

The Construction of *Cerai Manis* (Preferred Divorce) on the Border of Indonesia and Malaysia Communities

Dahlia Haliah Ma'u¹, Wagiyem², & Rita Mustika Rahayu³

Abstract: One of the implications of unregistered marriages between Indonesian-Malaysian border communities is the occurrence of non-litigation divorces or divorces outside of court. This implication happens because there is no evidence in the form of a marriage book that is officially regulated in Indonesia. Divorce referred to by the local community is known as *cerai manis* (preferred divorce). This type of divorce is done based on the willingness and agreement of both parties without any conflicts or disputes. The purpose of this research is to find out the construction of *cerai manis* law which is part of the customary law of the local community. The method used in this research is field research with a sociological approach, while for data analysis, the author used descriptive qualitative analysis techniques. The results of this research indicate that the parties who agree to divorce, after going through the stages of adat and customary mediation, will obtain a certificate of customary separation which also regulates child custody, rights to share over joint assets and collective agreements.

Keywords: *cerai manis*, customary law, Indonesian-Malaysian border communities

Abstrak: Salah satu implikasi perkawinan tidak tercatat antara masyarakat perbatasan Indonesia-Malaysia adalah terjadinya perceraian non litigasi atau perceraian di luar pengadilan. Hal ini terjadi karena ketiadaan bukti berupa buku nikah yang secara resmi diatur di Indonesia. Perceraian yang dimaksud bagi masyarakat setempat dikenal dengan istilah *cerai manis*. Jenis perceraian ini dilakukan atas dasar kerelaan dan kesepakatan kedua belah pihak tanpa adanya perselisihan atau sengketa. Tujuan riset ini untuk mengetahui konstruksi hukum *cerai manis* yang merupakan bagian dari hukum adat masyarakat setempat. Metode yang digunakan pada riset ini adalah *field research* dengan pendekatan sosiologis, sedangkan untuk teknik analisis data digunakan analisis deskriptif kualitatif. Hasil riset ini menunjukkan bahwa para pihak yang bersepakat untuk bercerai, setelah melalui tahapan adat dan mediasi adat, akan memperoleh surat keterangan pisah adat yang di dalamnya juga diatur tentang hak asuh anak, hak pembagian atas harta bersama, serta perjanjian bersama.

Kata kunci: *cerai manis*, hukum adat, masyarakat perbatasan Indonesia-Malaysia

^{1,2,3}Institut Agama Negeri Pontianak, Indonesia

E-mail: ¹lystia.lia@gmail.com, ²marsamwamar@gmail.com, ³ritamustika051@gmail.com

Introduction

Badau is one of the areas in the province of West Kalimantan which is located close to the border area between Indonesia and Malaysia. In this area, there are two border monuments which are marked by an intersection road in the form of a sticky red dirt road, signs, and Indonesia's flag. emblazoned on the edge of the Indonesia-Malaysia road junction bridge.

As a border area, Badau becomes a traffic area (where people enter and exit the border), as well as a center of activity for workers, traders, and farmers of Indonesia and Malaysia. Apart from being a center for community activities, Badau is also a place for temporary domiciles for migrants who come from Malaysia.¹ With this position, it is not surprising that later marriages occur between immigrants (Malaysia) and residents (Indonesia). Unfortunately, most of these marriages were carried out in the form of covert marriages or were not officially registered due to the incomplete identity of the migrants. This absence of registration will later become a source of difficulty for couples who are about to divorce in obtaining a letter of recognition from an official institution as stipulated in the Indonesian Marriage Law.

According to regulations in force in Indonesia, a marriage dissolution can occur due to one of the following things, i.e.: death, divorce, and a court decision. Specifically for divorce cases, this can only be done before the Religious Court hearing and even then with the condition that the previous marriage has been registered at the local office of Religious Affairs.² Because generally marriages that take place in Batau Village are carried out covertly, not officially registered at government agencies, this is what later becomes the basis for the application of Customary Law to resolve divorce cases that occur between residents and migrants (Malaysia).

Among the Badau community of West Kalimantan, there are three types of divorce namely: *cerai manis* (preferred divorce), one-sided divorce,

¹ Pos Lintas Batas Negara - Badau, <https://bppd.kalbarprov.go.id/plbn/pos-lintas-batas-negara-badau>. Accessed on April 2023.

² Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 2019.

and third-party divorce, all of which occur outside the courtroom. *Cerai manis*, as it is called in Badau Village, is a divorce process that is carried out according to local custom without any registration at the Religious Courts. This customary divorce is carried out by involving traditional leaders and is carried out through several stages. The result of this process is the issuance of a certificate of customary divorce which is legalized by the customary leader. This phenomenon is interesting to study, not only because this practice has legal implications for divorced couples but also a form of local wisdom of the local community which can be used by the government in designing a policy or drafting a new regulation.

It should be noted here, that before this research was conducted there had been many studies raising the issue of divorce as a topic of study. These studies include Nurlizawati's research with the title "*Cerai Dusun* (Divorce by Adat) in Kerinci Regency, Jambi Province". This study revealed four factors encouraging the occurrence of out of court divorce in Kerinci Regency, Jambi Province, namely covert marriage, the husband's desire to be polygamous, and the low rule of law.³ Another study, conducted by Nuroniyah's entitled "*Lebe Divorce* as a Local Initiative to Minimize Illegal Divorce Practices (Case Study in Cangkring Village District)" concluded that some of the reasons why some community members prefer to divorce before *Lebe* (a religious leader) than the Religious Courts were because the divorce process at Religious Courts took a long time and required a lot of money, or because previous marriages were carried out in secret, or because of cultural factors.⁴

Furthermore, another researcher, Tanak, who also examines the problem of the phenomenon of divorce through his research entitled "Juridical Review of Divorce According to Pamona Customary Law, Petiro Village, East Pamona District, Poso Regency", found the fact that

³ Nurliza Wati. "Perceraian Secara Adat (Cerai Dusun)." *Jurnal Socius: Journal of Sociology Research and Education*, 4.1 (2017): 59.

⁴ Nuroniyah, "*Cerai Lebe* Sebagai Inisiatif Lokal dalam Upaya Meminimalisir Praktik Perceraian Liar (Studi Kasus di Desa Cangkring Kabupaten Indramayu)". UIN Purwokerto, 14.1, (2020): 127-128; Compare Hadri Hasan, "Faktor Penyebab dan Dampak Praktik Thalak Liar di Kecamatan Tabir Kabupaten Merangin." *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, 16.02, (2016): 315-328.

customary divorce that occurs among the people of Petiro Village results in fines in the form of buffalo, or money equivalent to the buffalo, against the guilty party resulting in a divorce and it is not permissible to bring anything from the house that was once occupied together.⁵ In addition, another research conducted by Ulfa entitled "Lombok Indigenous Divorce Practices during the Covid-19 Period in Terms of Legal Sociology (Case Study of Tawun Hamlet, Sekotong District)", concluded that the Lombok indigenous people customarily divorcing their wives is a normal act and does not violate the law. Apart from that, it turns out that government officials (village heads, and marriage registrars) have also contributed to the phenomenon of divorce through customary law.⁶

This research has similarities with previous research in terms of topic selection, namely, both focus on divorce issues that occur outside the court. However, this study has significant differences in terms of location selection, the substance of the problem, and the approach used. The uniqueness of the *cerai manis* carried out by the local community is that after the divorce, the bonds of brotherhood between the two divorced couples are still well maintained.

Research Methods

This type of research is field research using a sociological approach. Through this activity, the researcher is trying to directly collect data to obtain a real picture of the practice and process of *cerai manis* among the Badau community, including factors associated with the phenomenon. This research uses primary and secondary data. Primary data is the data that researchers obtain directly from the field through interviews with informants. The intended informants are traditional stakeholders or *punggawa*, village customary leaders, Hamlet heads, religious leaders, and village chiefs. As for what is meant by secondary data from this

⁵ Tanak, *Tinjauan Yuridis Perceraian Menurut Hukum Adat Pamona Desa Petiro Kecamatan Pamona Timur Kabupaten Poso* (Palu: Universitas Tadulako, 2019), p. viii.

⁶ Ulfa, "Praktik Perceraian Adat Lombok di Masa Covid-19 Ditinjau dari Sosiologi Hukum (Studi Kasus Dusun Tawun Kecamatan Sekotong)", *Jurnal Dinamika Penelitian*, 21:1 (2021): 165-166.

study are data obtained from other sources that are complementary in the form of certain documents that researchers obtain in the field. In the data collection stage, the authors use interviews and documentation. As for the data analysis stage, the writer uses descriptive-qualitative analysis which is done by describing all the data that has been collected, then classifying them based on certain categories, and finally analyzing them to obtain conclusions.

Results and Discussion

Divorce is one event that can occur in a marriage institution. Divorce may occur through the demands of one of the parties to the marriage or the abolition of a marriage by a judge's decision. Divorce filed by the husband is called *cerai talak*.⁷ While the divorce filed by the wife is called *cerai gugat*.⁸

Legal norms regarding divorce in Indonesia are regulated in the Marriage Law articles 38-41 and the Compilation of Islamic Law in Indonesia in articles 113-129. Article 39 of the Marriage Law states: "*Divorce can only be carried out before a court hearing after the court concerned has tried and failed to reconcile the two parties*".⁹ A similar formula is also regulated in Article 115 of the Compilation of Islamic Law, and further strengthened in Article 123 of the KHI which confirms that: "*Divorce occurs and is calculated at the time the divorce was declared before the court.*" Before the case is examined carefully, the judge must first seek reconciliation between the parties as stipulated in Article 31

⁷ About *cerai talak* see Fikri, Fikri, Saidah Saidah, Aris Aris, and Wahidin Wahidin. "Kontekstualisasi Cerai Talak dalam Fikih dan Hukum Nasional di Indonesia." *Al-Ulum*, 19.1 (2019): 151-170.

⁸ About *cerai gugat* see Muzakkir Abubakar, "Meningkatnya Cerai Gugat Pada Mahkamah Syar'iyah." *Kanun Jurnal Ilmu Hukum*, 22.2 (2020): 302-322; Lilik Andaryuni, "Pemahaman Gender dan Tingginya Angka Cerai Gugat di Pengadilan Agama Samarinda." *Fenomena*, 9.2 (2017): 155-174; Sheila Fakhria, "Cerai Gugat dan Implikasinya Terhadap Hak-Hak Finansial Perempuan." *Legitima: Jurnal Hukum Keluarga Islam*, 1.1 (2018): 91-119; Damrah Khair dan Abdul Qodir Zaelani. *Mengungkap Fenomena Cerai Gugat di Bandar Lampung* (Bandar Lampung: Pusaka Media, 2020); Manna, Nibras Syafriani, Shinta Doriza, and Maya Oktaviani. "Cerai Gugat: Telaah Penyebab Perceraian pada Keluarga di Indonesia." *Jurnal Al-Azhar Indonesia Seri Humaniora*, 6.1 (2021): 11-21.

⁹ Kompilasi Hukum Islam, Inpres Nomor 1 Tahun 1991.

paragraph (1) and (2) of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law which states: "*The judge who examines the divorce suit tries to reconcile the two side. As long as the case has not been decided, efforts to reconcile can be carried out at each trial session.*"¹⁰ The judge's efforts to reconcile the parties, before examining and deciding their case, are intended so that both parties can forgive each other and commit to re-establish a *sakinah, mawaddah, and rahmah* (peaceful, harmonious, and prosperous) family.¹¹

As previously stated, according to the existing regulations divorce done outside of court, or what is termed *cerai sirri* (covert divorce), is not valid, although several classical fiqh books view that divorce as legal.¹² The necessity of divorcing before a court is a way of benefit taken by law to bury the habit of husbands arbitrarily divorcing their wives and, at the same time, to respond to the demands of women fighting for the rights to improve the status of women in the family.¹³

According to Nasution, the importance of the court's role in the divorce process is based on some reasons, namely: because Islam strongly encourages the preservation of the institution of marriage and does not like divorce. Courts are powerful protective institutions; Among the functions of the court are to rectify deviated actions, to save marriages, to ensure the use of divorce rights so that they do not deviate, to guarantee the rights of the wife, to seek peace, to provide lessons to the litigants, to examine the causes of divorce, and to guarantee other party's rights affected by the divorce.¹⁴ In line with Nasution's opinion,

¹⁰ Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Perkawinan, 1975.

¹¹ Dahwadin, "Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam di Indonesia", *Jurnal Yudisia*, 11: 1 (2020): 101. About *sakinah, mawaddah, and rahmah* see Abdul Qodir Zaelani, Issusanto Issusanto, and Abdul Hanif. "Konsep Keluarga *Sakinah* dalam Alquran." *EL-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 2.2 (2021): 36-60.

¹² Muhsin & Soleh Hasan Wahid, n.d. "Talak di Luar Pengadilan Perspektif Fikih dan Hukum Positif". *Jurnal al-Syakhsbiyyah*, 3:1, (2021): 80.

¹³ Khoiruddin Nasution, et.al, *Progres Hukum Keluarga Islam di Indonesia Pasca Reformasi* (Yogyakarta: Istana Agency, 2020), p. 70.

¹⁴ Khoiruddin Nasution, *Status Wanita di Asia Tenggara, Studi terhadap Perundang-undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia* (Leiden-Jakarta INIS, 2002), 153.

Asmara explained that the importance of declaring divorce before the court was because it was a good *masalah*. The state requires people to drop divorce before the court to achieve the benefit of post-divorce life. Furthermore, he also explained that the benefits of imposing divorce before the court are: (1) Giving legal certainty, especially to husbands and wives who are about to remarry, because the Office of Religious Affairs (KUA) will not permit to remarry widowers or widows, if there is no valid divorce certificate from the Religious Court. (2) To guarantee the certainty of child support. If the divorce is before the court, the court will give a ruling that the husband is still responsible for providing for his child. If the husband is unable, then the obligation is transferred to the wife. (3) To guarantee maintenance of the wife which includes: maintenance of *'iddah* (period of return), residence during *'iddah*, and distribution of joint assets.¹⁵

Divorce has a legal impact on married couples, children, and assets. The Marriage Law in Indonesia stipulates that the legal consequences of divorce, as stated in article 41, are that: "(a) Both the mother and the father are still obliged to look after and educate their children, solely based on the interests of the child. If there is a dispute over the control of the children's child, the court renders its decision. (b) The court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife". (c) The father is responsible for all the maintenance and education costs needed by the child; If the father cannot fulfill this obligation, the court may determine that the mother must share the costs.¹⁶

Furthermore, as Susylawati explained, in divorce cases the parties have the freedom to claim or not claim their post-divorce rights. The rights that can be sued against the plaintiff are the right of *mut'ah* in the form of goods or money unless the defendant is in the condition of *qabla al-dukhûl* (has not had intercourse), the right to get living

¹⁵ Asmara & Reti Andira, "Urgensi Talak di Depan Sidang Pengadilan Perspektif *Masalah Mursalab*", *Jurnal al-Istinbath*, IAIN Curup, (2018): 223-224.

¹⁶ Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 2019.

expenses during the *iddah period*, the right in the form of the remaining dowry owed, and the right of *hadhânah* (nurturing) for children under 21 years of age.¹⁷

The legal implications of contested divorce for husband and wife are the breakup of a marriage with *ba'in sughra*, no reconciliation, no husband's obligation to pay *mut'ah* money, as well as to pay *'iddah*. Meanwhile, the legal consequences of lawsuits against joint assets are regulated according to their respective laws (religious law, customs, and others).¹⁸

The Process of *Cerai Manis* and the Contents of the Indigenous Separation Statement

Cerai is a term among the Badau community which is closely related to customary law. Based on the description of traditional leaders and community leaders, the definition of *cerai manis* is: (a) Divorce is done based on the willingness of each party. This decision was agreed upon by both parties without being preceded by any conflict or dispute. (b) Divorce is done based on volunteerism, sincerity, without any major conflict between husband and wife, or is termed as having lost a mate. (c) Divorce is done voluntarily between the two parties, namely husband and wife.

Three stages must be taken in filing for a *cerai manis*. First, the parties, both husband and wife, apply for a divorce to the local Head of Neighbourhood (RT) where they live. Then, The RT, in the first stage, together with their families, is to reconcile (mediate) the two parties so that they do not divorce. If the mediation attempt at the RT level fails, then it proceeds to the next stage, namely at the level of Hamlet Head. At this stage, the RT together with the parties reported to the Hamlet Head the problems that occurred. The task of the Hamlet Head at this stage is similar to the task of the RT at the first stage, namely

¹⁷ Susylawati, "The Judge Principle is Active in Case of Divorce in Madura District Religious Court", *Jurnal al-Ihkam*, IAIN Madura, 14.2, (2019): 276.

¹⁸ Isnawati Rais, "Tingginya Angka Cerai Gugat (Khulu') di Indonesia: Analisis Kritis terhadap Penyebab dan Alternatif Solusi Mengatasinya". *al-Adalah*, 12.1, (2014): 195.

mediating the parties. After going through the first and second stages, and it turns out that the mediation efforts failed as the parties remained on the decision to divorce, the RT, together with the Hamlet Head and the parties, hold a hearing which was held at the Village office.¹⁹ At this stage, a customary trial will be held by the Adat council consisting of the Adat judge or *punggawa*, the Adat Head, and the Hamlet Head. All the notes made by the minutes of the session will be taken into consideration in making the final decision.²⁰ After the customary councils held deliberation, the customary judge (*punggawa*) read the court decision and the judge will ask the litigants whether each party has objections or not with the decision made by the Adat council. If the parties accept the results, then the next process is the preparation of the customary separation letter. However, if one of the parties is dissatisfied with the customary decision, or if the parties still want the litigation process, then they will be allowed to go to trial at the Religious Court.

After going through the customary trial process between the husband and wife (both parties) having agreed on a *cerai manis*, then the following is the preparation of a certificate of customary separation, which in the process of typing is carried out by the village officer with the format from the customary judge (*punggawa*). The contents of the letter include the biodata of the parties, information on the time of the divorce, the type of divorce carried out, an explanation regarding child custody, the right to share joint assets, and an agreement for the future consequences that occur as a result of the divorce being carried out. Furthermore, if all the elements have been fulfilled, then proceed with the signing of the certificate of customary separation. This signing was carried out by the husband and wife carrying out the divorce, the customary council, and witnesses, and then is ratified by the traditional *punggawa*. This legal letter is duplicated to be submitted to each party and made into the archives of the local customary council.²¹

¹⁹ M. Yamin, a village leader, interview on 14 August, 2020.

²⁰ Edison, villager, interview on 14 August, 2020.

²¹ M. Yamin, a village leader, interview on 14 August, 2020.

Factors Contributing to Choosing *Cerai Manis* as the Main Alternative to Divorce among the Badau Community

Several factors cause people to choose *cerai manis* as a divorce solution, namely:

a. Economy

The occurrence of divorce outside the court, namely through customary law, is generally due to consideration of the relatively large trial costs. According to information from the community, the majority of the community, the majority of whom work as laborers on oil palm plantations, feel that it is difficult for them to pay the costs of carrying out a divorce at the Religious Courts. Therefore, people prefer to carry out divorce by customary law.²²

b. Distance.

The long-distance between Badau Village, where the indigenous communities live, and the Religious Court in the district capital (*Putussibau*) also makes it difficult for the parties seeking a divorce. Because of that, they prefer to do it through traditional institutions rather than the Religious Courts.²³

c. Time.

In addition to court costs and travel distance, the issue of time is also become a consideration for the community as to why they choose to file divorce cases through traditional institutions, rather than the official state institutions (Religious Courts). As stated by some residents and local religious leaders, the trial process at the Religious Courts takes a long time whereas some people whose household life is quite busy with work, want the divorce case to be completed quickly. Apart from that, some members of the community think that the litigation process in Religious Courts is complicated and convoluted, so they are reluctant to carry out a procedural divorce at the official government institution.²⁴

²² Arminanto, a villager, interview on 14 August, 2020.

²³ Arminanto, a villager, interview on 14 August, 2020.

²⁴ Sukiman, a villager, interview on 14 August, 2020.

d. Lack of legal knowledge and awareness.

Many members of the public believe that there is no provision in Islamic law which states that divorce must go through the courts; so that divorce through customary law is valid according to religious law. According to Zulkarnain, as a local chief, he has given understanding to the community that the impact arising from customary divorce is that there is no legal force, so it will also have an impact on child administration, when they register for school, get married, and so on. Most people already know the impact that will arise from an unofficial divorce, but for some reason, the sweet divorce phenomenon still occurs.²⁵

Legal Analysis of *Cerai Manis* Practices

Regulations in Indonesia have rendered the legality of divorce for Muslims if it is done before a court hearing. But in reality, divorce practices that do not go through legal procedures as regulated by the state still exist. This phenomenon shows that the level of public awareness and legal compliance is still low

Compliance with legal norms will be realized if there is legal unification in a jurisdiction. There are several regulations governing various legal issues in Indonesia, namely state, religious, and customary law. The existence of legal pluralism that is equally valid among the community provides an opportunity for members of the public to choose an alternative law they like and leave those they don't like. In other words, people who choose to divorce out of court because alternative legal options are possible.

The choice of law in the form of state law, religious law, or customary law is acceptable as long as there are clear and firm boundaries regarding the competence of each of these legal norms. So that there is no overlap between these legal norms which causes people to disobey the laws of their own country.

²⁵ Zulkarnain, a village religious leader, interview on 14 August, 2020.

Concerning the problem of divorce procedures, even though the law has regulated the method of divorce in Indonesia, there are still many members of the public, especially in border areas who still maintain and are subject to customary law, or religious law. This tendency indirectly overrides the applicable laws and regulations.²⁶ A clear example is shown by the divorce practices that occur among the *Badau* community who live in the Malaysia-Indonesia border region.

As previously stated, the *Badau* community carries out a non-litigation divorce process which is commonly called *cerai manis*. This divorce took place under the knowledge of local government officials, in fact, one of the paths taken by the parties who are getting divorced is to submit the problem to the head of the local RT, which if it fails, then it will be forwarded to the Hamlet Head. Both the RT head and the Hamlet head are government officials, but unfortunately, the case decisions that went through them came out of the legal provisions made by the Government. This phenomenon, when linked to the existence of national law, to be precise Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, is an aberration. This is because Indonesia is a constitutional state, where one of its regulations stipulates that a legal divorce must go through a court of law, so that divorce practices that are not under existing regulations, such as the case with Sweet Divorce, will not obtain legality from National Law.

However, this problem is different when associated with Islamic law. In the conception of Islamic Law, Customary Law is known as *al-'adah* or *al-'urf*, which can be divided into two parts, namely *al-'urf al-shahîh* and *al-'urf al-fâsîd*. *Al-'urf al-shahîh* is a tradition that is carried out by the community that does not conflict with syara's propositions, in the sense that it does not justify what is unlawful or conversely forbids what is lawful, and does not cancel what is obligatory. While *al-'urf al-fâsîd* is a tradition carried out by the community that is contrary to the provisions of the Shari'a because it justifies what is forbidden or cancels what is obligatory. In Islamic Law, *al-'adah* or *al-'urf* as long as it does

²⁶ Fajri & Muhammad, "Tinjauan Undang-Undang dalam Perceraian di Luar Pengadilan Agama", *Jurnal an-Nawawi: Jurnal Hukum dan Ekonomi Islam*, 2: (2022): 5.

not conflict with the Shari'a then it can become a legal provision.²⁷ If this conception is related to the tradition of divorce in the *Badau* community, which is called *cerai manis*, it can be concluded that this practice is not against Islamic law. This is because, in the practice of divorce, there are no elements or things that violate the basic principles of Shari'a. In other words, the custom is acceptable under Islamic law.

Apart from the different attitudes of the two legal systems above (National Law and Islamic Law) if further analyzed, some factors encourage the emergence of a tendency for people to choose customary law over national law. As previously described, the causes of Sweet Divorce include the result of the economic inability of the community to pay court fees, the complexity and length of time that must be passed in court, as well as the lack of legal knowledge and awareness of the community. In fact, by choosing customary law and abandoning national law, the litigants will instead encounter new problems not only related to state recognition of the status and legitimacy of the divorce but will also have an impact on solving problems that come afterward. It is clear that even though at the end of the Sweet Divorce process, the parties receive a separation certificate from the customary institution which contains the child custody rights, the right to share joint assets or other rights and obligations related to it, if one of the parties refuses and does not want to fulfill their obligations, it will be difficult for the other party to sue the matter because the parties do not have an official document in the form of a divorce certificate, as an authentic deed issued by the court. Therefore, it is highly emphasized that parties who wish to divorce should do so through an official judicial institution appointed by the Government, namely the Religious Courts. Because only through the institution, the rights and obligations of the parties can be guaranteed, and there will be no new post-divorce problems due to the absence of authentic evidence that formally explains that a divorce has taken place.

²⁷ Fahimah, "Akomodasi Budaya Lokal (*Urf*) dalam Pemahaman Fikih Ulama Mujtahidin", *Jurnal Mizani*, 5:1, (2018): 13.

Conclusion

Cerai manis is a divorce that is carried out without being preceded by a dispute or dispute between husband and wife, or in other words occurs based on the willingness of both parties (husband and wife), and the decision is agreed upon by both parties. From the perspective of Islamic Law, Sweet Divorce belongs to a legal structure called al-'urf, which as long as it does not conflict with the Shari'a, its position can become part of the sources of Islamic law. However, because Indonesia is a constitutional state that has several regulations relating to divorce procedures, the practice of Sweet Divorce, which is a tradition of the Badau people and which took place under the knowledge of government officials, is not legally acceptable because it goes beyond existing regulations. This phenomenon arises due to many factors, including procedural problems which are considered complicated and convoluted, high costs, and what is even more dominant is the lack of public legal awareness.

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Interview

- Arminanto, a villager, interview on 14 August, 2020.
- Yamin, M, a village leader, interview on 14 August, 2020.
- Edison, villager, interview on 14 August, 2020.
- Sukiman, a villager, interview on 14 August, 2020.
- Zulkarnain, a village religious leader, interview on 14 August, 2020.