

PROHIBITION OF SEXUAL MARRIAGE IN BATAK TOBA SAMOSIR TRADITIONS PERSPECTIVE OF ISLAMIC LAW



Erwansyah¹

Universitas Islam Negeri Sumatera Utara, Medan, Indonesia
erwansyah0221223002@uinsu.ac.id

Muhammad Amar Adly²

Universitas Islam Negeri Sumatera Utara, Medan, Indonesia
muhhammadamaradly73@gmail.com

Imam Yazid

Universitas Islam Negeri Sumatera Utara, Medan, Indonesia
imamyazid@uinsu.ac.id

Abstract

Regulations regarding mahram and the prohibition of intermarriage in Samosir Batak society are some of the important aspects that influence social life and marriage. The clan in the Samosir Batak tradition has a very central position, so the prohibition on intermarriage within the clan is regulated to maintain the purity of the lineage and social harmony. In Islamic law, the prohibition on intermarriage can be analogous to the prohibition against mahram, namely people who are forbidden to marry because of blood or marriage relations. This research aims to examine the relationship between mahram in Islamic law and the prohibition of intermarriage in Samosir Batak custom, as well as explore the similarities and differences between the two. The method used is descriptive qualitative with a normative approach. The research results show that there are similar goals between the two systems in protecting offspring and family honor. However, there are differences in determining which parties are considered mahram and semarga. This research suggests that there should be a deeper understanding of these two systems to create a balance between religious and customary law in Samosir Batak society. Even though there are differences in determining who is considered a mahram in Islamic law and who is considered a clan in Samosir Batak custom, these two systems have the same goals of maintaining family honor, protecting legitimate descendants, and preventing marriage within a close lineage. Socialization and Education require more intensive outreach efforts regarding the differences and similarities between mahram in Islamic law and the prohibition on intermarriage in Samosir Batak custom. This is important to provide a clear understanding to the community, especially the younger generation so that they can live their religious and traditional lives in harmony.

Keywords: Prohibition of Intermarriage, Samosir Batak Customs, Islamic Law, Marriage

INTRODUCTION

In Toba Batak society, especially in Samosir, intermarriage is considered a serious violation of social and cultural norms. Clan marriage is defined as a marriage between individuals who have the same surname, for example, Harahap with Harahap or Siregar with Siregar. This practice is prohibited because it is considered to bring bad luck and can cause problems in offspring. Sanctions for those who violate this prohibition are very severe. Violators must apologize before the eight Kings of local villages and can be fined in the form of animal slaughter. In addition, those who enter into clan marriages will not be included in other traditional ceremonies, which shows how serious this violation is in the social context of Batak society.

The Samosir Batak tradition has a social system that pays great attention to lineage, which is reflected through the use of surnames in society. The clan not only functions as a cultural identity but also regulates social relations, including in matters of marriage. One of the important customary rules is the prohibition on intermarriage, which prohibits someone from marrying individuals with the same surname. This prohibition aims to maintain the purity of offspring and social relations between families.

Clan is a very important concept in Batak culture, especially in the Samosir Batak community. The clan is considered a kinship identity that binds individuals to one large family group or clan. Each clan has a particular history and lineage that is respected by the community. Therefore, marriage between members of the same clan is considered a violation of the existing social structure and kinship system (Hilman. H, 1990 : 67-69). The prohibition on intermarriage in the Samosir Batak tradition is understood as a rule to maintain the continuity of kinship relations within one clan.

From a traditional perspective, marrying within the same clan can lead to internal conflict which can damage harmony between extended families. Apart from that, marriage between clans can lower the status of the family in the eyes of society, considering the important role of the clan in Batak social life (Surojo. W, 1979: 11). This practice of prohibiting intermarriage is applied at every stage of the traditional Batak wedding procession. From exploring potential partners to the stage of getting to know the family, the couple's surname will be checked to ensure that there is no blood relationship between the

two. If it is discovered that the prospective husband and wife are from the same clan, then the marriage will be considered void or invalid according to custom.

The prohibition on intermarriage functions to maintain a well-organized social structure in Batak society. The surname is not only a symbol of the family but also reflects a larger social group, involving all members of the extended family and their descendants. By prohibiting marriage between members of the same clan, social relations within the Batak community are systematically maintained. These prohibitions strengthened relations between different clans, which were often bound by broader social and kinship ties. This encourages inter-clan marriages which strengthen social ties between extended families of different clans.

Each clan in Batak has a symbol and identity that is passed down from generation to generation. By prohibiting intermarriage within the clan, the bloodline within the clan is maintained and protected, and the clan's name is maintained in each generation. This is very important for the Batak people who value their ancestors and family history. The prohibition on intermarriage also functions to preserve Batak customs and keep them relevant amidst changing times. Batak customs are closely related to the concept of kinship organized based on clan, so these rules are considered a way to maintain the continuity of traditions and customs that have long been implemented. This gives a sense of identity and pride in local culture.

Overall, the ban on intermarriage helps maintain harmony in Batak society. Because every individual in Batak society has a strong kinship relationship with each other based on clan, this rule also aims to prevent conflict or tension that could arise due to too close blood relations or marriages between the same extended family.

However, the prohibition on intermarriage can also limit the choice of life partners for individuals in Batak society. When a person is bound by this rule, they must seek a partner from a different clan, which can sometimes be very limited within the scope of the local community. These restrictions can cause difficulty in finding a suitable partner, especially in smaller or traditional communities.

On the other hand, in Islamic law, some rules regulate mahram, namely people who are forbidden to marry because of blood or marriage relations. In general, mahram refers to

people who cannot marry us based on the provisions of Islamic law (Amir. M, 2018). This is due to blood relations, marriage relations, or breast milk relations. Therefore, a mahram can be seen as a person who is considered protected by family ties or marriage ties that make it unlawful for us to marry for the rest of our lives. Mahram is divided into two main categories.

Firstly, mahram *muabbad* (eternal), these are people who are forbidden to marry forever. This category includes: 1) Mahram by Hereditary: Including mother, daughter, sister, grandmother, and so on. 2) Mahram by Breastfeeding: If a child breastfeeds from a woman, then that woman becomes his mahram forever, just like his biological mother. 1) Mahram by Marriage: Including in-laws, daughters-in-law, and stepmothers. After marrying a woman, the mahram relationship also applies to her family (Amir. M, 2018: 41).

Secondly mahram *muaqqot* (temporary), these are people who are forbidden to marry only under certain conditions. For example, the prohibition on marrying two sisters at once or the prohibition on marrying a woman who is in the iddah period after divorce. One aspect that is very relevant to the discussion of mahram is marriage. In this context, Islamic law prohibits marriage to someone who is a mahram. As an example: 1) A man may not marry his biological mother, biological sister, or daughter, because they are his mahram. 2) Similarly, a woman may not marry her biological father, her brother, or her son, because they are her mahram (Amir. M, 2018: 41).

As time goes by, people's views on the prohibition of intermarriage have begun to change. Many younger generations are starting to question this tradition and choose to marry partners from the same clan. This shows a shift in values and understanding of the importance of inter-clan relations in Batak society. However, there are still many traditional leaders and communities who maintain this prohibition as part of their cultural identity. They argue that following tradition is important to maintain social harmony and stability in the community.

Even though both have similar goals, the differences in determining who is considered a mahram in Islamic law and who is considered a clan in Samosir Batak customs need to be understood in depth. This is important to avoid potential confusion for the Muslim Samosir Batak community in arranging marriages and maintaining harmony between custom and religion.

REVIEW OF LITERATURE

Customary Law Theory

This theory explains how customary norms, including the prohibition on intermarriage, are formed and function in the Toba Samosir Batak community. The focus is to understand the role of the clan as a kinship identity and the basis for prohibitions on marriage in the customary context (Prodjosantoso, A. K. et al, 2024)

Maqashid Sharia Theory

This theory is used to analyze the prohibition of intermarriage from the perspective of Islamic law. Maqashid Syariah aims to protect five main things (religion, soul, reason, lineage, and property), so this prohibition can be linked to efforts to protect lineage and family honor. (Febria, S., Rahman, F., & Ramlah, R, 2023).

Comparative Law Theory

This theory is used to compare the prohibition on intermarriage in Toba Batak's custom with the prohibition on marriage in Islamic law. This comparison helps understand the similarities, differences, and relevance between the two (Lukito, R. 2016).

Benefit Theory

This theory explains how the prohibition on intermarriage in Toba Batak custom can provide social benefits, such as maintaining social stability, family harmony, and community morals, which is in line with the principles of Islamic law (Mutakin, A., 2017).

Social Relations Theory

This theory helps understand the social relationships formed through the clan system in the Toba Batak tradition and how the prohibition on marriage within the clan affects the social structure of the community (Thompson, J. B, 2015).

RESEARCH METHOD

This research is descriptive-qualitative because this research is considered capable of analyzing social reality in detail. Research is a process of collecting, processing, and analyzing an event. To obtain scientifically accountable studies (Muleong, Lexy, 2002: 53). So, the data collection methods used in preparing this research are as follows: **a)** Documentation: This method was used as an effort to obtain secondary data about the

Samosir community. The data collection process involves collecting documents, both written documents, image documents, and work results. This documentation method can be used as additional data that already exists and as evidence and data reinforcement; b) Interview: This is one of the methods in qualitative research. Interviews in qualitative research according to Denzim and Lincoln (1994) are conversations, the art of asking and listening. This method was carried out in-depth by the author to obtain clearer and more detailed information and information from informants. Interviews were conducted with Samosir Batak families whose families carried out clan marriages, namely, the perpetrators of clan marriages (between husband and wife from the same clan) namely those with the Harahap surname, the Hasibuan surname, and the Lubis surname. The author also conducted interviews with elders who are experts in the field of customs and religious figures in Samosir.

RESULTS AND DISCUSSION

Understanding the Prohibition of Marriage within the Toba Samosir Batak Customs

Due to the diversity that exists in Indonesia, each ethnic group has a different traditional marriage system, including in this case traditional marriage. These different marriages are characteristic and unique in every existing culture. Etymologically, the custom is used to refer to the binding norms of a particular society, which regulate the phases of a person's life in a society.

In Indonesia, the term *adat* is also not uncommon. *Adat* is often used by the general public in its simple form, but more complicated terms such as customs or customs are often used too. As stated by Snouck Horgronje, one must be aware of the differences between traditional terms used in one's region and customs in other regions (Abdurahman, 1978: 57).

The meaning of customs like this seems to be inseparable from the fact that people in Indonesia understand this term in a sense that covers many dimensions of life. Therefore, it can be said that every Indonesian society or every ethnic group has a different culture and its characteristics are influenced by the natural structure of the mind.

Customary marriage law is community law (people's law) which is not written in the form of state legislation, which regulates marriage procedures (Lukito. R, 2008: 139). Based on this understanding, the laws or regulations regarding marriage customs are made by a

particular cultural group and are mutually agreed upon by the group, to create harmony within the group.

There are three types of traditional marriage. First, exogamy, that is, a man is prohibited from marrying a woman of the same clan as him. Second, endogamy, that is, a man is required to marry a woman within his circle of relatives (tribe, family clan) and is prohibited from marrying a woman outside his circle of relatives. Third, eulegamy, namely that a man is no longer required or prohibited from marrying a woman outside or within his circle of relatives but within the limits determined by Islamic law and applicable statutory law (Vergouwen, J.C, 1986: 82).

In the marriage system above, the Batak people adhere to an exogamous marriage system. Batak society prohibits intermarriage because such marriages violate Batak customary rules. Anthropologically, intermarriage is considered an abstinent marriage or violates Batak customary rules. The marriage of a man to a woman of the same clan is considered to be a sibling and blood of the father (patrilineal).

Marriage of the same clan is a marriage between a man and a woman who enter into the marriage having the same surname. For example, marriage between the Hasibuan clan and the Hasibuan clan, the Harahap clan with the Harahap clan, the Lubis clan with the Lubis clan, and so on. In essence, Batak customary law regarding kinship relations prohibits marriage between a man and a woman of the same clan.

This prohibition on intermarriage had been passed down for generations before Islam came to Batak land. Therefore, local Batak people always adhere to customary law and still maintain it. In ancient times, couples who married within the same family would be punished severely, such as being ostracized from society, and usually the community did not want to accept them, were not recognized, and were prohibited from participating in traditional ceremonies, and both parties would even be sanctioned by being humiliated by their community and/or expelled from that society.

The Samosir Batak people highly uphold Batak cultural values, especially in marriage. However, in reality, in the Samosir Batak community, there have been violations of Samosir cultural regulations. Samosir Batak clan marriages, for example, show that the custom of prohibiting clan marriages in Batak customs is implemented and violated by the

community. This system of marriage outside the clan has disappeared in Batak society. This marriage is called a cemarga marriage (discordant).

A clan marriage is a marriage that occurs between a man and a woman of the same clan. Semarga in the Batak people's view is also called namariboto (brothers and sisters). Clan marriages are strictly prohibited in the Toba Batak tribe's customs because the clan is considered to be one descendant, one ancestor, and even one stomach (*sabutuha*). However, if this happens in Toba Batak society, then the marriage is tantamount to incest.

According to the beliefs of the Toba Batak people, even though it has been passed down for several generations, people from the same clan are still related by blood, like brothers and sisters. This is confirmed in customary provisions so that it is taboo for people of the same clan to marry. So, if incest occurs, it means that charcoal will not only be a mark on the family's forehead but also the face of the community. This attitude of respect for ancestral heritage makes customary law speak, namely that the perpetrator's partner is given heavy sanctions.

Apart from clan marriages, some marriages are prohibited by Toba Batak customary law, including:

1. Marpadan wedding

Marpadan marriage is a marriage between related clans based on an ancestral oath. For example, the ancestors of the Sitompul and Tampubolon clans. Because of their strong friendship, they became like siblings until they agreed to agree or make a promise so that their offspring would not marry each other.

2. Bona ni ari marriage

A bona ni ari marriage is a marriage between a man and a woman of the same clan as the wife of the first ancestor. For example, it is taboo for Tambunan women to marry Manurung men because Boru Manurung is the wife of the King of Tambun. On the other hand, Tambunan men are strongly encouraged to marry Manurung women. They were Marpariban Boru Manurung, and Boru Bone, the daughter of the mother's brother, a descendant of King Tambunan.

For people who understand their *partuturon* (clan genealogy), it will not be possible for them to marry someone of the same clan, bona ni ari or *marpadan* because they will

consider those of the same clan as themselves to be of the same descent or even the same stomach as themselves and in general they will consider people who are of the same clan as themselves to be their brothers or sisters and who are the stipulations of their ancient ancestors that they will be highly respected (Sutan Tinggi. B, 2011: 51).

Clan marriage is a marriage that is deviant and violates the provisions of Toba Batak customary law which has existed for hundreds of years and is opposed by both traditional leaders and the Toba Batak community. The existence of customary provisions regarding the prohibition of clan marriages that occur within the traditional community of the Toba Batak tribe, means that clan marriages are strictly avoided and prohibited for the Toba Batak people.

Marriage in the Toba Batak tradition is a very sacred activity. Sacred because in the Batak traditional understanding, marriage means sacrifice on the part of the woman (parboru) because the woman makes the sacrifice of giving one living a human life, namely her daughter, to another person, namely the man (paranak) who is her in-laws so that the man must also be able to respect it with respect. sacrificing or offering one's life is also slaughtering an animal (cow or buffalo), which will be a meal or dish (traditional food) in a traditional wedding ceremony or ulaon (C. (Wulansari, C. D., & Gunarsa, A. 2016: 48).

In Toba Batak's custom, marriage must be with another clan and cannot be exchanged directly between two families of different clans, known as dalihan na tolu (three hearths). The marriage referred to here is a marriage between a man and a woman who have different clans or different lineages. Dalihan na tolu embodies a system of social relations in very strong kinship relationships based on blood (genealogical) descent.

In Toba Batak traditional ceremonies, dalihan na tolu has a very important position and cannot be removed from the scope of Toba Batak society. Dalihan na tolu consists of hula hula (na tolu), boru and dongan sabtuba. The hula-hula is the woman's (wife's) family, so the father, father's brothers, and sons are the hula-hula for the family that takes the girl's child. Boru is the family that takes the woman (wife) or the party that receives the wife, which also includes the father, the father's brothers, all his sons, and his clan friends who are the boru of the family that gave the woman. And Dongan Tubu is a clan relative (J.C. Vergouwen, 1986: 19).

In the Samosir Batak tradition, the prohibition on intermarriage refers to the provision that a person cannot marry someone with the same surname. The clan is a symbol of patrilineal lineage which is very important in Batak society. The prohibition on intermarriage aims to prevent marriages within the same lineage which are considered to damage the honor of the family and descendants.

Prohibition of Marriage in Islamic Law

In the principles of the Islamic religion, several prohibitions on marriage are formulated, with whom one may marry and with whom one is prohibited (not allowed to marry).

1. Different religions, as Allah says

فُنُكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا ۖ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ ۚ وَلَوْ أَعْجَبَكُمْ ۗ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۗ وَاللَّهُ يَدْعُوا إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ ۗ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

“Do not marry polytheist women until they believe! Indeed, a believing female servant is better than an idolatrous woman, even if she attracts your heart. Also, do not marry polytheist men (to believe women) until they believe. Indeed, a faithful male servant is better than a polytheist male slave, even if he attracts your heart. They invite them to hell, while Allah invites them to heaven and forgiveness with His permission. (Allah) explains His verses to people so that they learn a lesson.” (QS. Al Baqarah (2) : 221).

2. Too Close Blood Relations

From the perspective of medical science (family health), marriage between blood-related families who are too close will result in the offspring being less healthy often disabled, and sometimes even less intelligent.

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُم مِّن نِّسَائِكُمُ اللَّاتِي دَخَلْتُم بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ ۗ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَن تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا -

“It is forbidden for you (to marry) your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brothers' daughters, children - the daughters of your sisters, your mothers who breastfeed you, your sisters who are breastfed, the mothers of your wives (in-laws), the daughters of your wives (stepchildren) who are in your care from the wives

you have you interfere, but if you have not mixed with your wife (and you have divorced her), then it is not a sin for you to marry her, (and it is forbidden for you) the wives of your biological children (daughters-in-law), and it is forbidden to bring together (in marriage) two women who are sisters, except what has happened in the past. Indeed, Allah is Forgiving, Most Merciful." (QS. An-Nisaa: 23).

3. Breastfeeding Relationships

A breastfeeding relationship is a man and a woman who are not related by blood, but who have breastfed with the same mother (woman) are considered to have a breast-feeding relationship, therefore there is a prohibition against marriage between the two for reasons of breastfeeding. Of course, another issue will arise, namely whether it is the number of times you breastfeed or how long you breastfeed that gives rise to the prohibition on marriage. This prohibition is a minimum of 5 (five) times until you are full each time you breastfeed, it doesn't matter what times you breastfeed, whether you breastfeed five times a day or two or three days or a week apart (Basyir, Ahmad. H, 1999: 421). Then the marriage ban arose. This opinion is the opinion of Imam Syafi'i and his followers. This prohibition is also explained in Q.S An-Nisaa Verse 23 which means all those who are cared for by the same mother even if they are not related.

4. Semeda Relations

A marital relationship means after a previous marital relationship, for example, your wife's (male) older sister. Laki-laki (you) has married his older sister or younger sister, so there is a prohibition on marriage between the husband of that older sister and that older sister. Allah says:

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

“And do not marry women whom your father has married, except (incidentally) in the past. Indeed, this act is very vile and hateful and the worst path (taken).” (QS. An-Nisaa: 22).

5. Polyandrous Marriage

Polyandry is a woman who is married and remarries another man (not yet divorced). The prohibition on polyandrous marriages is confirmed in Q.S. An-Nisa verse 24 which reads:

﴿ وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ ۚ كَتَبَ اللَّهُ عَلَيْكُمْ ۚ وَأُحِلَّ لَكُمْ مَّا وَرَاءَ ذَٰلِكُمْ أَن تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسْلِفِينَ ۖ فَمَا اسْتَمْتَعْتُمْ بِهِ ۖ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً ۚ وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ ۖ مِن بَعْدِ الْفَرِيضَةِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

“And (it is also forbidden for you to marry) married women, except for slaves that you own (Allah has established this law) as His decree for you. And it is permissible for you other than that (namely) to seek wives with your wealth to marry, not to commit adultery. So, the wives whom you have enjoyed (interfered with) among them, give them their dowries (perfectly), as an obligation; and there is nothing wrong with you for something that you have given up to each other, after determining the dowry. Indeed, Allah is All-Knowing, All-Wise.” (QS. An-Nisaa: 24).

6. Against Women in Li'an

Li'an is moving away from each other, that is, husband and wife stay away from each other after li'an happens forever. Li'an is the husband's oath that his wife has committed adultery (had an affair) with another person and that the child his wife gives birth to as a result of adultery (if any) is not his child. If someone accuses his wife of adultery without evidence, then he has committed qadzaf and is entitled to the hadd law in the form of 80 lashes. Allah Ta'ala says:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَٰئِكَ هُمُ الْفَاسِقُونَ ۖ

"And those who accuse good women (of adultery) and they do not bring four witnesses, then whip them (those who accuse them) eighty lashes." (QS. An-Nur: 4).

7. Marrying an adulterous woman or adulterous man

The purpose of marriage is sacred. It must be prevented from all elements of desecration, and pollution, that is why it is a religious institution. It is haram that does not protect, guard, and secure the sanctity of marriage (Hakim. R, 2000: 364). A marriage based on secularism alone (according to what it is, culture alone) will not be able to maintain or will not be able to maintain that purity, as explained in Q.S An-Nur Verse 3 which reads:

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً ۖ وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ ۚ وَحُرِّمَ ذَٰلِكَ عَلَى الْمُؤْمِنِينَ

“A man who is an adulterer, the one he marries is also an adulterous woman or a polytheist woman. An adulterous woman's soul mate is an adulterous man or an idolatrous man, and this is forbidden for believers.” (QS. An-Nur: 3).

Married Marriage Perspective of Islamic Law

1. Perspective of Islamic Law

Islam regulates the prohibition of marriage based on lineage, marriage, or marriage (mahram). In terms of family: a) If the marriage does not involve a mahram relationship, then the original law is mubah (permissible); b) However, if according to certain customs the clan is considered to be mahram (because of the perception of close kinship), then local clerics can provide legal considerations.

2. Relation to Urf (Tradition)

- a. Urf Sahih (Good customs); If the prevailing customs in society consider that marriage within the clan does not bring harm, then Islam tends to allow it, as long as it does not conflict with the Shari'a.
- b. Urf Fasid (Bad customs); If custom prohibits intermarriage for strong reasons (for example to maintain social harmony), then Islamic law can consider this prohibition to maintain the benefit.

3. Ulama's Views

Some scholars state that Islam provides leniency as long as there are no violations of the Sharia. However, other scholars reminded us to keep considering the benefits, such as traditional conflicts or family harmony.

4. Case Example

In Batak society, for example, the prohibition on marriage within the clan is very strict because it is considered a violation of custom. In this context: a) Islam does not directly prohibit it but respects these customs to prevent social conflict; b) Decisions are usually left to the discretion of local communities and religious leaders.

Based on the results of research regarding Batak clan marriages in the migrant Samosir Batak community which was discussed in the previous chapter of this thesis, conclusions can be drawn. The Batak community, which has a patrilineal kinship system with an exogamous marriage system, has a customary provision that members of the same clan

are prohibited from marrying because it is believed that those who marry within the same clan are still related by blood (Nelson. L, 2012: 24).

It cannot be denied, as the saying goes, where the earth is stepped on, there the sky is upheld. This can be seen in the Toba Batak community, with the prohibition on inter-ethnic marriages, like it or not, the community has to submit to customary regulations that have been established for a long time. This will be a problem when religion allows it while custom prohibits it. Here, the custom seems stronger than religion, religion should be upheld more highly than custom.

Therefore, the background to the emergence of inter-clan marriages in Batak society is to avoid marriages within the same clan, avoid marriages between siblings, avoid confusing kinship relationships (*partuturon*), and maintain a sense of shame. In this way, Batak people who marry will know what clans they can marry into and will consider those clans to be brothers (Pandapotan. N, 1994: 54).

Basically, according to the customs, marriage within the Samosir Batak community is prohibited because it is considered consanguineous and still maintains it, however, on the other hand, there are Batak Samosir communities who tend to change the prohibition on marriage within the clan. The Samosir Batak community considers clan marriages to be legal as long as they love each other. Apart from the love factor, the occurrence of clan marriages is also influenced by religious, economic, and educational factors, current developments, and lack of knowledge of Batak culture. The Batak people who practice intermarriage consider that the population is increasing so that it is no longer possible for members of the same clan to be of the same blood, and people who have the same surname do not mean they are relatives.

The issue of marriage has been regulated in the Al-Quran which includes the pillars and conditions of marriage, the purpose of marriage, and marriages that are prohibited in Islam. It also explains the women who are forbidden to marry. In Surah An-Nisa (4): 22-24. Women who are haram to marry are divided into two, namely temporarily haram and permanently haram. Meanwhile, in the Toba Batak tribe's customs, there is one more prohibition on marriage, namely the prohibition on inter-ethnic marriages.

CONCLUSION

Based on the results of previous research, this panel concludes that the most prominent factor in marriage within the clan is the religious factor, the prohibition against marriage within the clan does not exist in Islamic law, because relatives of the same clan are not included in those who are forbidden to marry according to the Qur'an and Sunnah. Thus, it can be said that same-marga marriages are permissible as long as they are not close relatives. Clan marriage is a social change for families in Samosir Batak society. Social changes in Samosir Batak clan marriages are currently changing the exogamous marriage system to an eleutherogamous marriage system which does not recognize any prohibitions or requirements as is the case in the exogamous marriage system or the endogamous marriage system.

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