

BESEANG (CUSTOMARY DIVORCE) IN SASAK SOCIETY FROM THE PERSPECTIVE OF MAQASID AL-SHARIAH

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Article history

Submission date: 10 August 2024
Received in revised form: 7 November 2024
Acceptance date: 22 November 2024
Available online: 20 December 2024

Keywords:

Customary Beseang, customary law, maqasid al-shariah

Funding:

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Competing interest:

The author(s) have declared that no competing interests exist.

Cite as:

Azhari, D., Nasution, K., Asmuni, Hadigunawan, N. (2024). Beseang (customary divorce) in Sasak society from the perspective of maqasid al-shariah. *Malaysian Journal of Syariah and Law*, 12(3), 574-582.
<https://doi.org/10.33102/mjssl.vol12no3.932>



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ABSTRACT

This study is primarily focused on "*adat beseang*" (customary divorce) as it is known among the Sasak people. The study highlights the intricacy of Sasak divorce customs, which are deeply ingrained in inherited customs and deeply held regional beliefs. This study examines the compatibility of Islamic principles and customary law practices using *maqasid al-shariah* as an evaluation framework. Findings indicate conflicts between *maqasid al-shariah* principles and customary law, despite the fact that customary law is crucial to divorce agreements. An incisive viewpoint for assessing customary law practices is provided by a critical grasp of justice, social welfare, and the defense of individual rights in *maqasid al-shariah*. Analysis of customary law viewpoints with *maqasid al-shariah* review confirms the necessity of balancing local customs and universal Islamic values in resolving conflicts, especially divorce, within the Sasak tribe and provides insights into the dynamics of divorce in this context. This article contributes to the ongoing discourse on the intersection of Islamic law and customary legal practises, particularly in regions where traditional customs remain influential. It provides a critical analysis of the need for reform in customary law to bring it in line with the principles of justice and equality enshrined in Islamic teachings. Furthermore, it emphasises the importance of examining the role of gender in these customs and calls for a more inclusive and equitable approach to marriage dissolution practises.

Introduction

In the Sasak Lombok community, *beseang* is the custom for divorce. However, it is unique in that the marriage relationship can be dissolved with just one word from the husband, *seang* (H. Munir et al., 2022; Sirajudin, 2011). If the word "*talaq* for three times" is added after the word "*seang*", this corresponds to a triple divorce. In order to perform *talaq*, which is the act of separation or annulment of the marriage bond, the couple must file for divorce (Lutfiah & Samsudin, 2021). In the Sasak Lombok community, the process has taken on a life of its own. Although the marriage status has been registered with the Religious Affairs Office (KUA), the Sasak Lombok community who practise *seang* do not involve the Religious Court or other mediators in their divorce.

No one has the authority to decide on issues of joint property, child custody and maintenance in a divorce between spouses in *seang*. A compromise between the husband and wife before the divorce is not required; the husband alone makes the decision on the divorce. The wife must consent if the husband wants to divorce (Sugitanata et al., 2023).

The detrimental effects of *beseang* on women and children of divorced parents are undeniable. When a divorce occurs without a divorce certificate, the woman is prohibited from marrying another man. Divorcees in this situation often have to pay out of pocket for a divorce certificate if they want to get married. Moreover, this is one of the reasons why a large proportion of Sasak Lombok community get married after a divorce because it is an easy process. Since they are only taken care of if their father is willing to provide for them, children raised by divorced mothers who do not have the qualifications to work in the public sphere often go unnoticed and are treated as if they have no father at all. Most divorced men feel that they no longer have to support their children if they live with their ex-wives (Ni'mah, 2017). In the Sasak tribe, divorce or *beseang* can have the following effects:

First, under customary law, women's property after a divorce is limited to tangible items kept in the house; other property, such as assets is outside their control (intangible). Secondly, as there are no written laws in customary law that protect the rights of both parties, such as those pertaining to joint property and parenting, it is important to consider these rights when seeking a divorce under customary law (Usman et al., 2024; Apriyani, 2004). Third, a fundamental problem with the Sasak *beseang* custom is that there are no laws governing children's rights after divorce. In fact, it is common in Gerantung village for many children to be abandoned and live with their grandmother while their parents disappear never to be seen again. This phenomenon shows that parents who abandon their children after divorce have no conscience, no empathy and no care. Fourthly, the children of the Sasak tribe will be affected by the deadly consequences of divorce, which can have a negative impact on their mental health at a young age. This is especially true given the lack of knowledge and care that leads to moral decay, loss of faith and the growing trend of early marriage in Central Lombok (Apriyani, 2004). The phenomenon of *beseang* among the Sasak tribe is presented as highly interesting to be viewed from the *maqasid* perspective of Al-Syatibi. This is because the theory developed out of a strong desire to develop a theoretical instrument that would improve the adaptability and flexibility of Islamic law as suggested by Hallaq (2000).

This study examines the development of customary practises in Gerantung village, Central Lombok, Indonesia, focusing on *beseang* as an integral element of Islamic law. Using a normative jurisprudential approach (Jonaedi Efendi, 2018), the research also relies on the analysis of secondary data, followed by a thorough examination of the phenomenon in Gerantung village. Here, the *beseang* acts as a *nomos*, representing the binding customary law in Sasak society. This perspective forms the basis for evaluating the application of *maqasid al-shariah* as a benchmark for the development of customary law. There are two main sources for the research data used: secondary and primary data. The secondary data were collected through documentation method from Adlini et al., (2022), which was crucial in drawing conclusions and validating the textual analysis. This approach broadens the researcher's insight into a particular phenomenon and offers practical implications (Bengtsson, 2016). Through extensive analysis, including authoritative works of *fuqaha*, hadith, Quran and scholarly publications. The second source, primary data, was collected during field research through direct interviews with local residents (Rachmawati, 2007). The combination of these sources supports the qualitative method of analysis used in this study which allows for in-depth interpretation.

The *maqasid shariah* theory of Imam Al-Syatibi is used in this study because it is more applicable and creative both methodologically and conceptually and thus can add more novelty value to the understanding of epistemology, ontology and axiology (Jalili, 2021). As it recognises integrative approaches such as *al-istiqra' al-ma'nawi* and *mabda' tadofur adillah*, Imam Al-Syatibi's *maqasid shariah* theory is more thorough. In an attempt to preserve the unity of the fundamentals of shariah, *al-istiqra' al-ma'nawi* makes extensive use of legal texts, both specific and general. In this context, Al-Syatibi refers to the fiqh rules as *asliyah* and the determination of specific Islamic law as a means of resolving legal issues arising from the harmonisation of customs. This academic success is what prompts researchers to explore the custom of *beseang* of the Sasak tribe of Lombok and look at it from the perspective of *maqasid al-shariah* because it is incompatible with the observance of the indicators of *maqasid al-shariah*, namely religion (*al-din*), life (*al-nafs*), mind or intellect (*al 'aql*), property (*al-mal*) and progeny (*al-nasl*) (Nizar, 2016; Alias, M. A. A., et al., 2024).

The attainment of benefit and the avoidance of harm in the interstices of community life are the fundamental teachings of the Shara'. Nevertheless, it is the Muslims who practise this *beseang* custom. *Maqasid al-shariah* distinguishes between three levels of needs: *dharuriyat*, *hajiyyat* and *tahsiniyat*. *Maqasid al-shariah* is generally intended to help understand the law in whole and in part, to comprehend authentic and comprehensible texts in practise, to support the understanding of a *lafaz* in an accurate and understandable context, and to serve as a resource for mujtahids investigating legal issues related to human actions or behaviour (Suganda, 2020).

Shariah contains commandments and prohibitions that Allah says are for the benefit of mankind both here on earth and in the hereafter. This is according to Imam Izzudin Ibn Abdul Al-Salam, who was quoted by Abdurrahman Kasdi (2014). Although worship is a manifestation of the fact that Allah is God, Allah SWT does not actually demand worship from His servants. It is true that human obedience and sin have a great impact on the glory of God, so the benefits of these laws trickle down to the people. It can be argued that once more these regulations serve human interests (Kasdi, 2014).

The formulation of Islamic law relies heavily on the concept of *maqasid al-shariah*. The *maqasid al-shariah* occupies a special place in the teachings of *usul al-fiqh*; Imam al-Syatibi even considers *maqasid al-shariah* as the basis of religion (*usul al din*), the teachings of shariah (*qawaid al shari'ah*) and the elements of shariah in their entirety (*kulliyat al millah*) (Rahmi, 2017).

Five elements, also known as *usul al-khamsah* in the understanding of *maqasid al-shariah*, are known to be necessary to fulfil the needs of *al-daruriyyat* and it is imperative that these five elements are preserved. However, scholars differ in their understanding of these five components. Imam Al-Ghazali (n.d.), for example, began with the preservation of religion, soul, mind, progeny and property (Al-Ghazali, n.d.). Another view or version is held by Imam al-Razi, who lists the five components in the order of protecting the soul, property, progeny, religion and mind. The five elements were then arranged by Al-Amidi in the order of preservation of religion, soul, progeny, mind and property. The primary components of *maqasid al-shariah* — preservation of religion, soul, progeny, property and mind — were also arranged in a different order by Al-Syatibi (n.d.). In Sasak society, the practise of *beseang* must be harmonised with the principles of shariah in order to protect the welfare of the individual and the community.

Beseang Custom of Sasak Tribe

For the Sasak community, the term "*beseang*" (which comes from the Sasak language) means "divorce" in Indonesian. The problem with '*beseang*' is that it can be dropped and accepted as legal by custom without ever going to court (Ni'mah, 2017).

When it comes to divorce, usually only the husband and wife and their families are affected, not the religious leaders. In other words, when a divorce occurs, the weaker party accepts the decisions of the other party, so there is no mediator between the two. When a husband says the word "*seang*" to his wife, e.g. "*seang wah*" (already divorced), he informs his parents that he has divorced her and requests that a representative of the family bring her back to his parents' house. This practise of *seang* in the Sasak community was originally still based on the values of politeness and respect. Religious authorities and close family members advise the husband and wife to reconsider their decision to file for divorce before

the wife is officially sent home. In contrast to today, divorced women are rarely seen positively returning to their former husband's family (Nirmala et al., 2015). Men make the decisions during and after the *seang* because women are considered weaker than men in the Sasak tribe.

It could be argued that the *beseang* custom is the result of a unilateral request because unless the wife explicitly asks for a divorce, the husband does not have to ask her permission before pronouncing the word *seang*. The couple's offspring will also reside with their mother because that is how most of them want to live. If the children already know about their parents' divorce, it is up to them to decide with whom they want to live (Apriliani, 2020). As for the wife's property, she will give everything to her ex-husband; in other words, there is no such thing as *gono-gini* (joint property) in *seang*. Although few women do this, it is unusual for women to demand this, especially in *seang*. Upon returning to their homeland, Sephardim also observe an iddah period that lasts three months and ten days — three times the length of an Islamic holy male bath — during which a number of events take place. Firstly, the husband continues to pay maintenance to his ex-wife, in addition to what he pays his children. Secondly, women who are in the iddah period should not go too far away without good reason. And finally, neither the wife nor the husband should have relations with other men or women (Herniati, 2011).

Despite its apparent simplicity, *beseang* in the Sasak community is justified on the basis of customary rules. Firstly, adultery between a husband and a wife has a negative impact on any legal partner and spreads throughout the extended family and community. This explains why customs are so strict when it comes to adultery. In fact, customs that base their punishment on destroying the community's reputation and exposing its members to shame for years can be even more cruel when it comes to murder (Taufik Sofyan, 2019).

The second factor is that one of the spouses is infertile. Since the desire to have children is the main reason for marriage, the Sasak custom justifies *beseang* regardless of whether the husband or wife is infertile. Third, the custom of *beseang* is justified when a partner (wife or husband) disappears for a long time without giving an explanation, or when a partner (wife or husband) has a bad character and cannot be forgiven. In these situations, it is assumed that the couple no longer loves each other. Finally, there is a genuine desire for peace between the two parties (Wahyudi, n.d.).

Beseang as Social Construct

Beseang is an established social construct that long predates the birth of the individual, that embodies the enduring values and customs of Sasak society. When individuals engage in *beseang*, they are reintegrated into a collective cultural framework that helps to maintain and affirm a shared social reality. This process not only reflects personal experiences, but also reinforces communal identity and continuity in the social fabric of society (Berger, 1997). Social construction refers to this process of social interaction through legitimacy as the attraction between the individual and other social realities — the reality of the self and other social realities outside the individual — which in turn move between the community, traditional leaders and so on (Beetham, 1991).

In this case, people have identified with an institution, and society regulates how people act in the process of objectivity. Some factors that contribute to the formation of social objectivity are identities, institutions and roles. In the future, established institutions will use coercion to apply precedents to individuals and force them to play roles in circumstances that they find objectionable. applied to individuals and will force people to play roles in circumstances even if they do not want to (Oktarina & Abdullah, 2017).

We recognise that the *beseang* custom and its values have objectified the Sasak people because both people have grown up with an awareness of Sasak customs from an early age. From birth, people have been objectified by the *seang*, and with time, they understand the ancient values associated with the *seang*. The Sasak community in Tanjung village has externalised itself, as shown by the existence of *beseang* amid their modern society and the pursuit of higher education, which serves as an example to the Sasak community. The externalisation of the Sasak people is responsible for the existence of *beseang* during their supposedly modern Sasak community and the pursuit of higher education that is still pursued in the Sasak tribal community in Tanjung village today.

Lamun ite jaq beseang, seang wah. Ndek arak saq ribet-ribet barak dengan kote, sah wah ino lagukan. Lamun wah teseang, tinggal uleq tejaug pekakas juq bale dengan toaq.

Translation: If I want a divorce, just divorce. There's no need to go through the hassle of the city, but it's considered a legal divorce. If the divorce has been finalised, then they return to their parents' house with their belongings, especially their clothes).

(Informant, personal communication, March 20, 2023).

The members of the Sasak tribe have been doing the *beseang* for a very long time according to ancient custom, so that it has become naturalised. The Sasak community's primary option for divorce with *beseang* is due to their tendency to adopt the practises of their earlier predecessors. The utterance of the word "*seang*" by the husband is enough to finalise the divorce proceedings, making it very simple. Moreover, no family members are involved in this process (Apriyani, 2004b). As soon as the word "*beseang*" is spoken, the family is informed about the divorce of their children. However, some couples also divorce because of a relative; for example, the husband might use the word "*seang*". For example, the Sasak community accepts it as legitimate for the husband to use the word "*seang*" to address his wife through one of her families or relatives instead of addressing her directly (Sofyan & Zaini 2019). The wife then returns to her parental home, bringing only the clothes and belongings that her ex-husband has authorised.

The presence of *beseang* within the Sasak community, which is now considered modern, and the pursuit of higher education to this point continues to objectify the Sasak community because of the externalisation that the Sasak community has undertaken. Couples who want to get divorced believe that the *beseang* custom is the best and easiest way to get divorced within the Sasak community of Lombok. The Sasak community has accepted and applied divorce by *beseang* and it is considered legitimate, so that divorce by *beseang* has become common in Lombok. The Sasak community has made extensive use of divorce by *beseang* (Ariany, 2016).

The Sasak community has always regarded the *beseang* custom as legitimate and also considered divorce proceedings conducted in religious courts as legitimate. Therefore, the reality in the community may have new or additional meanings in this case. a new perspective on the reality of the informants' environment and how they perceive divorce.

To differentiate themselves from the Sasak community, those who have higher education and social standing in their neighbourhood — such as those who are employed as civil servants or in offices - must go to the religious court when a couple in their community wants to file for divorce. They have to use the customary custom for their tribe, in accordance with the practises of their ancestors.

Maqasid al-Shariah Perspective of the Beseang

There is a term known as *maqasid al-shariah*, which plays a significant and fundamental role in Islam and verifies that Islam is a part of global civilisation in order to preserve and realise the benefits for humanity (Disemadi et al., 2020). The scholars' basis for the application of Islamic law during *ijtihad* is now the idea of *maqasid al-shariah*. The aim of *maqasid al-shariah* is to realise and establish a just civilisation, avoiding deception that could cause harm or be motivated by expediency (Mullareza, 2018).

Applying the *maqasid al-shariah* approach to the *beseang* custom in Gerantung village aims to ensure that Islamic law can provide optimal benefits in all aspects of human life, past, present and future (Pertwi & Herianingrum, 2024). This approach aims to combine the principles of Shariah with customary practises to holistically fulfil the needs of the community.

According to Al-Syatibi's theory of *maqasid al-shariah*, the *beseang* custom of the Sasak tribe in divorce must be designed to fulfil the principles namely ensuring benefits for individuals and society, both in this world and in the hereafter. The divorce process must pay attention to *masalih al-'ibad* (benefit to the people), support welfare and social harmony, and be consistent with the objectives of shariah, such as the protection of religion, soul, intellect, offspring and property (Karmelia, 2023). *Beseang* must ensure that the rights of the individual are fulfilled while safeguarding the public interest and Islamic principles.

Masalih al-'ibad in *beseang* custom requires that the divorce is conducted fairly and the impact on children, families and the social environment is considered to avoid new problems (Kartika & Noor, 2014). According to Al-Syatibi's theory, benefit is the core component of *maqasid al-shariah* which is designed for human welfare (Pertwi & Herianingrum, 2024). Islamic law must protect the five fundamental aspects of life and prioritise justice and wider benefit in accordance with the principles of shariah (Al-Syatibi, n.d.).

The participant's mother explained that the *beseang* custom of the Sasak tribe, which aims to uphold the principle of *hifz al-nasl* (preservation of progeny), has an impact on the Sasak tribe. This influence is due to the fact that some of the rules are not entirely based on Islamic law, such as leaving children behind after a *beseang* (divorce). In this study, the concept of *maqasid al-shariah* is examined to realise the benefits perfectly:

Tetun memang Adat beseang nik Cuma menguntungkan sak mame doank, lamun sak nine marak ite sak teseang endk arak mau epe-epe, bahkan anak mesaken mukn sie-siean sampe-sampe endekn beng biaya Pendidikan shingga tiangk sendiri banting tulang lanjutin kehidupan anaken

Translation: It is true that this *beseang* custom only benefits the male party, while women like me who carry out the *beseang* custom do not get anything, even my own child is neglected to the point that there is no money for education, so I myself am the backbone for my child.

(Informant, personal communication, March 20, 2023)

In *beseang* custom, the principle of *hifz al-din* encompasses both inner and external submission to divine commandments. Internal submission refers to the sincere acceptance of the divine will and ensures that the divorce process is carried out on a strong foundation of faith. External submission requires the divorce to be conducted in accordance with Sharia law, including the equitable settlement of alimony, custody and property division. In this way, *beseang* custom serves as a guardian of religious values in divorce and reconciles traditional practises with Islamic principles (Pakarti et al., 2023).

In the context of *beseang* custom, *hifz al-nafs* aims to protect the welfare of husband, wife and children in accordance with *maqasid al-shariah*. This protection includes providing adequate financial support, ensuring fair custody of the children and protecting the individual from physical and psychological abuse. The *beseang* custom also includes provisions for the prevention of violence and provides emotional and social support after divorce. This principle ensures that the divorce process is conducted with justice, empathy and respect for the well-being of all parties involved (Azis et al., 2024).

In *beseang* custom, *hifz al-'aql* emphasises the importance of clear and rational thinking during the divorce process to avoid emotionally driven decisions that could be detrimental to the interests of all parties, especially the children. This includes ensuring that individuals understand their rights and responsibilities with the help of community leaders or counsellors and make fair decisions regarding custody, property and financial support. The principle also encourages avoiding protracted conflict, promotes serenity and ensures that the divorce process conforms to Islamic teachings and prioritises fairness and justice.

The principle of *hifz al-nasl* in *beseang* custom focuses on preserving the rights of children during and after divorce, including custody, education, and physical and emotional needs (Azis et al., 2024). Children are assured the care and attention of both parents to ensure their welfare in accordance with Islamic teachings. This custom also promotes the maintenance of positive relationships between children and parents, protects their lineage and identity, and prevents social stigmatisation. This principle ensures that children are treated with respect and their dignity is upheld in accordance with *maqasid al-shariah*.

Hifz al-mal in *beseang* custom emphasises the fair and equitable distribution of assets in accordance with Islamic law during the divorce process and ensures that both parties receive their rightful share without financial disadvantage (Azis et al., 2024). This principle also includes the father's responsibility to continue to provide for the financial needs of the wife and children. The common law rules ensure that the division of assets is transparent and equitable and aims to avoid conflict, ultimately ensuring the well-being and stability of both parties post-divorce.

The five primary components of *maqasid al-shariah* play an important role and have the same priority, regardless of the context in which they are categorised differently. It is obvious that these five components have the same importance that must be maintained when creating a law. It all depends on the issue at hand, the circumstances and the environment in which you find yourself. The goal is to realise the actual benefit for the people (Helim, 2019).

As adopting the *maqasid al-shariah* Al-Syatibi's framework, the *beseang* custom of the Sasak tribe community will be even more relevant if all the above elements are applied in the *beseang* custom. This means that when applying the custom of *beseang* in the Sasak tribal community, considerations must be made for the preservation of five essential values. When considering the purpose or intention of *maqasid al-shariah*, it is divided into two types, namely *maqasid al-shariah* and *maqasid al-mukallaf* (Haq, 2007). *Maqasid al-shariah* is the intention of the lawmaker (Allah) in laying down a rule of law (Al-Khadimi, n.d.). The three types of meanings are:

- (a) Every rule of law that is intended for the subjects of law (*al-mukallaf*) is for their own benefit, whether for their own benefit or for the benefit in this world and in the hereafter, without there being any difference between the two.
- (b) A rule of law must also be implemented by the subject of law (*al-mukallaf*), because the rule of law is *taklif* for humans.
- (c) All this happens only so that the subject of law is under the patronage of the creator (Allah s.w.t.).

These three categories are related to each other and to Allah (*al-Syari*). It is self-evident that Allah has created the law for the benefit of mankind. Therefore, it cannot possibly seek to complicate matters or impose a burden that is beyond the capabilities of mankind. Undoubtedly, this is for the benefit of mankind, both now and in the future. However, achieving this goal depends on human understanding Allah's laws (*taklif* for people), which of course requires evidence of human willingness to put these laws into practise. Therefore, Allah's laws, which strive for a decent life and forbid a life based on lust, will always govern human existence.

Maqasid al-mukallaf refers to the intentions of the legal actors or human beings (*mukallaf*) in all aspects of their existence, including their words, deeds and intentions. Of everything that can be recognised as good and bad deeds, as worshipful and social life. and negative, both in religious and public life, between worshipful life and social interactions. or even in the state, all are observed to determine whether they disagree with or conform to *maqasid al-shariah* (Al-Khadimi, n.d.).

Thus, when examining the phenomena related to the Sasak tribe's *beseang* in terms of its goals afterwards, it becomes clear that many children are neglected and that there is no clear legal framework protecting their right to love and to be brought up on par with other children. This can lead to child neglect and even damage the child's physiology. It is expected that the implementation of *maqasid al-shariah* will reduce the negative effects that follow after the *beseang* custom.

Conclusion

In examining the *beseang* divorce custom of the Sasak people, this study has revealed significant concerns regarding its compliance with the principles of *maqasid al-shariah*, especially in terms of justice. The *beseang* custom, which allows for the dissolution of marriage by a simple utterance of the word "*seang*" by the husband, places women in a vulnerable position as they are unable to consent to divorce and their property rights are largely disregarded. This unequal power dynamic highlights a critical problem with the application of local customs in contemporary society, especially when they contradict Islamic principles that emphasise justice, the protection of rights and the well-being of all parties. The legitimacy of the practise of *beseang* within the Sasak community, despite its potential incompatibility with Islamic law, demonstrates the deep rootedness of this custom in the social structure of the region. The study also emphasises the imbalance of benefits, particularly with regard to the welfare of children, who are often

left unprotected in the aftermath of such divorces. From a *maqasid al-shariah* perspective, a rethinking of *beseang* is necessary to ensure that it promotes the broader interests of religion, life, intellect, property and lineage, all of which are at the centre of Islamic law.

The implications of this study extend beyond the Sasak community and offer valuable insights for other Muslim majority regions where customary law plays an important role in personal affairs. Future research should explore how *maqasid al-shariah* can be harmoniously integrated with local customs to ensure that these traditions evolve to better meet the needs of contemporary society while upholding the fundamental values of justice and equality. In addition, there is a need for further study on how customary laws can be reformed to protect vulnerable groups such as women and children and ensure that their rights and welfare are upheld within the broader context of Islamic principles.

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