

MARRIAGE BETWEEN THE SAME CLAN IN PAKPAK SIMSIM TRADITIONS PERSPECTIVE OF *MASHLAHAH MURSALAH*



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Abstract

This study aims to describe the prohibition of marriage between clans in the Pakpak Simsim custom in the Pakpak Bharat Regency from the Mashlahah Mursaya perspective, including the causes, impacts, and influences. This study aims to: Find out how marriage between clans is in the Pakpak Simsim custom, Find out what the sanctions are for those who carry out marriage between clans in the Pakpak Simsim custom, Find out how the law of marriage between clans is in the Pakpak Simsim custom from the Mashlahah Mursalah perspective. This type of research is empirical juridical, with data collection techniques including document studies, interviews, and observations. Furthermore, the data is processed and analyzed descriptively using several theories as analytical tools such as Mashlahah Mursalah (Public Interest) and legal awareness. with the method, The results of the study provide two answers, namely: first, in the Pak-Pak community, it is very forbidden to have marriages between clans that have been in effect for generations from the ancestors, the prohibition of marriage between clans is because the Pakpak Tribe considers that one clan is a sibling who cannot be married because they are of the same sex or from the same womb. Second, according to some information, the sanctions for those who married within the same clan in the Pakpak tribe were more towards social sanctions such as being considered uncultured and against customs, not being recognized as citizens, being expelled and ostracized from the village, not being recognized as family, not adding siblings in terms of socializing, even in the past, those who married within the same clan were more cruel and sadistic, namely the couple would be killed. Third, even though in the Qur'an or hadith there is no prohibition on marriage within the same clan, there is no prohibition related to marriage within the same clan, but if viewed from the perspective of Mashlahah Mursalah there is one side of consideration that is good for maintaining the custom of prohibiting marriage within the same clan, namely maintaining kinship.

Keywords: Marriage, One Clan, *Mashlahah Mursalah*

INTRODUCTION

Marriage is part of worship that regulates the existence of human generations on this earth as caliphs. To maintain this existence, humans are required to marry so that the next generations can continue the baton struggle to become caliphs on this earth.(Harisudin, 2016). For the marriage to be carried out not to conflict with the rules of Allah, then of course the marriage must be carried out according to Islamic law and as a good citizen, the marriage must also be following the regulations in Indonesia. One of the regulations governing marriage is the Compilation of Islamic Law (KHI) in addition to Law No. 1 of 1974 concerning Marriage. In the KHI it is stated that to carry out a marriage some conditions and pillars must be met (Alamsyah et al., 2021).

Although Islamic law has given clear limitations, some tribes in Indonesia have made customary laws that prohibit broader than Islamic law, namely the prohibition of marriage within the same clan. Among others, this prohibition can be found in the Pakpak tribe who live or settle in the provinces of North Sumatra and Aceh (Hazairin, 1982). The Pakpak tribe has five Suak branches, namely: Pakpak Simsim, Pakpak Keppas, Pakpak Pegagan, Pakpak Klasen, and Pakpak Boang. Some examples of clans from these tribes are Padang, Solin, Berutu, Angkat, Lembong and others.

This custom of prohibiting marriage within the same clan has become a paradigm in the Pakpak Simsim community and is still firmly upheld and preserved to this day based on the experience and observations carried out by researchers through the interview process with Sortagiri traditional figures in Salak City, which is the capital of Pakpak Bharat Regency (Nasution & Hasibuan, 2023).

The background of the problem is that the custom of prohibiting marriage between clans in the Muslim community of Pakpak Simsim, is apparently not in accordance with Islamic law, because Islamic law, both in the Qur'an and Hadith, does not recognize any prohibition regarding marriage between clans, because there is no element of lineage in Islamic law, it only strictly prohibits marriage between blood relatives, breastfeeding relatives and those of different religions, the prohibition of marriage between clans is merely a customary law that has been in effect and must be maintained in the customary order of the Pak-Pak Tribe (Sembiring et al., 2018).

Based on the explanation above, the researcher can formulate several problem formulations, namely: 1). What is the Law of Marriage of the Same Clan in Pakpak Simsim Custom, 2). What are the sanctions for those who carry out the marriage of the same clan in Pakpak Simsim custom? 3). How is Marriage of the Same Clan in Pakpak Simsim Custom from the Perspective of *Mashlahah Mursalah*?

REVIEW OF LITERATURE

Theoretical Basis of *Mashlahah Mursalah*

Etymologically, the word *al-mashlahah* is the same as *al-shalah*, namely a noun (*isim*) which means the opposite of danger, protected from danger, goodness, justice, *istiqomah* or used to indicate that someone or something is good, right, perfect, orderly, praiseworthy, useful, honest, sincere. (Mudjib, 2013).

Mashlahah means “actions that lead to human goodness” in Arabic. In a general sense, this word means anything beneficial to humans, whether attractive or productive, such as bringing profit or benefit, or in the sense of preventing harm or injury. So anything that contains rewards is called *maslahah*. Thus, *maslahah* involves two aspects, namely attracting or bringing benefits and avoiding or avoiding evil. (Mardani, 2016).

The Great Dictionary of the Indonesian Language defines the word *maslahat* as something that brings goodness, goodness, or usefulness. So, *maslahat* is usefulness, goodness, advantages, and benefits. In certain cases, only a few people can understand *maslahah*, especially those who use their minds to the maximum or who like to think intellectually. At the same time, the general public does not reach the *maslahah* contained in the problem or law (Dzajuli, 2016).

Al-Ghazali formulated the theory of *mashlahah* in *al-Mustasyfas* as *murlahah*, namely everything (*masshahah*) for which there is no postulate of Shari'a in the form of a certain text that eliminates it, and no one obeys it (Danim et al., 1993). Thus, if these two words are put together in the form of *maslahah murlah* or *al-mashlahah al-murlah*, in the form or nature of *mausûf*, then the meaning is independent or independent of the evidence as to whether or not it is permissible to do it. Based on the definitions above, a common thread can be drawn on the elements or essence of *Mashlahah Mursalah*, which consist of:

1. Benefit is good according to reason, with the consideration that it can bring about goodness (*maslahah*) or avoid evil (disadvantage) for humans;
2. Something that is predicted as good and bad is following the general purpose of the institutionalization of Islamic law (*maqâsid al-syarî'ah*); What is good according to reason and in line with the legislative intention does not receive explicit legality from the Legislator to reject and accept it (Djazuli, 2006).

Based on the various definitions above, it can be concluded that the essence of *maslah maurshalah* is everything good according to reason in the sense of bringing goodness to humans or preventing evil and in accordance with the objectives of sharia. In the linguistic sense, *maslahat* only refers to the goal of fulfilling a person's needs and the opportunity to follow his desires. While in the definition of sharia, *maslahat* should refer to the five objectives of sharia, namely maintaining religion, soul, mind, descendants, and property, without ignoring the fulfillment of human needs, namely obtaining pleasure and welfare and pleasure and happiness as well as avoiding misery (Ar Raudli, 2024).

As for the object of *mashlaha al mursalah*, it is an event or incident that must be determined by law, but there is no example of the Qur'an and Hadith that is used as a basis. The principle adopted by most schools of fiqh, Imam Al Qarafi Ath Thesei explains in his book *Maslahat Al Mursalah* that *maslahat al mursalah* is the basis for determining the law in *muamalah* and other places of worship that are similar to Allah. SWT makes laws because humans have not been able to fully understand the wisdom of worship (Judge, 2000).

The relationship between the prohibition on marriage between clans and *Mashlahah Mursalah* is to ensure and highlight whether the prohibition on marriage between clans can be permitted by considering the benefits in the Pakpak Simsim traditional community so that it truly realizes benefits or avoids harm for the survival of humanity.

RESEARCH METHOD

The type of legal research used is normative juridical. The approach used is a conceptual approach and statute approach, namely focusing on the study and analysis of legal norms contained in laws and regulations which are then reviewed with the concept of *Mashlahah mursalah*, where *Mashlahah Mursalah* is one of the theories in *Usul Fiqh* in

formulating a problem.(Efendi & Rijadi, 2016). The primary legal material in this study is the *Mashlahah mursalah* Concept in the science of Ushul Fiqh and the rules of fiqh. While tertiary data is obtained from interviews and observations in the field, as well as other supporting data, usually this data consists of articles, journals, and information from the internet and other media related to this study. Then the data is processed using Qualitative methods and then described in the form of analysis, according to the needs of the study, and then concluding.

RESULTS AND DISCUSSION

Marriage Law of the Same Clan in Pakpak Simsim Custom

The Pakpak tribe is a community with customs that have a certain marriage system that is different from other regions or tribes. The Pakpak tribe itself has 5 sub-tribes (Suak in Pakpak language), namely Suak keppas, Suak pegagan, Suak simsim, Suak boang, and Suak kellasen, and each of these sub-tribes is spread across the islands of Sumatra to Aceh. Regarding the marriage system of the Pakpak people, they are included in the exogamy category, namely marriages that are carried out must be outside the group or kinship. A man or woman must marry someone who is not of the same surname as him, for example, the Berutu clan cannot marry a Beru Berutu or Berru Angkat cannot marry someone with the Angkat surname, and so on (Suryani & Sayuti, 2022).

Marriage has the purpose of forming a household that is *sakinah mawaddah wa rahmah*, the information and peace created in the family will also have a good influence on the life of society. To achieve the purpose of marriage, various methods are carried out, various things must be considered both before and after the marriage takes place.

Several factors cause the prohibition of marriage between fellow Sortagiri descendants, namely as follows:

- a. Confusing kinship relationships/genealogy. Marriages between the same surname can result in difficulty in calling out greetings (*payah tenggoen*) when gathering with family.
- b. It is feared that it will damage the relationship of friendship (Faza et al., 2021).

If a divorce occurs, it is feared that it will damage the relationship of kinship and brotherhood that has been established between the two brides even though they are siblings

(same clan). Therefore, to avoid damaging the relationship of kinship, traditional leaders prevent marriages between clans. This is based on the hadith of the Prophet which explains that those who break the ties of kinship will not enter heaven. Likewise, if a marriage occurs with another tribe, it will strengthen the relationship between clans (Nugraha et al., 2021).

c. It is feared that there will be a marriage between siblings.

The community from the traditional leader group prohibits marriages within the same clan because it is likened to the time of the Prophet Adam (AS) where his children could not marry their twin siblings but were allowed to marry alternately (not with his twin brother), this is one of the reasons why marriage between the same surname is prohibited. The traditional leaders are very worried if marriages occur between siblings, therefore it starts with siblings of the same surname who are prohibited from marrying (Pohan, 2021).

d. Considering the descendants of Sortagiri to be brothers

In ancient times, the sense of kinship was very strong so that it felt very close, so if you wanted to get married you had to look for someone from another clan. This marriage between clans, if viewed logically, would cause a lack of affection for your partner, whereas in Islam you are told to marry people who create affection, the higher the love of a husband for his wife, the better the quality of generation will be (Batubara, 2018).

e. Educating Shame

In the Pak-pak tradition, brothers and sisters must respect each other, and have a sense of respect and shame towards brothers, if there is a marriage within the same clan then there is no shame towards brothers. This prohibition on intermarriage aims to educate shame because shame is part of the faith. Here we can see that shame is also taught in religion, this is in accordance with customs based on syara' and syara' based on the Book of Allah, in other words, customs depend on religion, and customs refine religion and humanity (Tambunan & Tanjung, 2023).

Along with the development of the times and the many young men and women today who violate the applicable customary provisions and many do not have knowledge or lack knowledge of Pakpak customs themselves, resulting in many violations of marriages of the same surname being carried out in Pakpak society. For people who carry out marriages, sanctions are imposed, the sanctions for those who carry out marriages today are different

from the sanctions in the past which were strong in customs and the provisions or sanctions for violators of the customs themselves which have now changed have resulted in many people being less concerned about the prohibition (Pohan, 2018).

Sanctions for Those Who Marry Within the Same Clan in Pakpak Simsim Customs

In Pakpak society, people who do not comply with customary provisions will be labeled as uncivil and ethical. In Pakpak society, the rules that are obeyed must also be in line with customs, not just religion and law.

In ancient times, couples who married within the same clan would be severely punished, such as being ostracized from society. Based on some information, the custom of prohibiting marriage within the same clan is rarely violated in Pakpak Bharat, because the Pakpak community highly upholds the values and regulations of tradition, even long before this time, the grandmothers of the past said that if anyone violates the custom, they will be ostracized, ridiculed, even killed, although in Islamic law there is no prohibition on marriage within the same clan, but they pay close attention to matters related to customs including the prohibition on marriage within the same clan.

It is feared that marriages of the same surname will damage the relationship if a divorce occurs, which was originally between siblings of the same surname but because they got married and then divorced, this will cause the relationship between them to break, even though the divorce occurs not because the couple has the same surname or not, but depends on each individual.

And this prohibition was made because it was considered to be one tarombo, and if it was done it was considered a mistake and would violate the tradition. Therefore, from childhood, children were taught who were their relatives, including relatives of the same clan, so that children would know each other and know that those of the same clan were relatives and they were not allowed to marry if they were still of the same clan.

Other sanctions or fines for those who marry with the same surname in the Pakpak tribe are not being recognized as citizens, being expelled and ostracized from the village, not being recognized as family, in terms of socializing not adding siblings, even in the past those who married with the same surname would be killed.

Marriage of the Same Clan in Pakpak Simsim Custom: The Perspective of Mashlahah Mursalah

Maşlahah Mursale is a form of benefit that is not explicitly mentioned in the text (Al-Qur'an or Hadith), but is considered based on the general principles of the Shari'a to bring benefits and prevent harm. The prohibition on marriage within the clan is a phenomenon that is often found in the traditions of certain communities, including certain customs or cultures in Indonesia, such as in the Pakpak tribal community.

The prohibition on marrying within the same clan is usually based on custom, not direct sharia. However, if analyzed from the perspective of Maşlahah Mursalah, this prohibition has a purpose that is in line with the principles of sharia, namely maintaining public welfare and preventing harm. For example:

a. Preventing Social Conflict

This prohibition aims to maintain social harmony in society. In a strong culture such as the Pakpak Tribe, clans have significant social functions, including family structures and relationships between clans. Marriage within the same clan has the potential to create conflict between members of society or between clans because of the perception of violating customary norms.

b. Maintaining the Integrity of Cultural Identity

The tradition of prohibiting marriage within the same surname serves to maintain a certain cultural identity. This identity is important in strengthening a sense of togetherness and cultural heritage. If this tradition is violated, the cultural values that have been inherited can be eroded, threatening the sustainability of the custom.

c. Biological and Genetic Implications

Biologically, marriage within the immediate family or clan can increase the risk of genetic diseases due to consanguinity. Prevent genetic diseases that can reduce the quality of the health of offspring.

d. Compliance of Prohibitions with the Objectives of Sharia (Maqāsid al-Sharī'ah)

The prohibition of inter-clan marriage can be analyzed through the five main objectives of sharia, namely: Hifz al-Dīn (Protecting Religion): Traditions that do not conflict with religion can be part of good values. Hifz al-Nafs (Protecting the Soul): Preventing social

conflicts that can harm relationships between people. Hifz al-'Aql (Protecting Reason): Avoiding psychological stress due to customary conflicts. Hifz al-Nasl (Protecting Offspring): Preventing genetic damage to offspring due to inter-clan marriage. Hifz al-Māl (Protecting Property): Avoid conflicts that can result in economic losses due to family disputes.

So there are several considerations to allow the prohibition of marriage within the same clan in the Pakpak Simsim custom, without denying that this prohibition is not to clash with the Qur'anic text and the Hadith about the absence of a prohibition on marriage within the same clan. However, looking at it from the perspective of the community's interests. This is in line with the rules of Islamic jurisprudence, namely: Maintaining good traditions (customs) and adopting new and better things.

CONCLUSION

Based on the explanation above, it can be concluded that the prohibition of marriage between the same surname in the Pakpak Simsim tradition from the perspective of *Maṣlaḥah Mursalah* has a strong basis in preventing harm and bringing benefits. Although this prohibition is customary, the values carried are in line with the universal principles of Islamic law, namely realizing benefits, maintaining social harmony, and protecting offspring from biological risks. Therefore, this prohibition can be considered as part of the implementation of *Maṣlaḥah Mursalah* in a particular cultural context.

REFERENCES

- Alamsyah, R., Thooyibah, I., & Novianti, T. (2021). Pengaruh Teori Receptie dalam Politik Hukum Kolonial Belanda terhadap Hukum Islam dan Hukum Adat dalam Sejarah Hukum Indonesia. *PETITA*, 3(2), 343–362. <https://doi.org/10.33373/pta.v3i2.3875>
- Ar Raudli, M. (2024). *Kaidah-kaidah Fiqih Bekal Fuqoha Kontemporer*. Qaf.
- Batubara, S. (2018). Pelarangan Perkawinan Satu Marga dalam Adat Batak Mandailing. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 18(1), 1–12. <https://doi.org/10.30631/al-risalah.v18i2.37>
- Danim, S., Yahya, M., Faturrachman, F., & Mardjono, H. (1993). *Dasar-Dasar Pembinaan Hukum Fiqh Islam*. Al-Ma'arif.
- Djazuli, A. (2006). *Kaidah-Kaidah Fiqih*. Kencana.

- Dzajuli, A. (2016). *Kaidah Kaidah Fikih Kaidah Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah Yang Praktis*. Kencana.
- Efendi, J., & Rijadi, P. (2016). *Metode Penelitian Hukum Normatif dan Empiris*. Kencana.
- Faza, A. M., Putra, D., & Ritonga, R. (2021). Perkawinan Semarga Masyarakat Batak Angkola: Implementasi Hifz Al-'Ird dan Hifz Al-Nasl Pada Sanksi Adat. *AL-HUKAMA*, 11(2), 29–54. <https://doi.org/10.15642/alhukama.2021.11.2.29-54>
- Hakim, R. (2000). *Hukum Perkawinan Islam*. Pustaka Setia.
- Harisudin, N. (2016). *'Urf sebagai Sumber Hukum Islam*. Al-Fikr.
- Hazairin, H. (1982). *Hukum Kekeluargaan Nasional*. Tintamas Indonesia.
- Mardani, M. (2016). *Hukum Keluarga Islam di Indonesia*. Kencana.
- Mudjib, A. (2013). *Kaidah-Kaidah Ilmu Fiqih*. Kalam Mulia.
- Nasution, I., & Hasibuan, N. H. (2023). Akulturasi Hukum Islam dan Kearifan Lokal: Kajian Pergeseran Tradisi Sanksi Hukum Adat Kawin Semarga Masyarakat Batak Angkola. *Indo-MathEdu Intellectuals Journal*, 4(2), 534–541. <https://doi.org/10.54373/imeij.v4i2.251>
- Nugraha, A. L., Syafe'i, R., & Januri, Moh. F. (2021). 'Urf sebagai Metode Penentuan Hukum dalam Bisnis Syari'ah. *Iqtisad: Reconstruction of Justice and Welfare for Indonesia*, 8(2), 207. <https://doi.org/10.31942/iq.v8i2.5693>
- Pohan, M. (2018). Perkawinan Semarga Masyarakat Migran Batak Mandailing di Yogyakarta. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 10(2), 134–147. <https://doi.org/10.14421/ahwal.2017.10202>
- Pohan, M. (2021). Fenomena dan Faktor Perkawinan Semarga. *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan*, 8(1), 67–84. <https://doi.org/10.32505/qadha.v8i1.2088>
- Sembiring, I. A., Sembiring, R., Yefrizawati, Y., & Khoirunnisa, A. (2018). Perubahan Penerapan Sanksi Adat terhadap Perkawinan Semarga pada Masyarakat Mandailing. *Journal of Indonesian Adat Law*, 2(3), 48–73.
- Suryani, D., & Sayuti, A. T. (2022). Sanksi Adat Perkawinan Semarga Masyarakat Batak Angkola di Kecamatan Batang Angkola Kabupaten Tapanuli Selatan. *Zaaken: Journal of Civil and Business Law*, 3(1), 1–22. <https://doi.org/10.22437/zaaken.v3i1.16365>
- Tambunan, Abd. A., & Tanjung, D. (2023). Analisis Hukum Implementasi Perpindahan Perwalian dalam Pernikahan. *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 22(3), 390–402. <https://doi.org/10.30743/jhk.v22i3.6980>