



WEAKENING TRADITION: THE SHIFTING IN SAME-CLAN MARRIAGE PROHIBITION IN MANDAILING BATAK

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Abstrak: Perkawinan sesama marga dilarang di kalangan masyarakat Batak Mandailing. Praktik tersebut dianggap merugikan *partuturon* (sebutan dalam hubungan keluarga). Namun, larangan tersebut sudah mulai dilanggar oleh masyarakat. Sanksi bagi pelanggar sudah tidak berlaku lagi. Hal ini menunjukkan melemahnya hukum adat dalam masyarakat. Penelitian antropologi hukum ini menggunakan observasi dan interview kepada para pemimpin adat Masyarakat Batak Mandailing dan mereka yang melakukan perkawinan sesama marga. Penelitian ini menemukan bahwa faktor-faktor seperti modernitas, peningkatan pendidikan, mobilitas, dan ajaran Islam mempengaruhi perubahan perkawinan sesama marga.

Kata kunci: pernikahan adat; pernikahan sesama klan; Batak Mandailing

Abstract: Same-clan marriage is prohibited among the Mandailing Batak society. The practice is considered to harm *partuturon* (designation within the family relationship). However, people have started to violate this prohibition. Sanctions for the violators have no longer been imposed. This indicates the weakening of the customary law in society. This is a legal anthropological inquiry involving observations and interviews with the customary leaders of the Mandailing Batak Society and those who practice the same-clan marriage. This research finds that factors influencing the changes in the same-clan marriage include Islamic teachings, modernity, improvement in education, and people's mobility.

Keywords: customary marriage; same-clan marriage; Mandailing Batak

Introduction

For indigenous communities, marriage is regulated by certain values to maintain honors. The regulation aims to avoid irregularities and violations that may harm the community's honors and dignity (Setiady, 2013). In Indonesia, marriage is regulated by Law No. 1 of 1974, which its implementation is regulated by Government Regulation No. 9 of 1975. Another law regulating marriage is Law No. 7 of 1989 on Religious (Islamic) Courts and the Compilation of Islamic Law. This latest Law was established based on Presidential Instruction No. 1 of 1991 (Syarifuddin, 2006). Legal awareness and legal compliance are two related variables. Legal awareness is an abstract conception about the harmony between orderliness and desired tranquillity. This is the core of the cultural system of a society. Some people argue that the cultural system is normative. Legal awareness gives rise to various systems of norms because the core of legal awareness is a strong desire to live regularly. Consequently, customary law is part of custom or even the concretization of legal awareness, especially in societies with simple social and cultural structures (Pide, 2014).

Today, it is still recognized that customary law reflects the identity of each region. The enforcement of customary law aligns with past, present, and future historical movements. Customary law in Indonesia has unique characteristics and features different from other laws (Ishom, 2019). In the sense of “customary engagement”, marriage has a legal effect on customary law applied in a community. The legal consequences of this have existed since a marriage took place, such as by the existence of an engagement relationship called a “*rusah sanak*” (the relationship between the families of the future husband and wife) (Hadikusuma H., 1990).

Many regions set their own marriage customs. Some of them may contradict Islamic law or align with it. It is undeniable that marriage should be in tune with the applicable customs in the respected area (Soekanto S., 2003). In customary law, marriage does not merely mean a bond between man and woman as husband and wife to get descendants then build and foster household life. Marriage also means a legal relationship involving the couple's family members. The occurrence of marriage means the enactment of a harmonious and peaceful kinship. (Hadikusuma H., 1990).

Batak society is known for its patrilineal system. Batak people refer to its member as *Dongan sabutuha* (relationship based on lineage from the father). Batak people use the word clan to denote both smaller and larger units and the largest groups (Vergouwen, 1986). They do not recognize matrilineal lineage. According to the South Tapanuli custom, people who have the same bloodline or family are not allowed to marry. Also, there are other customs concerning who can be married by the people. The violation of those customs will result in punishment. In response, Batak people have a tradition called “*rombak tutur*”, or changing a designation used in a speech.

The Batak community, especially the sub-ethnic Batak Padang Lawas, Sipirok, Angkola, and Mandailing), determines customary marriage rules. Batak Padang Lawas and Sipirok prohibit same-clan marriage. This restriction is based on the principle of exogamy. Even though their religions do not prohibit such practices, most Sipirok people still follow these traditions. They will not take a wife from their clan. The women will leave the community and move to their husband's community (Vergouwen, 1986)

The Batakese people believe that an ideal marriage is between *rumped* people or between a man and his mother's brother's daughter. Thus, a Batak man is very unyielding to marry a woman from his clan. Nevertheless, such practice has no longer been done (Soekanto S. &., 1986).

Padang Lawas is a Batak sub-group residing in South Tapanuli Regency. The people maintain the Batak marriage law that strictly bans same-clan marriage. The person who practices it considered marrying *tutur iboto* (their own brother/sister). Nonetheless, the conflict between Islamic and customary law regarding this issue becomes obvious (Hasibuan, 2007). Nowadays, the practice of same-clan marriage has started to disappear. One of the regions managing the shifting in its customary law is the District of Barumon of Padang Lawas Regency.

The Philosophical Foundation of Same-Clan Marriage Prohibition in Mandailing

Indonesia as a huge country and has ethnic diversity, one of them is the Batak culture categorized as Toba Batak, Karo Batak, Simalungun

Batak, Pakpak Batak, Mandailing Batak, and Angkola Batak. The six Batak clans have different cultural and linguistic characteristics yet have the same principle and culture, namely Batak culture. The Batakese people know their clan as an identity that shows their origin. The clan categories can be traced from the family name someone has since birth. According to Vergouwen, a clan signifies that the people have the same grandfathers (Vergouwen, 1986)

Each ethnicity has its own distinctive culture. One of the Batak clans is Mandailing Batak, a Batak Muslim clan with social structures and systems inherited from its ancestors. Mandailing Batak has a social structure that is essentially based on the father's lineage. This social structure consists of three elements, better known as *dalihan na tolu* (Hilda, 2016).

In the Indonesian indigenous communities, there are three main lineage principles: 1) matrilineal kinship is a system that develops its system based on maternal lineage and prioritizes women over men; 2) Paternal kinship system builds its system based on both father and mother lineage. In this system, sons and daughters are treated the same in the inheritance distribution; 3) Patrilineal kinship system manages its system based on the father's lineage. As a consequence, boys are prioritized over girls. When a family does not have any son, it will adopt one (Hadikusuma, 1995).

The term "patrilineal" comes from Latin *pater* and *lineal*. *Pater* means father, while *lineal* means direction or way. Therefore, patrilineal means the direction of the father. With such a system, the basic principle of marriage in Batak must be exogamous, meaning that a person should only marry someone from outside of the group. In other words, the patrilineal bloodlines also determine the direction in which a person can marry and with whom it is permitted. The genealogy determines the basis of bloodlines and the patrilineal line. Therefore, someone's clan is determined by the father's surname. That is why Batakese are called according to patrilineal bloodlines and prohibit same-clan marriage (Munthe, 2012).

Marriage in Indonesia is regulated by Law No. 1 of 1974 contained in State Gazette No. 30 and regulated in Government Regulation No. 9 of 1975. The enactment of this law marked the unification of marriage

law in the country, applicable to all citizens. The bond between a man and woman as a husband and wife is only legitimate if their relationship is established based on the law (Prodjohamidjojo, 2011). Customary law governing marriage in Indonesia can be classified into three types of systems, those are:

First, the endogamy system means that a person can only marry someone from his or her own tribe. The Toraja people apply this system. However, there has been a shift in the system. One of the factors causing this shift is the easy access to other regions. Because of this, the system has begun to be abandoned.

Second, the Eleutherogamy system means that a person cannot marry someone who has a hereditary tie, such as mother, grandmother, biological children, grandchildren, etc. Third, the exogamy system means that a person is prohibited from marrying someone from the same tribe or clan. This system can be found in Tapanuli, Minangkabau, South Sumatra, and other regions (Soekanto, 1992).

The reasons behind these prohibitions are, first, kinship consideration. Familial relationship in Mandailing custom is developed based on Dalian Na Tolu's principle. This value consists of: *kahanggi*, *mora*, and *boru*. *Kahanggi* is a brother from father's bloodlines, while *mora* is a sister from father's bloodlines. *On the other hand*, *Mora* is a brother from the wife of *kahanggi*. These three should not marry each other.

In this case, the people from the same clan are descended from common grandfathers. They see their kin as having the same blood or *markahanggi* (siblings). A person marrying his or her sibling is considered incestuous, which is strictly prohibited by customs. In the past, those who committed incest were immediately exiled from their community (Hasibuan, 2007). The customary law of marriage is an unwritten law. Any violation made is resolved in a customary court (community court) (Hadikusuma H., 1990).

The second reason is to maintain *tutur* or designation or the calling to relatives. *Tutur* is a keyword in the kinship system of the Barun society. The *tutur* will determine someone's position in the *Dalihan Na Tolu* network. Here, everyone meets with the same Bataknese, which makes the words that first come out questions about each clan. Hence, a person knows about the right *tutur* for his or her

counterparts, and this is what is called the *tarombo* (Interview with Ali Kasa Hasibuan, 2018).

The concept of *Dalihan Na Tolu* is the key to banning same-clan marriage in Batak society. *Dalihan Na Tolu* is a socio-cultural concept that is specifically found in Batak. It means that a person who marries someone from his or her own clan negates the function of *Dalihan Na Tolu*. The philosophy of the same-clan marriage is to maintain the purity of offspring based on the *Dalihan Na Tolu* of the Batak community (Munthe, 2012). If a person insists on marrying one from his or her clan, then one of the *Dalihan Na Tolu* elements, namely the function of *Boru*, disappears. This is because the woman will become *hula-hula* (the wife's clan group/the same clan as the in-laws), although they are the same people as their son-in-law. Therefore, in such a marriage *boru* becomes a *dongan sabatuba* with *hula-hula*. Any violation against the prohibition of the same-clan marriage results in a serious punishment, which is exile.

Dalihan Na Tolu consists of *kahanggi* (same clan friends), *boru* children (the wife taking), and *mora* (the wife giving). *Dalihan Na Tolu* is analogous to three stoves, usually used stones to support pots or pans when cooking. The distance of the three stoves is equal to each other. This is to enable them to support any cooking tools put on them. The fulcrums or cauldrons are on all three furnaces and get the same heavy pressure. Cooking wares can be interpreted as a burden of joint obligations or joint work, commonly called *horja*. The whole order of *Dalihan Na Tolu* takes part in *horja*. Because of that, *Dalihan Na Tolu* is interpreted by three stoves, showing the similarity of roles, obligations, and rights of the three elements in *Dalihan Na Tolu* (Hilda, 2016).

Apart from exile, as the most severe punishment, those who violate the same-clan marriage prohibition face other consequences as follow: 1) The violators should provide gifts to their prospective in-laws, families and customary leaders in the form of butchering a male buffalo to be eaten by *Dalihan Na Tolu*. In the ceremony, they should announce that the ceremony is held to pay off the punishment; 2) Women who marry the same-clan husband must change their family name by asking their husbands' family names to their husbands' mothers through a customary ceremony; 3) The surname given to the prospective wife applies only to

herself after determining that the wife will be a member of her husband's *mora* group (the clan of her husband's mother) and no longer a member of her parent's clan; 4) If the couple produces a male offspring, the child is prohibited from taking *boru tulang* (*boru* from his wife's brother) (Hasibuan, 2007).

Family members that are prohibited from being married are: a) siblings from the same mother and father; b) clan relatives; c) clan relatives; c) siblings of biological mothers when she is still alive; d) sons of brothers; e) children from biological sisters (*babere*); children of siblings from biological father; g) children of siblings from biological mothers; h) children from sisters to our side's son.

The same-clan marriage is also applied in the South Tapanuli custom. This is a consequence of violating the notion of *partuturan* (designation within the family relationship). In responding to such violations, the community and customary authority punish the perpetrators. This leads to the so-called Rombak Tuttur, which means changing designation or calling for someone.

The violation often happens because the same-clan marriage is acceptable by state law and Islamic teaching. People prelude religious and state law consideration over customs (Lubis, 2006). Same-tribe marriages have resulted in drastic changes in *pertuturon*. Changes in designation or overlapping *partuturon* also occurred because of marriages of people related for a long time with a particular *tuttur*. Then marriages occurred between people from the parent and child levels. This is called a “*sumbang*” marriage, which is to marry *Boru ni Namboru* (our greeting to father's/aunt's sister). While those who should marry according to custom, the marriage between “*Anak Namboru* (Son greeting from mother's side) with *boru tulang* (Greeting Daughter from the father's side) (Alam, 2011).

In a patrilineal society, the goal of a marriage is to preserve the husband's path in the male line. According to the customary family law, a man still belongs to a group relative (a blood descendant) (Vergouwen, 1986). Even though many customary laws remain unwritten, people acknowledge them. Some of the provisions are accompanied by legal consequences involving physical punishment, exile, and fines, while others only result in social punishment. People

are often embarrassed when they obtain punishment, even with only light ones (Husny, 1986).

Shifting Norms of the Same-Clan Marriage Ban in the Mandailing Batak Society

It is undeniable that local wisdom has contributed to maintaining orders in society. Every ethnicity in Indonesia has local wisdom to create and maintain harmony. Among the local wisdoms known are *dalihan na tolu* from Tapanuli, *basusun sirih* from Malay, and *siro yo ingsun, ingsun yo siro* from East Java. However, not all values of local wisdom can survive. Some even experience shifts and changes, as found by many studies (Rasyidin, 2009).

As mentioned, the same-clan marriage in the indigenous community of Barumun of Batak tribe is banned because it considers damaging offspring and designation between *boru*, *mora*, and *kahanggi* children (Interview with Ahmad Johan Siregar, 2018). This means that the practice makes the people uncomfortable. However, at the moment, many have practised the same-clan marriage in Barumun. This is no longer considered abnormal. Consequently, no sanctions are posed to those who marry their same-clan counterparts (Simamora Community, 2018).

The shifts also occur in the punishment of those who practice same-clan marriage. They are no longer given customary sanctions such as the fine to slaughter a goat or paying a certain amount of money equal to a goat price to return to their village after the exile. The practice of same-clan marriage is even more possible as the state law does not ban it. Law No. 7 of 1974, with the influence of Islamic law, only prohibits marriage with a mahram (Siregar, 2018). Those who practice the same-clan marriage choose to avoid customary marriage ceremonies. Still, they register their marriage at the Office of Religious Affairs (KUA) to be admitted by the state.

This new shift possibly weakens the power of customary law. The fading of customary law due to globalization is unavoidable (Pasaribu & Sukirno, 2017). The future of customary law may be uncertain. In reality, the customary leaders can only impose the lightest sentence to those who commit *na tarboan-boan rohana*, *sumbang*, or *iboto*. Many other customary violations have begun to subside. Such negligence has

started since the colonial government period and has intensified during the current government. This is due to the lack of authorities' interests in enforcing the customary law (Vergouwen, 1986).

The banning of same-clan marriage in the Batak Mandailing society aligns with the structural functionalism theory of Talcott Parsons. This theory seeks to interpret a structure that interacts with each other, especially in norms, customs, traditions, and institutions. The structural functionalism theory assumes that the family is a system used to answer every functional need for a social system to survive and how this function can be maintained (Ritzer, 2012).

Every value in a social system takes place simultaneously. This means that the changing process occurs functionally integrated into a form. Any violation will face the law that functions to restore order in the community life. Indigenous laws are unchangeable but develop following the wishes of the people and the development of society (Ritzer, 2012).

The structural functionalism theory aligns with the reality of the Barumon community's social life. Thus, changing mindset, behaviour, and values is changing into a more rational mindset. It is expected that the banning of same-clan marriage can restore order in society. As maintained by Burn, the main function of customary law is to intervene, create, adjust the balance between the physical and spiritual lives of individuals and society (Lukito, 2008). As stated by Hazairin in the theory of *Receptio a Contrario*, meaning "acceptance that does not conflict", the applicable law for Muslims in Indonesia is Islamic law. Customary law can only be applied if it does not contradict Islamic law. According to Hazairin, in Indonesia, the existing law is customary law, but what is followed by the society is the law of religion. Therefore, Islamic and customary laws have their own place and cannot replace each other. Hazairin said that religious law was preparing to disassemble itself from the customary law. It can be seen that compared to the colonial era, Islamic law has been more developed (Yaswirman, 2013).

The marriage prohibition has been specified in the Quran, *sura al-Nisā'* [4]: 22-24. It is stated: *wa uḥillalukum ma warā'a dhalikum* (verse 24). The word *wa uḥilla* (and is permissible) means that no

marriage should be banned or denounced except those that the Qur'an prohibits. Those banned to be wed in the Quran do not include cousins. Naturally, this stipulation shifts the patrilineal and matrilineal forms of society to a bilateral society according to the Al-Qur'an. In responding to the same-clan marriage, the Qur'an refuses exogamy marriage.

With the removal of various prohibitions on cousin marriage, the prohibition in patrilineal and matrilineal is wholly or almost completely parallel with same-clan marriages. Then it removes automatically on same-clan marriage prohibition. This means that the Qur'an abandoned exogamy marriage. A bilateral society arises with the permit of same-clan marriage (Yaswirman, 2013).

According to Muhammad Soleh Nasution, the head of the indigenous community, people who are married to the same family cannot carry out traditional marriages. According to Islam, both male and female families only hold a *kenduri* ceremony by making congratulatory prayers and inviting a limited number of families and neighbours (Interview with Ali Kasa Hasibuan, 2018). Consequently, they cannot attend traditional banquets served at anyone's wedding. Besides, they cannot participate in the *manortor* (Batak traditional dance) in a *horjal walimah* (a traditional wedding party) (Nasution and Hasibuan, 2018).

The occurrence of *marsumbang* marriage and the adaptive attitude of the customary leaders towards the practice indicate a new development of the indigenous marriage system. The previous exogamy system is now shifting to the *eleuthrogami* system. The pattern is visible among young people in Batak society who have started to abandon and have a limited understanding of the customary law (Nasution, 2018). The limited role of parents in introducing the customary law contributes to such an attitude. Moreover, the acceptance of *marsumbang* perpetrators by the society and customary leaders indicates such change. This is different from the old customary leaders who reject the same-clan practice (Pasaribu & Sukirno, 2017).

The Simamora Association added that the custom violation is caused by the limited understanding of Batak young people who do not speak Batakese about their traditional customs and sanction. With improved

education among society, people realized that the implementation of same-clan marriage punishments, such as exile and killing, are no longer applicable nowadays (Simamora Community, 2018).

People who practice same-clan marriage is actually to understand that their actions violate customary law, yet they accept Islamic teachings. For example, Mantar Harahap and Ermida Harahap, who practice same-clan marriage, realize and know that their action contradicts customary rules. They explained that the only reason for them to marry is because they love each other. After their marriage, they and their families do not obtain any customary sanctions. This is because the same-clan marriage has been common among Buruman society (Harahap, 2018). Moreover, Horas Nasution and Saripah Nasution, who are also same-clan couples, also said that when they held the marriage, there were no sanctions. They were sanctioned by the obligation to slaughter a goat. However, this sanction was only a formal speech (Nasution, 2018).

The strong influence of Islam among the Batak Mandailing community affects their freedom to choose a mate. However, the fact shows that many people have married those who have the same surnames. The same-clan marriages are no longer as damned as before. This is because the people do not find any harm of the same-clan marriage posed to their offspring, including physical defects. Also, their families are not different from other families who do not marry the same clans (Pohan, 2018).

The shifting in customary law becomes among the consequences of globalization and modernity. In other words, this is a logical consequence of the progress in technology, information and transportation. Values brought about through globalization and modernity are taken and used without filtering. This shift is also seen in the kinship system that starts to fade. The negligence is more common among urban communities and the younger generation (Pasaribu & Sukirno, 2017).

Based on the author's observation, the practice of the same-clan marriage is not because of the perpetrators' limited knowledge of the rules. However, they are ready to accept any consequences of their actions because of love. The author witnessed the respondents' happy and harmonious families. Moreover, they do not carry any burden caused by social stigma due to their marriages.

Shifting Paradigm in the Same-Clan Marriage

The shift in the same-clan marriage prohibition was due to several factors, including religious influences. Islam penetrated the North Sumatra in the mid-13th Century or approximately in 1451. Since then, Islam has influenced many of North Sumatran's aspects of life, including the shifting in same-clan marriage prohibition (Suprayitno, 2012).

The Muslim community who are currently living in the Batak tradition believe that the concept between Batak customary law and Islamic teaching is not much different, which is to fulfil the harmonious marriage for a happy and eternal family. The community believes that there are 13 types of people who are prohibited from being married, divided into three groups, including:

First, seven people of descendant, they are; (1) mother, mother of the mother, mother of the father, up to lineage and so on; (2) children, grandchildren, and their descendants onwards; (3) sisters of same-father, or only in the same-mother and same-father; (4) the sisters of the father; (5) the sisters of the mother; (6) the daughters of a brother; (7) the daughters of a sister. *Second*, two people from the same-*Radā'ah's* (breastfeeding), namely; (1) mothers who breastfeed, even if they are not biological ones; (2) siblings caused by the same wet nurse. *Third*, four people related by marriage, namely; (1) the mother of the wife or mother-in-law; (2) stepchildren, if they have already married their mothers, (3) wife of biological children (son-in-law); (4) wife of the father (biological father) (Hamid, 2000).

For Muslims, these 13 types of people are prohibited from being married. This rule applies to the Barumun community that consists of 99% Muslims. This rule is influential, in addition to their traditional cultures. However, according to Barumun society, the same-clan marriage does not meet the objectives of harmonious marriage. In Islamic law, the same-clan marriage does not violate the law because, in its practice, no *nasab* element is prohibited by Islamic law found. This latest teaching eventually influenced the shifting.

Second, in the current development, influenced by modernization, the people have started to remove their family names due to the discriminatory environment caused by the influence of family names. Moreover, modernity has changed people paradigm (Pasaribu & Sukirno, 2017). Besides, those who practice the same-clan marriage usually leave their villages and do not dare return to their villages. The

author's observation in Barumon sub-district found that many same-clan couples remain settled in their village. This indicates the weakening of the customary power.

Third, the improvement of education makes people think that the same-clan marriage does not align with the state law on marriage. People start to consider more logical rules. As a consequence, they leave the less logical customary rules behind.

Fourth, the migration and overseas movement of the Mandailing Bataks influence the people's shifting paradigm. People tend to choose the law according to their interests and rational considerations. In other words, they choose the more beneficial for them.

Conclusion

This study concludes that the prohibition of the same-clan marriage among the Batak Mandailing Muslim community in Barumon is because the same clan is considered equal to the same bloodline. However, the prohibition has largely started to be abandoned by the people. This is because the people consider Islamic law that does not consider the same-clan marriage consisting of the *nasab* element prohibited to be married. The Barumon people have been open to legal pluralism in their society. The stipulation prohibiting same-clan marriage has shifted towards a more flexible and adaptive practice. This is influenced by the interaction of the local culture with the current progress and development as the impact of globalization. The religious factor is the most influential in the shifting paradigm of the same-clan marriage prohibition. Islamic law does not prohibit marriage between those with a similar surname or from one family line. Such prohibition is not in accordance with the Qur'an and Sunnah. It can be said that the same-clan marriage is permissible (*mubāḥ*) as long as not with those who are banned by Islamic law. The shifting paradigm has consequently changed the exogamy marriage system to an eleutherogamy marriage system. The latest system does not recognize the restrictions in the exogamy or endogamy marriage system. The lessening enforcement of sanctions imposed to those who practice same-clan marriage indicates the weakening of customary law power. Therefore, there is a need to understand this new shifting paradigm among the Batak Mandailing community in Barumon.

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Interview

Interview with Ahmad Johan Siregar, 2018.

Interview with Ali Kasa Hasibuan, 2018.

Interview with Mantar Harahap, 2018.

Interview with Muhammad Soleh Nasution, 2018.

Interview with Parhimpunan Simamora, 2018.

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