



## Comparison between Law No. 1 of 1974 and Islamic Law Regarding the Customary Marriage System of Nikka Ada' in Mamuju Society

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### ABSTRACT

The main issues addressed in this research are: 1) The meaning and process of Nikka Ada' implementation in Mamuju, 2) Islamic law's perspective on the practice of Nikka Ada' in Mamuju, and 3) The view of National Law No. 1 of 1974 on marriage regarding the practice of Nikka Ada' in Mamuju. This study adopts a qualitative approach with descriptive research, utilizing oral questioning. The theoretical frameworks employed include comparative theory, customary wisdom, and maslahah mursalah. The findings of this research conclude that: 1) The process of divorce marriage in Kalukku sub-district is similar to conventional marriage practices, with the groom providing a dowry, witnesses, a guardian, and other customary requirements. The local customs dictate that the marriage is considered complete upon dissolution (divorce). Pregnant women will divorce when the child is born. 2) The phenomenon of divorce marriage in Kalukku sub-district, considering its purposes, brings more benefits than harm. Therefore, based on Quranic verses, Hadiths, and Islamic legal principles, the practice of divorce marriage in Kalukku sub-district is permissible, provided it is undertaken out of necessity to bring about benefits. 3) Nikka Ada' marriages in Kalukku sub-district contradict the prevailing laws as they are not conducted through a court hearing. Divorce occurs solely based on the agreement of both parties, their respective families, and community and customary leaders.

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### INTRODUCTION

Marriage according to Law no. 1 of 1974 states that marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God.

Remarriage not only unites two individuals but also unites families, each of whom has a different background. Everyone has many choices and then it comes down to making a decision. Before making a decision, individuals face a long process of considering and determining their choices. Making decisions is not easy because the decisions that have been taken must be accounted for and have consequences for each individual who chooses. According to Zaidi & Shuraydi, arranged marriage is a marriage arranged by parents or close relatives for the couple and usually this match is carried out on women. The validity of marriage is regulated in the Marriage Law.

Article 2 Paragraph 1 of Law Number 1 of 1974 states that a marriage is valid if it is carried out with a marriage procession based on the religious teachings of the bride and groom who have fulfilled the pillars and requirements of marriage. If the marriage is carried out according to their respective religions and beliefs without any registration at an agency that has been determined by statutory regulations. If it has fulfilled the correct provisions of the Shari'a and there is no siri motive then the law is valid according to Islamic law.

Marriage in Islam itself is one of the most important institutions in the lives of Muslims. According to Islamic teachings, marriage is considered a sacred bond between a man and a woman who love each other and want to build a life together.

The marriage process in Islam consists of three stages. The first stage is the application, where the prospective husband submits a request to the prospective wife to marry. Then, if the request is accepted, the marriage process continues with a consent ceremony, where the prospective husband pronounces the promise of marriage and the prospective wife accepts by saying the word "qabul". After the consent process is complete, the marriage process continues with the marriage contract, where the marriage is formalized by signing a marriage contract or marriage contract. This marriage contract is carried out by a priest or judge in the presence of valid witnesses. Although Islam views marriage as a sacred institution, in some situations divorce can occur.

According to Islamic teachings, divorce can occur either by mutual agreement between the husband and wife or at the request of one of the parties. However, before divorcing, Islam teaches that husband and wife must make maximum efforts to improve their relationship. They should try to improve communication and resolve problems that occur between them.

If disputes, quarrels and violence cannot be resolved, then the condition of the household will reach its peak, leading to divorce and/or dissolution of the marriage increasingly becoming a reality; as an initial indication of a legal problem.

Article 39 of Law Number 1 of 1974 confirms that divorce can only be carried out by trial in court, after the court concerned has tried and failed to reconcile the two parties, and to carry out a divorce there must be sufficient reasons so that it can be used as a reasonable basis that between husband and wife there is no longer any hope of living together as husband and wife.

In the Mamuju area, especially the Kalukku sub-district, there is a marriage practice called Nikka Ada' by the local community. Nikka ada' what is interpreted in Indonesian as marrying and divorcing. In practice, divorce is carried out by both parties by carrying out the marriage and then immediately divorcing. The causes of divorce include the lack of parental approval, but the man and woman committing adultery, so according to the customary law of the area they must be married using nikka ada' (divorced marriage). As for other causes, because the act of adultery between a man and a woman causes pregnancy out of wedlock, but the man and woman do not love each other, and do not want to build a household together, and there is also no parental consent, then according to the law there is in that area there must be a nikka wedding held'.

According to traditional leaders in the area, the reason for carrying out nikka ada' is to cleanse the village of disasters so that they do not happen again. Then to save the birth of the child in the mother's womb, and that the people in the area uphold shame (siri'). Because the birth of a child without marriage is considered by the local community to be a very big disgrace. So to eliminate siri', nikka ada' is implemented.

Drawing from the background above, this research can be used to review the meaning and process of implementing nikka ada' in Mamuju. What is the view of Islamic law towards the implementation of the nikka ada' wisdom in Mamuju, as well as the view of Law No. 1 of 1974 on the implementation of the nikka ada' wisdom in Mamuju.

## METHODOLOGY

This type of research uses a qualitative approach with descriptive research in the form of verbal questions from the Sondoang village community being observed. The aim of the research using a qualitative approach is to analyze the comparison of Law No. 1 of 1974 and Islamic Law on the Mamuju Community's Nikka Ada' Wisdom System. This research was conducted in Kec. Kalukku, Kab. Mamuju. To make it easier for researchers to analyze research results, there needs to be a research focus. This research focuses on the comparison of Law No. 1 of 1974 and Islamic Law on the Nikka Ada' Wisdom System in Mamuju Society.

## RESULTS AND DISCUSSION

### The meaning and process of implementing nikka is in Mamuju, Kalukku District

What does Nikka ada' mean when interpreted in Indonesian as traditional marriage or what society generally calls divorced marriage. Divorce in practice is carried out by both parties by carrying out the marriage and then immediately divorcing. The causes of divorce include the lack of parental approval, but the man and woman committing adultery, so according to the customary law of the area they must be married using nikka ada' (divorced marriage). As for other causes, the results of the interview presented by Huseng S:

*Aka disakka, mappapia kakadakeang sipa'dua So it must be panicked accordingly'. Appo ke jasanna toi u'de sieloi u'de melo siola, jasanna toi tobara'na u'de toi melo kedipasiala ana'na appo karna do*

*kakadakeang tatta' dipanikka appo marry divorce.*

It means:

*Being arrested while committing mischief (adultery) between the man and the woman means they must be married off. However, when they don't love each other, they don't want to build a household together, usually their parents don't want their child to build a household, but because they have committed damage (adultery), they have to be married off by divorce.*

Interview by Mrs. Becce, a resident of Kalukku sub-district:

*Usually they are arrested for committing adultery, usually it is also discovered that this woman is pregnant, that's why she is given a marriage or mepakasiri'siri'*

From the statement above, we can understand that the cause of marriage and divorce is because the act of adultery between a man and a woman causes pregnancy out of wedlock, but the man and woman do not love each other, and do not want to build a household together, or do not If there is blessing from the parents, according to customary law in that area, the marriage must be married, divorced. However, for those who are pregnant, the divorce process takes place when the unborn child is born. So as long as the woman is pregnant, the man is obliged to provide for the woman's living needs. According to the explanation by Huseng S:

*"Ke kebattangi, ya dipanikka jolo moa ceraina moa messohong mi ana'na inde e anu kebattang. As long as you go to the trunk you have to carry out all the things you need."*

It means:

*When you are pregnant, you still get married first and then divorce until the child you are carrying is born. So as long as a woman is pregnant, a man must fulfill her needs.*

Regarding the purpose of carrying out the marriage and divorce, Huseng S, one of the traditional leaders or elders in the village explained:

*To solve the problem of appearance or being trapped in peace. Anna di paccingi kapping anna u'deng diang mambabe tellolo iting. Anna toi in'de e kapping u'de diang calamity na meroa. Then toi ya anakna kasi dikebattang, namasiri keborn i dako u'de diang ambena. Aka inde e dikapping siri' kaiyang ke diangngi child born dilino u'de diang tobara'na. The mai'di's fingers are guarded, so that before an indo occurs, a divorce can be carried out so that there is peace between the respective families.*

It means:

*To resolve all of this, society's problems are peaceful. So that the village is also cleaned up so that no one will do that (adultery) anymore. Then also so that this village can avoid disasters which result in many people being affected. Then it's also a pity for the child who is still in the womb, later he will be embarrassed when he is born without the father's attack. Because being trapped is a very big disgrace when a child is born in this world without parents. So there are many things that must be taken care of so that before this happens, a marriage and divorce can be carried out, as well as peace between the respective families.*

From this statement we can understand that the purpose of carrying out marriage and divorce is to resolve the community's dispute regarding adultery itself. then to cleanse the village of disaster so that this act does not happen again. Then, so that a disaster does not occur in the village which results in many residents being affected, for example there is an earthquake, flood, and/or the local community experiences crop failure or other things. Then another aim is to save the birth of the child in the mother's womb, and that the people in the area uphold shame (siri'). Because the birth of a child without marriage is considered by the local community to be a very big disgrace. So to eliminate siri', nikka ada' is implemented.

From the results of this interview, it can be understood that the marriage process for divorced married couples in Kalukku sub-district is the same as marriage in general, namely that the man provides a dowry, presents a witness, a priest or a person entrusted with the marriage. However, after carrying out the marriage vows, discussions are held between both parties to the marriage and the families concerned regarding the continuation of the marriage. Then after the results of the discussion, the traditional leaders or the most senior people in the village, took over and conveyed that this marriage had been carried out and resolved in a family manner (divorced). However, those who are pregnant will be divorced when the unborn child is born. So the man in question is still obliged to fulfill the woman's living needs while she is pregnant until she gives birth

### **Views of Islamic Law on the Implementation of Karifan Nikka Ada' in Mamuju**

The purpose of marriage is to build a household that is harmonious, full of love and affection (sakinah, mawaddah wa rahmah), as explained in the verse above. This kind of life is a need that has become the nature or instinct of every human being. This can be achieved if the couple (husband and wife) can carry out their domestic life in accordance with the teachings of the Islamic religion. The original law of marriage is mubah (permissible). However, based on the illat or in terms of the conditions, the marriage can change to be obligatory, sunnah, makruh, haram, or permissible.

The law of marriage will change to become obligatory, if a person is deemed capable of properly establishing a household, able to meet these needs, he is obliged to carry out the marriage, because if he does not marry he will tend to commit sin (adultery).

Marriage can become recommended or sunnah if it is carried out by someone whose spiritual and physical growth is considered sufficient for married life. If he marries under such circumstances, he will get a thigh and if he does not want to marry, as long as he is able to protect himself he will not sin.

Marriage is considered makruh if it is carried out by someone who is relatively underage and unable to provide for and take care of the household. People who marry at this age will also cause problems for their lives and their families. Even though he was not guilty of committing marriage in this situation, his actions could be categorized as disgraceful.

The law becomes haram if it is done by a man with the intention of abusing a woman or his future wife.

Marriage is legally permissible, for people who have the ability to do it, but if they don't do it they don't worry about committing adultery and if they do get married, they don't abandon their wife. taking care of his family life, his spiritual and physical growth has really matured. In this situation, the difference in formulation is caused by the fact that marriage as an institution has many aspects and can be viewed from various points of view, such as religion, community law, and so on. From a religious perspective, marriage is considered a sacred institution according to Islamic law.

Regarding nikka ada' or marriage and divorce in Kalukku District, which in practice is carried out by both parties by carrying out a marriage and then immediately divorcing. In this case, Islam actually does not know about this and there are no examples from the Prophet, there are only a few cases of marriage such as mut'ah marriages and other marriages that existed during the time of the Prophet and there are many explanations so it is easy to determine directly the law. . However, regarding the causes of marriages and divorces, it is because of the act of adultery between a man and a woman, some even lead to pregnancy out of wedlock, but the man and woman do not want to build a household, or there is no permission from their parents, so according to the law The custom is that you have to be married by nikka ada' (divorced marriage). The objectives of carrying out the marriage and divorce are: 1) To resolve the community dispute regarding adultery itself. 2) Clean the village from disasters so that these actions don't happen again. 3) So that a disaster does not occur in the village which results in many residents being affected, for example an earthquake, flood, and/or the local community experiences crop failure and so on. 4) Save the lineage of the child in the mother's womb, so that it remains connected to the father. 5) And that the people in the area uphold shame (siri'). Because the birth of a child without marriage is considered by the local community to be a very big disgrace. So to eliminate siri', nikka ada' is implemented.

Therefore, this substance can be used as a basis that according to researchers the phenomenon of marriage and divorce in Kalukku District, by looking at the purpose of its implementation, is contrary to Islamic law. So with the existence of Al-Qur'an verses and hadiths as well as Islamic legal rules as a basic reinforcement for the implementation of divorce marriage in Kalukku District, the researcher concluded that the implementation of divorce marriage is not permitted because it is contrary to the rules of Islamic law.

### **National Legal View of Law No. 1 of 1974 on the implementation of the nikka ada' wisdom in Mamuju**

The purpose of marriage is to form a happy and eternal family. For this reason, husband and wife need to help and complement each other so that each can develop their personality to help and achieve spiritual and material prosperity.

This law emphasizes that a marriage is valid if it is carried out according to the laws of each respective religion and belief, and besides that, every marriage "must be recorded" according to the applicable laws and regulations.

This law adheres to the principle of monogamy. Only if the person concerned wishes, because the law and religion of the person concerned allows a husband to have more than one wife.

This marriage law adheres to the principle that prospective husband and wife must be mature in body and soul to be able to enter into marriage, in order to realize the goals of marriage, well without thinking about divorce and to have good and healthy offspring.

Because the purpose of marriage is to form a family that is eternally happy and prosperous, this law adheres to the principle of making divorce difficult.

The rights and position of the wife are balanced with the rights and position of the husband, both in domestic life and in social interactions, so that everything in the family can be negotiated and decided together by the husband and wife.

In essence, the main purpose of marriage registration is to regulate and protect the rights of husbands, wives and children born of marriage. To avoid unwanted problems such as rights and obligations between husband, wife and children, state officials must take action to carry out records. This is because in people's lives it is clear that there are problems, including in marital relationships. Marriage registration also functions to prevent polygamy, which is carried out through private marriages or unregistered marriages, which can have a negative impact on all parties involved in the polygamous activity. because every couple who wants to get married at KUA or KCS usually goes through a process of announcing the status of the prospective bride and groom. If either party objects, the marriage can be annulled.

From the explanation above, we can understand that a marriage is valid if it is carried out in the presence of a marriage registrar's employee, is recorded in the marriage registration register by that employee, and is carried out in accordance with the provisions of this law and/or the provisions of the marriage law of the parties to the marriage, as long as they do not conflict with this law. Therefore, by looking at the nikka ada' (divorced marriage) in the Kalukku sub-district, researchers consider it to be contrary to the applicable law. Because the marriage was carried out without the knowledge of the local KUA, they did not register the marriage according to applicable law. And nikka ada' marriage is a marriage that has no legal force.

Regarding Divorce According to Law Number 1 of 1974, the issue of dissolution of marriage Law Number 1 of 1974 regulates it in Chapter VIII Article 38 to Article 41 of 1975 Article 14 to Article 36, and other technical matters in Minister of Religion Regulation Number 3 of 1975. The provisions of Article 38 of Law No. 1 of 1974 state that a marriage can be dissolved due to three things, namely the death of one of the parties, divorce, and a judge's decision. Furthermore, in Article 39 paragraphs (1), (2) and (3), it is also stated that divorce can only be carried out in front of a court session after the court (panel of judges) has failed to reconcile the two parties, and there is sufficient reason for them to divorce because there is no longer any hope of living in harmony in a household, their marriage has really broken up. A divorce lawsuit can be filed by the husband or wife for reasons determined by the applicable laws and regulations.

Law Number 1 of 1974 concerning Marriage is a source of Islamic marriage and family law which regulates in a complete and modern way the marriage and divorce of Muslims which is rooted in the Islamic religion. In fact, this Law is much more perfect and complete regarding the substance regulated therein, both perfect and complete regarding the substance regulated therein, both in the form of principles and legal norms for marriage and divorce and family life.

The termination of a marriage according to Law No. 1 of 1974 is due to three reasons, first, because of death, second, because of divorce, and third, because of a court decision (Article 38 letters a, b, and c). Meanwhile, Government Regulation No. 9 of 1975 uses the term divorce talak, for divorce. As for divorce due to a court decision (Article 38 letter c) Government Regulation No. 9 of 1975 uses the term lawsuit divorce. The difference between a divorce or talak divorce and a divorce due to a court decision is that the husband vows a divorce in front of a court hearing, while the dissolution of a marriage due to a court decision or in terms of Government Regulation No. 9 of 1975, a lawsuit divorce is a divorce that occurs because of a lawsuit from one of the parties to the husband and wife. or a divorce as a result of a court decision.

Therefore, the judge's task in handling divorce is to try to reconcile the two parties, if deemed necessary, they can ask for help from people or advisory institutions such as BP 4. Efforts to reconcile must be made at each hearing (Article 31 paragraph (1) and (2) Government Regulation No. 9 1975). If the reconciliation effort is successful and the two parties can reconcile again and another time a request for divorce occurs, then the same reason cannot be filed again as a new lawsuit (Article 32 of Government Regulation No. 9 of 1975). A judge who is Muslim will incur Allah's wrath if he makes divorce easier, because divorce is hated by Allah.

From the explanation above, we can understand that according to the law, a divorce can only be carried out in front of a court session after the person concerned has tried and failed to reconcile the two parties. In this case, the researcher considers that the nikka ada' (divorced marriage) that occurred in Kalukku sub-district is contrary to applicable law. Because it is implemented not through a court hearing. This divorce occurs only with the agreement of both parties concerned, their respective families and community leaders and traditional leaders.

## CONCLUSION

Divorce in practice is carried out by both parties by carrying out the marriage and then immediately divorcing. The cause of marriage and divorce is because the act of adultery between a man and a woman causes pregnancy out of wedlock, but the man and woman do not love each other, and do not want to build a household together, or there is no permission from their parents, so according to the law The custom in that area is that marriage is to be married and divorced. However, for those who are pregnant, the divorce process

takes place when the unborn child is born, so as long as the woman is pregnant. The purpose of carrying out the marriage and divorce is to resolve community issues regarding adultery, to cleanse the village of disaster, so that a disaster does not occur in the village which results in many residents being affected and another aim is to save the fate of the child in the mother's womb, as well as that of the community in The area upholds shame (siri').

Comparing the nikka in the Kalukku sub-district, this divorce marriage is contrary to Islamic law. Because according to Islamic legal terms, marriage is a contract that stipulates conditions that allow a man and a woman to have fun and allow intimate relations between a woman and a man. So nikka ada' (marriage and divorce) cannot be punished with *maslahah murlah* even though there are some that bring peace and security in society but are contrary to the text. Because the terms of *maslahah murrasa* according to Ash Saytibi are that the use of *maslahah murrasa* must be in line with the spirit of the Shari'a and must not conflict with the *qath'i* text. Then, if you pay attention to the arguments regarding *nikah muhallil*, it seems that the nikka is the same as the *muhallil nika* during the time of the Prophet when the marriage was held briefly, indicating the invalidity of the marriage, even mentioning the threat of stoning. The words of curse in the hadiths show how cursed this heinous act is.

Explained in Article 2 paragraph 1 of Law No. 1/1974, namely that marriage is valid, if it is carried out according to the laws of each religion and belief. Every marriage is recorded according to applicable laws and regulations. Therefore, by looking at the nikka ada' (divorced marriage) in the Kalukku sub-district, researchers consider it to be contrary to the applicable law. Because the marriage was carried out without the knowledge of the local KUA, they did not register the marriage according to applicable law. And nikka ada' marriage is a marriage that has no legal force. Regarding Divorce According to Law Number 1 of 1974, the provisions of Article 38 of Law No. 1 of 1974 state that a marriage can be dissolved due to three things, namely the death of one of the parties, divorce, and a judge's decision. Furthermore, in Article 39 paragraphs (1), (2) and (3), it is also stated that divorce can only be carried out in front of a court hearing.

## RECOMMENDATION

From the results of research carried out using various theories and research methods so that the wisdom of nikka (Marriage and Divorce) can be minimized, the researcher wants to make several recommendations which are expected to be useful. And it is better for people to really avoid all forms of adultery, and marry according to the provisions in a good manner in accordance with the applicable provisions, both Islamic provisions and statutory regulations. Because marriage is a sacred bond because in the marriage bond there is not only a physical or physical bond but there is also a spiritual bond which is based on the Almighty Godhead. This means that a marriage is not just an external relationship, but more than that, it is a an inner and outer bond or relationship between a man and a woman which aims to form a happy and eternal family based on belief in the Almighty God.

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