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Implementation of Indigenous Marriages of the Malay Community between Titled Kings and Non-Titles

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Abstract: Customary law is an unwritten law that is recognized in the 1945 Constitution. One of the indigenous peoples in Indonesia who still practice their customary law is the indigenous Malay community, especially in the city of Pekanbaru. The law of marriage for the Malay customary community must be carried out in stages and irrationally in accordance with the stages of the implementation of marriage and Malay teachings with Islamic nuances, especially in marriages between people with the title of King and people who do not have the title of King that occur among the Malay community which will also affect the children, assets, and the position of husband and wife. The main problem in this research is how the implementation of traditional Malay marriages between those with the title of King and those who do not have the title of King in Pekanbaru, and what are the legal consequences for the occurrence of marriages between those with the title of King and those who do not have the title of King for children, assets, and the position of husband and wife in the indigenous Malay community in Pekanbaru. The method used in this study when viewed from its kind is using observational research methods using survey methods. From the results of the research it is known that currently there are still many children from parents from among people with titles of Kings or nobles in Pekanbaru who carry out marriage customs, but many of these traditional marriage processions have been abandoned and keep up with the times which of course are no longer appropriate. with the authenticity of the marriage customs of the Malay community.

Keywords: Marriage, Custom, Original, Titled King.

1. Introduction

The Unitary State of the Republic of Indonesia is a State of Law (Rechtsstaat), so the law is at the highest power. The regulation that Indonesia is a state of law is contained in the 1945 Constitution which reads "The Indonesian state is based on law (Rechtsstaat), not based on mere power (Machtsstaat)". The thing that confirms that Indonesia is a state of law can be seen in article 1 paragraph 3 of the 1945 Constitution which reads "The State of Indonesia is a state of law".

The applicable law in Indonesia is Indonesian positive law, all laws that are positivized or currently in force in Indonesia. Talking about the Indonesian legal system means discussing in depth about the Indonesian legal system. Systemically means that the law is seen as a unit, whose elements and subsystems or elements are interrelated, mutually influencing and mutually reinforcing and cannot be separated.¹

¹ Ilhami Bisri, *Indonesian Legal System*, Raja Grafindo Persada, Jakarta, 2010, page 5

Written law is law that has a form and form of codification in the form of a book or book which includes laws made by lawmakers and treaties resulting from international relations. Meanwhile, unwritten law is uncodified law which is usually only in the form of customary law which is often called customary law. Custom means an action that is repeated in the same way and action and then becomes a habit.²

Customary law is a law recognized in Indonesian national law as stated in Article 18B paragraph 2 of the 1945 Constitution which reads "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 in the Law".

Customary law communities are human communities that obey the laws that regulate human behavior in dealing with each other in the form of overall habits that are adopted and believed and if violated will receive customary sanctions. This understanding arises spontaneously in a certain area without any stipulation or order from a higher authority, which is only based on a sense of solidarity between fellow community members in it.³

"Hilman Hadikusuma defines customary law as the rule of human habits in social life. Human life begins with the family and they have organized themselves and their members according to customs and habits that will be carried over into society and the state."⁴

The term Customary Law comes from the Arabic language cited by Snouck Hurgronje when he disguised himself as Affan Gaffar to study Aceh's customary law which was later named "Adhatrecht". The term was then adopted by Van Vollenhoven and again by Ter Haar in the 1930s. Customary law comes from the words "law" and "adat". Law comes from the Arabic "huk'm" and the word adat is "adah". Law comes from the plural word "ahkam" which means provisions, orders, or commands.⁵ The customary law of marriage is the overall customary rules regarding the forms of marriage, proposal procedures, procedures for the implementation of marriage, the legal consequences of marriage, and the consequences of breaking up customary marriages in Indonesia.⁶ In customary law, marriage is not only an important event for those who marry, but it is an event that is very meaningful and gets the attention and is followed by the spirits of the ancestors of both parties. Thus it can be concluded that marriage according to customary law has a broader meaning, namely between family groups of male relatives and female relatives, and can even involve one community with another community. The marital relationship that occurs is determined and supervised by the system of norms that apply in the customary law community.⁷

² Soedjono Dirdjosisworo, *Introduction to Legal Science*, Raja Grafindo Persada, 14th Printing, Jakarta, 2010, p.205

³ Laksanto Utomo, *Customary Law*, Raja Grafindo Persada, Jakarta, 2016, P 1

⁴ Hilman Hadikusuma, *Anthropology of Indonesian Law 1st*, Alumni, Jakarta, 1986, p.7

⁵ Dominikus Rato, *Hukum Adat*, LaksBang PRESSindo, Yogyakarta, 2011, p.3

⁶ Hilman Hadikusuma, *Introduction to Indonesian Customary Law, Mandar Maju*, 2nd Printing, Bandung 2003, p.182

⁷ Laksanto Utomo, *Customary Law*, Raja Grafindo Persada, Jakarta, 2016, p.89

Custom in Malay society must have a strong, main and highest foundation, none other than the Qur'an and the Sunnah of the Prophet. From the above expression, it can be concluded that, in the customary form, it can be changed or replaced based on the demands of the times, but the principle must be in accordance with the Qur'an and the Sunnah of the Prophet, such as the way of dressing Muslims in the Malay bridal custom.⁸

The customary tradition of marriage is an outward necessity that must be held. Basically, marriage is to form a family that will produce zuriat or offspring who continue their lives, ideals and prayers. Because marriage is so important in human life, various rules apply to it which later become traditional customs. The purpose of marriage according to Malay custom is a holy and noble goal. Marriage is a relationship between a husband and wife binding themselves to live together, in harmony and peace forever.⁹

The Malay indigenous community still upholds their customs and adheres to the guidelines of customary law which results in the Malay indigenous community being one of the many regions in Indonesia that still has strong elements of customs in their lives. The Malay indigenous people are a "nation" rather than a "tribe" as we know it so far, this is due to the wide distribution of the Malay community in Southeast Asia which includes Indonesia, Malaysia, Brunei Darussalam, Singapore, and the southern part of Thailand, namely Pattani. In Indonesia itself, the coverage of the Malay community is mostly found on the island of Sumatra, namely Riau Province, Riau Islands, Jambi, North Sumatra (Deli Serdang), South Sumatra, Bangka Belitung, Lampung, while on the island of Kalimantan there are in West Kalimantan Province.¹⁰

Malay customs in Pekanbaru are inseparably linked to the Kingdom of Siak Sri Indrapura which originated from the Kingdom of Johor in Malaysia, the Kingdom of Tanjung Pinang, and the Kingdom of Daek Lingga. This is because Pekanbaru was once part of the territory of the Siak Sri Indrapura kingdom where the 4th and 5th Kings of Siak once stopped and lived in Pekanbaru. After the death of the fifth King of Siak, the control of Senapelan was handed over to Datok Bandar who was assisted by 4 big Datok, namely Datok Lima Puluh, Datok Tanah Datar, Datok Pesisir, and Datok Kampar. They did not have their own areas but only assisted Datok Bandar. The 4 Datok are responsible to the Sultan of Siak and the running of the government is entirely in the hands of Datok Bandar.¹¹

The Malay traditional community adheres to the patrilineal system, which is a kinship system that maintains paternal lineage. So if the Malay community enters into a marriage, the children of the marriage will follow the father's lineage. Malay indigenous people are divided into 2 levels, namely ordinary Malay people and Malay people of King descent, this also has an impact on marriage customs where there are differences in the marriage procession and there are things that are special

⁸ Yosi Malasari dan Cecep Darmawan, *Riau Malay Bridal Customary Culture in the Development of Citizenship Culture*, HUMANIKA Vol.24 No.1, Jakarta, 2017, p.16

⁹ Zulfa, *Adat Istiadat Perkawinan Masyarakat Melayu pada Masa Kesultanan Siak*, Faculty of Cultural Sciences, Lancang Kuning University, Journal of Cultural Sciences Vol.7 No.1, Pekanbaru, 2010, p.11

¹⁰ Interview with Datok OK Tabrani as the Customary Stakeholder and Chairman of the LAMR Pekanbaru Customary Council, March 23, 2021

¹¹ Interview with Datok OK Tabrani as the Customary Stakeholder and Chairman of the LAMR Pekanbaru Customary Council, March 23, 2021

in traditional marriages. In this case, the differences and special things in traditional marriages are in the procedures for conducting marriages, traditional clothing used, and trinkets in marriage.¹²

However, the phenomenon that is currently happening is that the Malay traditional community has experienced a shift due to the times in understanding the procedure for implementing the original Malay traditional marriage, where most of the Malay people today do not understand and mix up the implementation and noble values that exist in Malay traditional marriages. Malay culture has the expression "adat bersendikan syarak, and syarak bersendikan kitabullah" which means that Malay cultural customs uphold religious values while upholding customs, this is because the Malay traditional community adheres to Islam which deifies Allah SWT and sticks to the Qur'an and the Prophet Muhammad SAW.¹³

In the marriage of indigenous Malay people between titled kings and non-titled kings in Pekanbaru, there are differences in getting the title of descent. The Malay community's kinship system is patrilineal (father's descent). This means that the child in the relationship with the father's family and the mother's family is more to the father's lineage but there is no difference in the treatment of both sides of the family, which will have an impact on the child of the marriage in giving the title of his descendants.

In the marriage of indigenous Malay people between titled kings and non-titled kings in Pekanbaru, marital property follows the family system of the Malay community, namely patrilineal, where joint property (gono gini) is jointly controlled by husband and wife. But what needs to be remembered, as for the innate property will still be controlled by each party, in other words, the husband's innate property is controlled by the husband and the wife's innate property is controlled by the wife. However, if the marital property is obtained together after marriage, then in the event of a divorce, there must be provisions that become the basis and guide in resolving the problem.

In the marriage of indigenous Malay people between titled Raja and not titled Raja in Pekanbaru, the position of husband and wife certainly raises questions and hypotheses for the author, because it can be seen from the differences in position in the indigenous Malay community of Pekanbaru.

2. Method

When viewed from the type of research, the authors use observational research methods using survey methods, namely research that is directly carried out at the location or scene of the incident with data collection tools, namely interviews and questionnaires using an empirical approach. The nature of this research is descriptive research, meaning that this research describes more clearly and applies the existing reality in detail, clearly and systematically about the main research problems.

The census method is a method used if the population to be reviewed is small or small, so it is possible if the researcher uses the entire population as respondents.

¹² Interview with Datok OK Tabrani as the Customary Stakeholder and Chairman of the LAMR Pekanbaru Customary Council, March 23, 2021

¹³ Interview with Datok Makhzun Hafas as the Pemangku Adat of the Pekanbaru LAMR Customary Council, March 23, 2021

Analysis The data collected from the population and respondents are first grouped by type and then the data is processed. Furthermore, data derived from interviews is presented in the form of sentence descriptions and then linked to theories related to the research. While the data collected from the questionnaire is presented in tabular form which is then related to the theory related to the research so that conclusions can be drawn.

3. Result and Discussion

1. The implementation of the original customary marriage of the Malay community between titled Raja and non-titled Raja in Pekanbaru

The customs and culture of the Malay community of Pekanbaru City as a whole are formed under the influence of various things, as well as marriage. But Siak as a kingdom that has a big role in the development of Pekanbaru City has made a big contribution and is very closely related and related to the development of marriage customs for the people of Pekanbaru City. g. The forms of marriage in the customary law community of Pekanbaru City. Forms of marriage of indigenous people

The forms of marriage based on the structure of society in Indonesia are as follows;

1. Kawin jujur is a form of marriage in which the male party gives honesty to the female party. Objects that can be used as honesty are usually objects that have magical powers. The gift of honesty is required to restore the magical balance that was initially shaken, due to the vacancy in the family of the woman who has left for marriage. Honest marriages can be found in patrilineal societies, both pure and transitional. A common feature of honest marriages is that they are patrilocal, meaning that the wife is obliged to reside in the residence of the husband or the husband's family. However, this does not mean that all patrilocal marriages are honest marriages, because sometimes in other marriages the wife is also obliged to live at the husband's residence.
2. Marriages of consanguinity are essentially matrilineal and exogamous; matrilineal means that the wife is not obliged to reside at the husband's residence. These marriages are also usually found in emergencies, where it is difficult for women to find a mate or because men are unable to provide honesty. The position of husband and wife is also not equal. This form of marriage is found among the Minangkabau people and is a common form of marriage in Indonesia, therefore it can be found in every form of society.
3. Free marriages do not specify where the husband or wife should live, this depends on the wishes of each party, which is ultimately determined by consensus between the parties. In general, free marriages are endogamous, meaning that there is a recommendation to marry members of one's own kin group; this form is commonly found in Java, Kalimantan, and so on. In contrast to honest and consanguineous marriage, free marriage can be found in parental societies. After a free marriage, the husband and wife no longer have one family but two families at once, namely the husband's relatives on one side and the wife's relatives on the other. And so on until the children and their descendants.

4. Mixed marriages in the sense of customary law are marriages that occur between husbands and wives of different ethnicities, cultural customs and or different religions. The National Marriage Law does not regulate this, which only regulates marriage between husbands and wives of different nationalities as stated in Article 57 of Marriage Law Number 1 of 1974. In mixed marriages there is a combination of different customs. In Lampung, before the marriage takes place if the man comes from outside the area, he is first made a customary citizen of the "kelama" family (male relatives of the mother's brothers) or may also be included in the customary citizens of "kenubi" (mother's brothers).
5. Elopement can occur within an indigenous community, but the most common is among the Batak, Lampung, Bali, Bugis/Makassar, Maluku communities. In these areas, although elopement is a violation of custom, there are procedures for resolving it. In fact, elopement is not a form of marriage but rather a proposal system, because from the occurrence of elopement, the form of honest marriage, semenda or free / independent can apply, depending on the circumstances and negotiations of the two parties.

The implementation of the traditional marriage ceremony in Malay society will actually always refer to the traditional ceremony procedures or susur galur rules. This susur galur rule has also been compiled to cover the intentions both clearly and implicitly contained therein. The rules of the traditional ceremony of Malay marriage in Pekanbaru City are also taken from those that have been regulated and apply in the order of the Kingdom of Siak and then adjusted to the appropriate flow for the general public, so that the implementation of the traditional marriage ceremony of the Malay community in Pekanbaru City is not something that is made up but has a very deep meaning of good value. In the Malay community to build a family in the bond of a marriage, there must be at least five elements that must be fulfilled, namely the bond of birth and mind, man and woman, as husband and wife, the intention to form a household, and the intention because of Allah SWT.

The marriage procession between people with the title of King and people without the title of King for the Malay community in Pekanbaru City is similar to the marriage procession of the Malay community in general, because the procession of customs is taken from the customary rules of marriage within the Kingdom of Siak but has been adjusted so that it can also be implemented for the general public. However, specifically for people with the title of King or nobles in Pekanbaru City who have Arabic Fam because people with the title of King or nobles in Pekanbaru are descended from people with the title of King or nobles in the Kingdom of Siak who are descended from the 5th King of Siak, namely Sultan Assaidis Syarif Ali Abdul Jalil Saifuddin whose mother was an Arab noble and his wife was the daughter of the 4th King of Siak (Sultan Abdul Jalil Alamuddin Syah) whose descendants to this day still have Arabic Fam.

In carrying out a marriage, there is a special procession that must be included in the stages of the traditional marriage procession for people with the title of King or noble in Pekanbaru City, namely Maulid Diba' which is carried out before the marriage contract procession will begin, and also the Zafin Arab dance which is performed after the direct day event is over. The purpose of holding Maulid Diba' is

to send blessings to the Prophet Muhammad SAW and expect His mercy, and the purpose of Zafin Arab is as a symbol that symbolizes that the Malay community with the title of King or noble in Pekanbaru is thick with Islamic nuances and aura.

However, at this time the procession of the direct day ceremony is still carried out by the Malay community in Pekanbaru, especially from among people with the title of king or noble, but has undergone modifications in the place of implementation. If you want to follow the procession of the hari langsung ceremony in accordance with the authenticity of Malay customs, it is held at the home of the bride-to-be and the location of the banquet is inside the house. But nowadays people hold direct day ceremonies in hotels, buildings, or outdoors which of course this can be used as a differentiator to see whether the bridal couple is holding a traditional marriage ceremony using their original customs or the bridal couple has used Malay marriage customs that have been modified modernly following the times and the Malay community in Pekanbaru, especially from among people with titles of kings or nobles, it is rare to find a civilized eating procession which is one of the activities in the direct day ceremony because most people today hold direct day ceremonies in hotels, buildings, or outdoors which makes the civilized eating procession impossible. Unlike the case when the bride and groom carry out the ceremony directly at the bride's residence, most of them still carry out the civilized eating procession in the direct day ceremony activities.

2. The legal consequences of marriage between those with the title of Raja and those without the title of Raja on children, property, and the position of husband and wife in the indigenous Malay community in Pekanbaru

1. Marriage Law According to Custom and Experts

According to customary law, marriage is a matter of kin, family, fellowship, dignity and personality. Customary marriage law, in addition to regulating the definition, function, form, and system of marriage, also regulates the consequences of marriage and the dissolution of marriage. Marriage is one of the most important events in the life of our society. Therefore, marriage not only concerns the woman and man who will become husband and wife, but also concerns the parents of both parties, their siblings, and other relatives.

According to Prawirohamijoyo, the foundations of marriage are formed by the natural elements of life itself, biological needs and functions, lowering the need for affection and brotherhood, caring for children born of marriage and educating these children to become perfect members of society.

According to Hilman Hadikusuma, the term marriage is a word formed from the basic word kawin with the affix per-an. Marriage for a civilized society does not aim only at biological demands but as part of a form of worship to God Almighty.

According to Soebekti, marriage is a legal relationship between a man and a woman for a long time.

According to Sudarsono, the purpose of marriage is to form a happy and lasting family. For this reason, husband and wife need to help and complement each other so that each can develop their personality, help and achieve spiritual and material welfare.

Thus, marriage according to customary law is not merely a bond between a man and a woman as husband and wife to obtain offspring and build and foster

household family life, but also a legal relationship concerning members of the relatives of the husband and wife. Regarding the validity of marriage, customary law depends on the family system adopted by the legal community where the prospective bride and groom live.¹⁴

The relationship between children and parents in customary family law is very important, because in customary law, biological children have a very important position in every somah (gezin) of an indigenous community. In general, the relationship between children and their families depends on the social circumstances of the community concerned, and more specifically on the system of descent. It is known that in Indonesia there are indigenous alliances whose structure is based on three types of lineage, namely maternal lineage, paternal lineage, and both paternal and maternal lineage.

In an alliance that adheres to the paternal-maternal lineage, the relationship between children in the family, whether from the father's or mother's side, is the same level of closeness. In such a bilateral family arrangement, the issues of marriage prohibition, inheritance, maintenance obligations and other legal relationships are equally strong. Similarly, in a patrilineal alliance, the relationship between the child and his father's family is closer than with his mother's family. However, this does not mean that the relationship with the family of the other party is not recognized, it is only in the social structure that causes one party to be closer than the other. In a parental society, a child's relationship with his or her father's and mother's relatives is the same. In a parental kinship system, issues of marriage prohibition, inheritance, and maintenance obligations all have the same intensity for both paternal and maternal relatives.

In the past, parents with the title of King or noble directed their children to marry fellow people with the title of King or noble, especially if the parents had daughters, which was a tradition or custom in the Malay community, especially those with the title of King or noble in maintaining their lineage. However, over time there has been a change in the thinking of parents from among people with the title of King or noble that they no longer direct their children to marry fellow titled Kings or nobles and apart from sons this also applies to daughters, which of course has shifted from the authenticity of the custom. In this study, the author was informed that the shift in the customary provisions in terms of parents from among those with the title of King or noble who have given flexibility to their children and no longer direct them to marry fellow people with the title of King or noble has occurred for a long time, because the respondents chosen by the author are married couples who come from the age range of 42-63 years, which means that at the time when the respondents wanted to get married, the leeway given by parents not to direct their children to marry fellow people with the title of King or noble had already occurred.

1. Legal consequences for children

In the marriage of indigenous Malay people between titled kings and non-titled kings in Pekanbaru, there are differences in getting the title of descent. The Malay community's kinship system is patrilineal (father's descent). This means that the child in relation to the father's family and the mother's family is more to the

¹⁴Dewi Sulastri, *Introduction to Customary Law, Pustaka Setia, Bandung, 2015, p.131*

father's lineage but there is no difference in the treatment of both sides of the family. It is only in the case of obtaining the title of king or noble descendant obtained from the titled father, while if only the mother has the title of King or noble then it cannot pass on the title to her child. so in general, the title of King or noble descendant obtained by the child must come from a father who has a title as well, while if only the mother has a title then it cannot pass on the title to the child.

So in marriages that occur in the indigenous Malay community who have the title of Raja with non-titled Raja in Pekanbaru, it will not eliminate the title of Raja or noble descent owned by the husband and wife. If the husband has a title while his wife does not, it will not affect his wife and vice versa if the wife has a title while her husband does not, it will not affect her husband. It's just that in Malay customs the one who has the right to pass on his title to the child is the husband not the wife, as discussed earlier.

In the marriage of indigenous Malay people between titled Raja and non-titled Raja in Pekanbaru, the rights and obligations of the child are maintained and nothing is lost. It is only if the child is born to a father with the title of King or noble that the child gets the title as well, otherwise if the child is born to a mother with the title of King or noble then the child cannot be passed down the title of King or noble, because in Malay customs the wife with the title of King or noble cannot pass down her title to her child. In Malay customs, there is no customary head like Niniak Mamak in Minang customs, so the result of Malay customary law for children born to mothers with titles of Kings or nobles but whose fathers are only ordinary people is that the child cannot be reduced to the title of King or noble and cannot participate in traditional Malay ceremonies of descendants with titles of Kings or nobles such as the Maulid Diba' and Zafin Arab ceremonies in the marriage ceremony and so on because the child does not have Zuriah (descendants or grandchildren) of the Sultans of Siak Sri Indrapura.

2. Legal Effects on Property

In the marriage of indigenous Malay people between titled kings and non-titled kings in Pekanbaru, marital property follows the family system of the Malay community, namely patrilineal, where joint property (*gono gini*) is jointly controlled by husband and wife. But what needs to be remembered, as for the innate property will still be controlled by each party, in other words, the husband's innate property is controlled by the husband and the wife's innate property is controlled by the wife. However, if the marital property is obtained together after marriage, then in the event of a divorce the property will be divided in accordance with the agreement and cannot be separated from the provisions of Islamic religious teachings regarding property in marriage or *faraid*.

In Malay customary law which regulates property, it is closely related to sources from the Qur'an, Sunnah, and Fiqh. Of the three sources are summarized into a reference in the contents of the Compilation of Islamic Law (KHI) which then based on Presidential Instruction No. 1 of 1991 formally enacted the Compilation of Islamic Law as positive law in Indonesia. The following are excerpts from the Qur'anic verses regarding property in marriage:

"And for you (husbands) one-half of the property left by your wives, if they have no children. If your wives have children, then you get a quarter of the property

they leave behind after fulfilling the will they made or (and) after paying their debts. The wives get a quarter of the property you leave if you have no children. If you have children, then the wives get an eighth of the property you leave after fulfilling the will you make or (and) after paying your debts. If someone dies, whether male or female, leaving no father or children, but has a brother or a sister, then each of the two types of brothers shall receive one-sixth of the estate. But if the brothers are more than one, then they shall have a share in the third, after the fulfillment of his will or the payment of his debts, without causing any harm to the heirs. (Allah has ordained this as a true law from Allah, and Allah is All-knowing and Merciful" (Q.S. An-Nisa'-12).

In the verse above, there is no mingling of property (gono gini) from husband and wife, but it is explained that each husband and wife have the right to their respective property.

Malay customary law governing property is inseparable from the influence of Islamic law in its implementation and written rules, this is in line with the explanation of the late Datok O.K Tabrani S. H and Datok Muhammad Ishak, both of whom are customary leaders in LAMR Pekanbaru, stated that the rules in Malay customary law originate from Islamic law because Malays everywhere must adhere to Islam because Malay and Islam are like two sides of a coin that are bound together, where the rules of Islamic law adopted by Malay customary law are currently sourced from the Compilation of Islamic Law (KHI) and are also contained in Law Number 1 of 1974 concerning Marriage which is stated as follows:

In Article 85 - Article 97 KHI, it is stated that marital property can be divided into:

1. Husband's inheritance, which is the property brought by the husband since before the marriage;
2. The wife's inheritance, which is the property she brought since before the marriage;
3. Joint property of husband and wife, namely property obtained during marriage which becomes joint property of husband and wife;
4. Assets resulting from the husband's gifts, grants, inheritances, and charity, i.e. assets acquired by him as gifts or inheritances;
5. Assets resulting from gifts, grants, inheritance, and charity of the wife, i.e. assets obtained by her as a gift or inheritance.

As well as in article 35 of Law Number 1 Year 1974 concerning Marriage, joint property is known. In this article, property in marriage (household) is divided into:

1. Property acquired during the marriage that becomes "joint property",
2. The inherited assets of each husband and wife, whether the assets were obtained before marriage or in marriage which each obtained as personal property, for example, gifts or inheritances. Personal property is fully under the control of each of them as long as the parties do not determine otherwise.

For the Malay-Riau people, adat and Islam are like two sides of an inseparable coin. Both are living laws in their lives and behavior. The harmonization of the relationship between adat and Islam is expressed in a Malay proverb that states "Adat bersendi syarak, syarak bersendi kitabullah, syarak says adat wears, yes the word syarak is true the word adat, adat grows from syarak, syarak grows from kitabullah".

3. Legal Effects on the Position of Husband and Wife

In the marriage of indigenous Malay people between titled kings and non-titled kings in Pekanbaru, the position of husband and wife is the same as the position of husband and wife in Islamic teachings. This can be seen in article 79 of the Compilation of Islamic Law paragraph (1) states "the husband is to the family and the wife is the housewife". Paragraph (2) states "the rights and position of the wife are balanced with the rights and position of the husband in household life and social life together in society". This is in line with the position of husband and wife in marriage between people who have the title of King or noble with people who do not have the title of King or noble in the Malay community in Pekanbaru. So this has been practiced by the Malay community, especially people with the title of King or noble who are married to people without the title of King or noble, which causes equality of position in the household between husband and wife regardless of only one of them has the title of King or noble, especially if the wife is the one with the title of King or noble while her husband is an ordinary person, it will not change the husband's position as head of the family even though he is from among ordinary people and the wife is still positioned as a mother in the household regardless of whether she comes from among people with the title of King or noble. So it can be concluded that there is no difference in position that only specializes people from the King or nobles who have a higher position in the household because in Malay customary law which comes from the teachings of Islam does not specialize in the degree of a person and equalizes the position of husband and wife in carrying out their obligations in their households and their daily lives in society.

4. Conclusion

Dapat diketahui bahwa sekarang ini prosesi adat nikah kawin masyarakat Melayu di Pekanbaru khususnya bagi orang yang bergelar Raja atau bangsawan mengalami perubahan didalam prosesi adat nikah kawin yang mana sudah jarang dilakukan seperti merisik karena dizaman sekarang merisik tidak lagi menjadi sarana perkenalan melainkan anak muda sekarang lebih mengenal "pacaran". Menempah bidan dan Mengamdan/berandam jarang dilakuan karena dizaman sekarang orang lebih mengenal MUA (penata rias) hanya berfokus ke pengantin perempuan saja sedangkan didalam budaya Melayu menempah bidan dan berandam/mengandam bertujuan mengurus dan mengajari pengantin perempuan bagaimana menjadi istri yang baik. Prosesi menyembah jarang dilakukan sebab masyarakat Melayu banyak melangsungkan perkawinan di gedung/hotel sedangkan acara menyembah itu sendiri identik dan lazimnya dilaksanakan dirumah mempelai wanita. Menjelang sanak saudara jarang dilakukan sebab si calon pengantin beranggapan sudah banyak yang datang dipesta perkawinan mereka, namun pada hakikatnya tujuan menjelang sanak saudara ialah untuk menjaga silaturahmi. Dalam melangsungkan perkawinan ada prosesi khusus yang harus diikuti sertakan didalam tahapan prosesi adat nikah kawin terkhususnya bagi orang yang bergelar Raja atau bangsawan yaitu Maulid Diba' yang dilakukan sebelum akad nikah dimulai dan Zafin Arab yang dilangsungkan setelah upacara hari langsung.

Hak dan kewajiban si anak tetap terjaga didalam kehidupan sehari-hari walaupun hanya salah seorang dari ayah dan ibunya yang bergelar Raja atau bangsawan. Bila ayahnya saja yang bergelar Raja atau bangsawan maka anak mereka tetap akan diturunkan gelar Raja atau bangsawan serta boleh ikut dan memberi andil didalam upacara adat Melayu yang dilaksanakan oleh kalangan orang bergelar Raja atau bangsawan, namun sebaliknya bila hanya ibunya saja yang bergelar Raja atau bangsawan maka anak mereka tidak dapat diturunkan gelar Raja atau bangsawan serta tidak boleh ikut dan memberi andil didalam upacara adat Melayu yang dilaksanakan oleh kalangan orang yang bergelar Raja atau bangsawan. Begitu pula perihal harta perkawinan, hukum adat Melayu dan Hukum Islam bagai dua sisi mata koin yang saling terikat yang berarti hukum adat Melayu yang mengatur perihal harta perawinan sejalan dengan Hukum Islam yang bersumber dari Alqur'an, Sunnah, dan fiqh kemudian tertuang didalam lampiran instruksi presiden Nomor 1 Tahun 1991 tentang penyebaran Kompilasi Hukum Islam (KHI). Begitu pula dengan kedudukan suami istri yang tidak memiliki perbedaan dan perlakuan khusus didalam rumah tangga walaupun salah satu dari mereka memiliki gelar raja atau bangsawan, sebab mereka akan tetap menjalankan kewajiban mereka sebagai si suami sebagai kepala keluarga dan si istri sebagai ibu rumah tangga yang sejalan dengan ajaran Islam dan hukum adat Melayu.

Daftar Pustaka

- Dewi Sulastri. (2015). *Introduction to Customary Law*. Bandung:Pustaka Setia,
Dominikus Rato. (2011). *Customary Law*. Yogyakarta :LaksBang PRESSindo.
Hilman Hadikusuma. (1986). *Anthropology of Indonesian Law*. Jakarta: Alumni.
Hilman Hadikusuma. (2003). *Introduction to Indonesian Customary Law*. Bandung:
Mandar Maju.
Ilhami Bisri. (2010). *Indonesian Legal System*. Jakarta: Raja Grafindo.
Juswandi. (2016). *The Nikah Kawin Tradition of the Rumbai Subdistrict Community, Pekanbaru City*. Pekanbaru: Universitas Lancang Kuning.
Laksanto Utomo. (2016). *Customary Law*. Jakarta: Raja Grafindo Persada.
Soedjono Dirdjosisworo. (2010). *Introduction to the Science of Law*. Jakarta: Raja Grafindo Persada.
Yosi Malasari dan Cecep Darmawan. (2017). Riau Malay Bridal Customary Culture in the Development of Citizenship Culture, *Humanika*, 24 (1).
<https://doi.org/10.14710/mkmi.v25i.1-9>
Zulfa. (2010). Marriage Customs of the Malay Community during the Siak Sultanate Period. Pekanbaru: Faculty of Humanities, Lancang Kuning University

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