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Prohibition Of Same-Tribe Marriage in The Indigenous People of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) Riau

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Abstract: Along with the times, now the indigenous Mandailing people can be found in various regions throughout Indonesia. One of the areas where the Mandailing indigenous people can be found is in the Rokan Hulu Regency of Riau. The Mandailing indigenous people in the area live by customary values brought from their place of origin, including in the field of marriage. The author is interested in researching how traditional marriages are carried out in the Mandailing community, especially nasution in the current era of globalization. This research was conducted using empirical methods, using primary data, and inductively concluded. The results of the study show that in the development of people's lives, especially in the current era of globalization, some members of the community do not practice it due to economic factors that make it difficult to make honest money payments to women, there are changes in people's thinking that are influenced by modernization or also influenced by foreign cultures

Keywords: prohibition; marriage; tribes.

1. Introduction

In general, the law is all rules of behavior in the form of norms / rules, both written and unwritten, that can regulate and create order in society that must be obeyed by every member of society based on the belief and power of the law. Pengerertian is based on the vision of the law in the material sense of the word, while in the formal sense of the word law is the will of human creation in the form of norms containing behavioral guidelines, about what can be done and about what should not be done, therefore, the law contains the values of justice, usefulness or usefulness, and legal certainty in the society where the law was created.¹

Indonesia is a country that adheres to plurality in its legal field, where there are three laws whose existence is recognized and applicable, namely western law, religious law and customary law. In practice, there are still many people who use customary law in regulating their daily activities and in solving existing problems. Each region in Indonesia has its own customary law system to regulate diverse social life, most of which are not in the form of written rules.²

This customary law evolves with the development of society and the traditions of the people. Customary law is a sediment of morality in society whose truth is recognized in that society. In its development, the practices that occur in customary law societies, the existence of customary law often raises questions whether these customary law rules can still be used to regulate the daily activities of the

¹ Muhamad Sadi Is, Introduction to the Science of Law, Second Printing 2017, (Jakarta: PT Kharisma PutraUtama: 2017), h. 3

² Amrita Ajeng Safitri, et al, The Existence of Customary Law in the Indonesian Legal System, Rechtenstudentjournal 3 (2), Auguts 2022, p. 1.

community and resolve problems that arise in customary law societies. Meanwhile, our country also has rules of law made by lawmaking bodies or institutions and other laws and regulations. Between customary law and State law have different binding power constitutionally the same but there are differences in the form and aspects.³

According to Van Vollenhoven, customary law is all the rules of community behavior that apply and have sanctions and have not been codified. According to Terhaar, customary law is all the rules that manifest in customary decisions and apply spontaneously. It can be concluded that customary law is an unwritten norm or regulation made to regulate community behavior and has sanctions.

The existence of customary law has been officially recognized by the State but its use is limited. Referring to Article 18B paragraph (2) of the 1945 Constitution which states "The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law" which means that the state recognizes the existence of customary law and its constitutional rights in the Indonesian legal system. In addition, Article 3 of the UUPA stipulates that "The implementation of customary rights and similar rights of customary law communities, as long as according to reality they still exist, must be in such a way that it is in accordance with national and State interests, which are based on national unity, and must not conflict with laws and other higher regulations".⁴

In the Indonesian language, marriage comes from the word "kawin" which according to the language means to form a family with the opposite sex; to have sex or have intercourse.⁵ Marriage is one of the most important dimensions of life in human life. So important is marriage, it is not surprising that religion regulates the issue of marriage, even the traditions or customs of the community and state institutions do not miss regulating marriage that applies among the community.⁶ In Indonesia, marriage is regulated by three laws, namely religious, state and customary laws.

Marriage under customary law in Indonesia will form a kinship system. There are 3 (three) kinds of kinship systems in Indonesia, namely: matrilineal kinship system, patrilineal kinship system and parental or bilateral kinship system. The matrilineal kinship system is a lineage based on the mother's line. The patrilineal kinship system is a lineage drawn based on the father's line. Meanwhile, the parental or bilateral kinship system is a lineage that draws descendants from the paternal and maternal lines (parents) so that there is no difference in position between men and women in obtaining inheritance.⁷

³ Gede A.B. Wiranata, *Indonesian Customary Law Development from Time to Time*, (Bandung: Citra Aditya Bakti, 2005), page. 56

⁴ Soetandyo Wignjosebroto, *Hukum Adat Dalam Masyarakat: Perkembangan Dan Masalah* (Malang: Bayumedia, 2008), page. 120.

⁵ Dep Dikbud, *Big Dictionary of the Indonesian Language*, (Jakarta: Balai Pustaka, 2000), p.4, page. 456

⁶ Martiman Prodjohamidjojo, *Indonesian Marriage Law*, (Jakarta: Indonesia Legal Center Publishing, 2002), page. 8.

⁷ Amir Sjarifoedin Tj. A, *Minangkabau From Iskandar Zulkarnain Dynasty to Tuanku Imam Bonjol*,

Living by Clan the familial unity arising from the pattern of kinship, matrilineal and patrilineal

This pattern of kinship, matrilineal and patrilineal relationships is still maintained in Indonesia, especially strongly in marriage. Some examples include Minangkabau and Semendo, which have two distinctive characteristics. Firstly, exogamy or the prohibition to marry seclan; and secondly, local material, i.e. a married woman is not obliged to follow her husband's place of residence. In addition, the patrilineal Batak descent system also recognizes the Clan system. In Batak it is more complicated, because there are three characteristics that distinguish it from others, namely exogamy, patrilocal, and asymmetrical. Exogamy in Batak is the same as in Minangkabau and Semendo, while patrilocal means that the wife must follow or reside in the husband's family. While asymmetrical means that it is forbidden to marry when between the families of the man and the woman there has been a Mora anak boru relationship, even though the man and woman are not of the same family.⁸

Selain itu, perkawinan bertujuan untuk mewujudkan kehidupan rumah tangga yang sakinah, mawaddah, dan warahmah.⁹ To realize the purpose of marriage, it is necessary to follow the applicable rules, both religious, state and customary rules. There are three marriage systems in Indonesia, namely:

a. Endogamous System

In this system people are only allowed to marry someone from their own family tribe. This marriage system is rare in Indonesia. According to Van Vollenhoven, there is only one region that practically recognizes this endogamy system, namely the Toraja region. But even in this region, the system will disappear on its own if blood relations with other regions become easier, closer and more widespread. This is because the system only exists practically in this area, and endogamy is not in line with the nature of the family structure in the area, which is parental.

b. Exogamous System

In this system, people are required to marry into other tribes. Marrying into one's own tribe was forbidden. However, over time, and the turning of the times gradually underwent a process of softening in such a way that the marriage ban was treated only in a very small family environment. This system can be found in Gayo, Alas, Tapanuli, Minangkabau, South Sumatra, Buru and Seram. Gayo, Alas, Tapanuli, Minangkabau, South Sumatra, Buru and Seram.

c. Eleutherogamy System

Eleutherogamy differs from the above two systems, which have prohibitions and requirements. Eleutherogamy does not recognize these prohibitions and requirements. The prohibitions contained in this system are those that relate to

(Jakarta: Gria Media Prima, 2000), page. 92.

⁸ Amir Sjarifoedin Tj. A, *Minangkabau From Iskandar Zulkarnain Dynasty to Tuanku Imam Bonjol*, (Jakarta: Gria Media Prima, 2000), page. 92.

⁹ Soerjono Soekanto, *Essentials of Family Law*, (Bandung: Citra Aditya Bakti, 1992), page.132.

family ties concerning lineage (descent) such as marrying mothers, grandmothers, biological children, grandchildren, as well as siblings, fathers or mothers. Or the prohibition of mating with musyahrah (relatives) such as mating with stepmothers, in-laws, stepchildren.

Violations of the prohibition of tribal marriage in principle have sanctions that aim to provide a deterrent effect for the perpetrators. This sanction is an agreement of the ancestors. The ancestors formulated severe sanctions for those who did it. The agreement on the prohibition of tribal marriage is due to the assumption of customary law which is absolute and inviolable.

Marriage in the indigenous people of Kenegerian Logas Tanah Darat is not only regulated by Islam but also regulated by local customs, customs in the Kenegerian Logas Tanah Darat community besides regulating marriage also regulate community life as a whole, especially social life which has always experienced the dynamics of society from the past to the present and for the future. These customs are regulations issued by local customary authorities, namely Penghulu, Ninik Mamak, Cerdik Pandai, Alim Ulama. such as the custom of engagement or engagement / custom of marriage.

Kenegerian Logas Tanah Darat is an area that is still thick with customs, culture and traditions. Marriage in Kenegerian Logas Tanah Darat is strongly influenced by customs which are inseparable from the influence of family cultural background and environment. In addition, there is also the influence of religion or belief that surrounds the legal action. Religion and custom have become an inseparable part of the life of the people of Kenegerian Logas Tanah Darat. In the midst of a strong attitude in carrying out the teachings of Islam, the indigenous people of Kenegerian Logas Tanah Darat also firmly defend their customs. For them, adat is something inherited from their ancestors that should be maintained and developed, because adat has taken root in their lives.

For the people of Kenegerian Logas Tanah Darat, marriage is not a private and family affair. The matrilineal system explains that marital affairs are a shared responsibility. In this context, the participation of the community is not only limited to moral, but also material assistance. Marriage arrangements according to customary law in the community cannot be ruled out. Customs and religion are inseparable from the community of Kenegerian Logas Tanah Darat and do not contradict religion. All customary rules will be harmonized with the provisions of Allah SWT as the main guide in carrying out customs. In accordance with the philosophy of Kenegerian Logas Tanah Darat "adat basondi syarak, syarak basondi Kitabullah", in this case custom refers to religious law.

In the indigenous community of Kenegerian Logas Tanah Darat there are five main tribes, namely the Mandahiliang, Malay, Paliang Lowe, Paliang Soni and Kampuang Salapan tribes. What is not allowed to marry between tribes, for example between the Paliang Soni tribe and Paliang Soni is prohibited from marrying, this tribal marriage is considered an abstinence marriage according to the local community. Because between tribes is very close and the indigenous people of Kenegerian Logas Tanah Darat consider them as brothers. The tribes are based on maternal blood ties (matrilineal).

In ancient times, namely the time of the ancestors of the indigenous people of Kenegerian Logas Tanah Darat, regulations regarding tribal marriage were formed

and applied within the indigenous people of Kenegerian Logas Tanah Darat. In accordance with the agreed rules of the prohibition of tribal marriage, people who violate these rules will be subject to sanctions, such as: Expelled from the village, banished from the tribe, and get social sanctions from the local indigenous community. But based on the phenomena that occur, there are still tribal marriages carried out by the indigenous people of Kenegerian Logas Tanah Darat.

The prohibition of the implementation of tribal marriage is not only a phenomenon that occurs in the Kenegerian Logas Tanah Darat indigenous community, but the prohibition of tribal marriage is a common phenomenon for indigenous peoples in Indonesia such as the prohibition of tribal marriage for the Tapanuli indigenous people or the prohibition of marrying a clan for the Batak indigenous people and the prohibition of marrying a tribe for the Minangkabau indigenous people, as well as the prohibition of marrying a tribe for the Bugis community on the island of Sulawesi.¹⁰

Based on the background of these problems, the authors are interested in conducting further research and discussing in a study entitled "Prohibition of Sesuku Marriage in the Indigenous People of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) Riau".

2. Method

Before continuing a research, a research method is needed which aims to make a research directed and has a clear source so as not to invite misunderstanding or misinterpretation for researchers and readers later, in order to realize this, the researcher must determine the research method to be carried out first, outline the research method described as follows:

a. Type and Nature of Research

The type and nature of research, the type of research used in this research is Observational Research, which is research conducted by going directly to the object of research in order to obtain data directly related to the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) Riau.

Based on the nature of the research used, it is descriptive analytic, namely the preparation, providing a detailed explanation of the data relating to the prohibition of tribal marriage. The data is in the form of the results of the author's interviews with traditional leaders, traditional leaders, and community leaders in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

b. Research Locations

The author conducted the research in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) Riau to obtain the data needed in the research through direct interviews with traditional leaders, traditional leaders, and community leaders in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan)

- 1) Population is a group or group of people who complete certain requirements related to research problems. In this study, the population includes:
 - a) 5 traditional leaders, namely, Datuk Rajo Ruhum, Datuk Momat, Datuk Gindo,

¹⁰ Hamidi, UU, *Indigenous Peoples of Kuantan Singingi*, (Pekanbaru: UIR Press, 2000), page. 34.

- Datuk Majo, Datuk Tuah.
- b) 5 Penghulu-penghulu/Ninik Mamak, namely, Datuk Rajo Melayu, Datuk Bandaro, Datuk Paduko, Datuk Mangkuto, Datuk Padano.
 - c) 2 Community leaders who understand the prohibition of tribal marriage in Kenegerian Logas Tanah Darat.
 - d) 10 pairs of perpetrators of tribal marriage
- 2) The sample is some of the total population that can represent the entire object under study in order to facilitate the author in conducting research. The author uses a purposive technique, namely determining the number of samples that can represent the total population, whose sample type has been determined by the author. So in this study the population and samples are:

Table 1.1 Populasi dan Sampel

No	Classification of Population/Sample	Population	Respondent	Percentage
1	Ninik Mamak	10	10	100%
2	Ccommunity leaders	2	2	100%
3	Couples Performing Same-ethnic Marriages	10	10	100%
	Total	22	22	100%

Source: Processed data, 5 July 2021

c. Data Source

In this research, the author collects data using several data that the author groups, among others:

1) Primary Data

It is data obtained directly from the field or directly from informants through interviews and questionnaires. The author conducts direct interviews with ninik mamak, community leaders and perpetrators of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

2) Secondary Data

This is data obtained from basic laws, laws, Al-Qur'an, papers, journals, theses, dissertations, and books as support in this research.

d. Data Collection Tools

The data collection methods that the authors used in writing this research were interviews and questionnaires.

e. Data Analysis

The material obtained from the author's interviews with respondents will later be analyzed qualitatively which is carried out on the data obtained and then processed using descriptions to provide an overview, so that it becomes systematic to answer the problems that have been formulated. The data obtained is then analyzed, so that it can answer the causes, consequences and role of ninik mamak and indigenous peoples in the prohibition of tribal marriage in the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) Riau.

3. Results and Discussion

a. Causes of Same-Tribe Marriage Prohibition in the Indigenous People of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) Riau

Each customary law area has its own customary rules, so that is what is distinctive in each customary area. Before entering the subject matter, the author first discusses the causes of tribal marriage, as for the factors that cause tribal marriage, namely: the factor of mutual love, the factor of pregnancy outside of marriage, the factor of lack of knowledge. It is important to understand that there is a significant difference between "forbidding" and "prohibiting". Because, what is forbidden by custom does not necessarily mean forbidden according to religion, but what is forbidden by religion, is definitely forbidden by custom. marriage with tribe is halal, but the custom of the community of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) forbids it.

According to Tsuyoshi Kato as quoted by Suardi Mahyuddin, the matrilineal kinship system has the following characteristics: First, descent is calculated through the maternal line, where each nagari has a number of descent groups called tribes. second, each tribe consists of a number of umbrellas (matrilinage), third, marriage does not merge the couple into a nuclear family where each becomes part of the matrilineal kinship. Fourth, authority in the paruik is not in the hands of the father but in the hands of the father.

The author's interview with ninik mamak in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan), the author asked several questions about the causes and consequences of the prohibition of tribal marriage in the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan). The results of interviews with niniak mamak about the causes of the prohibition of tribal marriage in the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan). Marriage is prohibited because of the breastfeeding relationship, which is a relationship that occurs because a child breastfeeds a mother other than his own biological mother. This is because the milk he drinks will become flesh and blood and form the bones of the child. The breastfeeding can foster feelings of childhood and motherhood between the two parties. Therefore, the position of the breastfeeding mother is regarded as her own mother. Islamic law establishes rules about women who are prohibited from marrying, one of the women who are prohibited from marrying is the relationship of breastfeeding.¹¹

According to Datuk Momat, the prohibition of tribal marriage has been regulated since ancient times by the niniak munyang (ancestors) of the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan), tribal marriage is strictly prohibited because tribal marriage is the same as we marry our own brothers/sisters. The impact of tribal marriage is that it can narrow socialization, cause great divisions, so that these actions are strictly prohibited in the custom of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).¹²

Then Datuk Mangkuto added, the prohibition of tribal marriage was prohibited because in ancient times the ancestors of the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) lived in the same area according to their respective tribes, so that when "baladang" (gardening) they went

¹¹ Suardi Mahyuddin, Dynamics of Minangkabau Customary Legal System in Jurisprudense

¹² Mahkamah Agung, (Jakarta: Raja Grafindo Persada, 2013), page. 49.

together and cultivated their fields by "planting rice kasang" (planting rice on land / not in rice fields), They set up a field hut to rest and leave their children, the children left in the field hut are taken care of by one of them, where the children are taken care of in turn, so that if there are children who cry for "manyusu" (drinking breast milk) then the children are breastfed by those who look after them. This is why tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) is strictly prohibited. Another reason why tribal marriage is prohibited is that it can cause less qualified offspring, the child's physiology is disturbed, this is also the cause of the prohibition of tribal marriage.¹³

One of the causes of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) is that of siblings, this is in line with the rules contained in Islamic law. Therefore, the ninik mamak strictly forbids their nephews and nieces not to marry sesuku, because marrying sesuku is tantamount to marrying one's own brother.

Muhammad Fikrul Hanif, entitled "Review of Islamic Family Law Against the Prohibition of Sesuku Marriage in the Sungai Rotan Area, Ampek Angkek District, Agam Regency, West Sumatra Province". This thesis discusses the factors that cause the prohibition of sapayuang marriage (sasuku marriage), customary sanctions and Islamic law review of the prohibition of sesuku marriage. the factor causing the prohibition of sapayuang marriage (sasuku marriage) is that the child does not have a bako / dunsanak or can be interpreted as a confusion of kinship relations and it is feared that it will damage brotherly relations when a dispute occurs. The sanctions obtained for violations of sasuku marriage are social sanctions in the form of isolation and ostracism in the community. According to Islamic law, marriage is not prohibited in Islam, in other words, the law of tribal marriage is permissible.¹⁴

Below is based on the results of a questionnaire to the perpetrators of tribal marriage who know the existence of rules prohibiting tribal marriage in the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

Table 1.2
Perpetrators of Tribal Marriages Who Know the Customary Rules of Prohibition of Tribal Marriages in the Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

No.	Performer's Answer	Total	Percentage
1.	Knowing	10	100%
2.	Don't know	0	0%
	Total	10	100%

Processed data: 1 November 2022

¹³ Interviews conducted by the author to ninik mamak with the title datuk Mangkuto on the date of 12 September 2022.

¹⁴ Muhammad Fikrul Hanif, "Review of Islamic Family Law on the Prohibition of Sesuku Nikah in the Sungai Rotan Area, Ampek Angkek District, Agam Regency, West Sumatra Province", Thesis Faculty of Sharia and Law UIN Sunan Gunung Djati Bandung (2018)

Based on table I.2 above, it proves that the perpetrators of tribal marriage are 100% aware of the existence of rules prohibiting tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan). Below is based on the results of a questionnaire of the perpetrators of tribal marriage who know and do not know the causes of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

Table I.3
Actors Who Know the Causes of the Prohibition of Same-Sex Marriage in the Logas Tanah Darat Ministerial Office (Luhak Nan Sambilan).

No	Performer's Answer	Total	Presentage
1.	Knowing	6	60%
2.	Don't Know	4	40%
	Total	10	100%

Processed data: 1 November 2022

Table I.3 above proves that 60% of actors know the causes of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) and 40% of actors do not know the causes of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan). It can be temporarily concluded that most of the perpetrators know the causes of the prohibition of tribal marriage, and a small proportion of the perpetrators do not know the causes of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan). So this is a form that the customs in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) are still valid among the people there, the violations that occur are not due to the lack of application of customs there but violations that occur due to the lack of a sense of belonging to the customs that exist within the perpetrators who carry out these tribal marriages, so this causes there are still perpetrators who violate the rules of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

The results of interviews with ninik mamak about the rules for implementing the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) from time to time until now.

According to Datuk Gindo explained that with the development of the era as it is today, many young people have begun to not pay attention to their cultural wisdom, this is because they have begun to enter outside cultures that they get through technology, but even so, the rules prohibiting tribal marriage are still recognized and carried out by the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan), the sanctions set by the ninik mamak are also still carried out in accordance with the rules set by the ninik mamak of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).¹⁵

Every science must adhere to one guideline, namely conformity, this can be seen in the behavior and actions that should be done by the community. In addition, customary law enforcers are considered supposed to maintain a pattern of behavior

¹⁵ Interviews conducted by the author to ninik mamak with the title of datuk Gindo on the date of 30 Agustus 2022.

so that these actions are customary law.¹⁶ Customary law can only be understood as a positive science by the indigenous people themselves, because they are the ones who actually feel the application of the customary law concerned. It is in the indigenous community that customary law is formed, and its development is carried out through decisions from authorized people or institutions.¹⁷

Datuk Padano added that why there are still perpetrators who violate the rules prohibiting tribal marriage is because of the feelings of mutual consent between the couple, so they remain adamant about their feelings without thinking about the prohibitions that hinder their relationship even though it is clearly regulated by customary law that tribal marriage is not allowed.¹⁸

Then Datuk Momat added, the cause of the sesuku marriage was "Tatangkong Di Biliak Dalam" (Caught Together in One Room), so inevitably they still had to be married because it was impossible for a man and woman to be alone in a room doing nothing, especially since they had no fraternal ties. And he also added that another cause is "buntiang outside of marriage" (pregnant outside of marriage) this is also the cause of tribal marriage, because it is impossible for the child in the womb of a woman to be thrown away, so the marriage must still be carried out even though it violates the customary rules of the Logas Tanah Darat Kenegerian (Luhak Nan Sambilan).¹⁹

The author finds that one of the causes of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) is the lack of knowledge and the many external factors that influence the community towards customary law. membuat minimnya pengetahuan mereka terhadap adat-istiadat yang berlaku di daerah mereka sendiri. Sehingga hal ini menyebabkan terjadinya pelanggaran terhadap aturan adat yang berlaku di tengah- tengah masyarakat adat Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

The following are the results of the questionnaire to the perpetrators of tribal marriage regarding the causes of tribal marriage due to the element of mutual consent carried out by the perpetrators of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

Table I.4
Perpetrators of Sesuku Marriages Who Perform Marriages Because of the Element of Consent

No	Performer's Answer	Total	Percentage
1.	Knowing	10	100%
2.	Don't Know	0	0%
	Total	10	100%

Processed Data: 1 November 2022

¹⁶ Interviews conducted by the author to ninik mamak with the title datuk Mangkuto on the date of 12 September 2022.

¹⁷ Zulherman Idris, identification of customary law (the perspective of the sociology of law section). UIRPress 2021, page. 124

¹⁸ Interviews conducted by the author to ninik mamak with the title of datuk Padano on the date of the interview 10 September 2022

¹⁹ Interviews conducted by the author to ninik mamak with the title of datuk Momat on the date of 30 August 2022

Based on table I.4 above, it proves that 100% of the perpetrators of sesuku marriage are due to the element of mutual consent that is inherent in the perpetrators. It can be temporarily concluded that the perpetrators who commit sesuku marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) are due to the mutual liking that has been inherent in the perpetrators of sesuku marriage, another thing that causes sesuku marriage is the lack of knowledge of the perpetrators of the customary rules regarding the prohibition of sesuku marriage, so that the customary rules regarding the prohibition of sesuku marriage are set aside by the perpetrators due to the mutual liking factor and the lack of knowledge of the perpetrators of the customary rules in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

According to Mr. Darwis, the prohibition of tribal marriage is a customary rule made by ninik mamak in ancient times to regulate the behavior of the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) so as not to marry tribesmen, in ancient times people who were tribesmen were the same as brothers. For the perpetrators who continue to carry out tribal marriages, it is a form of shallowness of their knowledge of the customary rules that apply in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) so that with shallowness of knowledge of customary rules they continue to marry, apart from that we also cannot blame those who do tribal marriages because soul mates come from Allah SWT, so after they grow up Allah SWT brings them together and matches, so they continue to marry even though they are tribal.²⁰

According to Minangkabau custom, in addition to the prohibition of marriage according to religion, there is also a "pantang marriage". Abstinance marriage is a marriage that can damage the kinship system, namely blood relatives according to the material lineage, sekaum or sesuku even though they do not have a genealogical relationship or are not senagari. Marriage within the same family or tribe is not a prohibition in the religious sense, but is only limited to the abstinence (incest) stipulated by adat. This has been going on for a long time along with the history of materilineal kinship. Until now it is still firmly held by the community.²¹

The theory above is in line with the customary rules in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) where tribal marriage is an abstinence marriage, this theory is also related to the author's interview with Mr. Darwis where this is a form of limited knowledge of the perpetrators of tribal marriage, so that due to the perpetrators' lack of knowledge of the customary rules that live in their area, this has led to tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

Based on the results of interviews with ninik mamak regarding the rules of prohibition of sasuku marriage, whether or not the existence is still recognized by the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

According to Datuk Mangkuto, it explains that a clear rule is made to regulate every behavior in indigenous peoples, and the rule of prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) is still recognized by indigenous peoples. However, the existence of customary law at this time began to fade due to the many regenerations now that no longer care about the customary

²⁰ Interviews that the author conducted with community leaders on 30 August 2022.

²¹ Ibid, h. 3

rules contained in their environment, so that their apathy towards customary rules resulted in violations of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).²²

Based on the results of interviews with ninik mamak whether there is an influence on the community due to the tribal marriage that occurred in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) According to Datuk Gindo explained that when examining the influence caused by tribal marriage on the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan), tribal marriage is something that is strictly prohibited in Kenegrian Logas Tanah Darat, this is based on a principle that upholds a very thick ancestral heritage, namely customary law which should be maintained.

This tribal marriage certainly has an impact, both on the existence of customary law itself and on society, for the existence of customary law itself, it can reduce the level of compliance with the inheritance of ancestors that cannot be valued at this price which will lead to an assumption that the customary law has faded, the influence on society, especially on regeneration, which will assume that the prohibition is something that can be violated, based on events that have been over or that have occurred, therefore tribal marriage is strictly prohibited in the Logas Tanah Land Kenegrian, judged more deeply on the harm and benefits.²³

b. The Role of Ninik Mamak in Handling Problems of Same-Sex Marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) Riau

In the modern practical dictionary of Indonesian language, according to Elha Santoso, sanction means punishment, coercive action for violations.²⁶ Punishment is to maintain and create human benefits and keep them from things that are mafsadah, because Islam is rahmatan lil "alamin, to provide guidance and lessons to humans. The punishment must have a basis, either from the Qur'an, Hadith or the legislative body that has the authority to determine the punishment for ta'zir cases. In addition, the punishment must be personal. This means that it is only imposed on the person who committed the crime. This is in accordance with the principle that: "one person does not bear the sins of another". Finally, the punishment must be general, meaning that it applies to all people, because all humans are equal before the law.²⁴

Violations of the prohibition of tribal marriage in principle have sanctions that aim to provide a deterrent effect for the perpetrators. This sanction is an agreement of the ancestors. The ancestors formulated severe sanctions for those who did it. The agreement on the prohibition of tribal marriage is due to the assumption of customary law that is absolute and inviolable. The customary law community of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) implements the rules of customs that apply as long as they do not conflict with Islamic law, violating a provision of customary law will be given customary sanctions including violations of tribal marriage which is clearly prohibited by the customary law of Kenegerian

²² Interviews conducted by the author to ninik mamak with the title datuk Mangkuto on the date of 12 September 2022

²³ Interviews conducted by the author to ninik mamak with the title of datuk Gindo on the date of 31 August 2022.

²⁴ Elha Santoso, Practical Modern Indonesian Dictionary, (Surabaya: Pustaka Dua Surabaya, No Years), p.362.

Logas Tanah Darat (Luhak Nan Sambilan). As explained in the previous chapter, the customary law marriage of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) adheres to an exogamous marriage system in which the community draws its lineage based on the matrilineal system, as is the case in Minangkabau society. This kind of marriage system is where a person is prohibited from marrying surnames or tribal marriages. In the event of a tribal marriage, the perpetrator of this marriage will be tried and sentenced to customary sanctions and first deliberated by Ninik Mamak, but before that, Ninik Mamak must investigate and have strong facts about the guilt of his nephew. After it is proven that his nephew has committed a tribal marriage, then the sanction is decided.

Based on the results of the author's interview with ninik mamak about the role of ninik mamak at the present time in determining and determining sanctions for perpetrators who violate the rules of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

According to Datuk Majo, customary rules in a "nagori" (Negeri) are rules made by ninik mamak or tribal leaders, as well as the customary rules in our area. Regarding tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan), it is an act that is strictly prohibited by custom and if violated, it will get consequences or sanctions for the perpetrator. At present, ninik mamak still plays a very full role in determining and applying sanctions for perpetrators who violate the rules of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) since ancient times ninik mamak and indigenous peoples in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) strictly adhere to every applicable customary rule, and these customary rules are made to regulate every behavior of the kemenakan children.²⁵

The existence of a leader is very important in determining the direction and purpose of the life of the community he leads. In the Kampar indigenous community, the customary leader/customary leader is known as "Niniok mamak". Niniok mamak as a leader/customary leader in the tribe and life of the Kampar indigenous people is a leader who is tasked with fostering and regulating the children in accordance with customary and religious rules. Niniok mamak is a lush wood tompek batoduo, wood godang tompek balinduong (lush wood for shelter, large wood for protection). A niniok mamak must have 4 (four) leadership functions, namely as a father in his own family, as a leader (mamak) in his clan as a sumando in his wife's house and as a niniok mamak in his tribe and country.

Below is the result of a questionnaire to the perpetrators of tribal marriage that the one who plays a full role in determining and determining sanctions for perpetrators who commit tribal marriage is the ninik mamak of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

Table I.5
The Role of Ninik Mamak in Determining and Setting Sanctions for Perpetrators of Tribal Marriage

No	Description	Total	Percentage
1.	Fully engaged	10	100%
2.	Not in Full Role	0	0%

²⁵ Interviews conducted by the author to ninik mamak with the title of datuk Majo on the date of 30 August 2022

Total	10	100%
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Processed Data : 11 November 2022

Based on Table 1.5 above, it proves that 100% of the perpetrators of tribal marriage recognize that those who play a full role and have full authority in determining and determining sanctions for perpetrators of tribal marriage are ninik mamak in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

It can be temporarily concluded based on the results of the questionnaire above, that the one who plays a full role in determining sanctions for perpetrators of sesuku marriage is ninik mamak, this is in line with the customary rules contained in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).

Based on the author's interview with ninik mamak about how ninik mamak determine sanctions for perpetrators who violate the rules of the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan). According to Datuk Paduko, before determining and deciding on sanctions for perpetrators who commit tribal marriage, the ninik mamak will gather at the soko house to conduct a "rapek adat" (customary meeting).

Then datuk Padano added, in deciding the sanctions for the perpetrators of tribal marriage, the ninik mamak will consult first or better known as "rapek adat" (customary meeting) so that there is no unilateral decision set by the ninik mamak on what sanctions will be received by the perpetrators who violate the rules of the prohibition of tribal marriage, in the Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) known as "saciok bak ayam sadonciang bak bos" (decisions are taken according to collective decisions) and decided with consideration of "raso jo pariso" (tolerance), After the consensus of the ninik mamak on what sanctions will be received by perpetrators who violate the rules of the prohibition of tribal marriage, only then is it notified to "pamocik torang" (holders of religious law and positive law), namely the KUA and POLICE to be able to participate in enforcing the sanctions received by the perpetrators of tribal marriage, then the sanctions agreed upon by the ninik mamak are legalized by "pamocik buek" (customary leader), namely Datuk Raja Ruhum.²⁶

According to Kampar Customary Law, those who commit tribal marriages are given customary sanctions by way of deliberation between all important figures such as Ninik Mamak, Alim Ulama, and Village Government or better known as the three-twisted rope custom. The customary sanction for the perpetrator of this tribal marriage is to pay a fine of one buffalo or in traditional terms bakandang kobau and expelled from the village. The buffalo will be given to the village. Usually the family will apologize by holding a bakampuang event. According to Kampar custom, the perpetrator of sesuku marriage violates the Soko Customary Law, which means that the violation committed embarrasses his own Ninik Mamak in the sense that the position or soko carried by his mamaknya has been tarnished so that this violation is included in a serious violation of customary law and the sanction is thrown away kabukuik nan tido buayu ka lughan nan tido buangin, which means being expelled from the village and may not return to live in the village at any time. Based on the results of the author's interview with ninik mamak about whether or not the perpetrator of tribal marriage who has paid customary sanctions in Kenegerian

²⁶ Interviews conducted by the author to ninik mamak with the title of datuk Padano on

Logas Tanah Darat (Luhak Nan Sambilan) is still recognized.

According to Datuk Paduko, it is explained that for perpetrators who have paid fines for tribal marriage, their existence is still recognized in the area as citizens who reside or are domiciled there. However, their existence in customary law is no longer recognized by the indigenous community, meaning that those who violate the rules of the prohibition of tribal marriage are no longer taken care of or have been banished from their tribe, therefore they are no longer taken care of by the ninik mamak in terms of the customs that apply in the Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).²⁷

Then Datuk Tuah added that for those who violate the rules of the prohibition of tribal marriage and still reside in the Kenegerian Logas Tanah Darat (Luhak Nan Sambilan), it is not a problem, but they live in the same area as "mantimun bungkuak, ado but indak bahituang" (humpbacked cucumber, exists but is not taken into account) in adat, coupled with the social sanctions given by the community to those who do tribal marriage in the Kenegerian Logas Tanah Darat (Luhak Nan Sambilan).²⁸

Laws that live in the community will always give birth to legal consequences for the community itself. Likewise, indigenous peoples who use customary law will still need a legal subject, the subject of law in customary law is the supporters of the rights and obligations regulated by the law, while the object of law can be the community itself.²⁹

Based on the results of the author's research, it was found that customary law in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) causes legal consequences for people who violate any customary rules in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan). Although customary rules have been established, there are still perpetrators who violate these customary rules, and this results in legal consequences for perpetrators who violate existing rules.

Based on the author's interview with community leaders about the role of the community in implementing sanctions set by niniak mamak against perpetrators of tribal marriage.

Indigenous peoples are communities that are preserved and structured by customary values. Indigenous communities are framed by customary provisions so that the structure of society is divided by customary norms. The customary value system in the form of a set of norms and sanctions becomes a guide, so that social traffic runs harmoniously. Harmony between human relations with humans and harmony with the surrounding nature, because adat is based on kitabullah, so the harmony of relations between humans and relations with nature, stemming from a relationship with God. In this way, humans fulfill their duty as khalifah (custodian) on earth in order to worship Him.³⁰

The author analyzes that with the theoretical basis above and coupled with

²⁷ Interviews conducted by the author to ninik mamak who holds the title of datuk Paduko on the date of the interview 12 September 2022.

²⁸ Interviews conducted by the author to ninik mamak with the title of datuk Tuah on the date of 31 August 2022

²⁹ <http://ejurnal.uinib.ac.id/jurnal/index.php/alakhakam/article/view/1857/1376> accessed on 25 November 2022.

³⁰ Hamidy, Jagat Melayu In Riau's Cross-Culture, Bilik Kreatif Press, Pekanbaru:2014, p. 74.

the results of interviews with community leaders, it shows that the steps of the indigenous people of Kenegerian Logas Tanah Darat (Luhak Nan Sambilan) who live in a traditional environment have been carried out correctly, and this is a form of society in carrying out and fulfilling its duties as *khaliah* (caretaker) on this earth, especially in the social circle that it lives in everyday life.

4. Summary

Based on the results of research that the authors found in the field, it is known that the cause of the prohibition of tribal marriage is that people who marry *sesuku* are the same as those who marry their own siblings, because in the era of their ancestors they were breastfeeding siblings and this is a cause of the prohibition of tribal marriage, another cause of the prohibition of tribal marriage is narrowing the association, can cause great divisions, create less qualified offspring, disturbed children's psychology, this is the basis that causes the prohibition of tribal marriage in Kenegerian Logas Tanah Darat (Luhak Nan Sambilan). Then *ninik mamak* plays a role in determining and applying sanctions for perpetrators who violate the rules of the prohibition of tribal marriage in indigenous peoples, then *ninik mamak* also plays a role in providing understanding related to the prohibition of tribal marriage to their children so that tribal marriage is not carried out.

Bibliography

- A.Djazuli. (2000). *Fiqh Jinayah*. Jakarta: PT Raja Grafindo.
- Ahmad Tholibi Kharlie. (2013). *Indonesian Family Law*. East Jakarta: Sinar Grafika.
- Amir Sjarifoedin Tj. A. (2000). *Minangkabau from Iskandar Zulkarnain Dynasty to Tuanku Imam Bonjol*. Jakarta: Gria Media Prima.
- Amrita Ajeng Safitri, dkk. (2022). The Existence of Customary Law in the Indonesian Legal System. *Rechtenstudent Journal* 3(2), <https://doi.org/10.35719/rch.v3i2.124>
- Dep Dikbud. (2000). *Big Indonesian Dictionary*. Jakarta: Balai Pustaka.
- Elha Santoso. (tt). *Practical Modern Indonesian Dictionary*. Surabaya: Pustaka Dua Surabaya.
- Gede A.B. Wiranata. (2005). *Indonesian Customary Law Development from Time to Time*. Bandung: Citra Aditya Bakti.
- Hamidy, UU. (2000). *Indigenous Peoples of Kuantan Singingi*. Pekanbaru: UIR Press.
- Hamidy, UU. (2014). *Jagat Melayu in Riau's Cross-Culture*. Pekanbaru: Bilik Kreatif Press.
- Martiman Prodjohamidjojo. (2022). *Indonesian Marriage Law*. Jakarta: Indonesia Legal Center Publishing.
- Muhamad Sadi Is (2017). *Introduction to the Science of Law*. Jakarta: PT Kharisma putra utama.
- Muhammad Fikrul Hanif. (2018). *Review of Islamic Family Law on the Prohibition of Sesuku Nikah in the Sungai Rotan Area, Ampek Angkek District, Agam Regency, West Sumatra Province*. Thesis Faculty of Sharia and Law UIN Sunan Gunung Djati Bandung.
- Ria Febria. (2022). Study of the Law of Tribal Customary Marriage in Minangkabau Society. *Semarang Law Review (SLR)*, 3(1). <http://dx.doi.org/10.26623/slr.v3i1.4774>

- Soerjono Soekanto. (1992). *Digest of Family Law*. Bandung: Citra Aditya Bakti.
- Soetandyo Wignjosebroto. (2008). *Hukum Adat Dalam Masyarakat: Perkembangan dan Masalah*. Malang: Bayumedia.
- Suardi Mahyuddin. (2013). *Dynamics of Minangkabau Customary Legal System in Supreme Court Jurisprudence*. Jakarta: Raja Grafindo Persada.
- Yusuf Qardhawi. (2012). *Halal and Haram*. Bandung: Jabal.
- Zulherman Idris. (2021). *Identification of Customary Law (the perspective of the sociology of law section)*. Pekanbaru: UIRPress.

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