

# PROSIDING 2

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## The view of Islamic Law on Petalangan Malay Indigenous Peoples who perform inter-tribal marriages

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**Abstract:** Purpose from research this is for knowing the view of Islamic Law on Sanctions given to the Malay Customary Society Adventurers who do Marriage A tribe. Method research used is ethod research A sociologist who is plunged research directly to field. Research this done in Perbatinan Region Balam Merah District Opponent. In the Qur'an and Hadith no found about obligations or forbid marriage a tribe Customs that exist in the tribe Malay about ban married a tribe this grounded above existing confidence regularly down hereditary from generation generation. Though customs Malay Adventure forbid marriage a tribe, however marriage the said no ever canceled and fixed considered valid marriage that has been done one quarter said. This indicates marriage a tribe not including illegal category. Because if a marriage banned then marriage the said should cancelled. Malay community Adventure consider marriage a tribe can However no good for done.

**Keywords:** Islamic Law; tribal marriage

### 1. Introduction

Marriage is one of the most important events in the life of our society. Because marriage does not only concern the bride and groom, but also the parents of both parties, their siblings, and even their respective families. (Febria et al., 2022) Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage states that "Marriage is valid if it is carried out according to the laws of each religion and belief". So that the legality of a marriage according to positive law in Indonesia is based on religious law (Nurchaliza, 2020).

The Indonesian state has many ethnic groups and various cultures which contain customs believed by the community. Each region has its own customs that characterize and are always preserved. Customs are embedded in the soul of society and regulate society in behavior. One part of community life that is regulated by customary law is married life (Mahfudin, 2022).

Customary law is an unwritten law that is a guideline for most Indonesian people and is maintained in daily life both in cities and villages (Samosir, 2013). Customary law is also formed and covered by sacred values, which in its formation are covered by religious values, as Soepomo views it as unwritten law and is maintained by legal functionaries and contains sanctions which contain religious elements (Fabiana Meijon Fadul, 2019). Customary Marriage in the Bunut Perbatinan Region of Pelalawan Regency still upholds customary regulations by not allowing its people to carry out tribal marriages in the custom. If you violate it, you will get sanctions. Carrying out traditional marriages in the

Bunut Perbatinan Region of Pelalawan Regency has an important role of *ninik mamak* who is an elder in every traditional event.

In the Petalangan Malay Traditional Community, *Ninik Mamak* plays an important role in planning the marriage. The male party proposes to the female family, followed by negotiations between the *Ninik Mamak* of the male party and the female party. Then, the time and place of the wedding celebration are decided. According to the Petalangan Malay Traditional Community, marriage between members of the same tribe is prohibited. The recommended marriage is called *Pulang Ke Bako*. In *Pulang Ke Bako*, a son marries the daughter of the father's sister. The married man lives in his wife's parents' house. A man may marry his father's daughter, as they are from different tribes.

Marriage is one of the basic human civil rights, which is fundamental to our existence and survival. marriage has a very close relationship with religious / spiritual norms, so that marriage not only has physical / physical elements, but mental / spiritual elements also have an important role (Sudarsono, 2010). A marriage bond not only means that husband and wife must help each other and complement household life, but also the participation of parents, family, and relatives of both parties to support the happiness of their household life. To regulate marriage, there are unwritten laws among indigenous peoples. In each indigenous community environment, there are also differences in the principles and principles of marriage that apply.

According to Article 2 of the Compilation of Islamic Law (KHI) "Marriage according to Islam is a very strong contract or *Miitsaqan Ghalizhan* to obey the commands of Allah and carrying it out is an act of worship". If this will be compared with the Marriage Law Number 1 of 1974, in principle what is stated in KHI and the Law there is no difference, namely in one physical and mental bond (a strong agreement).

According to Islamic provisions, marriage can be carried out by a Muslim if there is no *Mahrom* and *Nasab* relationship between the man and the woman and the marriage has no element of coercion. Whereas in the Petalangan Malay Traditional Community, *Susuku* marriage is not allowed, if married in one tribe, even though there is no *Mahrom* relationship between the two brides. According to residents' beliefs, if a tribal marriage occurs, it will cause havoc if the man and woman marry in the same tribe, it is feared that something bad will happen, for the continuity of the husband and wife in the household process, as well as for the Petalangan Malay community.

Tribal marriage is prohibited because the Petalangan Malay indigenous people view tribal marriage as a marriage of one family or one breastfeeding, meaning that there is still a family relationship or blood relationship between one another. Basically, tribal marriage can be done and is legal according to Islamic law. However, what happens in the Bunut Perbatinan Area, if a tribal marriage is carried out, sanctions will be imposed in the form of a buffalo that is cut and rice, then eaten together with the people of the village, then the couple who marries *sesuku* will be ostracized from the village or may not participate in customary

negotiations. What the couple did violated the rules that apply in the Petalangan Malay Customary Society in the Bunut Perbatinan Region.

The Petalangan Malay community in the Bunut Perbatinan Region adheres to Islam. In Islamic rules, there are no rules governing the prohibition of tribal marriage. Islam only prohibits marriages of consanguinity, and senasab. Meanwhile, the Petalangan Malay traditional community still performs tribal marriages). As for some explanations regarding the definition of marriage, in this case there are pillars and conditions that must be present in the marriage. According to the Jumhur ulama, the pillars of marriage are: 1) Prospective bride and groom who want to get married. 2) Guardian. 3) 2 witnesses. 4) Ijab and Kabul (marriage contract) (Jamaluddin, 2016). The conditions of marriage that must be met are 1) A prospective bridegroom is a Muslim who has a clear identity. Not being in ihram, not having four wives, and the absence of an element of coercion. 2) A prospective wife must be Muslim with a clear identity. The prospective wife is not currently married or still in the idah period, does not have a blood relationship, and there is no element of coercion (marriage of her own free will). 3) Carry out the Ijab and Kabul process which must be attended by witnesses.

Tribal marriage is something that often happens nowadays, because the man and the woman love each other. However, this research focuses on the Customary Sanctions for tribal marriages carried out by the Petalangan Malay traditional community. Tribal marriage in Islam has no rules, but in customary law, tribal marriage will cause the consequences of customary law that applies in the Petalangan Malay indigenous community.

## **2. Method**

This type of research is included in the class of empirical legal research, or it can also be said to be analytical sociological legal research. That is research that goes directly to the field. This research is a survey research conducted in the Balam Merah Perbatinan Area, Pelalawan Regency regarding Customary Sanctions Against Sesuku Marriage in the Petalangan Malay Community in Review of Islamic Law (Case Study in the Balam Merah Perbatinan Area, Pelalawan Regency).

In this study the data sources used are as follows:

- a) Primary Data  
Is data from direct interviews between the author and indigenous peoples in the Balam Merah Perbatinan Region of Pelalawan Regency.
- b) Secondary Data  
Is data from library reading that has a relationship with the problem of the research results.

For data collection, the author uses the Interview technique. Interview is a method used by the author from the explanation of the community verbally and so that the data can be received properly. Interview is a conversation between two or more people and takes place between the interviewee and the interviewer.

The purpose of the interview is to get the right information from trusted sources. Interviews are conducted by delivering a number of questions from the interviewer to the interviewee. The results of the interviews between the author and the community will be documented in the form of notes that will be used as evidence.

Data analysis is a process for examining, transforming and modeling data in order to find useful information so that it can provide clues for researchers to make decisions on research questions. The purpose of data analysis is to explain data to make it easier to understand, and make it easier to make a conclusion.

In the Conclusion Research Method, the author uses the Deductive method. Deductive method is a way of analyzing from general conclusions or generalizations that are described to concrete examples or facts that explain these conclusions or generalizations.

Deductive method is used in a study that lifts from a theory which is then proven by fact finding. This method explains the theoretical teaching material to the form of reality or explains the general nature to a special one.

### **3. Result and Discussions**

For the Indigenous Malay Community, Islam is the role model. All cultural values and social norms of the community must refer to the teachings of Islam and it is strictly forbidden to Benelikai let alone violate them. Therefore, all cultural values that are considered not harmonious and not in accordance with Islamic teachings must be straightened out first so that Islamic teachings cannot be separated from culture, customs, and social norms in the lives of Malays (Jamaluddin, 2016).

The Petalangan Malay community in the Bunut Borough upholds adat. The existence of the term Adat Bersendi Syara' and Syara' Bersendi Kitabullah when viewed from history that Adat first appeared and led the world compared to Islam.

According to customary law, the prohibition of tribal marriage is not allowed because it can break up their descendants, because they are in the same tribe and couples who do tribal marriage will be ostracized from the customary community. Some of them are willing to get sanctioned in order to marry the person they choose who is the same tribe as themselves.

According to Islamic Law, there is no mention of tribal relatives from the maternal line of descent being close relatives who are forbidden to marry. However, in the Balam Merah Perbatinan area, tribal marriage is still strictly prohibited because the local community is guided by the history of tribal marriage, which is considered one tribe that is prohibited from marrying. When viewed from the development of today's modern lifestyle of society, there is almost no one breastfeeding anymore. Therefore, many people perform tribal

marriages because they believe that Islamic law does not prohibit tribal marriages. Islamic law only prohibits inbreeding.

According to Islamic provisions, tribal marriage is not prohibited, this understanding is always carried out by the younger generation today to carry out tribal marriages. They are guided by the fact that religion allows them to marry tribally. Based on one person from a traditional leader, he said that religion does not prohibit tribal marriage, but because we live in an indigenous community and are guided by custom, tribal marriage is prohibited and should not be carried out.

As for the petatah petitih spoken by the Ninik Mamak in the past, it explains the occurrence of something bad for the family of the perpetrator of tribal marriage, such as his life will not be happy as people who do tribal marriage will experience a destitute life, live in anxiety and will not get peace in the household. Previously, this kind of incident had happened and was experienced by several people who married *sesuku*. But in Islam all bad things in the form of such calamities are the will of Allah SWT. As Allah's Word in Surah An-Nisa verse 79 which means :

مَا أَصَابَكُمْ مِنْ حَسَنَةٍ فَمِنَ اللَّهِ وَمَا أَصَابَكُمْ مِنْ سَيِّئَةٍ فَمِنْ نَفْسِكُمْ وَأَرْسَلْنَاكَ لِلنَّاسِ رَسُولًا  
وَكَفَى بِاللَّهِ شَهِيدًا

*"Whatever blessings you receive are from Allah, and whatever calamities befall you are from your own selves. We have sent you as a messenger to all people, and Allah is the Witness."*

Every regulation that is made must have sanctions, as well as regulations made against the prohibition of tribal marriage, of course there are clear sanctions. The sanctions for violating the prohibition of tribal marriage will be sanctioned in the form of a buffalo that is slaughtered and eaten together with the people of the village, then the couple who marries *sesuku* will be ostracized from the village or may not participate in customary negotiations. These sanctions have been in place since ancient times and the *Ninik Mamak* have carried out these sanctions. Regarding sanctions against the perpetrators of tribal marriages, there is nothing found in Islam because the prohibition of tribal marriages is not found in Islam. This kind of thing can be seen in the sanctions against the oath which is the basis for the prohibition of marriage in one tribe. As Allah's Word in Surah Al-Maidah verse 89 which means :

لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَدْتُمُ الْأَيْمَانَ  
فَكَفَّارَتُهُ إِطْعَامُ عَشْرَةِ مَسْكِينٍ مِنْ أَوْسَطِ مَا تَطْعَمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ  
رَقَبَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ  
كَذَلِكَ يَبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَشْكُرُونَ

*"Allah will not punish you for your unintended oaths, but He will punish you for your intentional oaths. The expiation for breaking an oath is to feed ten poor persons out of the food that you normally feed your family, or to clothe a freed slave. If you are not able to do this, then the*

*expiation is fasting for three days; such is the expiation for your oaths when you swear and break them. And keep your oaths. Thus, Allah explains to you the rulings so that you may be grateful to Him."*

From the above verse, it can be concluded that the sanction for breaking an oath is to feed ten poor people, or clothe them, and free a slave. And there are no sanctions found that violate the oath of the customary leader which is the petatah petitih on the sanctions of the prohibition of tribal marriage.

Regarding the saying "Where the earth is trodden there the sky is upheld", we can see this in the indigenous Malay Petalangan community in the Balam Merah Perbatinan area as well as the marriage of one tribe is prohibited according to local custom, but according to Islamic law there is no prohibition. In the sense that we must submit to the rules imposed by the local customary society, even though religion is stronger than custom and here we see that religion should be upheld compared to custom, but custom is stronger than religion. The absence of a ban on tribal marriage will not lead to the destruction of community life. Therefore, tribal marriage is mubah (permissible), but it is only prohibited. There is a difference between forbidding and prohibiting. Marrying sesuku means that the law is halal / permissible, but the matrilineal community does not do it because of several things and considerations.

In the Qur'an it is explained about the women who are forbidden to marry are divided into two, namely temporary and forever forbidden. As explained in Surah An-Nisa verse 22-24

QS: An-Nisa Ayat 22

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا

Meaning:

*"And do not marry women whom your fathers have married, except in the past. Verily, that deed is abominable and hateful to Allah, and it is the worst way to go".*

QS: An-Nisa Ayat 23

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخُوتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمْ  
الَّتِي أَرْضَعْنَكُمْ وَأَخُوتُكُمْ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ الَّتِي فِي حُجُورِكُمْ مِنْ  
نِسَائِكُمُ الَّتِي دَخَلْتُمْ بِهِنَّ إِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ  
الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ عَفُورًا رَحِيمًا

Meaning:

*"Forbidden to you are your mothers, your daughters, your brothers, your fathers' sisters, your mothers' sisters, your brothers' daughters, your*

*brothers' daughters, your sisters' daughters, your nursing mothers, your sisters in law, your wives' mothers, (and forbidden to you) the wives of your natural children, and to join in marriage two women who are sisters, except for what happened in the past; Allah is most forgiving, most merciful, and most compassionate”.*

QS: An-Nisa Ayat 24

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كَتَبَ اللَّهُ عَلَيْكُمْ وَعَلَىٰ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ ۖ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاصَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

Meaning:

*"And it is forbidden for you to marry married women, except for the slaves you own; Allah has laid down this law as His decree upon you. And it is permissible for you to seek wives with your wealth to marry, not to commit adultery. So those wives whom you have enjoyed among them, give them their dowries in full, as an obligation, and there is nothing wrong with you for what you have mutually consented to, after determining the dowry. Verily, Allah is all-knowing and all-wise.”.*

In Islam, there are two definitions of marriage prohibition: temporary and permanent.

Temporary marriage bans are:

- a. A wife who has been divorced three times
- b. Still in Iddah
- c. Gathering two mahram women
- d. Marriage with a slave
- e. Marrying more than four wives
- f. Marriage with another person's wife
- g. Marrying a polytheist or a woman of the book

While the prohibition of marriage for eternity is:

- a. Because of Nasab

Nasab is a solid foundation for establishing a family relationship based on the unity of blood or the consideration that one is part of the other. For example, a child is part of his father, and a father is part of his grandfather. Thus people who are related by blood are people who are related by blood (Hermanto, 2019)

- b. Because of Semenda

Semenda is a family relationship due to marriage with members of a group, when viewed from that group (for example, people who marry



brothers or nephews of wives or husbands); family relationship due to marriage ties.(Nurani et al., 2021)

Based on the explanation above, there is no order prohibiting tribal marriage. So it seems at first glance that the Petalangan Malay custom is contrary to Islamic law. However, if examined more deeply, these provisions do not contradict Islamic law.

Although the Petalangan Malay custom prohibits tribal marriage, the marriage has never been canceled and is still considered valid. This indicates that tribal marriage is not included in the haram category. Because if a marriage is forbidden then the marriage must be canceled. Because haram means sinful if done and rewarded if left. The Petalangan Malay community considers tribal marriage permissible but not good to do or in Islamic teachings it is called makruh. Makruh is something that is recommended not to be done. If the matter is done, there will be no sin, but if it is abandoned for good reasons, it will get a reward from Allah SWT so that the matter should be avoided.

#### **4. Conclusions**

In the Qur'an and Hadith there is no mention of the obligation or prohibition of tribal marriage. The customs that exist in the Malay tribe regarding the prohibition of tribal marriage are based on beliefs that have been passed down from generation to generation. They believe and hold fast to the oaths taken by the previous customary leaders. The Malay community knows that there is no verse or hadith that prohibits it, but the prohibition is strongly believed and they are afraid of bad things that will happen to them and they are afraid of the sanctions.

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