Al Hurriyah : Jurnal Hukum Islam
e-ISSN: 2549-4198
p-ISSN: 2549-3809

ORIGINAL ARTICLE OPEN ACCES

NIKAH BACINDUA IN THE PERSPECTIVE OF MASHLAHAH MURSALAH IN SOUTH BATIPUH DISTRICT, TANAH DATAR REGENCY, WEST SUMATRA

Hamdani[1], Fendri Yanto[2], Fadiah Nur Afiza[3]

*Correspondence:
Email : hamdani@uinbukittinggi.ac.id

Authors Affiliation:
[1] Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, *Indonesia*
[2] Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, *Indonesia*
[3] Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, *Indonesia*

Article History :
Submission: February 20, 2024
Revised: April 13, 2024
Accepted: June 17, 2024
Published : Agust 24, 2024

Keyword : Bacindua, Nikah Tahlil, Mashlahah

Kata Kunci : *Bacindua*, Nikah *Tahlil*, *Mashlahah*

Abstract

The principal goal of marriage is to build a *sakinah* family, as described in the Al−Qur'an Surah Ar−Rum (30:21). However, this noble goal cannot be realized as it should be since the increase in divorce cases. Paradoxically, there is remorse among divorced couples due to the demand for children and other psychosocial factors. This study looks at the practice of *tahlil* marriage, or what is known as bacindua. This study is field research. The perpetrators of the *tahlil* marriage, niniak mamak, religious scholars, and community leaders were the primary informants of the research. The research findings showed that *tahlil* marriage occurs when the husband has already divorced his wife with three kinds of pronouncements of divorce, either three at once or three sequentially. Some people understood that the third *talaq*, which is declared simultaneously, means triple talaq. This condition triggers the practice of *tahlil* marriage, in which the wife is told to marry the man her husband is looking for and marry at any time with the help of a person who is considered a religious figure (Angku). It was also found that *bacindua* has benefits (mashlahah), which are to protect the offspring produced from marriage to the first husband and for the benefit of the children's future. Nevertheless, the practice of tahlil marriage is contrary to the text of the Qur'anic verses and the hadith. Thus, in terms of the benefits, the practice of this type of marriage is categorised as maslahah mulghah.

Tujuan utama perkawinan adalah untuk membangun keluarga yang sakinah sebagaimana dijelaskan dalam al-Qur'an Surat al-Rum (30:21). Namun, tujuan mulia tersebut tidak dapat diwujudkan sebagaimana mestinya sejak maraknya kasus perceraian. Paradoksnya, ada penyesalan di antara pasangan yang bercerai karena tuntutan akan anak dan faktor psikososial lainnya. Kajian ini menjelaskan bagaimana praktik tahlil nikah atau yang dikenal dengan istilah bacindua. Penelitian ini menggunakan penelitian lapangan. Pelaku pernikahan tahlil, niniak mamak, ulama, dan tokoh masyarakat menjadi informan utama penelitian ini. Hasil penelitian menunjukkan bahwa nikah tahlil terjadi ketika suami telah menceraikan istrinya dengan tiga macam talak, baik tiga sekaligus atau tiga secara berurutan. Bahkan, ada orang yang memiliki pemahaman bahwa talak ketiga yang diucapkan secara bersamaan berarti talak tiga. Kondisi ini memicu terjadinya praktik tahlil nikah dimana istri disuruh menikah dengan laki-laki yang dicari suaminya dan menikah kapan saja dengan bantuan orang yang dianggap sebagai tokoh agama (Angku). Ditemukan juga bahwa bacindua memang memiliki manfaat (mashlahah), yaitu untuk melindungi keturunan yang dihasilkan dari perkawinan dengan suami pertama, dan untuk manfaat yang berkaitan dengan masa depan anak-anak. Padahal, praktik tahlil nikah bertentangan dengan teks ayat al-Quran dan hadis. Dengan demikian, ditinjau dari sisi kemaslahatannya, praktik perkawinan jenis ini dikategorikan sebagai maslahah mulghah.

INTRODUCTION

Islam regulates all aspects of human life as a complete and perfect religion. Relationships between human beings are one of the things that Allah set for humans, such

©2024 by the authors. Submitted for open access publication under the terms and conditions of the Creative Commons Attribution-ShareAlike 4.0 International License-(CC-BY-SA) (https://creativecommons.org/licenses/by-sa/4.0/)

Al Hurriyah : Jurnal Hukum Islam
Vol. 9. No. 1 Edition June 2024

as the rules of marriage. Humans are social creatures who live in need of each other, so Allah created humans in pairs so that human biological needs are met and to protect humans from sin or wrath from Allah SWT. As Allah says in Surah Al—Rum verse 21. Legally, marriage is an act that has Sunnah legal value.[1] Under certain conditions, marriage is required for someone who is psychologically, materially, and reproductively capable of carrying out marriage. This condition may be determined in line with the creation of human beings in pairs, where men and women have sexual desires that must be channeled under the values of Islamic law, namely through legal marriage. However, Islam has provided clear and straightforward boundaries where there are conditions for marriage that are forbidden.[2] One of the many types of marriage that are forbidden is the marriage of a woman who has been divorced (*talaq)* three times with a man to legalize her ex—husband, who is mentally ill. This kind of marriage is popularly called *nikah tahlil*. In the South Batipuh District, Tanah Datar Regency, West Sumatra, this *tahlil* marriage is popularly known as Bacindua.

This *tahlil* marriage is caused by a husband who has divorced his wife several times. All scholars of madhhab agree that a husband who is mentally married to his wife with talaq *bai'n kubra* (three times divorce) is no longer halal for him unless his ex—wife has married another man. As explained in the Word of Allah surah al—Baqarah verse 230, it can be understood that if there has been a triple talaq, then muhallil (another man who will be the second husband) must allow remarriage between the wife and the first couple. Muhallil is a lawful person.[3] In South Batipuah District, Tanah Datar Regency, West Sumatra Province, muhallil marriage is a common social phenomenon. The author's initial search found that one of the causes of this marriage's rise was divorce outside the court. A husband who easily throws the word *talaq* at his wife, so that it has reached *talaq bain kubra* for the understanding of the community. According to one of the figures and scholars in this area, this designed marriage should not have happened. Scholars and traditional leaders should help solve problems like this.

What is even more interesting is that many of them are also the perpetrators of the muhallil marriage. The practice of *tahlil* marriage is seen by various circles, especially when the perpetrators aim to save their children. So they have this little marriage. For this reason, the author tries to find more complete information about the practice of *tahlil* marriage in South Batipuh District, Tanah Datar Regency, West Sumatra Province. Some scholars have conducted a discussion on *tahlil* marriage. Several articles mentioned below are among existing studies: The article entitled *Nikah Muhallil Perspektif Empat Imam Mazhab* written by M. Tahir Malako from UIN Alauddin Makassar. This article was published in Mazahibuna: Jurnal Perbandingan Mazhab in 2019. This article explores the four Muslim scholars leaders' arguments on *tahlil* marriage. Thahir Malako wrote Hanafi, Maliki, Syafi'I, and Hanbali's Islamic legal arguments on *tahlil* marriage.[4] Ahmad Sanusi and Epa Nupiah from UIN Sultan Maulana Hasanuddin Banten wrote about the practice of muhallil marriage in Padarincang Serang, Banten Province, Indonesia, which was

[1] Moh. Ali Wafa, *Hukum Perkawinan Di Indonesia; Sebuah Kajian Dalam Hukum Islam Dan Hukum Materil* (Tangerang: YASMI; Yayasan Asy—Syari'ah Modern Indonesia, 2018), 42.

[2] Syaifullah, "Pernikahan Wanita Yang Hamil Di Luar Nikah Dan Akibat Hukumnya: Telaah Atas Dualisme Fikih Dan Kompilasi," *Misykat* 2, no. 2 (2017).

[3] Ahmad Sanusi and Epa Nurpiah, "Praktek Perkawinan Muhallil Di Padarincang Serang Provinsi Banten Indonesia," *JURNAL HUKUM ISLAM* 18, no. 2 (2020): 271—91, https://doi.org/10.28918/jhi.v18i2.3476.

[4] M Thahir Maloko, "Nikah Muhallil Perspektif Empat Imam Mazhab," *Mazahibuna: Jurnal Perbandingan Mazhab* 1 (2019): 234—41, http://journal.uin—alauddin.ac.id/index.php/mjpm/article/view/10627/7443.

published in the Journal of Islamic Law (JHI) in 2020. In the article, the author reveals the practice of muhallil marriage that occurred in Padarincang, Serang, and Banten.[6] Another article is The Practice of Tahlil Marriage in East Lombok Regency (Fiqh Analysis and Compilation of Islamic Law), written by Ruslan, from UIN Mataram. In his writing, Ruslan wrote about the forms of *tahlil* marriage that occurred in West Nusa Tenggara, precisely in East Lombok Regency.[7] Eko Saputra and Busyro write about Kawin Maupah: An Obligation to Get Married After Talak Tiga in The Tradition of Binjai Village in Pasaman District: A Maqʙsid al—Shari'ah Review. The article, published in the Qudus International Journal of Islamic Studies (QIJIS), explains the practice of *maupah* marriage, which in the fiqh language is actually *nikah tahlil* (*tahlil* marriage).

The View of Islamic Law, Marriage Law, and KHI on the Practice of Tahlil Marriage (Case Study in Suka Jaya Village, Muko—muko Bathin VII District, Bungo Regency), written by Sopriyanto, was published in the Nur El—Islam Journal, Journal of Education and Socio—Religious Affairs. In this article, Sopriyanto explained the *tahlil* marriage law that occurs in Bungo Jambi Regency from various reviews, namely Islamic law, marriage law, and the Compilation of Islamic Law (KHI). The author explains that nikah *tahlil* is contrary to positive law.[8] The dissertation written by Usman Betawi from UIN North Sumatra has the theme A Sociological Review of Islamic Law on Blind Chinese Marriage in Batu Bara Regency. In the article, Usman Betawi explained the sociological influence of Islamic law on blind Chinese marriage that occurred in North Sumatra, specifically in Batubara Regency. Blind Chinese mmarriage is the other term for *tahlil* marriage that is popular in the area.[9]The writings and research on *talaq* from various literary sources the author found, including Reformulation of Talaq Law Outside the Court, written by Makmun Syar'i, explains the tracing of the history of Talaq from time to time, which is influenced by the customs of the community.[10] The Position of Women Who Are Talaq Three Outside the Court Based on the Perspective of Fiqh and Positive Law written by Muh Aswan. In this article, Aswan explains the practice of talaq in Islamic law and provides a review of positive laws against *talaq*.[11]

From this existing research, the author has not found anyone who has conducted research on nikah *tahlil* and its relationship with *mashlahah* (public interest), so the author considers it necessary to conduct research with the theme of Maslahah Review of the Practice of *Nikah Tahlil* Due to out of Court Divorce Out of Court (Case Study in South Batipuh District, Tanah Datar Regency, West Sumatra). Usman Betawi explained about *tahlil marriage*. The Indonesian Marriage Law prohibits *muhallil* marriage because it is not based on the philosophy and purpose of marriage, namely building an eternal and happy household. Meanwhile, in Islamic law, most scholars also prohibit *muhallil* marriage and stipulate that *muhallil* marriage law is invalid based on the postulates of the Quran

[6] Sanusi and Nurpiah, "Praktek Perkawinan Muhallil Di Padarincang Serang Provinsi Banten Indonesia."

[7] Ruslan, "Praktik Nikah Tahlil Di Kabupaten Lombok Timur (Analisis Fiqih Dan Kompilasi Hukum Islam)" (UIN Mataram, 2021).

[8] Sopriyanto, "Pandangan Hukum Islam, Hukum Perkawinan Dan KHI Terhadap Praktek Nikah Tahlil (Studi Kasus Di Desa Suka Jaya Kecamatan Muko—Muko Bathin VII Kabupaten Bungo)."

[9] Usman Betawi, "Tinjauan Sosiologi Hukum Islam Tentang Pernikahan Cina Buta Di Kabupaten Batu Bara" (UIN Sumatera Utara, 2020).

[10] Makmun Syar'i, "Reformasi Hukum Di Luar Pengadilan," *Mazahib Jurnal Pemikran Hukum Islam* XIV, no. 1 (2015).

[11] Muh Aswan, "Kedudukan Wanita Yang Ditalak Tiga Di Luar Pengadilan Berdasarkan Perspektif Fikih Dan Hukum Positif" (IAIN Bone, 2020).

and As—Sunnah because it contains a lot of harm (*mudharat*) and is also detrimental to women.[12]

METHODS

The approach system used in this article is descriptive legal research, which is research that aims to collect data and information about an existing social symptom, namely the state of the symptom as it is at the time the research is carried out, without intending to make a generally accepted conclusion.[13] This research is field research, which aims to describe the reality encountered directly in the place where the research is carried out using a qualitative approach. This research will be carried out in the South Batipuh District, Tanah Datar Regency, where there are many *tahlil* marriage practices. This research explores the facts in the research field. The object studied in this study is the activities of people who has experiences with *tahlil* marriages. The approach in this study uses normative—empirical law with an emphasis on the behaviour of individuals and communities in South Batipuh. This method found answers to several questions by processing primary and secondary data. The primary data source in this study is the data writer's direct research using the subject and object of the research. The subject of the research is the person who should be researched in a study or who will provide information or data. This definition is called the key informant, which aims to clarify the results of the research with the consideration that the selected informants completely understand the data needed regarding the practice of *tahlil* marriage in South Batipuh District. In this study, the author involves several actors and important people who understand *tahlil* marriage, including married couples who conducted *tahlil*, traditional heads (Penghulu or Nagari Traditional Density/KKAN), *Alim Ulama* or Cadiak Pandai (religious leaders), and some expert community leaders who know the problems contained in this research.

Additional information was obtained through a literature review by reviewing the several texts, manuscripts, and information from various sources in South Batipuh District and books related to and relevant to this discussion, including documents that participated in practicing this *tahlil* marriage. For gaining scintific prove, in this article the author uses the field research method, namely: Observing and hearing about the practice of *tahlil* marriage carried out in South Batipuh District, Tanah Datar Regency. Observation is carried out to find answers by understanding, looking for evidence, and recording a phenomenon that occurs and is associated with the practice of the community until data analysis is carried out. As explained by Sugiyono, through observation, researchers learn about behaviour and the meaning of these behaviours.[14] Lexy J. Moleong, explained that this interview aims to construct information about people, events, activities, organizations, feelings, motivations, demands, and concerns about social situations (social setting).[15]

RESULT AND DISCUSSION

Maslahah Tahlil Marriage

Tahlil is a term in Arabic that comes from the words *hallala, yuhallilu*, and *tahlilah*, which is halal. Refers to the event of an agreement between the first husband (muhallalah)

[12] Usman Betawi , Nikah Tahlil Dalam Hukum Islam, Jurnal Hukum Responsif FH UNPAB, VOL. 7 NO. 7. Maret 2019

[13] Fenti Hikmawati, *Metodologi Penelitian*, 4th ed. (Depok: Rajawali Pers, 2020), 88.

[14] Sugiyono, *Metode Penelitian, Kuntitatif, Kualitatif Dan R & D* (Bandung: Alfabeta, 2017), 310.

[15] Lexy J. Moleong, *Metode Penelitian Kualitatif* (Jakarta: Rajawali Pers, 2014), 186.

and the man who marries the woman and then divorces her. The type of marriage that is carried out by muḥallil means a man who marries a woman who is *talaq* three times so that the first husband can marry again. In the study of Islamic jurisprudence (fiqh) this condition is known as *nikah taḥlil* or *ḥalalah*. It means to certify or make something halal, it is also a practice that was usually done before Islam. Tahlil marriage is marrying a woman who was was divorced by her previous husband three times (irrevocably divorced woman) on the condition that after the intended marriage was done, then the second husband divorces the woman. What is meant by *nikah tahlil* is a *muhallil* (a person who is told to marry someone else's ex−wife) marries a woman who was divorced by his husband through *talaq ba'in kubra*. After being married and associated, he divorces the woman. Muḥallil marriage is only a pseudo−marriage and has a limited period, so the purpose of marriage in Islamic perspectives could not be achieved. Therefore, the perpetrators of the engineering of tahlil marriage received strong criticism from the Prophet Muhammad:

عَنِ ابْنِ مَسْعُوْدٍ رَضِيَ اللهُ عَنْهُ قَالَ : (لَعَنَ رَسُوْلُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ الْمُحَلِّلَ وَ الْمُحَلَّلَ لَهُ (رَوَاهُ اَحْمَد وَالنَّسَائِى وَالتُّرْمُذِي)

"Abdullah Ibn Mas'ud said: The Messenger of Allah (peace and blessings of Allah be upon him) cursed a muhallil (a man who marries an irrevocably divorced woman for the sole purpose of making her lawful for her ex-husband to remarry) and the Muhallal lahu (the ex-husband of the woman who was irrevocably divorced, seeking to remarry her through an unlawful marriage)." (HR. Ahmad, Nasa'I, and Turmudzi)
Another hadith narrated by Uqbah Ibn Amir stated:

عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: قَالَ رَسُوْلُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: أَلَا أُخْبِرُكُمْ بِالتَّيْسِ الْمُسْتَعَارِ قَالُوْا بَلَى يَا رَسُوْلُ اللهِ. قَالَ: هُوَ الْمُحَلِّلَ ،لَعَنَ اللهُ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ (رَوَاهُ مُسْلِمٌ)

"From Uqbah Ibn Amir, the Messenger of Allah (saw). said: Will I tell you about at-Taisil Musta'ar (a rented ram)? The companions replied, Sure, O Messenger of Allah. He then said, "He is al-Muhallil (a man who marries an irrevocably divorced woman for the sole purpose of making her lawful for her ex-husband to remarry), Allah will curse al-Muhallil (a man who marries an irrevocably divorced woman for the sole purpose of making her lawful for her ex-husband to remarry) and al-Muhallal lahu (the ex-husband of the woman who was irrevocably divorced, seeking to remarry her through an unlawful marriages)" (HR. Muslim)

The majority of Islamic scholars and jurists have a uniform opinion on the law of *tahlil* marriage. However, there are still differences in the reasons for the law to be determined. Their opinions are as follows:

a. Hanafi School thinks that if a man marries a woman who has been irrevocably divorced with the intention to make a women remarry with her first husband (*muhallill*), then the marriage is validwith the following conditions:
   1) The marriage contract is carried out as a valid marriage contract. This means that the marriage meets all the pillars and conditions of marriage.
   2) This second husband did sexual intercourse with his wife (a divorced women);
   3) The sexual intercourse that is done obliges the junub bath.
   4) Truly confident that the sexual intercourse has occurred in its proper place;

5) Has been divorced by the second husband and has expired his *iddah* (waiting period).

b. Maliki School states that if a man marries a woman who has been irrevocably divorced to make it lawful for her to return to her first husband (muhallil), then the marriage contract is broken, it is not permissible to perform dukhul, and the marriage itself is completely null and void. Likewise, if a person requires that the marriage be a *tahlil* marriage, then the marriage becomes *fasakh* without *talaq*.

c. Shafi'i School argues that muhallil marriage is valid if she meets the following conditions:

1) The marriage contract is carried out as a valid marriage contract;
2) Not declaring that the marriage contract is a *tahlil* marriage contract;
3) The second man has understood the issue of marriage, even though he is notyet an adult;
4) Have carried out sexual intercourse reasonably.

d. Hanbali School states that if a man marries a woman who has been talaq three times by her first husband with the intention that he can return to his first wife, or he affirms that condition in the marriage contract, and it has been agreed. For example, if he is with his wife or guardian and the marriage is never revoked, then the marriage is invalid, so it is not halal for the wife to return to her first husband. This is from a hadith from the narration of Ibn Majah, which states that a man is the same as a rented ram.[18]

From the explanation of the opinions of the scholars above, it can be seen that the scholars have different opinions about the validity of this little marriage. The scholars of Maliki and Hanbali schools tend to argue that this marriage is damaged and invalid. Madzhab Shafi'i scholars tend to say that a marriage is valid if it meets several predetermined conditions. Meanwhile, the Madzhab Hanafi scholar argues that the marriage contract is valid, and even the muhallil (the second husband) gets a reward because he has become a peacemaker between the husband and wife who cannot get back together. With him, the husband and wife can re—establish a marriage relationship. From some of these opinions, the author tends to agree with the opinion of the scholars Madzhab Maliki and Madzhab Hanbali, who state that this *tahlil* marriage is invalid because it is contrary to the essence of marriage contained in the Quran and also contradicts the text of the hadith.

Mashlahah is a widely known concept in the study of *ushul fiqh*. Mashlahah (مَصْلَحَةٌ) in Arabic is derived from the word صَـلُحَ – يَصْـلُحَ – ضَـلْحًا, which means goodness or something positive. Mashlahah is formed from the letters *shad*, *lam*, and *ha*, which later became the roots of the word الصَـلْحُ, which means goodness. *Wazan* (Arabic scale) from the word الْمَصْـلَحَـةُ is الْمَفْعَلَـةُ which means to have "many benefits and interests".[19] The scholars give different definitions and concepts of this *mashlahah*, including:[20] Al—Ghazali's book Al—Mustasyfa min 'Ilm al—Ushul stated that the initial concept of *mashlahah* in Ushul Fiqh was to attract benefits or reject losses. But that is not the kind of understanding we want because achieving good and rejecting damage is the goal or intention of beings, while the goodness or benefit of beings lies in the achievement of their goals. But what we mean by *mashlahah* is to the purpose of sharia'. There are five

[18] Maloko, "Nikah Muhallil Perspektif Empat Imam Mazhab," 238—40.

[19] Marwin Amirullah, "Konsep Mashlahah Dr. Muhammad Said Ramadhan Al—Buthi Dalam Mengistinbath Hukum Nawazil," *Jurnal Wasatiyah* 2, no. 1 (2021): 54—74.

[20] Muhammad Ali Rusdi, "Mashlahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam," *Diktum; Jurnal Syariah Dan Hukum* 15, no. 2 (2017): 152.

objectives of sharia, namely: the protection of religion, soul, intellect, descendants, and property. So anything that contains or includes the maintenance of the five basic points is *mashlahah*, and anything that denies the five basic points is *mafsadah* (destruction), and rejects the *mafsadah* is *mashlahah*.

Najmuddin al—Thufi, in his book entitled *al-Ta'yin fi Syarh al-Arba'in* stated The meaning of Mashlahah in *'urf* perspective (customs develops in society) is a cause that brings goodness or benefit, such as trading activities that generate or bring profits. In terms of shari'a, *mashlahah* is a cause that can lead to being able to arrive at the meaning of Shari'a (Allah), either in the law of worship (*'ibadah*) or *'adah* (*mu'amalah*). Mashlahah is divided into two forms, namely *mashlahah* that is agreed by Allah as Allah's prerogative right. For example, is the problem of worship, and mashlahah whose purpose is for the good of creatures (humans) and the order of their affairs such as customary problems (customs). From the understanding of *mashlahah* presented by the experts of *ushul fiqh*, it can be concluded that the understanding of the scholars about *mashlahah* is almost the same, which is a goodness that Allah, as the Creator, wants to be realised towards His servants. However, they express the same understanding with different editors and diction. Based on the compatibility between something that is considered *mashlahah* by the human intellect and the guidance from the verse or hadith, Al—Ghazali divides the mashlahah into three parts, namely *mashlahah mu'tabarah*, *mashlahah mulghah*, and *mashlahah mursalah*.[21]

a. **Mashlahah *Mu'tabarah.*** This kind of *mashlahah* is something that is considered good both by human reason and God's provision. According to Allah, this is understood because there are instructions from verses or hadiths that stipulate the law to realise this good, either directly or indirectly.
b. **Mashlahah *Mulghah*** This mashlahah Mulghah is something that is considered good by the human reason. Nevertheless, according to Allah, as the Lawmaker, it is not a good thing because there is a verse or hadith that shows that it is not a good thing.
c. **Mashlahah *Mursalah*** Mashlahah Mursalah is something good according to human reason. However, there is no strict provision to command or to prohibit it neither in Quranic verses nor in hadith.

Sharia law will not be able to be separated from *mashlahah* issues.[22] Therefore, a very famous postulate emerged among *ushul fiqh* scholars: *Ainama kanat al-mashlahah fa tsamma hukm Allah* (Wherever there is a public interest, there will be the Allah's law).[23] In this problem, *ushul fiqh* scholars discussed the issue of *mashlahah* in two discussions, namely: The first is the discussion of *mashlahah* as *'illat* (the motive that causes the law to be implemented). This discussion is related to the problem of al—Qiyas, which equates the law of a problem with no legal substance with a problem that already has a legal meaning because between the two there is a similarity in 'illat. And every 'illat that is the basis of a law must start with the interests of human goodness (mashlahah). Second is the discussion of *mashlahah* as a source of Islamic law. In this discussion, scholars generallyreview to what extent the availability of Islamic sources tocategorize some problems as *mashlahah* or *mafsadah*.[24] In this case, the majority of scholars argued that

[21] Zulfa Hudiyani, "Kontribusi Maslahah Al—Thufi Dalam Pembaharuan Hukum Islam Di Era Kontemporer," *Teraju: Jurnal Syariah Dan Hukum* 01, no. 02 (2019): 51.

[22] Nur Asiah, "Maslahah Menurut Konsep Imam Al—Ghazali," *Diktum; Jurnal Syariah Dan Hukum* 18, no. 1 (2020): 120.

[23] Muhammad Roy Purwanto, "Kritik Terhadap Konsep Mashlahah Najm Ad—Din at—Tufi," *Madania* 19, no. 1 (2015): 30.

[24] Amirullah, "Konsep Mashlahah Dr. Muhammad Said Ramadhan Al—Buthi Dalam Mengistinbath Hukum Nawazil," 59.

the *mashlahah mu'tabarah* found in the *nash* (textual sources) that acknowledges its existence can be used as a legal postulate. On the other side, *mashlahah mulghah* found in the *nash* that states that a problem could not categorized as *mashlahah* cannot be used as a legal postulate because it is contrary to the *nash*. However, no evidence of *mashlahah* states that it is mashlahah, and no evidence of *nash* states that it is not mashlahah. According to al—Ghazali, this type of *mashlahah* can be used as legal evidence as long as it meets its requirements.

Marriage of Tahlil (Bacindua) in South Batipuh District

South Batipuh is a sub—district located in Tanah Datar Regency. The area is 82.73 km2, bordered to the north by Batipuh District, to the south by Solok Regency, to the west by Padang Pariaman Regency, and to the east by Rambatan District.[25] The religious condition of the community is also quite thick in the area located on the outskirts of Lake Singkarak. The results of the author's interview with the Head of Religious Affairs Office (KUA, Kantor Urusan Agama) Batipuh Selatan, Zul Andris, S.Ag., MH. The community's obedience in carrying out Islamic teachings is encouraged by the number of Islamic boarding schools, such as the Tarbiyah Islamiyah Islamic Boarding School (PPTI) Padang Laweh Malalo, the Tuangku Limo Puluah Foundation Islamic Boarding School (Yastu) Guguak Malalo, and MTI Guguak Malalo. In addition, there are also MAN Sumpur and MTsN Batu Taba, as well as MAS Batu Taba and MTsS Batu Taba.[26] Based on data collected from KUA, in the South Batipuh District, there are 21 mosques, 24 *mushallas*, and 54 *surau*. All of these worship places actively conducting religious activities, with the encouragement of 25 scholars, 73 muballigh, 51 *khatib*(a person who deliver a sermon), and nine religious instructor and educator.[27] The number of religious education places, worship places, and religious figures proves that the people of South Batipuh are quite obedient in carrying out Islamic teachings. They moreover, coupled with the activity of two Islamic organisations in this sub—district, namely Muhammadiyah and PERTI (Persatuan Tarbiyah Islamiyah), and the many people who are members of the study of Tariqat Naqsabandiyah and Tariqat Syatariyyah.

The author tried to conduct interviews related to this *tahlil* marriage with religious leaders, traditional leaders, and the Nagari (village) government. This *tahlil* marriage begins with a divorce that ends with a *ruju'* (revocation of divorce/reconciliation of broken marriage); in the case of *Raj'i* divorce, the process of ruju' is quite simple. Meanwhile, in the case of *ba'in* divorce, to reconcile their broken marriage, the husband and wife must go through procedures under the provisions of *sharia*. This provision obliges an ex—wife marries another man. In such marriage should do the sexual intercourse (jima'), then there is a divorce between the wife and the second husband, and only after that can the first husband remarry the wife. The practice of *tahlil* marriage in South Batipuah District is generally carried out in a sirri way[28] (Illegal Marriage)[29]. It means that tahlil *marriage* does not involve the state through KUA. In this case, community only needs the Sharia authority to reunite with the ex—husband or wife. As is the case between a married couple

[25] BPS Kabupaten Tanah Datar, *Kecamatan Batipuh Selatan Dalam Angka 2022* (Tanah Datar: BPS Kabupaten Tanah Datar, 2022), 3.

[26] Zul Andris, "Wawancara Langsung" (Kec. Batipuh Selatan: Kepala KUA, 2022), 3 Agustus 2022.

[27] Andris, 3 Agustus 2022.

[28] Nikah sirri dikalangan masyarakat dipahami dengan beberapa arti, diantaranya adalah nikah yang pelaksanaannya tidak di daftarkan di KUA, atau akad nikahnya tidak dalam pengawasan petugas pencatatan dari KUA bagi yang beragam Islam, di Kantor Catatan Sipil bagi non muslim. Eko Setiawan, "Fenomena Nikah Siri Dalam Perspektif Sosiologi Hukum," *Justicia Islamica* 13, no. 1 (2016): 140.

[29] Titis Thoriquttyas, "Nikah Sirri and Its Responses From Religious Court: Taking Sides Between Acceptation and Refutation," *Justicia Islamica* 14, no. 2 (2017): 192, https://doi.org/10.21154/justicia.v14i2.1226.

named Roni (not their real name) and Wita (not their real name), who lived happily like marriage in general at the beginning of their marriage. But as time went by, the marriage faced obstacles, so the husband divorced his wife with triple *talaq* (irrevocable divorce). It is understood that when the husband conveys triple *talaq*, the irrevocably divorce has happened. After the iddah period, the husband invites his wife to refer him, but the understanding of the community is that if he has been triple *talaq*, he should not return to his wife unless the wife is married to someone else (second husband), and only when this second husband divorced the wife, the first husband be able to refer to her.

The marriage with another man was designed by this husband going to someone's place and asking him to marry his wife and get divorced later. The husband paid the man Rp. 1,500,000. Thus, the man married the woman, and after that, he immediately divorced her.[30]Angga (not his real name) and Zela (also not her real name) can no longer maintain their marriage; this is proven by Angga stated triple talaq to Zela. But after reconciling, they wanted to refer, so with the existing belief, Angga and Zela agreed to marry Zela first with another man who was none other than one of the religious figures in the area. After that, it was hoped that the man would divorce Zela so that Angga and Zela could refer to a new marriage. However, after Zela married the man with an agreement that Angga paid the man Rp. 1,000,000, it turned out that the man did not want to divorce Zela. He said "*Ambo indak ado problem samo bini ambo do untuk apo bacarai*" (I have no problem with my wife, so why should I divorce her). In this case, according to Islamic law, Zela and her second husband are still in a valid marriage.[31] The length of the marriage grace period between the *muhallil* and the ex−wife of the first husband is one week or depends on the agreement of both parties. The ex−wife of the first husband had been married by the *muhallil* and then divorced, and after the *iddah* period expired, the first husband could return to his ex−wife.

The reality in tahlil marriage, such as in South Batipuh District, is that there is a gap between theory and its application in society. There are several indications of the gap between *Sharia* and practice. The practice of *tahlil* marriage carried out in South Batipuh District itself is not a natural marriage; the practice is only a temporary marriage that only aims to mediate the reunion of married couples who have been divorced in triple *talaq* and want to reunite by ignoring the principles of marriage in Islam. Several factors cause the occurrence of this tahlil marriage in South Batipuh. From the results of interviews and observations conducted by the author, it can be concluded that the three main causes of this forbidden marriage are:

1. Divorce Occurs Out of Court

   The rise of divorce outside the court is the main cause of tahlil marriage in South Batipuh. Zul Andris, S.Ag., MH., as the Head of KUA, conveyed this tahlil marriage because of the community's understanding that divorce outside the court is valid. He said " *Dek talak di rumah masih dianggap sah, mako banyak nan mode tu*." (Because talaq at home is still considered legal, so many people do *tahlil* nikah).[32]

   In every *tahlil* marriage that occurs, it can be ensured that the divorce is occured out of court because the purpose of the tahlil marriage is to re−legalise the first husband to his wife again after the occurrence of triple *talaq*.
2. Public Beliefs About Triple Talaq

   Based on the information the author got from the Wali Nagari Guguak Malalo, the public's understanding of triple *talaq* occurs if a husband divorces his wife by immediately saying triple *talaq* once. So when he wants to refer to his wife, he

[30] Roni, "Wawancara Langsung" (Kec. Batipuh Selatan: Pelaku Nikah Tahlil, 2022), 30 Juni 2022.

[31] Angga, "Wawancara Langsung" (Kec. Batipuh Selatan: Pelaku Nikah Tahlil, 2022), 3 Juli 2022.

[32] Andris, "Wawancara Langsung," 16 Juni 2022.

feels that he can no longer refer to her, so the only way that can be done to be able to refer again is by *tahlil* marriage (bacindua).[33]

3. For the Future of Children

   The unexpected impact from divorce is the neglect of the child's future, especially if the children are still young, and in addition, the divorce has been occured in triple *talaq*. So the *tahlil* marriage carried out by some people in South Batipuh District so that the first husband can immediately return together with his wife, who gave birth to his children, is driven by consideration of the children's future.

Married couples who have divorced with triple *talaq* do not want their children to be raised by stepchildren or stepmothers. Actually, his biological parents still have the right to raise their children, even though they no longer live with them, but society's understanding of the cruelty of fathers and stepmothers makes them unprepared for their children to be raised by their fathers or stepmothers. The author also interviewed Ahmad (not his real name) and Anggia (also not his real name), this couple said that the background to the *tahlil* marriage was because Ahmad had divorced his wife named Anggia three times, and of course, he could not return to his wife before his wife married another man. Considering the lives of his five young children, Ahmad told Soni (also not his real name) to marry Anggia. This marriage was carried out only to legalize Ahmad's return to Anggia, of course with Anggia's approval. So the tahlil marriage occurred between Soni and Anggia according to their agreement.[34]

The Practice of Tahlil Marriage (Bacindua) in South Batipuh District in a Review of Mashlahah

Islamic law provides that if a husband has divorced his wife through irrevocable divorce (triple *talaq)*, it is not halal for husbands to refer to ex—wifes. According to the interview with one of the religious leaders of South Batipuah District, namely Angku Katik (not his real name), he said that there are many cases in the South Batipuah area; some are under the Qur'an and Sunnah, and some are fraudulent to the *ruju'* mechanism. Indeed, there are many cases like this against the background of concern for children, but he firmly refuses the practice of *muhallil* marriage. Angku Katik revealed that marriage by *muhallil* is invalid marriage. The argument to keep children's life is not suppose to legalize to do *tahlil* marriage. He added that the divorce might contain the God's wisdom. The irrevocable divorce, , as written in Surah al—Baqarah verse 230, might show an educational experience for both wives and husbands. The ex—wife of the first husband experienced what it was like to live with another man. If the ex—wife feels at home and feels at peace with her second husband, then the fault lies with her first husband, but if the life of her ex—wife with the husband of the second wife is not lasting, then the fault lies with both of them; therefore, they must protect each other from the mistakes they have made.[36]

The author concludes from the results of interviews with *muhallil* marriage perpetrators, religious leaders, and community leaders that the background to the occurrence of *muhallil* marriage in South Batipuh District is because *talaq* has occurred three times. Another factor is because the childdrens life, for couple who has a child.

[33] Mulyadi, "Wawancara Langsung" (Guguak Malalo: Wali Nagari, 2022), 30 Juni 2022.
[34] Ahmad, "Wawancara Langsung" (Kec. Batipuh Selatan: Pelaku Nikah Tahlil, 2022), 4 Juli 2022.
[36] Angku Katik, "Wawancara Langsung" (Kec. Batipuh Selatan: Tokoh Agama, 2022), 4 Oktober 2022.

Al Hurriyah : Jurnal Hukum Islam
Vol. 9. No. 1 Edition June 2024

Some people worried if the *muhallil* marriage is not carried out, their children's lives will be abandoned. They think that the childrens educational neglect or a lack of affection from both parents will cause negative impact on theirchildren. The validity of a marriage must be based on the applicable regulations, such as fulfilling the principles and conditions of the marriage, in the hope that the purpose of the marriage can be realized. However, problems regarding marriage occur in communities that have fulfilled the harmony and conditions of marriage in general but are still controversial, for example, *muhallil* marriage.

This *tahlil* marriage (nikah *bacindua*) is carried out by people who deliberately mentally get their wives triple *talaq* or because they are angry and they leave the house. A sense of regret arose, so he wanted to return to his wife. The community will forbid him to return before his wife marriesanother man (bacindua). This Bacindua was carried out with several considerations. First, It is because of the regret carried out by the first husband, who made his wife angry. Second, for the benefit of children, because children are still small and need parental affection, this *bacindua* is done with that. Third, because of the consideration of affection, old wisdom said "*Kasiah habih sayang tak hilang*." These three factors are the reason to do *bacindua*. According to the marriage regulations in Indonesia, the purpose of marriage is based on Article 3, namely: marriage aims to be a *sakinah* family, *mawaddah warahmah* (peaceful and love). By these marriage objectives, the *tahlil* marriage that is carried out, does not aim to realize the purpose of the marriage because it is only in the form of artificial marriage to legalize first husband can return to his ex−wife. *Sakinah*, *mawaddah wa rahmah*, will be able to be realised if the marriage is for good, while *nikah tahlil* is not like that; the time is limited according to the time limit agreed before the marriage takes place.

The practice of *tahlil* marriage that occurs seem like a *mut'ah* marriage (temporary marriage)because the time of this *tahlil* marriage has been determined. The difference is that in the mut'ah marriage, the married husband spends the money to his temporary wife. In contrast, in the tahlil marriage, the married husband does not spend money but gets paid. However, they still have one similarity: both *tahlil* and *mu'tah* have a determined period in marriage. Indeed, there are public interests and benefits *(mashlahah)* in carrying out *tahlil* marriages, as the *tahlil* marriage practitioners explain. The main problem is safeguarding the future of children's life, which in *dharuriyyah al-khamsah* is included in *hifz al-nasl* (protecting family lineage). However, applying this designed *tahlil* marriage is contrary to the hadith. The practice of *muhallil* marriage is cursed and deemed by the Prophet Muhammad as a rented ram. Not only is it contrary to the text of the hadith, but it is also contrary to the value of marriage explained in the Qur'an. It was written in surah al−Rum verse 21 to bring peace and a sense of love between husband and wife. Apart from obtaining a sense of love and affection, of course, the purpose of marriage is to carry out Allah's commands and protect famili lineage *(hifz al-nasl)*. The possibility of realizing the value of marriage will be difficult if the marriage only takes place artificially. The principle laid down by the Marriage Law is so that the purpose of marriage is realized properly without ending in divorce and getting good offspring. Because this *tahlil* marriage is contrary to the contents of the verses of the Qur'an and the text of the hadith, the author concludes that the *maslahah* in the *tahlil* marriage in South Batipuh District is included in the *maslahah mulghah*. *Maslahah Mulghah* is a kind

of *mashlahah* that is good according to people but is contrary to the provisions of the Quran or hadith.

CONCLUSION

From the discussion above, it can be concluded as follows:

1. The practice of *tahlil* marriage carried out in Batipuah Selatan District, Tanah Datar Regency, is carried out to marry his ex—wife to another man. This marriage has a certain agreement and is temporary to legalize the ex—husband to return to his divorced wife. This marriage process is assisted by a religious figure who is considered pious by the local community.
2. The main cause of this tahlil marriage is the community's understanding of the fall of triple *talaq* when the husband divorces his wife once. When the husband wants to return to his wife, the ex—husband finds his wife a temporary husband who is tasked with making it legal for him to reconcile their broken marriage. Another reason for this *tahlil* marriage is for the future of the children. Divorced parents are afraid that their children will not be cared for or raised by stepparents. The occurrence of divorce outside the court is also one of the main causes of this *tahlil* marriage in Batipuh Selatan District.
3. From a *mashlahah* perspective, *tahlil* marriage has an element of *mashlahah* because it maintains the child's future and the child's education. However, this marriage is can be categorized as *mashlahah mulghah*. The *mashlahah mulghah* is not in line with the Sharia provision because hadith states that *tahlil* marriage is cursed.

References

Ahmad. "Wawancara Langsung." Kec. Batipuh Selatan: Pelaku Nikah Tahlil, 2022.

Amirullah, Marwin. "Konsep Mashlahah Dr. Muhammad Said Ramadhan Al—Buthi Dalam Mengistinbath Hukum Nawazil." *Jurnal Wasatiyah* 2, no. 1 (2021): 54—74.

Andris, Zul. "Wawancara Langsung." Kec. Batipuh Selatan: Kepala KUA, 2022.

Angga. "Wawancara Langsung." Kec. Batipuh Selatan: Pelaku Nikah Tahlil, 2022.

Asiah, Nur. "Maslahah Menurut Konsep Imam Al—Ghazali." *Diktum; Jurnal Syariah Dan Hukum* 18, no. 1 (2020).

Aswan, Muh. "Kedudukan Wanita Yang Ditalak Tiga Di Luar Pengadilan Berdasarkan Perspektif Fikih Dan Hukum Positif." IAIN Bone, 2020.

Betawi, Usman. "Tinjauan Sosiologi Hukum Islam Tentang Pernikahan Cina Buta Di Kabupaten Batu Bara." UIN Sumatera Utara, 2020.

BPS Kabupaten Tanah Datar. *Kecamatan Batipuh Selatan Dalam Angka 2022*. Tanah Datar: BPS Kabupaten Tanah Datar, 2022.

Firdaus, Elimartati; *Fikih Munakahat Kajian Sebelum Dan Sesudah Pernikahan*. Jakarta: Prasada Media, 2020.

Hermanto, Agus. "Perkawinan Di Bawah Umur Perspektif Hukum Normatif Serta Hukum Positif Di Indonesia." *Justicia Islamica* 13, no. 1 (2016).

Hikmawati, Fenti. *Metodologi Penelitian*. 4th ed. Depok: Rajawali Pers, 2020.

Hudiyani, Zulfa. "Kontribusi Maslahah Al—Thufi Dalam Pembaharuan Hukum Islam Di Era Kontemporer." *Teraju: Jurnal Syariah Dan Hukum* 01, no. 02 (2019). https://doi.org/10.35961/teraju.v1i02.45.

Katik, Angku. "Wawancara Langsung." Kec. Batipuh Selatan: Tokoh Agama, 2022.

Maloko, M Thahir. "Nikah Muhallil Perspektif Empat Imam Mazhab." *Mazahibuna: Jurnal Perbandingan Mazhab* 1 (2019): 234—41. http://journal.uin—

alauddin.ac.id/index.php/mjpm/article/view/10627/7443.

Moleong, Lexy J. *Metode Penelitian Kualitatif*. Jakarta: Rajawali Pers, 2014.

Mudhiiah, Ahmad Atabik; Khoridatullah. "Pernikahan Dan Hikmahnya Perspektif Hukum Islam." *YUDISIA; Jurnal Pemikiran Hukum Dan Hukum Islam* 5, no. 2 (2014).

Mulyadi. "Wawancara Langsung." Guguak Malalo: Wali Nagari, 2022.

Purwanto, Muhammad Roy. "Kritik Terhadap Konsep Mashlahah Najm Ad－Din at－Tufi." *Madania* 19, no. 1 (2015).

Roni. "Wawancara Langsung." Kec. Batipuh Selatan: Pelaku Nikah Tahlil, 2022.

Rusdi, Muhammad Ali. "Mashlahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam." *Diktum; Jurnal Syariah Dan Hukum* 15, no. 2 (2017).

Ruslan. "Praktik Nikah Tahlil Di Kabupaten Lombok Timur (Analisis Fiqih Dan Kompilasi Hukum Islam)." UIN Mataram, 2021.

Sakirman. "Urgensi Reaktualisasi Undang－Undang Perkawinan Di Indonesia." *Justicia Islamica* 13, no. 1 (2016). https://doi.org/10.21154/justicia.v13i1.518.

Sanusi, Ahmad, and Epa Nurpiah. "Praktek Perkawinan Muhallil Di Padarincang Serang Provinsi Banten Indonesia." *JURNAL HUKUM ISLAM* 18, no. 2 (2020): 271－91. https://doi.org/10.28918/jhi.v18i2.3476.

Setiawan, Eko. "Fenomena Nikah Siri Dalam Perspektif Sosiologi Hukum." *Justicia Islamica* 13, no. 1 (2016).

Sopriyanto, Sopriyanto. "Pandangan Hukum Islam, Hukum Perkawinan Dan KHI Terhadap Praktek Nikah Tahlil (Studi Kasus Di Desa Suka Jaya Kecamatan Muko－Muko Bathin VII Kabupaten Bungo)." *NUR EL-ISLAM : Jurnal Pendidikan Dan Sosial Keagamaan* 6, no. 1 (2019): 15－30. https://doi.org/10.51311/nuris.v6i1.116.

Sugiyono. *Metode Penelitian, Kuntitatif, Kualitatif Dan R & D*. Bandung: Alfabeta, 2017.

Syaifullah. "Pernikahan Wanita Yang Hamil Di Luar Nikah Dan Akibat Hukumnya: Telaah Atas Dualisme Fikih Dan Kompilasi." *Misykat* 2, no. 2 (2017).

Syar'i, Makmun. "Reformasi Hukum Di Luar Pengadilan." *Mazahib Jurnal Pemikran Hukum Islam* XIV, no. 1 (2015).

Thoriquttyas, Titis. "Nikah Sirri and Its Responses From Religious Court: Taking Sides Between Acceptation and Refutation." *Justicia Islamica* 14, no. 2 (2017): 191－206. https://doi.org/10.21154/justicia.v14i2.1226.

Wafa, Moh. Ali. *Hukum Perkawinan Di Indonesia; Sebuah Kajian Dalam Hukum Islam Dan Hukum Materil*. Tangerang: YASMI; Yayasan Asy－Syari'ah Modern Indonesia, 2018.