



Ijtihad
Volume 39, Nomor 2, Tahun 2023

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Writer : Surya Fadhli. H
Sumber : Ijtihad
Diterbitkan Oleh : Rumah Jurnal Fakultas Syari'ah
Universitas Islam Negeri Imam Bonjol Padang

To cite this article:

H, Surya Fadhli., 2023. "Nikah Cindua Basewa in Islamic Law". Ijtihad. 39 (2); 28-41.

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Ijtihad

pISSN: 1410-4687

eISSN: 2685-5216



Nikah Cindua Basewa in Islamic Law

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ABSTRACT This research is motivated by the practice of Nikah Cindua Basewa which is carried out by hiring a man as (muhallil), with the condition that he is not allowed to have husband and wife relations within the agreed time. So the muhallil must divorce his wife so that her previous husband can remarry her. This marriage did not recognize the existence of marriage registration and was only carried out to divorce him. Cindua Basewa's marriage lasted only a few days. The *purpose* of this study is to discuss the existence of the practice of Cindua basewa marriage in the legal tradition of the Nagari Salareh Aia community, Palembang District. To answer this question, the authors use field or empirical research methods using a socio-legal research approach. The findings in this study are: First, the existence of cindua basewa marriage in Nagari Salareh Aia is the same as an ordinary marriage, but has a marriage that does not last long, only around a few days and some only one night. This marriage was carried out by several people who wanted to reconcile with after being divorced three times, those involved were the couple who were getting married and their ex-husband. Second, the factors causing the cindua basewa marriage are 1) The desire to justify returning the wife who has been divorced three times by her husband to reconcile with her husband. 2) Customary law allows this marriage as a solution for couples who want to reconcile because their husband has divorced three of his wives. 3) Helping married couples who have been divorced up to three times to reconcile and some also help because of compensation. Third, the community's response to the cindua basewa marriage, both religious leaders and traditional leaders, namely allowing this marriage as one of the solutions that can make the husband and wife reconcile after the wife has been divorced three times by the husband.

KEYWORDS *Marriage, Nikah Cindua Basewa, Nagari Salareh Aia, West Sumatra, Minangkabau*

INTRODUCTION

Marriage comes from the word "kawin" which according to the language means forming a family with the opposite sex, having sex, or having intercourse. Marriage is also called marriage, which comes from the word nikah, which according to the language means to gather, and enter each other, and is

used for the meaning of intercourse (Ghozali, 2014).

Marriage in Islam is a recommendation for Muslims. In Law No. 1 of 1974, it is stated that "marriage is an inner and outer bond between a woman and a man as husband and wife to form a happy and eternal family (household) based on the divinity of the One God" (Law No. 1 of 1974 article 1).

Meanwhile, in the Compilation of Islamic Law, "a valid marriage according to Islamic law is a marriage, which is a strong contract or mistaken ghalidzan to obey Allah's commands and carrying it out is an act of worship. The purpose of marriage in the Compilation of Islamic Law is to realize a household life that is *sakinah*, *mawaddah*, and *rahmah* (Ministry of Religious Affairs of the Republic of Indonesia, Presidential Instruction No. 1 of 1991, 2000; 14).

From the above understanding, marriage has the aim of forming a happy and eternal family. So that both husband and wife must complement each other so that each can develop their personality to help and achieve spiritual and material welfare (Rofiq, 1995)

Meanwhile, in one of the Nagari in West Sumatra, namely Nagari Salareh Aia, there is a marriage process that is quite different according to Islamic law, namely *nikah Cindua Basewa*. Nagari Salareh Aia is one of the Nagari which is included in the Palembang District, Agam Regency, West Sumatra Province. Nagari Salareh Aia is a Nagari whose population is 100% Muslim and the practice of daily life is guided by Minangkabau customs, one of which is in the practice of marriage.

Marriage practices in general in Nagari Salareh Aia are basically by Islamic law and Minangkabau customs, but specific marriage practices such as *muhallil* marriage are carried out with different concepts. There is a community custom in the practice of *muhallil* marriage carried out with the practice of *Cindua Basewa*.

Nikah Cindua Basewa is a marriage practice carried out by hiring a man as a *muhallil*, meaning that when a husband has divorced his wife if the husband wants to make her his wife again (the wife he has divorced), then the wife must marry another man (*muhallil*) with the condition that she cannot have conjugal relations, within the agreed time, the *muhallil* must divorce his wife so that the previous husband can remarry her.

Nikah Cindua Basewa does not recognize the existence of marriage records

and is only carried out to divorce her, after carrying out the marriage process. In fact, the length of the *cindua basewa* marriage that was carried out was only a few days, even generally occurring in Nagari Salareh Aia for less than one day, after which they divorced and the man received a reward from one of the families.

Based on an interview with one of the residents of Nagari Salareh Aia regarding the practice of *muhallil* marriage, it has been going on for a long time and is carried out by the majority of the people of Nagari Salareh Aia. In the interview, it was stated that the implementation of *Nikah Cindua Basewa* was carried out by hiring one of the men to marry a woman who was divorced three times by her ex-husband. The goal is to hire the man so that the ex-husband can return to the wife he divorced. This means that the practice of *muhallil* marriage with *Cindua Basewa* is an important issue to review its legal status according to Islamic family law, which is largely different from the concept of *muhallil* marriage in its implementation (Interview, M. Natsir, Nagari Salareh Aia, 17-09-2021).

After the man divorces the woman and gets paid, there is no longer a marital bond between them, meaning that this *cindua basewa* marriage is engineered with the sole purpose of legalizing a woman who has been divorced by her former husband.

METHODS

The research is field research or empirical. Empirical research is used to analyze laws that are seen as patterned community behavior in the lives of people who always interact and relate in social aspects (Sunggono, 2016). This research is further referred to as socio legal research (Soekanto, 1983). Data was obtained by conducting in-depth interviews with *Nikah Cindua Basewa* couples in Nagari Salareh Aia. The research approach used is qualitative which is an inquiry strategy that emphasizes the search for meaning, understanding, concepts, characteristics, symptoms, symbols, and descriptions of a phenomenon.

Data analysis techniques are done narratively.

FINDINGS AND DISCUSSION

A. Concept of Marriage

The word nikah can be approached from the aspects of understanding or meaning, namely the lughawi meaning, ushuli (shar'i) meaning, and fiqh (legal) meaning (Summa, 2004). According to the lughawi meaning, in the Indonesian language, mating is defined as marriage, intercourse, and sex (for animals). In the complete dictionary of the Indonesian language, marriage is defined as "establishing a new life with a husband or wife, getting married, having sexual intercourse, having intercourse (Tim Prima Pena, n.d.). the term marriage from Arabic, namely (النكح) some say marriage according to fiqh terms, the word nikah is used and the word (زواج) the word marriage is attributed to the word nikah which is the same language as the words, zawaj. These two words are used in the daily life of the Arabs and are found in the Quran and the hadith of the prophet. The word na-ka-ha is found in the Quran with the meaning of marriage as in Surah An-Nisa verse 33(Syarifuddin, 2009):

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ
مِّنَ النِّسَاءِ مَنَّىٰ وَتَلْتِ وَرَبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا
فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

Meaning: If you fear that you will not be able to do justice to the rights of orphans (when you marry them), marry any other woman you like: two, three, or four. But if you fear that you will not be able to do justice, (marry) only one or a female slave whom you own. That is closer to not doing injustice.

Similarly, there are many words za-wa-ja in the Koran in the sense of marriage as in Surah Al-Azhab verse 37:

وَإِذْ نَقُولُ لِلَّذِي أَنْعَمَ اللَّهُ عَلَيْهِ وَأَنْعَمْتَ عَلَيْهِ أَمْسِكْ عَلَيْكَ
زَوْجَكَ وَاتَّقِ اللَّهَ وَتُخْفِي فِي نَفْسِكَ مَا اللَّهُ مُبْدِيهِ وَتَخْشَى

النَّاسِ وَاللَّهُ أَحَقُّ أَنْ تَخْشَاهُ ۗ فَلَمَّا قَضَىٰ زَيْدٌ مِنْهَا وَطَرًا
رَوَّجْنَاكَهَا لِكَيْ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ
أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ وَطَرًا وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا

Meaning: (Remember) when you (Prophet Muhammad) said to the one on whom Allah had conferred favor and you had conferred favor, 'Keep your wife and fear Allah,' while you concealed within yourself that which Allah is to disclose. And you feared the people, while Allah has more right that you fear Him. So when Zayd had no longer any need for his wife, We married her to you [O Muhammad] so that there not be upon the believers any discomfort concerning the wives of their adopted sons when they no longer require them. And ever is the command of Allah accomplished.

In the Al-Munaawir dictionary, the term marriage is mentioned as an-nikah and az-ziwaj/az-zawj or az-zijah. An-nikah means al-wath'u adhdhammu and al-jam'u al-wath'u originates from the word wathi'a - yatha'u - wath'an which means walking on, passing through, stepping on, entering, mounting, embracing, and having sexual intercourse (Munawwir & Warson, 1997). Adh-dhamma, derived from the root word dhamma - yadhummu - dhamman, literally means gathering, holding, uniting, combining, supporting, embracing, hugging, and adding up. It also means being gentle and friendly (Summa, 2004).

As for the term marriage with the meaning of nikah in the Sharia context as expressed by jurists of Islamic jurisprudence, various formulations differ from one another but have the same meaning and purpose. Nikah according to the Hanafi school of thought is "a contract that results in ownership to consciously enjoy oneself for a man with a woman, especially to obtain biological pleasure." Whereas according to the Shafi'i school of thought, it is a contract that ensures ownership for sexual intercourse using the

wordings النكاح or التزويج; or derivatives (meanings) of both.

According to the Maliki school of thought, it is an expression or title for a contract carried out and intended solely to achieve pleasure. Meanwhile, according to the Hanbali school of thought, it is a contract that uses the phrase النكاح which means التزويج or to obtain pleasure (Al-Jaziri, 2008).

According to Indonesian terminology, marriage is often distinguished between "pernikahan" and "perkawinan," but fundamentally marriage and "pernikahan" only differ in their linguistic roots. "Perkawinan" is an expression about a contract that is very clear and explicitly covers its pillars and conditions. Whereas according to Sharia law, it means a contract that permits enjoyment with a woman through intimate relations, touching, kissing, hugging, and the like, if the woman is not included among the mahram in terms of lineage, foster relationship, and family (Az-Zuhaili, 2011).

From the above explanation, we can conclude that marriage or "perkawinan" is a contract using the term "menikahkan" or "mengawinkan" wherein the contract legitimizes sexual intercourse and binds the parties involved as husband and wife, forming a happy and enduring household. Considering the essence of marriage as a contract that permits actions previously prohibited, it can be said that the original ruling of marriage is permissible or "mubah." Marriage is an act commanded by Allah and also commanded by the Prophet. There are many commands from Allah in the Quran to carry out marriage, among them is His statement in Surah An-Nur verse 3 (Syarifuddin, 2009)

الرَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ

Meaning: Adulterous men are not fit to marry anyone except adulterous women or polytheistic women, and adulterous women are not fit to marry anyone except adulterous men or polytheistic

men. That is forbidden to the believers.

The ruling on marriage according to the majority of jurists (jumhur fuqaha) is that originally, the ruling on marriage is recommended (sunnah) and applies generally. Based on the Quran and the Sunnah of Islam, marriage is highly encouraged for Muslims who are capable of entering into it. However, considering the conditions of the individuals involved and the purpose of marriage, it can be subject to various rulings such as obligatory (wajib), recommended (sunnah), forbidden (haram), disliked (makruh), or simply recommended (sunnah) (Ghozali, 2010). As for the objectives and wisdom behind marriage for the Muslim community, among them are: First, to have legitimate offspring to continue the future generations. This is evident from the conditions mentioned in verse 1 of Surah An-Nisa:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

Meaning: Mankind, fear your Lord, who created you from one soul (Adam) and created from it its mate (Hawa), and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs (relationships). Indeed Allah is ever, over you, an Observer.

Secondly, to attain a happy family life filled with tranquility and affection. This is evident from the word of Allah in Surah Ar-Rum, verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۗ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Meaning: Among His signs is that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has placed love and mercy between you. Surely, this are signs for those who reflect.

As for the wisdom that can be found in marriage, it includes averting the gaze from impermissible matters according to Sharia and safeguarding one's honor from falling into sexual misconduct (Syarifuddin, 2009). Some legal implications of a valid marriage are:

- a. The formation of a blood relationship between husband and wife;
- b. The formation of a blood relationship between parents and children;
- c. The formation of kinship ties from the children towards the husband's parents;
- d. Formation of inheritance rights;
- e. Formation of a sense of mutual assistance among siblings and relatives;
- f. Formation of an extended family.

The types of marriages prohibited are as follows:

1. Syighar marriage

Syighar marriage is when a man marries off his daughter to another man, on the condition that the other man also marries off his daughter to him, without any dowry (mahr) exchanged between them. The jurists unanimously agree that syighar marriage is prohibited by Allah and the Prophet Muhammad (peace be upon him). As elucidated in a hadith narrated by Imam Bukhari and Imam Muslim, which states: 'Ibn Umar (may Allah be pleased with him) reported: The Messenger of Allah (peace be upon him) forbade syighar marriage. Syighar marriage is when a man marries his daughter to another man, on the condition that the other man also marries his daughter to him, without any dowry exchanged between them (HR. Bukhari and Muslim).

Thus, syighar marriage is prohibited because it does not fulfill the conditions and pillars of marriage, namely the dowry (mahar). It can also disadvantage a woman's rights. This marriage can become valid if a suitable dowry is given. The ruling on syighar marriage is forbidden according to the hadith mentioned above. However, the marriage laws and the Compilation of Islamic Law (KHI) do not address such marriages because they fall under religiously prohibited marriages. Therefore, there is no need to regulate their implementation, as illustrated in the following hadith: "Ibn Umar (may Allah be pleased with him) reported: The Messenger of Allah (peace be upon him) forbade syighar marriage. Syighar marriage is when a man marries his daughter to another man, on the condition that the other man also marries his daughter to him, without any dowry exchanged between them (HR. Bukhari and Muslim).

Therefore, syighar marriage is prohibited because it does not fulfill the conditions and pillars of marriage, namely the dowry (mahar). It can also deprive a woman of her rights. This marriage would be considered valid if a symbolic dowry is given. The ruling on syighar marriage is deemed forbidden according to the aforementioned hadith. However, both marriage laws and the Compilation of Islamic Law (KHI) do not address such marriages because they fall under religiously prohibited unions. Hence, there is no need to regulate their implementation in official regulations (Mardani, 2017).

2. Mut'ah marriage

Mut'ah marriage," also known as mut'ah marriage, or referred to as contractual marriage. It's called contractual marriage because a man marries a woman for a specific period, which could be a week, a month, or a year, based on a contract agreed upon. This marriage does not involve divorce; hence, with the end of the marriage contract, it automatically ends without a waiting period (iddah) or inheritance rights. The purpose of mut'ah

marriage is solely for pleasure and to fulfill desires (Sabiq, 1986). According to the majority of scholars, mut'ah marriage has been unanimously agreed upon as prohibited. Therefore, if a mut'ah marriage occurs, it is considered null and void. The reasons behind this are firstly, such marriage does not align with the concept of marriage as intended in the Quran. Secondly, mut'ah marriage is solely aimed at satisfying desires and not at creating a harmonious and loving family. Thirdly, mut'ah marriage poses risks to women and children born from such unions.

3. Tahlil marriage

Etymologically, "Tahlil" means to legalize something that is originally forbidden. Therefore, when related to marriage, it refers to an act that transforms someone who was initially prohibited from marrying into being permissible or halal. The person who facilitates the legalization of marriage for another individual is called a "muhallil," while the person whose marriage is legalized by the muhallil is referred to as "muhallalah," (Syarifuddin, 2009).

Muhallil" in Arabic originates from the trilateral root verb "حَلَّ" (hal) meaning permissible or lawful. It is then transferred from the verb form "سُلِّسَتْ مُجَرَّدًا" (sulasi mujarrad) to the verb form "سُلِّسَتْ مُزِيدًا" (sulasi mazid bi harfin) which conveys a transitive meaning, becoming "لَحَلَ" (luhall), "لَحَّلَ" (luhall), "حَتَّلِيَال" (hatliyal), and "أَحْمَلَ" (luhmal), comprising a past-tense verb, a present-tense verb, a non-verbal noun, and an agent noun respectively, meaning to legalize. An example is the phrase "جَعَلُوهُ حَالًا لًا" (ja'aluhu halalan) which means making something lawful between two individuals. "Al Muhallil" is called or referred to as such because its purpose is to legalize something in a particular context or object that was initially unlawful. "Al Muhalla lahu" refers to the former husband who instructs another person to act as a muhallil for his benefit (Bassam, 2006).

The type of marriage performed by a muhallil refers to a man marrying a woman who has been divorced three times so that her first husband can marry her again (Munawwir & Warson, 1997) or in fiqh known as marriage Tahlil or halalah, which means legalizing or making something permissible. It is also an act commonly practiced before Islam (Abdurrahman, 1992). Nikah Tahlil is marrying a woman who has been divorced three times, with the condition that after the second husband legitimizes (consummates the marriage) for the first husband, the second husband divorces the woman (Bassam, 2006). Marriage Tahlil refers to a muhallil (the person instructed to marry someone else's former wife) marrying a woman who has been divorced with the third and final divorce, with the condition that after legitimizing (marrying and consummating the marriage) for the first husband, he divorces the woman. According to Sayyid Sabiq in his book "Fiqh Sunnah," a muhallil is a man who marries a woman who has been divorced three times, has completed her waiting period, and has had sexual intercourse with her, then divorces her so that she becomes halal for her previous husband (Sabiq, n.d.). In the Encyclopedia of Islam, it is explained that nikah muhallil is when someone marries a woman who has been divorced three times by her husband, and her waiting period has ended, with the intention that this woman will later be halal to be remarried to her previous husband (Dewan Redaksi Ensiklopedi Islam, 1997).

Furthermore, Ibn Rushd in his book "Bidayah al-Mujtahid" defines nikah muhallil as the marriage intended to legalize the wife who has been divorced three times (Rusyd, 2007). There is a very explicit hadith regarding nikah Tahlili:

لعن و عن ابن مسعود رضي الله عنو قال:
رسول الله صلى الله عليه وسلم أحملل لو
. رواه أحمد، والنسائي، والرت مذي وصحو،
ويف الباب عن علي، أخرجة ال

Meaning: From Ibn Mas'ud (may Allah be pleased with him), he said, the

Messenger of Allah (peace be upon him) cursed the muhallil (the person who marries a woman who has been divorced three times to make her lawful for her first husband) and the muhallalah (the former husband who instructs someone else to act as a muhallil). (HR. Ahmad, An-Nisa'i, and At-Tirmidhi, considered this hadith authentic. From Ali, narrated by four hadith scholars).

In "I'lam Al-Muwaqifin," Ibn Qayyim states that muhallil marriage is not permitted in any religion, was never practiced by the companions of the Prophet Muhammad (peace be upon him), and has never been declared valid by any jurist (Bassam, 2006). In Islam, the law regarding nikah Tahlil is considered forbidden and null by the majority of scholars. Islam desires that the marital bond between spouses remains permanent and enduring until death separates them. Temporary marriage (nikah mut'ah) has been annulled by Islam through unanimous agreement. Islamic law does not advocate divorce, even though divorce (talaq) is permissible, as it is strongly disliked by Allah SWT. Nikah Tahlil is regarded as a temporary or time-bound marriage. Consequently, the intended purpose of marriage according to Islam is not fulfilled. Therefore, those who engage in nikah Tahlil receive severe condemnation from the Prophet Muhammad (peace be upon him). This form of marriage constitutes a major sin and is forbidden, with the perpetrators being cursed by Allah SWT. While the Quran does touch upon nikah Tahlil, in Surah Al-Baqarah verse 230, which reads as follows:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ ۗ
 فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا
 حُدُودَ اللَّهِ ۗ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

Meaning: If he divorces her (after the second divorce), she will not be lawful to him until she marries another man. If the latter divorces her, there is no blame upon either of them (the first husband and the former wife) if they return to each other (in

marriage), provided they think they can keep within the limits of Allah's law. These are the limits of Allah, which He makes clear to people who know.

The verse above leads us to the conclusion that a woman is not permissible for her first husband except under the following conditions: a. Her marriage to another man. b. The second man who marries her does so legitimately and they have engaged in marital relations. c. She has been divorced from that man, either by talak, death, or other means. d. Her waiting period (iddah) has ended (Yunus, 1990).

Scholars have unanimously agreed that Tahlil marriage conducted with openly stated conditions in the contract, whereby the second husband makes the wife permissible to be remarried by her first husband, is not permissible (Az-Zuhaili, 2011). Other scholars have considered Tahlil marriage to be entirely prohibited due to the intention behind it. Some have labeled it as merely reprehensible (makruh). Therefore, the opinions can be summarized as follows:

The first opinion holds that among the scholars who consider nikah Tahlil valid are Imam Shafi'i, the Maliki school, the Hanbali school, Tawus, and the Zahiri school. However, in their view, it is a condition that the legalization (halal) is not explicitly mentioned in the marriage contract. If it is mentioned in the contract, then it is not valid. An invalid nikah Tahlil occurs when a man marries a woman to legalize her for her former husband, and then divorces her. If it is not made a condition in the marriage contract, then the contract is deemed valid (Sabiq, 2006).

The second opinion states that whether nikah Tahlil is stipulated in the contract or not, its legal status is deemed reprehensible (makruh tahrim) (Az-Zuhaili, 2011). Scholars who adhere to this view include Abu Hanifah and Zufar. If a man makes Tahlil a condition during the marriage contract, openly stating that he is marrying the woman to legalize her for her first husband, then she becomes lawful for her first husband despite the act

being considered reprehensible. The reasoning is that the marriage contract remains valid and cannot be annulled by conditions contrary to Sharia (Az-Zuhaili, 2011).

The third opinion holds that nikah Tahlil is entirely invalid or haram, whether it is merely intended or included as a condition in the marriage contract. This condition renders the marriage null and void. The prohibition of nikah Tahlil indicates the corruption of what is prohibited, and the legal name of marriage is not mentioned in the prohibited marriage. The muhallil or Tahlil marriage involves a man marrying a woman with the condition that if he has sexual intercourse with her, the intercourse is not considered a valid marriage. This opinion is held by the majority of scholars (Az-Zuhaili, 2011). including Ibn Qudamah, a scholar of the Hanbali school.

Ibrahim al-Nakha'i stated that marriage is not permissible except for sincere intentions. Therefore, if any of the three parties, whether the first husband, the potential second husband, or the woman, aim to legalize the marriage, it is not valid (Ayyub, 2005). Additionally, Ibn Qayyim al-Jawziyya holds the opinion that nikah Tahlil, whether mentioned in the contract or not, is haram, which is a legal opinion adopted by the majority of scholars, both early and later.

According to Sufyan al-Thawri, if a man marries a woman with the intention of Tahlil and then intends to maintain the marriage, he must divorce her and arrange for a new marriage (Ayyub, 2005). Imam Malik holds that a muhallil marriage with conditions can be annulled (Rusyd, 2007). Imam Shafi'i also deems it invalid if the condition of muhallil marriage is mentioned during the contract, with the legal basis being the hadith of the Prophet Muhammad (peace be upon him) narrated by Ibn Mas'ud (Ayyub, 2005). Additionally, he employs analogy (qiyas) with mut'ah marriage, considering nikah Tahlil is not absolute but conditional, subject to a specific timeframe.

The Maliki and Hanbali schools hold that Tahlil marriage, even without

conditions, i.e., a marriage conducted to make the woman lawful for her first husband, is haram, invalid, and null. Therefore, such a marriage is not valid, and it does not render the woman lawful for her first husband through this marriage (Az-Zuhaili, 2011). The Hanafi and Shafi'i schools also consider marrying with the intention of Tahlil without mentioning conditions in the contract as valid, with the act being reprehensible according to the Shafi'i school. Therefore, it is lawful for the first husband to marry her after having marital relations with the second husband, as intentions without conditions in transactions are not considered. Similar to intentions and other purposes that corrupt (Islamiyah, 1983).

Regarding the occurrence of nikah Tahlil, it happens because of thalak ba'in kubra. Thalak ba'in kubra is the third and final divorce, which removes the husband's ownership of his former wife and nullifies the permissibility for the former husband to remarry his former wife unless she marries another man, completes her waiting period (iddah), and then gets divorced. Talak ba'in kubra occurs after the third talak.

Article 120 of the Compilation of Islamic Law (KHI) also mentions and defines thalak ba'in kubra, "Thalak ba'in kubra is the divorce that occurs for the third time. This type of divorce cannot be revoked, and the spouses cannot remarry each other unless the former wife marries someone else and then undergoes divorce after consummating the marriage and completing her waiting period."

Nikah cindua base is a marriage conducted by a husband and wife to legalize the former wife who was divorced by her first husband. In this nikah cindua basewa, the man who marries the woman divorced by her former husband receives compensation or rental payment from either the woman's family or the family of her former husband (Interview, M. Natsir, Nagari Salareh Aia, 17-09-2021).

B. Practice of Nikah Cindua Basewa

The nikah cindua basewa practiced in Nagari Salareh Aia is a marriage conducted between a groom and a bride with the

presence of an agreement or contract between the marrying couple and the former husband involved in the marriage. The purpose is to legalize the former wife so that the first husband can remarry the former wife. (Interview with couples X and Y, Nagari Salareh Aia, 2022).

The practice of *nikah cindua basewa* conducted in Nagari Salareh Aia is done secretly (a marriage conducted privately) without involving the state, in this case, the Office of Religious Affairs (KUA). This is because the community in Nagari Salareh Aia only requires Sharia legality to reunite with their former spouse (Interview with couples X and Y, Nagari Salareh Aia, 2022). As *nikah cindua basewa* is conducted secretly, the implementation is simple and witnessed only by close family members to fulfill the requirements of marriage. Therefore, it is not registered with the Office of Religious Affairs (KUA), and the number of cases cannot be determined. In conducting *nikah cindua basewa*, one of the families seeks a man (*muhallil*) willing to marry his former wife. In the cases in Nagari Salareh Aia, the party seeking a man (*muhallil*) willing to marry the woman who has been divorced three times comes from the woman's family.

The practice of *nikah cindua basewa* that occurs in Nagari Salareh Aia is not much different from regular marriage; what distinguishes *nikah cindua basewa* from regular marriage is that *nikah cindua basewa* aims to legalize the former spouse the first former husband can remarry the first former wife. In Islam, *nikah cindua basewa* has the same purpose as *nikah tahlil*.

In terms of marriage conditions and pillars, *nikah cindua basewa* is similar to regular marriage, such as the presence of the woman's guardian, witnesses for the marriage contract, and the dowry. The amount of dowry used in the marriage is agreed upon by both parties. However, essentially, the dowry used in Nagari Salareh Aia is a set of prayer equipment. Still, several conditions in *nikah cindua basewa* must be fulfilled. These conditions apply after the marriage contract is performed (Interview

with couples X and Y, Nagari Salareh Aia, 2022).

The implementation of *nikah cindua basewa* is not carried out in front of marriage registration officials, but rather conducted at the bride's parent's house or the house of her relatives, depending on the agreement of both parties. In the *cindua basewa* marriage, only the immediate families of both sides attend. After the marriage contract is performed, the bridal couple does not hold a wedding feast or *walimah* in Islam because the *nikah cindua basewa* is considered shameful for the family. Usually, *cindua basewa* marriages in Nagari Salareh Aia do not last long, only lasting for a few days, or even just one night, depending on the agreement between the bridal couple and the former husband (Interview with couples X and Y, Nagari Salareh Aia, 2022).

So, this *cindua basewa* marriage is not in line with the purpose and objectives of marriage, because the purpose and goal of marriage are to form a family or household that is harmonious, and loving, and to preserve the purity of human lineage. Whereas *cindua basewa* marriage aims only to legalize a woman who has been divorced three times by her husband so that her former husband can return to her. If we look at the marriage contract of *cindua basewa* in Nagari Salareh Aia, as with a regular marriage contract, there are no specific conditions included in the contract. Then the issue of agreement or arrangement made by both spouses with the first husband is carried out after the marriage contract. Usually, the agreements in Nagari Salareh Aia include:

1. Abstaining from marital relations
2. Long duration of the marriage
3. Compensation for the man (*muhallil*) marrying the woman. (Interview with the couple *cindua* A and B, Nagari Salareh Aia, 2022).

In Nagari Salareh Aia, men willing to marry women or former wives are usually sought after by the women's side, but sometimes it's also sought by the men's side or the former husband looking for a man willing to marry his former wife. After the

marriage is conducted, the married couple will not engage in marital relations due to the agreement made by the couple with the former husband. The former husband makes this agreement claiming that he is unwilling or not sincere for the man to have marital relations with his former wife.

In Nagari Salareh Aia, the duration of a cindua basewa marriage is only one night. After one night, the man divorces the woman. After divorcing the woman, the man receives compensation. The compensation given typically ranges from 1,000,000 to 2,000,000 Indonesian Rupiah depending on the agreement (interview with a cindua practitioner or muhallil, 2022). In Nagari Salareh Aia, the man who agrees to marry a woman who has been divorced three times by her husband is called the cindua practitioner. The cindua practitioner has the same duties and objectives as the muhallil in the explanation found in Islamic jurisprudence or Islamic law.

In Nagari Salareh Aia, the cindua practitioner still resides around the residence of the married couple. However, some reside outside Nagari Salareh Aia but still within the Palembayan sub-district (interview with the couple cindua A and B, Nagari Salareh Aia, 2022).

Before conducting a cindua basewa marriage, the cindua practitioner and the family members of the woman and her former husband agree or come to terms, which must be fulfilled by both parties. The cindua practitioner usually receives compensation according to the terms and agreements made.

C. Factors and Community Leaders' Responses

The community in the Palembayan district, especially the community in Nagari Salareh Aia, which practices cindua basewa marriage, cites several reasons, supported by various community leaders. The practice of cindua basewa marriage in Nagari Salareh Aia is carried out due to several factors, including:

1. If a husband and wife have divorced up to three times or the wife has been divorced three times, and they wish to reconcile, it is required that the wife must marry another man first (interview with religious figure, Nagari Salareh Aia, 2022).
2. The factor that leads to the desire for the reunion of divorced couples, hence requiring a cindua basewa marriage. However, considering their young children who need affection from both parents, they contemplate reuniting even through cindua basewa marriage. In the first couple, the driving factor for them to engage in cindua basewa marriage is the children. They fear their children will not receive proper affection, thus affecting their psychology (interview with cindua basewa couple X and Y, Nagari Salareh Aia, 2022).
3. Initially, the husband and wife experienced many disputes while building their household, leading to divorce and the pronouncement of triple talaq. After their divorce, feelings of regret arise, prompting them to reconcile to build a better household than before. Although the former wife must undergo cindua basewa marriage or halal marriage with another man (muhallil). In the second couple, the factor driving them to engage in a cindua basewa marriage is that they still have feelings of love (interview with cindua basewa couple A and B, Nagari Salareh Aia, 2022).
4. Cultural or regional tradition factors. The practice of cindua basewa marriage has been carried out for a long time since ancient times, and it is still allowed because if a woman has been divorced three times by her husband and has not married another man or has not undergone cindua, then they wish to reconcile, fearing they may run away to another region to reconcile. If the

woman does not marry another man, the reconciliation is not valid, making it forbidden or equivalent to adultery (interview with traditional figure, Nagari Salareh Aia, 2022).

The factors that drive the cindua broker to assist in conducting cindua basewa marriages include:

1. **Economic Factor:** The economic factor that drives them to perform cindua basewa marriages is noteworthy. Generally, cindua brokers have limited financial means. The cindua broker carries out these marriages because the remuneration or fee provided is sufficiently high, thus motivating them to carry out the marriage (Interview with cindua broker or muhallil A, Nagari Salareh Aia, 2022).
2. **Desire to Assist or Help:** Performing cindua basewa marriages stems from a desire to assist individuals who have been divorced three times. This is out of pity for their children, as they witness the separation of their parents. Another reason is to enable those who have been divorced three times to rebuild their households, and to avoid sin if they reconcile without remarriage through cindua basewa or tahlil marriage (Interview with cindua broker or muhallil X, Nagari Salareh Aia, 2022).

Community Leaders' Responses to the Practice of Cindua Basewa:

1. **Religious Leaders:** In Islamic teachings, cindua basewa or tahlil marriages are prohibited. However, cindua basewa marriages are forbidden if conditions are stipulated in the contract, such as marrying within a specified time frame or including conditions in the contract. According to religious leaders in Nagari Salareh Aia, another strengthening factor is the concern that undesirable outcomes may occur. For instance, if a husband and wife who have been divorced three times wish to reconcile but the wife has not undergone cindua marriage, they may go elsewhere and reconcile without the wife marries another man, which is deemed

prohibited. This is based on the principle of *usul al-fiqh*, which applies the concept of *syaddu-al zariah*, where something may seem permissible but may potentially lead to forbidden actions. If something leads to or facilitates forbidden actions, it is deemed prohibited (Interview with Religious Leader, 2022).

2. **Customary Leaders:** According to the customary leader of Nagari Salareh Aia, the practice of cindua basewa marriages in the region is common as it has been occurring since ancient times until now. The customary leader states that cindua basewa marriages are permitted because they are an effort to reunite couples where the wife has been divorced by her husband. From a standpoint of public interest, cindua basewa marriages have significant implications, as they provide a solution for couples who have divorced and wish to reconcile. If cindua basewa marriages are not allowed in the region, the customary leader fears that couples may reconcile without undergoing tahlil or cindua basewa marriages, which are provided in Nagari Salareh Aia (Interview with the customary leader, Nagari Salareh Aia, 2022).

After conducting in-depth interviews with community leaders, customary leaders, and practitioners of cindua basewa marriages in the village, the author analyzes the law of cindua basewa marriages in Islamic law. The practice of this type of marriage is not considered valid or void, even though it is intended to legalize a woman who has been divorced by her husband so she can reconcile with him. This is because what invalidates a marriage is not intentions but requirements. In this regard, the author agrees with the opinion of Imam Syafi'i as quoted by Amir Syarifuddin in his book titled "Islamic Marriage Law in Indonesia," stating that if there are no conditions in the contract to divorce the woman after entering the marriage or otherwise, but it is only intended, then the cindua basewa marriage is valid because there are no conditions in the

marriage contract. However, a marriage contract is only void if it does not meet the required conditions, not based on intentions. Thus, the *cindua basewa* marriages conducted in the village of Salareh Aia are valid because there are no specific conditions in the marriage contract.

Cindua basewa marriages are not significantly different from regular marriages in terms of their pillars and conditions. The only difference lies in the condition of the prospective female spouse, which is that she must have been divorced three times by her first husband.

As for the prohibitions on marriage stipulated in the Compilation of Islamic Law that could render a marriage null and void or permissible for remarriage, they are outlined in Article 43 (2) of the Compilation of Islamic Law (KHI), namely:

- a. The woman must marry another man besides the husband who divorced her in a valid marriage,
- b. The woman has engaged in marital relations with her second husband,
- c. This marriage must be conducted naturally without any interference or arrangement from the former husband or the second husband,
- d. Divorced by the second husband,
- e. The waiting period (*iddah*) from the husband who divorced her has expired.

When compared between *nikah tahlil* and *nikah cindua basewa* in terms of their legality, it can be concluded that only *nikah cindua basewa* practiced in Nagari Salareh Aia is invalid or void. This is because the majority of scholars have stated that *nikah tahlil* is forbidden or invalid. In *nikah cindua basewa*, as mentioned in point (b) above, it is not implemented because there is an agreement before the marriage, namely "not to engage in marital relations." In *nikah cindua basewa*, there is an agreement or understanding before the marriage between the couple and the former husband. One of the agreements in *nikah cindua basewa* is not to engage in marital relations and the

agreement on the duration of the *cindua basewa* marriage.

In Dr. Mardani's book titled "Islamic Family Law in Indonesia," it is explained that marriage agreements are not found in classical *fiqh* literature discussing specific marriage agreements. What exists in *fiqh* discussions and is continued in some *fiqh* books with the same intention is "conditions in marriage" or *asy-syuruth fil-nikah*.

Therefore, the marriage agreement is separate from the marriage contract, so there is no legal connection between the marriage contract and the conditions specified in the agreement. This means that failure to fulfill the agreement does not invalidate a valid marriage. However, the aggrieved parties from not fulfilling the agreement have the right to request the annulment of the marriage.

In terms of the purpose and wisdom of *cindua basewa* marriage, it is indeed contradictory because *cindua basewa* marriage does not aim to form a family as stipulated in the Quranic rules and hadiths. However, the *cindua basewa* marriage conducted in Nagari Salareh Aia aims to legalize the return of a woman who has been divorced by her husband to reconcile with her husband. In other words, it aims to help the husband and wife continue their household.

According to the data found by the researcher in the field, the practice of *nikah cindua basewa* conducted in Nagari Salareh Aia is not permissible according to Islamic law, because the *nikah cindua basewa* in Nagari Salareh Aia aims to legalize a woman who has been divorced three times by her former husband so that the former husband can return to his former wife. In Islamic law, *nikah cindua basewa* has the same purpose as *nikah tahlil*, while *nikah tahlil* has long been forbidden by the majority of scholars. Furthermore, in *nikah cindua basewa*, there is an agreement and understanding between the woman, the man who marries the woman, and her former husband. Typically, the agreements or understandings made by the parties involved in *nikah cindua basewa*

include determining the duration of the marriage between the former wife and the man who marries her. Another agreement is not to engage in marital relations between the former wife and the man who marries her.

CONCLUSION

The practice of nikah cindua basewa in Nagari Salareh Aia is carried out by two couples who want to reconcile after divorcing up to three times. This marriage is conducted like a regular marriage but with a short duration, lasting only a few days or even just one night. In nikah cindua basewa, there is also an agreement or arrangement between the couples getting married and the former husband. The research results indicate that the motivation for conducting nikah cindua basewa is to legalize the return of a wife who has been divorced three times by her husband for reconciliation. Nikah cindua basewa is permitted according to customary law because it provides a solution for couples who wish to reconcile after the husband has divorced his wife. As for the factors motivating the tukang cindua or muhallil in Islam to conduct nikah cindua basewa, it is to assist couples who have divorced three times to reconcile and continue their marriage. The tukang cindua may also assist due to the significant remuneration received for conducting nikah cindua basewa. In the practice of nikah cindua basewa, customary leaders permit it because it provides a solution for couples to reconcile after the wife has been divorced three times by her husband.

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B. Interview

wawancara dengan 2 (dua) pasangan Nikah

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