan yang berlaku. Bahkan, perceraian sering disebut sebagai "pintu keluar darurat." Namun, hal ini berbeda dengan kelompok tradisional Cireundeu, di mana perceraian dilarang. Tidak ada mekanisme perceraian yang ditemukan dalam pernikahan tradisional ini. Artikel ini mengeksplorasi alasan filosofis dan sosiologis terkait fenomena larangan perceraian, sambil memandangnya melalui lensa pluralisme hukum. Metode penelitian yang digunakan adalah penelitian kualitatif dengan data diperoleh dari wawancara dengan para sesepuh dan hubungan masyarakat kelompok tradisional, serta data dari dokumentasi berupa catatan tertulis yang melekat pada peraturan. Oleh karena itu, secara filosofis dan sosiologis, kelompok tradisional Cireundeu merupakan komunitas asli yang mematuhi adat dan menghormati hak-hak perempuan. Hal ini dibuktikan dengan larangan perceraian sebagai bentuk kesetiaan, perlindungan mutual, dan cinta hingga maut memisahkan kita. Dalam praktiknya, perbedaan pengaturan hukum terkait perceraian menggambarkan pluralisme hukum di Indonesia.

Kata kunci: Larangan cerai, Kampung Adat Cireundeu, pluralisme hukum.

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Introduction

Infidelity, economic circumstances, bad behavior of the spouse, imprisonment of the spouse, abuse or constant conflict, and even violation of the divorce agreement or apostasy of the spouse can be grounds for divorce (Law No. 1 of 1974). Divorce is permitted and regulated by law, namely, in the Marriage Law Article 38 et seq. and in the KHI Article 113 et seq. In accordance with Article 38 of the Marriage Law, a marriage can be terminated due to death, divorce, or a court decision (Marriage Law No. 1 of 1974). Divorce is not only regulated by national law but is also permitted by Islamic law. Although detested by Allah SWT, it is permissible and can be done when there are valid reasons (*masyru'*) (Gul et al. 2021), and is even referred to as an emergency exit. Unlike customary law, customary law arises in accordance with the characteristics (territory) of existing customs. In the Cireundeu customary group, divorce is prohibited while the couple is still alive, meaning that divorce is not allowed except in the case of death or divorce due to death (Sofiana et al. 2024a).

The Cireundeu customary group has had ties with the Cigugur Kuningan customary community in West Java since the 18th century until the mid-19th century (disrupted due to the death of Prince *Madrais* as the elder of *Kasepuhan* Cigugur and began to establish relations with *Kasepuhan* Cigugur in early 2000) (Sofiana et al. 2024a). In addition, the granddaughter of the Cireundeu elder became the wife of Prince *Madrais*, the elder of *Kasepuhan* Cigugur (Sofiana and Khasanah, 2022). The existence of the Cireundeu customary group in terms of rules, the origins of its teachings, and way of life began with the *Kasepuhan* Cigugur, namely as individual practitioners in 1982 after previously being part of the *Kasepuhan* Cigugur (Sofiana et al., 2024a).

As a traditional group that has preserved customs and traditions, the Cireundeu traditional group has its own legal system that is supported by and cooperates with the local government of Cipatat Village. This illustrates the dynamics of Indonesian society in implementing laws, which are characterized by the phenomenon of legal differences, as mentioned above. This study is a follow-up study conducted by the author. The culture practiced by the Cireundeu indigenous group, particularly in terms of marriage (called *Nikah-kawin* by the indigenous group), is '*urf shohih*' that can be preserved (Sofiana, 2019). *Nikah-kawin* is a marriage conducted with a *jatukrami* pledge, a marriage pledge that makes women the main subject in the contract, while also affirming freedom in marriage (Sofiana and Nuraini 2023) so that in practice it can be categorized as a gender-responsive marriage custom. In addition, this marriage does not recognize divorce (Sofiana et al. 2024b, 2024a).

Furthermore, in this study, the author wishes to reveal the philosophical and sociological reasons behind the prohibition of divorce in the Cireundeu

indigenous group while also examining it from the perspective of legal pluralism. As a pluralistic country, customary rules can be found throughout the country. Legal pluralism can also be found everywhere (Harahap, 2019). This is because Indonesia has a variety of ethnic groups and cultures that have their own customary laws, which color the legal dynamics that develop in these communities as Indonesian citizens who are bound by positive law and as individuals who embrace a particular religion that is also bound by the rules of that religion. Similarly, Sundanese groups or communities closely tied to Sundanese customs can be found in other areas or regions of West Java. Likewise, the prohibition on divorce is not only found in the traditional village of Cireundeu, but the rules differ from one another. This study complements the existing knowledge on this subject.

Literature Review

A complete family life is the goal of marriage. The phrase “until death do us part” is the goal of every married couple. However, family life can be dynamic and often ends with separation. Divorce can be granted if the marriage cannot be salvaged. State and Islamic laws also have provisions for this. However, divorce is prohibited in the traditional village of Cireundeu. This rule is not only found in the Cireundeu traditional community, but also in the *Badui* Banten traditional community (Anwar and Muslih, 2021), the Lampung *Pepadun* traditional community (Fauzi, Hermanto, and Taqwa, 2022), and the community in the *Jalawastu Ciseureuh*-Brebes hamlet (Syah, 2022).

The *Badui* and Cireundeu indigenous groups come from the same tribe, namely the Sundanese, but they have several differences. These differences can be seen in terms of customary rules, elders, and lifestyles. One of the differences is that the *Badui* community prohibits marriage with people from outside the community, while the Cireundeu Indigenous group does not have a similar rule, but rather a prohibition based on differences in ethnicity or race (Khaulani et al., 2024). For the *Badui* indigenous community, there are strict limitations between the inner and outer *Badui* communities. The inner *Badui* are fully obedient to Sundanese customs that have been preserved since their ancestors existed, such as the prohibition of divorce, which is similar to the prohibition in the traditional village of Cireundeu. *Pikukuh* or *Badui* rules prohibit divorce and only recognize death as a ground for separation.

The Lampung *Pepadun* indigenous community, or the Lampung community who live far from the coast, in the interior, or in high-altitude areas, have a philosophy of self-respect (*piil pesenggiri*) and maintaining a good reputation (*juluk adek*) to preserve the sanctity of marriage and consider marriage to be a matter of life and death (Fauzi et al., 2022). For the Lampung *Pepadun* indigenous community, such as *Megou Pak* Tulang Bawang, divorce is considered a disgrace, so there is a rule called *mak dik juk siang* or

prohibition on divorce. This prohibition has been passed down from generation to generation to maintain self-esteem (Sururi 2016), but this rule only applies to marriages between Lampung tribes.

Meanwhile, the community in the hamlet of *Jalawastu Ciseureuh-Brebes* is a Muslim community nicknamed the “*Badui* of Central Java” because there is a story that says the founders of *Jalawastu* and *Badui* were siblings. The prohibition on divorce has existed since ancient times as a customary rule, based on the teachings of *silih asah* and *silih asuh*, or the teachings of mutual care and love until death. In addition, the prohibition on divorce also means maintaining the integrity of the indigenous community itself (Syah 2022).

The existence of this prohibition on divorce has become customary law as well as local wisdom that has its own meaning for the regions that enforce it. In line with the concept of legal pluralism, customary law has become a scientific study that contributes to the life of society. Legal pluralism began to emerge as a term in 1970, but according to other sources, it had already emerged in 1935 (Harahap 2019). It is characterized by the existence of more than one legal system in the same location (HuMa 2005). There are three categories of legal pluralism. First, weak legal pluralism, or a state that recognizes customary law. Griffiths further explains that this is characterized as another form of legal centralism, meaning that legal pluralism is recognized but state law remains superior. Second, strong legal pluralism or the existence of semi-autonomous regions that interact with each other without being dominated. According to Griffiths, this is characterized by the assumption that all legal systems have the same status in society. Third, multi-side pluralism bridges the relationship between existing laws (Griffiths 1986; Pradhani 2021).

Method

This study used a descriptive qualitative approach. This type was chosen because it is a natural setting or conducted in a natural place. Second, it studies natural objects as they are and are not manipulative. Third, it is based on positivist philosophy as an interpretative and constructive paradigm. Fourth, in-depth and meaningful data were obtained. The approaches used are socio-philosophical and legal pluralism. Data collection was carried out through observation of a marriage ritual called *ikrar jatukrami* or marriage vows or marriage contract according to the Cireundeu traditional group, and direct interviews with elders, married couples, and members of the Cireundeu traditional group, as well as elders of the *Kasepuhan* Cirebon. The author conducted further interviews with the elders and public relations officers of the Cireundeu traditional group, focusing on the rules prohibiting divorce. The interview process conducted by the author was classified into three stages. interviews with the elder of the Cireundeu traditional village, Abah Widia, which were conducted three times at different times with different discussion

topics. In addition to the elders of the Cireundeu traditional village, the author also interviewed an elder or *pangjejer* of the *Kasepuhan* Cigugur Cirebon named Abah Wahyu during the author's two-day, one-night stay at the source's residence.

Interviews were also conducted with the public relations officers of the traditional village of Cireundeu, namely, Kang Yana and Kang Jajat. These interviews were conducted more intensively and via telephone and WhatsApp chat at more flexible times. In addition, interviews were conducted with married couples who were members of the traditional group. The selection of informants in this study was carried out according to the needs and themes of the research. The couples were categorized according to the type of marriage contract they had entered into: couples who were married with a marriage contract at the KUA, couples who were married with a *jatukrami* pledge, and couples who were married with a marriage contract at the KUA and a *jatukrami* pledge. This classification was made by the author because the *jatukrami* vow is a form of vow or contract that legalizes marriage among the Cireundeu indigenous group.

In addition to observation and interviews, data were collected using documentation techniques through written documents belonging to the Cireundeu indigenous group in the form of manuscripts about marriage, as well as documents, journals, articles, and related writings related to the research theme. The analysis was conducted descriptively and analytically using a deductive pattern, first explaining the concept of divorce among the Cireundeu indigenous group, and then explaining the sociological-philosophical values and views from a legal pluralism perspective. This study was conducted in accordance with the ethical procedures and cultural norms of the community being studied. To verify the validity of the data, the author used triangulation. Furthermore, the author draws conclusions that complement previous research.

Result

Nikah-kawin is the term used for marriage or matrimony conducted by the Cireundeu indigenous group. This term is also used by the indigenous community of Kasepuhan Cigugur. It is called this because *nikah-kawin* means that the marriage between the two parties occurs both physically and spiritually. In fact, elders in Kasepuhan Cigugur explain that it is not only two individuals who are married, but also the macro and micro cosmos on earth that are bound together (Sofiana et al. 2024a). Marriage in the Cireundeu indigenous group is a very sacred matter because it must go through three stages: before, during, and after the wedding.

Table 1. Stages of Marriage in the Cireundeu Indigenous Group

Pre-marriage	Marriage	After the wedding
<ul style="list-style-type: none"> • <i>totoongan</i> • <i>nendeun omong</i> or <i>nendeun carita</i> • <i>narosan</i> • <i>ngeyeuk seuereuh</i> • <i>masaran</i> • <i>ngaras</i> • <i>sungkeman</i> and <i>siraman</i> 	<ul style="list-style-type: none"> • The <i>jatukrami</i> vow or marriage contract 	<ul style="list-style-type: none"> • <i>sawer</i> • <i>nincak endog</i> • <i>meuleum harupat</i> • <i>pabetot bakakak</i> • <i>huap lingkung</i> • <i>etc.</i>

Source: Data processed by the author

Based on Table 1, each stage has its own meaning and purpose. In the first stage, before marriage, there is a stage called *toto'ongan*, which is carried out by a person to explore, observe, or find out about their partner's background (Khalisa et al., 2024). This is followed by *nendeun omong* or *nandeun carita*, where a person visits the residence of their prospective partner to introduce themselves, discuss their intentions, and seek permission from their family (Khalisa et al., 2024). This is followed by *narosan* or the proposal stage, which is followed by *seserahan* (Sofiana 2019), then *ngeuyeuk seuereuh* or sex education as a stage of betel processing carried out by both prospective spouses, conducted privately and in a limited manner, as well as guidance on sexuality education in the household (Ridho et al. 2017). Next is the *masaran* process, which is a form of preparation, education, and testing by the elders in the form of a large cooking activity carried out directly by the bride and groom, after which the food is served in front of all the elders and guests, followed by proverbs and philosophical explanations of the activities that have been carried out (Sofiana 2021), then *ngaras* or farewell to the family, as well as *sungkeman* and *siraman*.

At this pre-marriage stage, the Cireundeu traditional group associates the completion of the stages with the term "*lulus*" or successfully passing all the stages. Each stage requires a considerable amount of time, energy, and materials; therefore, it requires sincerity and a long process. During the *masaran* process, the Cireundeu traditional group does not carry out this process in the Cireundeu traditional village, but in Kasepuhan Cigugur Cirebon, so that the entire extended family can participate in the event. After going through the pre-wedding stages, the next stage is the core stage, or

when the wedding takes place. This stage is the *Jatukrami* pledge, marriage pledge, or marriage contract. This stage is the culmination of the process, as it marks the official start of marriage. What is different about the *jatukrami* pledge is that, first, there are several questions that must be answered simultaneously by both the bride and the groom. Second, the bride recites the contract. Third, this stage is defined as *jangji saati bade satia satuhu kangge ngajatukrami*, or a promise to be of one heart and to be faithful in the marriage that is being built (Sofiana et al. 2024a).

The questions asked by the officiant (who performs the marriage ceremony) consist of confirming that both parties share the same beliefs, are mutually consenting, have no complaints against each other, are physically and mentally healthy, understand the meaning and purpose of marriage, are 25 years old for the groom and 20 years old for the bride, are capable of leading a household, educating, caring for, and managing the household, that there is compatibility between the bride and groom's parents, that there are no relationships with other parties, that they will not divorce or practice polygamy, that they will not hurt each other, and that they are capable of fulfilling their physical and spiritual obligations during the marriage. This stage is carried out with great solemnity and is attended by elders from the traditional villages of Cireundeu and Kasepuhan Cigugur Cirebon.

The final stage is after the wedding, also known as *turun bantayan* or traditional rituals that accompany the wedding, such as *sawer*, *nincak endog* (stepping on eggs), *meuleum harupat* (burning prayer sticks), *pabetot bakakak* (pulling a whole grilled chicken), *huap lingkung* (feeding each other food), and so on (Sofiana 2019). In accordance with the stages of marriage, there are many meanings and lessons that the bride and groom can learn as preparation for building a household. The long process that the bride and groom must go through serves as a reminder of the struggle to achieve a valid marriage, so that it also becomes a "*pepeling*" or reminder for the man and woman when they become husband and wife and experience disputes or differences (Yana 2024).

According to Yana, this prohibition on divorce is one of the customary rules that the Cireundeu customary group fully obeys. To date, there have been no cases of divorce in this group. Kang Yana (2024) explains that:

"teu aya kasus perceraian di adat mah, dilarang, sareung saleresna mah teu aya konsekuensi menghukum ti ketua adat atanapi masyarakat setempat mah, mung langkung ka pepeling yen di adat mah teu aya mekanisme perceraian. Walaupun nyondong sebatan janda atanapi duda, eta salah sawijina kumargi ngantunkeun, disebatna serah batin atanapi cerai mati (there are no divorce cases in customary law, it is prohibited, and in fact there are no punitive consequences from the customary leader or the local community, but

it is more of a reminder that there is no divorce mechanism in customary law. Although there are terms for widow or widower because one of them has died (*serah batin* or *cerai mati*).“

As explained by the author above, the stages of marriage play a significant role in maintaining the integrity of the marriage. In the masaran procession, the marriage is determined to continue or not. In addition to cooking together, there are also advice and lessons for the bride and groom. As for reconciliation in marriage, it is first resolved by the efforts of both parties (husband and wife) to maintain the marriage by remembering the struggles and journey that led to the marriage. Second, through mediation by traditional elders or community leaders. Third, separating the husband and wife for a period of time with the aim of fostering longing, because it is believed that this longing will improve the poor relationship (Handayani et al., 2023). The problems that arise in marriage are diverse. When a couple does not have children, the traditional group recommends adoption or caring for a sibling's child (Yana 2024).

Discussion

Philosophically, the prohibition of divorce among the Cireundeu indigenous group is due to the fact that marriage is sacred and has philosophical value that must be upheld and fought for until death separates the couple. First, the stages undertaken before marriage are a long process full of advice and guidance from elders and leaders. Pre-marital preparation plays a major role in helping couples maintain their marriages. Second, the *jatukrami* or marriage vow that is recited is a promise not to divorce and to fulfill other obligations (the readiness to do so is confirmed before the vow is recited). Third, the Cireundeu traditional community greatly respects and honors its women. This third point is evident in many supporting factors, such as the marriage vow recited by the bride, which is a reflection of a gender-responsive traditional group, not only in terms of the vow recited by the woman, but also in terms of the consequences of not divorcing or practicing polygamy and the equal distribution of inheritance between women and men. because the traditional group upholds justice (Sofiana and Khasanah, 2022).

Sociologically, the Cireundeu traditional group reflects Sundanese society, which has preserved the values and norms of its ancestors for generations. The presence of elders and the awareness of each individual are strong factors in the preservation of traditions and customs. The existence of customary law adds a unique flavor to the dynamics of law in Indonesia. According to Hurgroje and Van Vollenhoven, state law is not the only law; customary law is also one of the laws that intersects with Dutch East Indies government law (Pradhani 2021; Vollenhoven 1981b, 1981a). Since ancient times, in addition to customary law, there has been royal law. Today, the

intersection of laws in Indonesia is characterized by religious, state, and customary laws. The existence of a legal pluralism approach does not mean that these laws should be viewed in isolation. Rather, it means that laws should be viewed locally (Irianto, 2017).

The phenomenon of divorce prohibition among the Cireundeu customary group can be categorized as weak legal pluralism in Indonesia. However, this cannot be categorized without considering other factors because the law must be viewed as a whole. In categorizing this phenomenon, the author refers to his previous research. The author categorizes the types of marriages in this customary group into three types. First, a marriage vow made by performing a marriage contract and a *jatukrami* vow, which indicates that some people consider the *jatukrami* vow a custom and require a legal document through a KUA marriage contract. Second, a marriage vow made only with a *jatukrami* vow because the community considers this to be an obligation. Third, marriage vows are made only through a marriage contract, because they consider the marriage to be valid with the marriage contract alone (Sofiana 2019). In the second type, the married couple does not receive a legal and valid certificate for their marriage because the recording of traditional marriages is still not recognized or difficult to obtain legality.

By looking at the classification of marriage vows made by the Cireundeu indigenous group, there is a reality related to the superiority of state law, as well as in terms of divorce prohibitions that are also permitted in the state and religion, but not in customary law, which is believed and upheld by the Cireundeu indigenous group. Therefore, when divorce occurs, there is no record of it, because marriages conducted with only a *jatukrami* vow or according to customary law do not have legal validity (under state law). Because there have been no divorce cases, a divorce settlement that could be used as a benchmark for this type of legal pluralism is not clearly found. However, in short, the prohibition of divorce among the Cireundeu indigenous group is a sign of legal pluralism because there are various laws that simultaneously govern a community or, in other words, there are certain groups that apply different laws.

This is supported by Griffith's definition of legal pluralism as the condition of having more than one legal system in a social arena (Harahap, 2019). This legal pluralism supports Friedman's theory of legal culture as a determinant or factor of legal supremacy (Muhazir, 2021). This is illustrated by the legal culture of the Cireundeu indigenous group, which has its own legal culture in responding to legal systems.

Conclusion

The prohibition of divorce among the Cireundeu indigenous group did not arise out of nowhere; rather, it is a mandate of custom or of ancestors that is still believed in and strongly upheld to this day. This phenomenon supports

legal pluralism in Indonesia, which illustrates the existence of different legal systems in a particular region. The prohibition of divorce reflects a society that strives for lifelong marriages by maintaining the integrity of the household, reflecting the philosophical values of marriage, and supported by a traditional environment that supports the integrity of marriage.

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This research was conducted independently by the author.

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