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The Interplay of *Fiqh*, *Adat*, and State Marriage Law: Shaping Legal Consciousness of Sasak Women

Jumarim

Universitas Islam Negeri Mataram, Mataram, Indonesia
email: jumarim@uinmataram.ac.id

Ilyya Muhsin

Universitas Islam Negeri Salatiga, Salatiga, Indonesia
email: ilyya_muhsin@uinsalatiga.ac.id

Muhammad Chairul Huda

Universitas Islam Negeri Salatiga, Salatiga, Indonesia
email: choirulhuda@iainsalatiga.ac.id

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Abstract:

Sasak women grapple with a legal conundrum stemming from the coexistence of multiple marriage legal frameworks encompassing *fiqh*, *adat*, and state law. This intricate legal pluralism dynamically shapes the legal consciousness of Sasak women as they navigate the selection of legal avenues to secure legality and address their marital legal challenges. This study pursues two primary objectives: *firstly*, to examine the intricate interplay among *fiqh*, *adat*, and state marriage law concerning the provision of legal certainty and protection for Sasak women; *secondly*, to probe into the manifestations of legal consciousness arising from the plural marriage legal frameworks. Data were collected through document analysis, literature review, and in-depth interviews with selected Sasak women. The findings illuminate a dynamic interplay among *fiqh*, *adat*, and state marriage law across various marital facets, including prenuptial considerations, minimum marriage age,

Author correspondence email: jumarim@uinmataram.ac.id

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marriage prerequisites and pillars, marriage contracts, residency, polygamy, divorce, and reconciliation. Moreover, the study identifies three distinct forms of legal consciousness emerging among Sasak women: 'before the law' when confronting *fiqh*, 'with the law' when embracing formal legal mechanisms to address marital issues, and 'against the law' when eschewing formal legal provisions. In conclusion, state marriage laws are more progressive in providing legal certainty and protection for women but lacking criminal sanctions/fines weakens their position compared to religious law (*fiqh*) and customs (*adat*). Ultimately, this shapes the legal consciousness of Sasak women in diverse ways.

Keywords:

Adat; Fiqh Munakahat; Legal Consciousness; State Marriage Law; Sasak Women

Introduction

Mega (25) is a Sasak woman who was divorced via telephone by her husband, Ali, a migrant worker in Saudi Arabia. She and her son were compelled to leave their domicile and return to her parent's residence. However, the challenges faced by Mega did not end there. She was subsequently confronted with a series of difficulties as a result of her marriage and divorce. Because her marriage was conducted unregistered (*nikah sirri*)¹ when she was merely 18, Mega and her former spouse lacked a marriage certificate which is a requirement to obtain a family card. Furthermore, her son does not yet have a birth certificate because a family card is required to obtain a birth certificate. Additionally, Mega's status has become uncertain. Islamic law (*fiqh*) and customary law (*adat*) classify her as a widow, whereas positive law (state marriage law) considers her to be a woman who has never been married because her marriage was not

¹ This kind of marriage is valid according to *fiqh*; however, it is not legal according to the state marriage law because it is conducted without the presence of marriage registrar from Religious Affairs Office (*Kantor Urusan Agama: KUA*). Sasak people normally perform *nikah sirri* when the future bride and groom are under-aged or do not possess divorce certificate of previous marriage from religious courts (*Pengadilan Agama: PA*).

recorded at the Religious Affair Offices (*Kantor Urusan Agama: KUA*). Consequently, in positive law, she is considered a maiden.

Mega's marriage and divorce is a typical Sasak women's experience on the Island of Lombok where Muslim women frequently marry at a young age, get divorced, and remarry. Around 70 percent of marriages in this context are legalized only according to *fiqh* and *adat* without being officially recorded by the government.² Although these marriages hold legal significance within their communities, they deprive women of their rights granted by the state marriage laws. For example, state marriage law granted women the right for a share of joint property in case of divorce.³ However, the right is easily violated by men due to unregistered marriage. Hence, the state marriage law, which is intended to protect women's rights in marriage, cannot be upheld due to the provisions of *fiqh* and *adat*.⁴ Exploring the legal consciousness of Sasak women living in the context of legal marriage pluralism in Lombok can therefore shed light on how Indonesian women understand and perceive marriage legal pluralism in their daily life contexts.

Legal pluralism arises when diverse legal frameworks interact and function within a defined territory, community, ethnicity, or nation. Historically rooted in colonialism, this complexity emerges as colonial powers imposed their legal systems upon new territories, thereby overlaying preexisting legal structures. In Indonesia, legal pluralism encompasses state law, religious law, and customary law. Despite the recent emergence of state law, its formal nature diminishes the prominence of religious and customary legal practices, relegating them to informal status. Notably, legal pluralism predominantly manifests within the realm of family law, particularly concerning marriage.⁵ *Adat* is upheld as long as it does not conflict

² Maria Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, 2017, <https://doi.org/10.4324/9781315178943>.

³ Republik Indonesia, "Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan" (1974).

⁴ Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*.

⁵ Alkhanif, "Women, Islam, and Modern Family Construction in the Perspectives of Legal Pluralism in Indonesia," *PETITA: Jurnal Kajian Ilmu Hukum dan Syariah* 4, no. 2 (2019), <https://doi.org/10.22373/petita.v4i2.24>.

with *fiqh*, and *fiqh* will persist if reinforced by state law and does not contradict it. Legally, state marriage law is regarded as a formal or positive law that is compulsory and binding for all citizens, while the other two marriage laws, *adat* and *fiqh*, are considered informal.^x

Several scholars have examined the complex issue of Sasak women and marriage legal pluralism, including Islamic jurisprudence (*fiqh*), customary practices (*adat*), and state marriage law. Platt's⁶ research highlighted that around 70% of marriages in Lombok are solely recognized under *fiqh* but remain unregistered by the state. This discrepancy is largely attributed to the prevalence of *merariq*,⁷ a practice that results in many underage marriages. Additionally, studies by Sugitanata et al.⁸ have revealed other discriminatory customs within Sasak society, such as *kawin maghrib* (forced marriage), which often subjects Sasak women to long-term trauma in the guise of preserving the morality of youth. *Fiqh* and *adat* are found to be two main factors in legalizing the practice of *kawin maghrib*.

Nimah⁹ explores the consequences faced by Sasak women following unilateral divorces (*talaq*) instigated by men, influenced by patriarchal *fiqh* and *adat*. She delineates four infringements upon Sasak women's rights, including unpaid *mut'ah* (divorce compensation), delayed dowry payments, deprivation of their portion of marital assets, and uncertainty surrounding marital status. In parallel, Nasir¹⁰ scrutinizes the provision of litigated divorce (*cerai-gugat*) within state marriage law as a mode of resistance among Sasak women against unilateral divorce and polygamy without wives' consent, two practices endorsed by *fiqh* and *adat*. Nasir contends that

⁶ Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*.

⁷ *Merariq* is a distinct tradition within marriage ceremonies, requiring a man to abscond with or take the girl before the wedding ritual commences.

⁸ Arif Sugitanata et al., "Violation of Women's Rights: the Kawin Magrib Tradition of the Sasak Muslim Community in Lombok, Indonesia," *Journal of Islamic Law* 4, no. 2 (2023), <https://doi.org/10.24260/jil.v4i2.1772>.

⁹ Zulfatun Nimah, "The Violation on Women's Rights in the Unilateral Divorce in Sasak Community from A Feminist Legal Theory," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 1 (2018): 25-48, <https://doi.org/10.19105/al-lhkam.v13i1.1482>.

¹⁰ Mohamad Abdun Nasir, "Islamic Law and Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia," *Asian Journal of Social Science* 44, no. 1-2 (2016), <https://doi.org/10.1163/15685314-04401006>.

the existence of state marriage laws providing legal safeguards for women facilitates their resistance. Nonetheless, the enduring sway of *fiqh* and *adat* in Sasak community perpetuates male dominance.

This article diverges from the prior studies which predominantly focused on the repercussions endured by Sasak women due to marriage legal pluralism by exploring the interplay of these three legal frameworks throughout various facets and stages of Sasak marriages. Additionally, it examines how this interaction contributes to shaping the legal consciousness of Sasak women. Consequently, this study endeavors to address two fundamental research inquiries. Firstly, to examine the intricate interplay between *fiqh*, *adat*, and state marriage law in providing legal certainty and protection for Sasak women; secondly, to investigate the manifestation of legal consciousness arising from the pluralistic marriage law framework. We believe that the emergence of state policies regarding marriage law aims to provide protection for women from gender-biased norms found in informal laws by incorporating affirmative rules and ensuring their strict, definitive, and binding enforcement for all parties involved.

Methods

This research adopts a normative-empirical legal research approach, facilitating an in-depth exploration of individuals' experiences, perceptions, and interpretations of legal pluralism and legal consciousness. Data collection involves document analysis and in-depth interviews. Document analysis entails examining legal documents and related materials to provide additional context and support empirical findings interpretation. Furthermore, in-depth interviews were conducted with participants from varied backgrounds, including married and divorced Sasak women, legal professionals, and women activists, enabling the exploration of diverse perspectives on legal pluralism and legal consciousness. Thematic analysis is then employed to identify patterns, themes, and categories within the qualitative data obtained from document analysis and in-depth interviews.

Result and Discussion

The Interplay of *Fiqh*, *Adat*, and State Marriage Law

Legal pluralism in Indonesia is a phenomenon due to the influence of colonialism. The Dutch introduced their legal system while adding it to existing layers of customary and religious law. After gaining independence, Indonesia adopted the colonial legal system as its national and formal legal and justice system.¹¹ Afterward, Islamic law and customary law have developed into informal legal systems that exist outside of the state. Meanwhile, laws inherited from the Dutch have become formal laws enforced by the state apparatus.

Although positive law has been adopted by the state, in practice, the community still uses *fiqh* and *adat* as two systems of justice and legality outside that of the state.¹² Legal disputes, particularly those related to family civil matters such as marriage and inheritance, are typically resolved by the community through these informal legal systems.¹³ In this context, the law should be aspirational and democratic.¹⁴ Hence, the existence of three legal systems in society provides a choice of legal remedies and at the same time, can also create legal confusion and ambiguity.¹⁵ In this section, we discuss the legal certainty, legal protection, the legality of marriage in Sasak society amidst the dynamic interplay between *fiqh*, *adat*, and state marriage law. Table 1 below provides a summary of the space and form of interaction between these three laws.

¹¹ Muhammad Sodik, "Dualisme Hukum di Indonesia: Kajian tentang Peraturan Pencatatan Nikah dalam Perundang-Undangan," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 7, no. 2 (2016): 109, <https://doi.org/10.14421/ahwal.2014.07201>; Zezen Zaenal Mutaqin, "Culture, Islamic Feminism, and the Quest for Legal Reform in Indonesia," *Asian Journal of Women's Studies* 24, no. 4 (2018): 423–45, <https://doi.org/10.1080/12259276.2018.1524549>.

¹² Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*.

¹³ Platt.

¹⁴ Widya Sari, Muhammad Arif, and Elkhairati, "Pemikiran Ibrahim Hosen tentang Konsep Pernikahan dan Kontribusinya terhadap Pembaruan Hukum Perkawinan di Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (2021): 127–44, <https://doi.org/10.29240/jhi.v6i1.2540>.

¹⁵ Yuliandri et al., "Shifting from Legal Pluralism to Legal Syncretism in Multi-Cultural Indonesia," *ISVS E-Journal* 10, no. 1 (2023): 182–92.

Table 1. The point of the interplay among *fiqh*, *adat*, and marriage law

Aspects	Adat	Fiqh	State Marriage Law
Method for entering marriage	<i>Merariq</i>	<i>Khitbah</i>	Following the provision of each religion ¹⁶
Nuptial age	<i>Merariq</i> ¹⁷	Puberty (<i>aqil baligh</i>)	The minimum age is 19 years old, and prospective spouses under 21 years old must obtain permission from their guardians (<i>wali</i>) ¹⁸
Marriage requirement	Following the provision of <i>fiqh</i> and <i>pisuke</i> ¹⁹	The bride and groom, <i>shighar/ijab qabul, wali</i> , and two male witnesses	Following the provisions of <i>fiqh</i> and must be attended and recorded by a marriage registrar from KUA, ²⁰
Prenuptial agreement	Not available	<i>Takliq talaq</i>	Prenuptial contract ²¹
Polygamy	Following <i>fiqh</i>	Men are only allowed to have four wives simultaneously and must be able to treat them fairly	Following <i>fiqh</i> but providing stricter requirement, like approval from current wife or wives before requesting permission for polygamy to the religious court ²²
Post-marital residence	Women must move to men's place after wedding	Not mentioned	Based on the agreement between both spouses ²³

¹⁶ The Indonesian Marriage Law, No. 1 of 1974, Article 2, Paragraphs 1 and 2

¹⁷ Since *Merariq* is spontaneous, it can involve either children or adults at any age.

¹⁸ The Indonesian Marriage Law, No. 1 of 1974, Article 6 , Paragraph 2 and Article 7, Paragraph 1

¹⁹ "*Pisuke*" denotes a financial or material offering from the groom's family to the bride's family following the wedding ritual within the Sasak practice. *Pisuke* is not dowry.

²⁰ The Indonesian Marriage Law, No. 1 of 1974, Article 6 - 12

²¹ Article 9

²² Article 3, 4, and 5

²³ Article 32, Paragraph 2

Divorce	<i>Beseang</i> and <i>nyerorot/nyenger</i>	<i>Talaq/Khulu'</i>	Either husbands or wives can file divorce to court ²⁴
Reconciliation	Following <i>fiqh</i>	Applicable during <i>iddah</i> period (waiting period)	Must be registered to the KUA during the <i>iddah</i> period ²⁵

Table 1 depicts how classic Islamic jurisprudence (*fiqh*), customary practices (*adat*), and state marriage laws intersect and interplay at various stages of marriage. Both state marriage law and *fiqh* follow the same method of marriage, which is *khitbah* (marriage proposal).²⁶ Accepting *fiqh* provisions into the national marriage law shows that state law builds a cooperative relationship with Islamic law.²⁷ In the *khitbah*, the families of the brides and grooms meet to discuss the details of the marriage. At this stage, both state marriage law and *fiqh* provide certainty to women from the customary system, namely *merariq*. However, when the bride-to-be is rushed and brought to the groom's house via *merariq*, she has no room for negotiation and no bargaining position at all.²⁸ Negotiations for marriage are conducted solely by male family members. On the other hand, *khitbah* involves pre-agreement on the date and time of the marriage contract, while in *merariq*, the agreement is discussed after the bride has been taken away. The negotiation process can take several days or even weeks, during which the date for *akad nikah* remains uncertain. In these circumstances, women are victimized because they are required to live in the household of the future groom's family who is not yet their own. During this period of negotiation, the bride-to-be is often expected to perform various domestic chores in the man's house. This period is seen as an orientation to determine whether the prospective bride is capable of taking care of the household.

²⁴ The Indonesian Marriage Law, No. 1 of 1974, Article 38, 39, dan 40

²⁵ Article 10 and 11

²⁶ *Khitbah* is an effort towards the realization of matchmaking between men and women

²⁷ Mohamad Abdun Nasir, "Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law," *Mazahib Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022): 155–86, <https://doi.org/10.21093/mj.v21i2.5436>.

²⁸ Syafruddin, *Perlawanan Perempuan Sasak: Perspektif Femenisme* (Mataram: Mataram University Press, 2007); Syafruddin et al., "One-Party Divorce: The Devaluation of Sasak Women in Eastern Indonesia," *Przestrzen Społeczna* 22, no. 3 (2022): 114–32.

The dynamic interaction among these three legal norms regarding marriage also extends to the minimum age limit for prospective spouses. The Positive Law in Indonesia in determining adulthood is obtained from an a-contrario interpretation which departs from the meaning of the word immature in Article 330 BW.²⁹ State marriage laws explicitly state that the minimum age for both prospective spouses is 19 years old, with the additional provision that for spouses under 21 years old, parental or guardian consent is required.³⁰ Setting the marriage age limit in marriage laws is one effort to prevent child marriages, which are still prevalent, especially in Lombok. On the other hand, *fiqh* provides a very general limit, namely reaching puberty (*akil baligh*). The concept of *akil baligh*, according to *fiqh*, is determined by physical and psychological conditions that turn out to allow child marriages to occur.

Sasak customary law, meanwhile, is more ambiguous in setting age limits because there are no specific provisions regarding the minimum age limit in *merariq*. If the female spouse is willing to be eloped, she is considered mature enough for marriage.³¹ This is why *merariq* is seen as a significant factor contributing to the high prevalence of child marriages among the Sasak people.³² In terms of age limits for marriage, state marriage laws provide more precise provisions, although in special cases, they also allow for dispensation, such as in marriages preceded by pregnancy out of wedlock. Dispensation means the granting of permission for exemption from an

²⁹ Ibnu Amin et al., "The Concept of Baligh Perspective of Fiqh and Positive Law," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 441-66, <https://doi.org/10.29240/jhi.v7i2.5268>.

³⁰ Article 7 of Law No. 1 of 1974, reinforced by Law No. 19 of 2019.

³¹ Maria Platt, "It's Already Gone Too Far: Women and the Transition into Marriage in Lombok, Indonesia," *The Asia Pacific Journal of Anthropology* 13, no. 1 (2012): 76-90, <https://doi.org/10.1080/14442213.2011.636063>; Sarmini, Ulin Nadiroh, and Muhammad Saeun Fahmi, "Reduce Conflicts in Traditional Merariq Traditions through the Long Tradition of the Tribal People of Sasak Lombok," *Journal of Physics: Conference Series* 953, no. 1 (2018): 012186, <https://doi.org/10.1088/1742-6596/953/1/012186>; Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*.

³² Maila D.H. Rahiem, "Covid-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia," *Child Abuse and Neglect* 118, no. Query date: 2023-05-20 16:53:02 (2021), <https://doi.org/10.1016/j.chiabu.2021.105168>.

obligation or prohibition.³³ It is this dispensation space that is often used as a negotiation space for parties upholding *adat* and *fiqh* but still wanting to register marriages.³⁴

The spirit of ensuring legal certainty for women within marriage by the state is also evident in the provisions of marriage registration within state marriage law.³⁵ Due to this provision, women are positioned as rational-legal subjects who are eligible to make their own decision.³⁶ On the other hand, in the provisions of *fiqh* and *adat*, women are not positioned as independent subjects because their agency is represented by men, namely the guardian and two male marriage witnesses. Provisions regarding the necessity of a marriage guardian and marriage witnesses can be seen as a strong manifestation of patriarchy within *fiqh* and *adat*. Provisions regarding the necessity of marriage registration indeed aim to ensure that women in formal marital relationships are legally protected.³⁷ Although the obligation to register marriages creates numerous obstacles in the community. On the one hand, it appears that people's understanding of the importance of registering their marriage has not taken root.³⁸

Although state marriage law asserts that every Muslim marriage in Indonesia must be registered at the KUA, it also states

³³ Muhammad Fauzinudin Faiz, Zezen Zainul Ali, and Muhammad Taufiq, "Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023): 223-34, <https://doi.org/10.31958/juris.v22i2.9097>.

³⁴ Salmah Mursyid and Nasruddin Yusuf, "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi," *Samarah* 6, no. 2 (2022): 975-96, <https://doi.org/10.22373/sjhk.v6i2.12439>.

³⁵ Eva Nisa, "The Bureaucratization of Muslim Marriage in Indonesia," *Journal of Law and Religion* 33 (2018): 1-19, <https://doi.org/10.1017/jlr.2018.28>; Euis Nurlaelawati, "Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi?," *Musāwa Jurnal Studi Gender dan Islam* 12, no. 2 (2013): 261, <https://doi.org/10.14421/musawa.2013.122.261-277>.

³⁶ Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*.

³⁷ Nurlaelawati, "Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi?"

³⁸ Salma, Hasanatul Wahida, and Muhammad Adib Bin Samsudin, "Ignoring Family Law Administrative Procedure: Falsifying Death of Spouses for the Registration of New Marriage in Lembang Muslim Community," *Al-Ahwal* 15, no. 1 (2022): 1-20, <https://doi.org/10.14421/ahwal.2022.15101>.

that marriages are considered valid when conducted according to the respective religious customs and procedures. This provision creates a legal loophole for proponents of *fiqh* to argue that as long as a Muslim marriage is conducted according to *fiqh*, it remains valid even without registration by KUA. This ambiguity is often used as justification to defy marriage registration requirements by the community.

In Lombok, marriages without KUA registration are quite common, with one driving factor being the practice of *merariq*. Although *merariq* involves children, Sasak people normally still proceed with the marriage according to *fiqh* without going through KUA registration. Here, these three marriage norms interact to determine the validity and legality of marriages within Sasak society, where *fiqh* and *adat* often prevail. *Fiqh* and *adat* concerned about the validity meanwhile state marriage law upholds the idea of validity and legality before the state law.

The progressive nature of state marriage law in ensuring legal certainty within marriage is also evident in its provisions regarding prenuptial agreements. The concept of prenuptial agreements is uncommon in Eastern cultures, including Indonesia. However, their existence can protect women from domestic violence and ensure that women's rights are upheld in marriage. *Adat* Sasak does not recognize prenuptial agreements, focusing solely on the dowry before marriage. Meanwhile, *fiqh* introduces the concept of *taqlik talaq*, but there are differing opinions among *fiqh* scholars regarding this provision. Although the Indonesian Compilation of Islamic Law (*Kompilasi Hukum Islam: KHI*)³⁹ acknowledges the existence of *talik talaq*, it is not commonly practiced in society. Therefore, the inclusion of prenuptial agreements in state marriage law can be seen as an effort to provide legal certainty and protection for women within marriage.

Polygamy, meanwhile, presents a complex issue when considering the interplay of *fiqh*, *adat*, and state marriage law in the context of women's rights protection and fulfillment. The legalization of polygamy by *fiqh* often leads to accusations of sexist Islamic teachings towards women.⁴⁰ Knowing that rights and obligations are

³⁹ Articles 45 through 52 of the Compilation of Islamic Law (*Kompilasi Hukum Islam: KHI*).

⁴⁰ Atun Wardatun and Bianca J. Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of *Nushūz* in Marriage," *Ulumuna* 24, no. 2 (2020), <https://doi.org/10.20414/ujis.v24i2.416>.

related to a person's behavior, it is clear that the concept of rights and obligations is an ethical concept, so this definition also strengthens the position of *fiqh* which is full of religious ethics and is not always identical to legal language in the sense of laws.⁴¹ States attempting to adopt modern concepts, including women's protection, are faced with a dilemma: whether to prohibit polygamy to accommodate modern demands or permit it to accommodate Islamic requirements.⁴² State marriage law opts for a middle ground by allowing polygamy according to *fiqh* and *adat*, yet it imposes administrative requirements that must be met by the male spouse. While *fiqh* only requires a man wishing to practice polygamy to be fair, this condition is highly subjective as it relies on the man's self-assessment of his capacity.⁴³

In contrast, state marriage law sets clearer criteria, stipulating that every Muslim man seeking polygamy must obtain written consent from his existing wife(s).⁴⁴ Additionally, state marriage law mandates that men seeking polygamy must provide strong reasons for their request. Due to these provisions, many polygamous practices remain unregistered in Lombok, where marriages are conducted solely according to *fiqh* and *adat* without formal registration.⁴⁵ This situation raises new issues as many husbands may be legally

⁴¹ Syarial Dedi, "Ushul Fiqih Menurut Paradigma Filsafat Ilmu (Kajian Ontologi, Epistemologi, dan Aksiologi)," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 (2020): 289–310, <https://doi.org/10.29240/jhi.v5i2.1829>.

⁴² Jeremy Menchik, "The Co-Evolution of Sacred and Secular: Islamic Law and Family Planning in Indonesia," *South East Asia Research* 22, no. 3 (2014): 359–78, <https://doi.org/10.5367/sear.2014.0220>; Suci Flambonita, "The Concept of Legal Pluralism in Indonesia in the New Social Movement," *Jurnal Analisa Sosiologi* 10, no. 3 (2021), <https://doi.org/10.20961/jas.v10i0.45939>; Mutaqin, "Culture, Islamic Feminism, and the Quest for Legal Reform in Indonesia."

⁴³ Bianca J. Smith, "Stealing Women, Stealing Men: Co-Creating Cultures of Polygamy in a Pesantren Community in Eastern Indonesia," *Journal of International Women's Studies* 15, no. 1 (2014): 118–35, <https://vc.bridgew.edu/jiws/vol15/iss1/8/>; Theresia Dyah Wirastris and Stijn Cornelis van Huis, "The Second Wife: Ambivalences towards State Regulation of Polygamy in Indonesia," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 246–68, <https://doi.org/10.1080/07329113.2021.1912579>.

⁴⁴ Articles 4 through 5 of Law No. 1 of 1974.

⁴⁵ Smith, "Stealing Women, Stealing Men: Co-Creating Cultures of Polygamy in a Pesantren Community in Eastern Indonesia"; Sarmini, Nadiroh, and Fahmi, "Reduce Conflicts in Traditional Merariq Traditions through the Long Tradition of the Tribal People of Sasak Lombok"; Syafruddin et al., "One-Party Divorce."

registered with only one wife while, in reality, they have multiple wives. The legal consequences of this discrepancy are not only felt by the spouses but also by their children in the future.⁴⁶

Divorce and reconciliation are two other aspects of marriage where the three laws of marriage – *fiqh*, *adat*, and state marriage law – interact dynamically, shaping the experiences, access, opinions, and perceptions of Sasak women regarding the laws. *Fiqh* governs the termination of marriage through *talaq*, which is the prerogative right of the husband.⁴⁷ In classical *fiqh*, the majority of scholars are of the opinion that the husband has the absolute right to divorce, therefore whenever and wherever a husband wants to divorce his wife, whether there are witnesses or not, whether there is a reason or not, the divorce is valid. In fact, some scholars say that even a divorce given by a husband who is drunk is valid.⁴⁸ The wife cannot initiate *talaq*, but she can request her husband to divorce her through *khulu'* with the obligation to pay *iwadh*.⁴⁹ *Fiqh* also rigorously outlines the conditions and provisions of *talaq* and *khulu'* (litigated divorces).

Sasak *adat* law, on the other hand, adopts the *fiqh* provision of *talaq*, known as *seang*.⁵⁰ Similar to *talaq* in *fiqh*, *seang* is also the prerogative right of the husband. The wife can only request *seang*⁵¹ from her husband. The main difference between *adat* and *fiqh* is that customary law lacks the *khulu'* mechanism. Consequently, Sasak women are significantly disadvantaged under customary law. However, in Sasak marriages, the practice of *nyenger* (to sulk) and

⁴⁶ Nisa, "The Bureaucratization of Muslim Marriage in Indonesia"; Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*.

⁴⁷ Mursyid Djawas et al., "Creating Family Resilience in Indonesia: A Study of 'Marriage Guidance' Program in Aceh and South Sumatera," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 1 (2022), <https://doi.org/10.19105/AL-LHKAM.V17I1.6150>.

⁴⁸ Musda Asmara and Reti Andira, "Urgensi Talak di Depan Sidang Pengadilan Perspektif Masalah Mursalah," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 2 (2018): 207, <https://doi.org/10.29240/jhi.v3i2.626>.

⁴⁹ Abdul Wahid and Atun Wardatun, "Listening to Everyone's Voice: The Contested Rights of Muslim Marriage Practices in Eastern Indonesia," *Global Journal Al-Thaqafah* 10, no. 2 (2020): 47–57, <https://doi.org/10.7187/gjat122020-6>; Wardatun and Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage."

⁵⁰ Syafruddin, *Perlawanan Perempuan Sasak: Perspektif Femenisme*.

⁵¹ *Seang* literally can be translated as divorce

nyerorot (to escape)⁵² is known, which Sasak women can use as a form of resistance when in an unhealthy marital situation.⁵³ Although existing as a practice, *nyenger*, and *nyerorot* are highly taboo in Sasak society.⁵⁴ Parents of women usually refuse to accept and protect their daughters who engage in *nyenger* and *nyerorot* against their husbands. In many cases, the parents of women will personally return their daughters to their husbands. Hence, in providing legal certainty to women in divorce, *fiqh* is more progressive than customary law. The state marriage law, meanwhile, reinforces *fiqh* provisions by introducing more affirmative requirements, namely obtaining written consent from the legitimate wife and a consent from the religious court.⁵⁵

The interaction among *fiqh*, *adat*, and state marriage law is evident throughout various aspects and stages of Sasak marital practices. Customary norms are often parallel to *fiqh* regulations, while state marriage law, employing a positive legal approach, reinforces *fiqh* principles through formal legal mechanisms such as court rulings and official documentation and registration. Despite advancements in state marriage law aimed at enhancing legal certainty for women within marriages, Sasak society predominantly relies on *fiqh* and *adat*, particularly regarding aspects like the age of marriage, divorce, polygamy, and reconciliation. This reliance contributes to elevated incidences of child marriage, extrajudicial unilateral divorces (*talaq*), and polygamy without explicit consent from religious courts and the legal wives.

Sasak Women's Legal Consciousness in the Context of Marriage Legal Pluralism

The legal pluralism in Lombok significantly shapes the legal consciousness of Sasak women. This plurality of legal systems creates different images and influences within the communities where it

⁵² These two terms can be translated as an escape from the husband's house. However, Sasak women practicing this will be discredited by society even by their parents.

⁵³ Syafruddin, *Perlawanan Perempuan Sasak: Perspektif Femenisme*.

⁵⁴ Nurmala Fahriyanti, "Gugat Cerai: Membebaskan Perempuan dari Penderitaan," *QAWWAM* 13, no. 2 (2019): 101-22, <https://doi.org/10.20414/qawwam.v13i2.1468>.

⁵⁵ Articles 4 through 5 of Law No. 1 of 1974.

operates.⁵⁶ For instance, *fiqh* presents a distinct image and influence on women compared to the image and influence arising from marriage laws. Similarly, state marriage law carries different perceptions and impacts on Sasak women compared to *adat*. Therefore, within the context of legal pluralism, legal consciousness greatly aids women in understanding and making a choice among existing legal systems.⁵⁷

This section will outline and discuss our major findings regarding the forms of legal consciousness emerging among Sasak women due to the legal pluralism in marriage. According to Ewick & Shilbey, there are three forms of legal consciousness that actors – in this research context, Sasak women – may develop to understand the prevailing legal phenomena: ‘before the law,’ ‘with the law,’ and ‘against the law.’⁵⁸ We utilize these three categories of legal consciousness to classify the variety of legal consciousness developed by Sasak women in the context of prevailing legal pluralism in Lombok.

Those with legal consciousness ‘before the law,’ are seeing the law a distant entity from their lives, wielding significant power.⁵⁹ Three respondents in this study developed ‘before the law’ consciousness towards *fiqh*. However, they held differing views on

⁵⁶ Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*, vol. 6, 2015, <https://doi.org/10.1080/14442213.2015.1125772>; Yuliandri et al., “Shifting from Legal Pluralism to Legal Syncretism in Multi-Cultural Indonesia.”

⁵⁷ Tamir Moustafa, “Islamic Law, Women’s Rights, and Popular Legal Consciousness in Malaysia,” *Law and Social Inquiry* 38, no. 1 (2013): 168–88, <https://doi.org/10.1111/j.1747-4469.2012.01298.x>; Lynette J Chua and David M Engel, “Legal Consciousness Reconsidered,” *Annual Review of Law and Social Science* 15, no. 1 (2019): 335–53, <https://doi.org/10.1146/annurev-lawsocsci-101518-042717>; Qian Liu, “Legal Consciousness of the Leftover Woman: Law and Qing in Chinese Family Relations,” *Asian Journal of Law and Society* 5, no. 1 (2018): 7–27, <https://doi.org/10.1017/als.2017.28>.

⁵⁸ P. Ewick and Silbey. S., *The Common Place of Law: Stories From Everyday Life* (University of Chicago Press, 1998).

⁵⁹ Simon Halliday, Celia Kitziinger, and Jenny Kitziinger, “Law in Everyday Life and Death: A Socio-Legal Study of Chronic Disorders of Consciousness,” *Legal Studies* 35, no. 1 (2015): 55–74, <https://doi.org/10.1111/lest.12042>; Filip Horák, David Lacko, and Adam Klocek, “Legal Consciousness: A Systematic Review of Its Conceptualization and Measurement Methods1,” *Anuario de Psicologia Jurídica* 31, no. 1 (2021): 9–34, <https://doi.org/10.5093/APJ2021A2>.

state marriage law and customary practices. According to these respondents, since state marriage law and customary practices are man-made, they may choose to adhere to them or not.

Mega, one of the respondents, stated as below:

“To be honest, I feel like I have been treated very unfairly by my husband. Can you imagine? He left me and our child to go to Saudi Arabia, only to get married again there. Then, he divorced me via phone. But what can I say, this is already the law and fate from Allah.”

Mega feels reluctant to challenge what her husband has done. She believes her husband’s actions align with *fiqh*, considering it done, albeit difficult and painful for her and her child. A similar sentiment is echoed by Suci as follows:

“According to the *Tuan Guru*, marriage is considered an act of worship. In Islamic law, wives are expected to be obedient and submissive to their husbands. A wife’s paradise depends on her obedience and devotion to her husband. My husband occasionally beats me when he is angry, but not often.”

Since Mega and Suci understand and perceive *fiqh* as ‘before the law,’ they have developed a culture of silence and permissiveness towards domestic violence and toxic marital relationships.⁶⁰ However, their ‘before the law’ legal narratives towards *fiqh* also lead them to view *adat* and state marriage law not as legal remedies for resolving their marriage problems, even though they are aware of practices like *nyenger/nyerorot* in *adat* which they can employ to escape from their toxic marriage. At the same time, they are also fully aware that women can file for divorce against their husbands in religious courts. However, they ignored both provisions (*adat* and state marriage law) due to prioritizing the *fiqh*.

⁶⁰ B. Smith and Atun Wardatun, “Domestic Violence and Islamic Spirituality in Lombok, Indonesia: Women’s Use of Sufi Approaches to Suffering,” *Contemporary Islam* 16, no. 2-3 (2022), <https://doi.org/10.1007/s11562-022-00495-5>.

Meanwhile, individuals who possess 'with the law' legal consciousness see themselves as consumers, and the law as a commodity they can rightfully use to fight for their rights and justice.⁶¹ Law as an important instrument in the realization of justice for society must remain in connection with the reality and sub-systems that surround it.⁶² In the context of legal pluralism, individuals 'with the law' view themselves with varying commodity offers. They just need to choose which law to use. Therefore, for those with legal consciousness 'with the law,' the law is far from being all-powerful. Instead, it is seen as something that can be changed and manipulated, allowing it to be challenged through legal procedures.

The respondents in this study generally demonstrate legal consciousness 'with the law.' However, they exhibit varying levels of agency⁶³ despite sharing the same form of consciousness. Some respondents navigate independently to choose the marriage law they want to use to uphold their rights. On the other hand, some respondents require support from external actors to achieve legal consciousness 'with the law.' Typically, those with legal consciousness 'with the law' arising from their own knowledge, understanding, and experience are more confident in navigating themselves within the context of legal pluralism in marriage in Lombok. This is exemplified by Rina's story.

"Opposing a husband's tyranny within a marriage is not a form of defiance against religious laws. I oppose my husband not because I am disobedient to customs and religion, but because my husband fails to be a good husband. As a lawful wife registered at KUA, I am protected by the state."

⁶¹ Halliday, Kitzinger, and Kitzinger, "Law in Everyday Life and Death"; Horák, Lacko, and Klocek, "Legal Consciousness."

⁶² Zainal Arifin Haji Munir, "Wealth Distribution among Sasak Communities Through Inheritance: A Quest for Justice," *Samarah* 7, no. 3 (2023): 1627-43, <https://doi.org/10.22373/sjhk.v7i3.10835>.

⁶³ Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce," *Islamic Law and Society* 20, no. 3 (2013): 242-71, <https://doi.org/10.1163/15685195-0010A0003>; Platt, "'It's Already Gone Too Far'"; Nasir, "Islamic Law and Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia."

Sasak women who understand and experience the phenomenon of marriage law through the lens of 'with the law' are very open to using formal legal systems such as religious courts to fight for their rights and justice. This is as recounted by Dian, one of the respondents whose divorce decree has just been issued by the religious court:

"I have consulted with an Islamic scholar about my marital situation- my husband remarried without my consent- but the scholar only asked me to be patient and keep praying. I also sought refuge at my parent's house, but I was scolded instead. So, inevitably, I had to file a lawsuit in the religious court."

In the realm of divorce, Dian indeed sees the provisions of state marriage law regarding divorce as a solution to the legal issues she has faced. However, when it comes to matters of post-marital residence and personal belongings, she no longer adheres to the dictates of state marriage law. Instead, she reverts to 'with the law' approach to the provisions of *adat*.

While still married, Dian and her husband lived in a house they built on her husband's inherited land. According to the provisions of state marriage law, Dian should have joint ownership of the house as it is considered marital property. However, due to her decision to file for divorce, she willingly relinquished all assets to her husband. In Lombok, when a wife is divorced (*teseang*) by her husband, she is escorted back to her parent's home by the husband's extended family along with her belongings. However, if a wife engages in *nyenger/nyerorot*, it is taboo for her to return to the husband's home to reclaim her belongings. If a woman engages in *nyerorot* and demands her belongings, she is considered to lack self-respect and deserves shame.

"Because I divorced after filing for divorce, I feel embarrassed to insist on the assets to my ex-husband and his extended family because my extended family and his extended family still have familial ties."

Dian's experience illustrates that legal consciousness regarding a particular law within the context of legal pluralism is temporary and contextual. However, legal consciousness is still crucial in assisting Sasak women like Dian in navigating the legal remedies available to them. In one aspect, she may decide to utilize state marriage law, while in another aspect, she upholds *fiqh* and *adat*.

Not all respondents with legal consciousness 'with the law' ultimately choose to use the provisions of state marriage law as legal remedies for the marital issues they face due to their own knowledge or considerations. Some respondents admit to accessing the judiciary through religious courts with the support of a women's NGO. Previously, they were resigned to their fate, understanding the phenomenon of marriage law with a narrative of 'before the law.' This clearly shows that legal consciousness can change due to external interventions. This is echoed by Yuni, a respondent who is a woman's activist as follows:

"We have assisted many Sasak women who were divorced by their husbands outside the court. These women often feel resigned, although divorce outside the court significantly affects their legal status as widows. We endeavor to mediate with their former husbands in the hope that they will proceed with formal divorce proceedings in the religious court. However, if these former husbands refuse, we continue to support the women in filing lawsuits in religious court."

The interview result shows that women typically hesitate to use the formal justice system because they tend to refrain from engaging with the formal justice system due to their entrenched legal consciousness narratives premised on the concepts of 'before the law,' particularly concerning *fiqh* and religious courts. *Fiqh*, being perceived as immutable divine law, is deemed as holding an unquestionable status, while religious courts, particularly for Sasak women with limited educational backgrounds, represent formidable symbols of authority that seem unattainable. Consequently, they are unable to envision themselves accessing a justice system as potent as the religious courts for seemingly trivial divorce matters that they encounter.

On the other hand, the experience of Sasak women with *fiqh*, adat, and state marriage law contribute to the formation of their 'against the law' legal narratives. Individuals with such consciousness tend to eschew recourse to legal remedies through the formal judicial system due to perceptions of its inability to provide certainty and the attendant risks involved. Indeed, some respondent express reluctance to resort to formal legal mechanisms for fear of broader social ramifications, including reputational concerns within their communities. This sentiment is echoed in the findings of Nurmala.⁶⁴

Furthermore, beyond social and familial considerations, Sasak women are deterred from seeking justice through the formal legal system by convoluted bureaucratic procedures and substantial administrative expenses. Additionally, the protracted nature of court proceedings, often involving multiple hearings before a verdict is reached, contributes to their disillusionment with the formal legal process. For instance, Rani, a respondent who opted for *nyerorot* and left her husband three years ago, recounted her experience with the religious court as follows:

"I was asked for registration fees for the case. Then I had to pay for legal representation and other expenses. After knowing that, I decided not to pursue my case in religious court. I preferred *nyerorot* instead."

Furthermore, Sasak women also contemplate the process of reconciliation when preparing to file for divorce. If divorce occurs outside of the courts, the husband and wife can reconcile during the *'iddah* period without administrative processes. However, when the divorce process is conducted through the courts, the reconciliation process must also be reported.

The legal consciousness of Sasak women in the context of legal pluralism in marriage is therefore plural and contextual, heavily influenced by their knowledge, understanding, experiences, and environment. Despite its diversity, legal consciousness plays a crucial role in guiding Sasak women in choosing the legal norms they adhere to. Therefore, efforts towards empowerment and gender mainstreaming must take into account these forms of legal

⁶⁴ Fahriyanti, "Gugat Cerai: Membebaskan Perempuan dari Penderitaan."

consciousness. The law cannot be formulated solely on paper but must also consider the social conditions of the groups who are subject to the law.

Conclusion

The intricate interplay among *fiqh*, *adat*, and state marriage law significantly shapes the legal landscape for Sasak women in Lombok, influencing both legal certainty and their legal consciousness. Although the state marriage law aims to provide clear guidelines, its impact turns out to be limited due to inadequate enforcement measures, allowing traditional norms of *fiqh* and *adat* to retain considerable influence. Only when integrated with other legal frameworks, such as administrative statutes (*Undang-Undang Administrasi Kependudukan*), does the state law gain effectiveness. Within this context, Sasak women's legal consciousness manifests diversely. *Fiqh* is often perceived as immutable divine law, while engagement with state law is increasing, particularly through formal legal procedures. Conversely, resistance to state law can be viewed as a challenge to social harmony. This study highlights a significant gap in understanding factors that maintain Sasak women's adherence to *fiqh* and *adat* legal which hinder their ability to fully utilize state marriage law provisions as their legal remedies in marital disputes. An in-depth exploration of these factors is crucial for elucidating pathways to transform the legal frameworks guiding Sasak women's engagement with *fiqh* and *adat*. Future research should employ diverse methodologies to explore socio-cultural, economic, and historical contexts shaping Sasak women's perceptions and behaviors regarding marriage legal pluralism. Additionally, investigating Sasak women's level of legal literacy and awareness regarding the provisions of state marriage law could provide valuable insights into potential avenues for empowerment and legal advocacy. Addressing these research gaps will contribute to a more nuanced understanding of gender, law, and cultural dynamics in Sasak community.

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