



Ahkam

Jurnal Ilmu Syariah

- ❖ ARIFUDDIN MUDA HARAHAP
Rules on Wage Standard to Improve Workers' Living Needs in the Perspective of Maqasid Al-Shari'ah
- ❖ M. IKHSAN TANGGOK
Circumcision Law in Christianity and Islam
- ❖ ABDUL ROHMAN ZULFIKAR ALFAROUQ & NURHASANAH
The Positivation of National Sharia Board Fatwa About Mudaraba into Financial Service Authority Regulation
- ❖ MUHAMAD ISNA WAHYUDI
Women Dealing With the Law in Religious Courts
- ❖ ARIF HIDAYATULLAH & ANITA PRIANTINA
Toward Zakat Management Integration in Indonesia: Problems and Solution
- ❖ MUHAMMAD ADIL DAN MUHAMAD HARUN
Fiqh Melayu Nusantara in the Palembang Darussalam Sultanate Period
- ❖ SUGIRI PERMANA
Implications of Hazairin and Munawir Sjadzali Thoughts in Establishment of Islamic Inheritance in Indonesia



Volume 18, Number 2, 2018

EDITOR-IN-CHIEF

Khamami Zada

EDITORS

Fathudin

Maman R Hakim

Windy Triana

Nur Hidayah

Ahmad Bahtiar

INTERNATIONAL EDITORIAL BOARD

Tim Lindsey (University of Melbourne Australia)

Nadirsyah Hosen (Monash University Australia)

Ahmad Hidayat Buang (Universiti Malaya Malaysia)

Raihanah Azahari (University Malay Malaysia)

Mark Elwen Cammack (Southwestern University)

Razeen Sappideen (University of Western Sydney)

Carolyn Sappideen (University of Western Sydney)

Nik Ahmad Kamal bin Nik Mahmud (International Islamic Universiti Malaysia)

Ahmad Tholabi Kharlie (UIN Syarif Hidayatullah Jakarta)

Muhammad Atho Mudzhar (UIN Syarif Hidayatullah Jakarta)

Masykuri Abdillah (UIN Syarif Hidayatullah Jakarta)

Muhammad Amin Suma (UIN Syarif Hidayatullah Jakarta)

M. Arsykal Salim GP (UIN Syarif Hidayatullah Jakarta)

Asep Saepudin Jabar (UIN Syarif Hidayatullah Jakarta)

ASSISTANT TO THE EDITORS

Kamal F. Musa

Erwin Hikmatiar

ENGLISH LANGUAGE ADVISOR

Bradley Holland

Umi Kulsum

ARABIC LANGUAGE ADVISOR

Amany Burbanudin Lubis

AHKAM has been accredited based on the determination of Director General of Research Reinforcement and Development, Research, and Technology Ministry of Higher Education of Republic of Indonesia, No. 36/a/E/KPT/2016 (valid until 2021).

AHKAM Jurnal Ilmu Syariah (ISSN: 1412-4734) is a periodical scientific journal published by Faculty of Sharia and Law of Syarif Hidayatullah State Islamic University Jakarta in collaboration with Indonesian Scientist and Sharia Scholar Association (HISSI). This journal specifically examines the science of sharia and obtains to present various results of current and eminence scientific research. The administrators receive articles as contributions Sharia and Islamic law disciplines from scientists, scholars, professionals, and researchers to be published and disseminated.

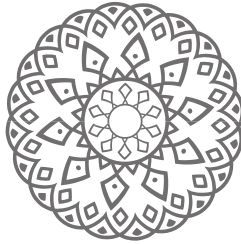
EDITORIAL OFFICE:

Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta
Jl. Ir. H. Juanda 95 Ciputat, Jakarta 15412
Telp. (+62-21) 74711537, Faks. (+62-21) 7491821
Website: <http://journal.uinjkt.ac.id/index.php/ahkam/index>
E-mail: Jurnal.ahkam@uinjkt.ac.id

TABLE OF CONTENTS

- 251 ARIFUDDIN MUDA HARAHAAP
Rules on Wage Standard to Improve Workers' Living
Needs in the Perspective of Maqasid Al-Shari'ah
- 265 M. IKHSAN TANGGOK
Circumcision Law in Christianity and Islam
- 285 ABDUL ROHMAN ZULFIKAR ALFAROUQ & NURHASANAH
The Positivisation of National Sharia Board Fatwa About
Mudaraba into Financial Service Authority Regulation
- 305 MUHAMAD ISNA WAHYUDI
Women Dealing With the Law in Religious Courts
- 321 ARIF HIDAYATULLAH & ANITA PRIANTINA
Toward Zakat Management Integration in Indonesia:
Problems and Solution
- 347 MUHAMMAD ADIL & MUHAMAD HARUN
Fiqh Melayu Nusantara in the Palembang Darussalam
Sultanate Period

- 375 SUGIRI PERMANA
Implications of Hazairin and Munawir Sjadzali Thoughts
in Establishment of Islamic Inheritance in Indonesia
- 395 RIFQI QOWIYUL IMAN
The Competence of Religious Court in Indonesia and
Syahadah Istifadhah (Testimonium De Auditu) in Case of
Itsbat Waqf
- 417 MUSTAPA KHAMAL ROKAN & KAMA RUSDIANA
Configuration of Costomary Law Related to Economy
(Economic Adat Law Study in North Sumatera,
Indonesia)
- 433 YAYAN SOPYAN & MUHAMMAD SHOFWAN NIDZAMI
Nyabek Toloh Marriage Proposal Tradition in Madurese
Culture: A Review of The Sociology of Islamic Law
- 453 NURYANI & M. MUSYAFA
Linguistic Review on Marriage Age Regulation
- 463 WETRIA FAUZI
Regulation of Sharia Insurance After the Enactment of
Law No. 40 of 2014 Concerning Insurance



NYABEK TOLOH MARRIAGE PROPOSAL TRADITION IN MADURESE CULTURE: A REVIEW OF THE SOCIOLOGY OF ISLAMIC LAW

Yayan Sopyan & Muhammad Shofwan Nidzami

Abstrak: Artikel ini mengkaji praktek *nyabek toloh* di desa Romben Guna, Dungkek, Sumenep-Madura. Tujuan dari *nyabek toloh* adalah sebagai simbol dari terjalinnya hubungan antara keluarga laki-laki dan perempuan dalam pertunangan; untuk menunjukkan tanggung jawab laki-laki terhadap perempuan dalam pemberian *toloh*; dan untuk memelihara tradisi *sangkolan*. Penyelenggaraan *nyabek toloh* adalah suatu keharusan dalam *abhakalan*; ketiadaan *nyabek toloh* dapat menyebabkan batalnya *abhakalan*. Artikel ini menunjukkan bahwa tradisi *nyabek toloh* merupakan harmonisasi hukum Islam dengan adat, meskipun tidak secara keseluruhan. Ada elemen-elemen yang sesuai dengan ajaran Islam dalam tradisi ini. Adapun elemen yang tidak berasal dari Islam, merupakan produk dari masyarakat, terutama masyarakat desa Romben Guna, Dungkek, Sumenep, Madura. Hal ini dapat dilihat sebagai kohesi antara agama dan tradisi di Indonesia.

Kata kunci: *Nyabek Toloh*, *Abhakalan*, Islam, Budaya, Madura

Abstract: This paper examines the practice of *nyabek toloh* in Romben Guna village, Dungkek Region, Sumenep-Madura. The purposes of *nyabek toloh* are to symbolize the establishment of a relationship between the family of a male and female fiancé; to show the responsibility of a man to a woman by giving *toloh*; to maintain man's dignity, and to maintain the tradition of sangkolan (elders). Conducting *nyabek toloh* is a must in *abhakalan* (marriage proposal); the absence of *nyabek toloh* will lead to the cancellation of *abhakalan*. This article argues that the tradition of *nyabek toloh* is the harmonization of Islamic law and custom, even not as a whole. There are some Islamic elements in this tradition. The tradition is not Islamic teaching, but it is the product of the society, especially the people of Romben Guna village, Dungkek Sub-District, Sumenep District, Madura. This can be seen as a smooth cohesion between religion and tradition in Indonesia.

Keywords: *Nyabek Toloh*, Marriage proposal/*abhakalan*, Islam, Culture, Madura

ملخص: تبحث هذه البحث في ممارسة *nyabek toloh* "بمبيك طولوه" في قرية "رومبين جونا"، منطقة "دونجيك" "سومينف" مادورا. العادة هي أن ترمز إلى إقامة علاقة بين عائلة خطيب من الذكور والإناث؛ لإظهار المسؤولية الرجل لخطيبته من خلال إعطاء *toloh*؛ للحفاظ على كرامة الإنسان، والحفاظ على تقاليد *sangkolan* (الشيخوخ). إجراء *nyabek toloh* أمر لا بد منه في اقتراح الزواج (*abhakalan*)؛ عدم القيام *nyabek toloh* سيؤدي إلى إلغاء *abhakalan*. والرأي من هذا البحث أن تقليد *nyabek toloh* هو التنسيق القانون الإسلامي والعرف معاو لو ليس كل الجوانب من هذه العادة. هناك بعض العناصر الإسلامية في هذا التقليد رغم أن التقليد ليس تعليماً إسلامياً، بل هو نتاج المجتمع، خاصةً سكان قرية رومبين جونا، مقاطعة دونجيك الفرعية، مقاطعة سومينف، مادورا. يمكن الاعتبار من هذا بمثابة التماسك بين الدين والتقاليد (العرف) في إندونيسيا.

الكلمات المفتاحية: بمبيك طولوه، اقتراح الزواج، الإسلام، العرف، لمعايير الاجتماعية، مادورا

Introduction

Religion and culture are a unified whole, despite the general paradigm that religion produces culture. Religion shapes the way of life in a society. By approaching religion through culture, it does not mean that the social forces certain religious values, but it is an attempt of the religious acculturation within the life of the society. The religious acculturation shows how a belief to something irrational, unverifiable, unproven is able to rationally shape an identity, consciousness, and behaviour in certain social construction.

Implicitly, a religion (*din*) automatically engenders a civilization (*tamaddun*). Religion and civilization closely related to each other, with significant proximity. Some, sharply distinguish religion and civilization, by stating that religion is God's revelation, while the civilization is the result of human intelligence and innovation. Islam is more than a religious system; it is complete from of a culture.

Indonesia is built on the pillars of diversity, in terms of ethnicity, culture, custom, and religion. Religion in Indonesia emerged and developed with certain norms binding its adherents. This norms, in turn, absorbs within the society. The behavior of Muslim society is regulated by Islamic Law, either in social or spiritual (vertical) relationship. The function of Islamic law to continuously shape the social structure of a Muslim society. Because the nature of norms is to be obeyed by the people, these norms firmly attached to their reality.

Basically, Indonesia Muslims are not monolithic. Plurality exists in various traditions, understandings, and religious practices as the expression of the beliefs in Islam. People develop traditions, modesties and customs to serve their religious interest and to proselytize; to understand and feel its morals and noble values.

Culture is a guide for the people in a society, in which they believe in its truth. If the culture is the guide in a society, its wisdom should be acknowledged by the people. It is obvious that culture and Islam is a complete whole. Culture materialized in an integration. Changes in one of the elements of culture often trigger formidable reactions, even in unexpected aspects.

Madura is a region with a strong influence of Islam. Madurese society is known for their firm adherent to Islam. Therefore, Madura

is identical with Islam, even though not all Madurese are Muslims. In other words, Islam is an identical part of the ethnicity. Therefore, as the religion of Madurese people, Islam is not only as a reference for Muslims to behave in a social context but also as an ethnic symbol of the Madurese people. Both elements, Islam and culture, determine people's affiliation to the Madurese ethnicity. It, therefore, can be said that the Madurese culture is the representation of Islamic values.

The fanaticism of Madurese people to Islam is sometimes reflected in an exaggerative behavior. For example, circumcision is an obligation for Muslims. For Madurese people, uncircumcised men are *kafir* or infidels. Most of them do not know that the Jewish people, who are considered infidels, are also obliged to perform circumcision.

To enter the society, Madurese people should perform certain ceremony or rites of passage. This ritual is related to the life cycle of a human, with a series of phase and a long passage. For example, before a baby is born, there should be a ceremony of *pellet kandung* for the baby, in the seventh month of the pregnancy. During this ceremony, people recite salvation prayer (*doa selamat*), and the history of the Prophet Muhammad's birth.

Madurese society is known for their strong adherence to religious teachings. The Madurese people actively maintain their culture and traditions, especially those related to their local culture and Islam. This influences their ordinary people who are unaware of the origin of the tradition. Islam acknowledges this attitude as *taklid* (to follow certain values blindly). With regards to the *taklid* attitude of the Madurese people, Anshori, a prominent religious figure in Madura, states that *taklid* is mostly to follow what is prescribed by the elders. It is clear that not all Madurese traditions have Islamic elements in it. D. Zawawi Imron argues that there are rituals in Romben Guna with no Islamic elements in them, such as the tradition of *mamaca* dan *mamapar* in a marriage.

Proposing a Woman in Madurese Culture

Every region in Indonesia possesses a uniqueness in a marriage proposal ritual. Similarly, Madurese people have a unique way of conducting a marriage proposal, called *Abhakalan*. In *Abhakalan* a man

and woman are tied in engagement and approved by both families. This engagement may be based on their own will or arrangement by other parties.

Abhakalan refers to a term used by Madurese people to show that someone is already attached to a marriage plan, by arrangement or his/her own will. This is because a marriage proposal is an activity to match a man with a woman, or a man asks a woman to be his wife. This is conducted with certain ways according to the common tradition.

The practice of *abhakalan* should preserve the existing tradition adhered by society. For example, to maintain the relationship between two families, there is a tradition called *asekhet batton* (strengthening the knot of wooden/ bamboo bed). In this tradition, both families send food to each other on the *Eid al Fitr* day, holy months of Islam, and any other occasions to strengthen the familial ties. When the relationship of both families is not well maintained, the *abhakalan* may fail. With this failure, the marriage is *epaburung* (cut off), with the reason of *sobung paste* (it is not destiny) to match both of them.

Nyabek Tolok in Romben Guna Village, Sumenep

The above tradition among the society of Romben Guna village, Dungkek Sub-District, Sumenep District, Madura is called *nyabek toloh*, or the gift during Ramadhan month before Eid al Fitr. The male fiancé (*bhakal*) gives to the female fiancé (*bhakal*). This gift has become an obligation in the society, especially for those in Romben Guna. The unfulfilled gift becomes one of the factors that lead to the failure of the proposal.

The Compilation of Islamic Law, Article 13, does not mention any legal implication in the cancellation of a marriage proposal. In fact, there are various customs among Indonesian society stipulating the cancellation of the marriage proposal. Some require compensation, while some do not require any. For example, among Minangkabau society, with the dissolution of a marriage proposal, there should be the return of all goods given. This also applies in Romben Guna. This research found out that there are consequences caused by such cancellation.

Romben Guna is one of the places where the tradition of *nyabek*

toloh is still preserved until today. From the perspective of the Sociology of Law, customs should have its purpose and objectives. There must be philosophical meaning in them, which is the focus of this research.

Correlation between Islam and Culture in the Marriage Proposal in Madura

Khitbah or marriage proposal is an expression of intention to marry a woman, and this intention is communicated to the woman and her guardian. This communication can be done directly by the man, or by a representative from his family. If the woman or her family express their agreement, then the proposal is considered valid (accepted).

The practice of proposal is basically *mubah* (allowable), as long as does not violate Islamic law/ *shara'*. From the perspective of Imam Malik, the proposal is *Sunna*. However, sometimes the proposal can be *makrooh* or disliked, e.g. the proposal is conducted during *ihram* in *hajj* or *umrah*. As is stated in a hadith:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا يَنْكِحُ الْمُحْرِمُ وَلَا يَنْكَحُ وَلَا يَخْطُبُ
(رواه مسلم)

Meaning: The Prophet PBUH stated that a person in *ihram* should not marry, should not be married, and should not propose.” (HR. Muslim).

This is in line with Imam al Shafi’I that said that the proposal is *Sunna*, but is *makrooh* when it is conducted during *ihram*. A man and woman who perform *ihram* are prohibited from making a marriage contract.

The principle of a marriage proposal in the Quran is in QS Al-Baqara (2): 235

“There is no blame upon you for that to which you [indirectly] allude concerning a proposal to women or for what you conceal within yourselves. Allah knows that you will have them in mind. But do not promise them secretly except for saying a proper saying..”

A hadith from Jabir bin Abdullah narrated by Abu Daud says:

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا خَطَبَ
أَحَدُكُمْ الْمَرْأَةَ فَإِنْ اسْتَطَاعَ أَنْ يَنْطُرَ إِلَى مَا يَدْعُوهُ إِلَى نِكَاحِهَا فَلْيَفْعَلْ (رواه
ابوداود)

“Ibn Jabir r.a. said, the Prophet Muhammad PBUH said if someone among you proposes a woman, if he is able to see matters that encourage him to marry her, then do it!” (HR. Abu Daud).

Most of the *Ulama* argue that an engagement is not an obligation. However, the customary practice in the society shows that the proposal is preceding that must be done. This is because of the moral message in it, and it is considered a good manner in to begin a plan of building a family to create happiness, *sakinah mawaddah wa rahmah* (tranquil, affectionate and merciful).

Abhakalan is a process to match two persons with opposite sex (teenagers and, in the past, children) in a bond resemble an engagement. The concept of *abhakalan* and engagement is different. The similarity is that both are done before marriage. The range of time in *abhakalan* and engagement is different. In the Javanese or Sundanese culture, the period from engagement to marriage is days of months. This means that the interval from the engagement to the marriage is not long.

In *abhakalan*, however, the interval is uncertain. In most of the practice, it takes a long time. Therefore, it is common for the Madurese custom that a couple marries after five years of *abhakalan*, or even seven to ten years. This is because the *abhakalan* is conducted when the couple is still at school ages. In Romben Guna village, on average, the *abhakalan* begins during childhood, even just after the birth of a child. Based on the purpose of *mapolong tolong* (collecting bones), the neighbors use *abhakalan* to make others become their own family through a marriage proposal.

Ta'aruf (introduction) during the engagement is the first step toward marriage, in which the purpose is to know the character both man and woman. The *abhakalan* tradition in Madura has a similar purpose, which is to know the *bhakar bini* (female fiancé) and *bhakar lake'* (male fiancé), even though the process takes a long time compared to other places outside Madura.

For the Madurese people, the *abhakalan* is not a sign that a marriage will be done soon. The *abhakalan* is only to mark the relationship between a male a female. This means that the relationship between the concept of a marriage proposal in Islam and Madurese society can be viewed from its definition and purpose. In term of definition and purpose,

both concepts agree that a marriage proposal is a preliminary act in a marriage, for both parties to know each other.

It is undeniable that there are some distinctive features in the practice of *abhakalan* in Madura. D. Zawawi Imron maintains that difference between the practice of *abhakalan* in Madura and the marriage proposal outside Madura is in its ritual, among others is in the stuff brought to the proposal ceremony. There is certain food should be served during the ritual, such as *mostomos*, consisting of lepet, kocor (cucur), etc.

The tradition of nyabek toloh is one part of the *abhakalan* ceremony that should be performed by every Madurese, especially the people of Romben Guna village. Nyabek Toloh is a distinctive feature in the *abhakalan* ritual and becomes a differentiator with the practice of marriage proposal outside Madura.

Ritual Practice and Legal Implication of *Nyabek Toloh*

The following is the process of *abhakalan* to the giving of *toloh* in Romben Guna village, as is obtained from the written note of Rahman, a figure from the village:

1. *Angen-angenan* (giving news/ communicate)
2. *Mabada pangada' menta aki' ka bhisan bini'* (prepare for a representative to ask the female (about her needs))
3. *Elamar* (proposing)
4. *Bada jajan lamaran cam ma cam mah jajan* (there are various snacks)
5. *Deri bhisan laki' ka bhisan bini'* (the male family goes to meet the female family)
6. *Saminggu belesan dari bhisan bini'* (a week later, there will be a response from the female family)
7. *Semarenah ka'dintoh.*(after that)
8. *Ater tolo sabban taon* (deliver toloh every year)
9. *Bulan Ramadhan/poasa* (Ramadhan/ fasting month)
10. *Issena tolo beddha* : (the toloh consists of)
 - a. *Kalambi* (clothes)
 - b. *Sandal* (sandals)

- c. *Bedda'* (cosmetics)
 - d. *Pesse* (money)
 - e. *Ben kodung* (head scarf)
11. *Bile tellasan bhakal amaen ka bhakal bini'* (on the id al Fitr day, the male fiancé visits the female fiancé)
 12. *Dari bhakal bini' amaen ka bhakal lake' agi ba jajan bile molea bhakal bini e berre' pesse mon bhakal lake'* (from female fiancé to male fiancé, taking some cakes, and when she goes home she is given some money by the male fiancé).

There is a Latin tradition proverb saying *ubi societas ibi ius/justicia*, wherever there is society, there is law. Every society should have a legal product, whether automatically formed; or intentionally made by the society. This applies to the living law in the tradition of *abhakalan*. A Madurese has a proverb, saying “*Tal ontalan amaen betoh nginum la'ang alamak kaen babakalan bhelum tantoh mun palang ngalak oreng laen*”. This proverb illustrates that in an engagement there will be *bhakal burung* (failed engagement) and *bhakal tolos* (successful engagement). The failure and the successful of engagement depends on how both parties obey the prevailing law in the society.

The tradition of *nyabek toloh* is one of the traditions in the village Rumben Guna society. It is an obligation for the people to conduct *nyabek toloh* for those who are in *abhakalan*. The longer the *abhakalan* is maintained, the more the male family should prepare for giving the *toloh*. For example, if *abhakalan* is conducted when the couple is five years old, and they marry by the age of 18, then the *toloh* runs for 13 years.

If there is one Ramadhan where the *toloh* is not given, then the female and her family still expect that the male and his family will deliver the *toloh*. The consequence of unrepresented *toloh* is the disharmony between the two families. Without *toloh*, there will be an assumption that the engagement is not going to be continued. Another consequence is that the family will be the talk of the people.

The highest risk of not presenting *toloh* is the cancellation of *abhakalan*. Niwanah says that her son's *abhakalan* cancellation is because they did not deliver the *toloh* to her son's fiancé. According to the informant to this study, usually every year the *toloh* is delivered.

In the year where *toloh* is not delivered, then in that year also the *abhakalan* is invalid. In the case of Niwanah, her son had maintained the *abhakalan* for five years, but it is then invalid. It can be said that the giving of *toloh* is one of the signs for the continuation of *abhakalan* for the people in Romben Guna village.

This is different from Wardi's point of view, saying that it is not an obligation to giving *toloh* to a fiancé. For Wardi, this is because he conducts *abhakalan* with his relative. Since the beginning of *abhakalan*, they already made an agreement that they will not give *toloh* if they do not have money. The female fiancé and her family need to wait until the man has money. For this informant, it should not be a problem as long as they maintain good communication.

Apart from that, if the *abhakalan* is cancelled, the consequence is that both parties are not obliged to return all gifts, either from the male to the female or otherwise. The gift is the symbol of love for the fiancé. This is similar to the dowry that is not returned when a divorce happens.

It is clear that people's perceptions of the practice of *nyabek toloh* are varied. There are some who believe that giving *toloh* is a must, and some others believe that it is not a must. For those who believe in the obligation of *toloh*, the absence of it will cause the cancellation of *abhakalan*.

Basically, Madurese people are known for their obedience, especially in matters related to manners. For instance, in visiting others' house, the Madurese people have some rules to be followed. If they do not follow the rule, they will be considered impolite, and the hosts will ignore them. This is similar in the practice of *abhakalan*. The people should follow the rule when the rule is violated; the *abhakalan* is void.

The urgency of Nyabek Toloh in Marriage Proposal

Nyabek toloh tradition has been strongly rooted among the people of Romben Guna village. There are considerable meanings to be studied in this *sangkolan* tradition.

The meaning of *nyabek toloh* is: first, to strengthen the relationship between two families. This is because there will be different responses from the fiancé who is given *toloh*, and who is not. As is mentioned

above, without providing *toloh* the *abhakalan* can be void. The meaning behind the cancellation of *abhakalan* without *toloh* is a statement that maintaining a relationship or silaturahmi is compulsory for both families. Eva Nur Fauza, a woman who practiced *nyabek tolroh*, said that the preservation of *nyabek tolroh* tradition is to preserve and enhance the relationship between two families.

According to Anshori, the giving of *toloh* is the sign of bond and keepsakes for the woman, and as the sign that someone has already had her. Madurese people properly keep their property, and no one can take it. It is more complicated when it comes to matters related to women in engagement. If a man disturbs a woman who is already engaged, problems will occur, and bloodshed (*carok*) is possible to happen. For Madurese people, women are an important part of the social structure, because of they a prestigious symbol and honor of the family.

Before Islam, women were subordinated by men. Women were not given freedom in all matters. The majority of women did not have chances to enjoy their life and obtain legal protection for their rights.

In general, old society considered women having low status, and even did not see them as human beings. According to Mustaghiri Asrar, as quoted by Huzaemah T. Yanggo, from a legal and cultural perspective, there almost no society in the ancient nations that put women in a proper status. This is different with Romben Guna society that maintains women honor, proven by the practice of *nyabek tolroh*.

D. Zawawi Imron maintains that the giving of *toloh* is a symbol of love from a man to his fiancé or in the Madurese language called *pangestoh* (the symbol of faithfulness). There is a proverb in Madura saying *mun nyareh kancab ka mekkasan mun nyareh beleh ka sumenep*. It is obvious, for them, being a friend is considered as family in Sumenep, let alone being a *bhakal* (fiancé). Being a fiancé will automatically be more prioritized.

The second meaning of *toloh* is that the women will look more beautiful to meet the male family in the Eid day. Rakso told that when he did *abhakalan*, the moment that he waited was the meeting with his *bhakal bini*, because she dressed up and put on makeup with *peparem*. The purpose of those is to make the female look more beautiful and smell good during the meeting.

This tradition is still maintained until today. For the Madurese, it is a prestige to facilitate a woman to beautify herself. The family of the woman and the family of her fiancé will be embarrassed if the woman dresses up too ordinary.

Apart from that, there is also an honor to the elders who instil the tradition and values in giving *toloh*. As is told by Siti Fatimah, at first, she did not know that the *nyabek toloh* tradition came from her elders. After they told her, then she did it. The Madurese people prioritize respects and appreciation, especially to those who are older and have higher social status. Thus politeness is important in the social life of the Madurese people.

These respect and appreciation are, not only shown by those who have already practised the tradition, but also by those who have not. Saiwah just affianced her child but has not practice *nyabek toloh*. However, she plans to do it as it is the tradition in her village. The *toloh* will not be a burden for her, because there is no standard in what to give and how much. The *toloh* will depend on her ability.

Some informants of this research explain that the practice of *nyabek toloh* is not a burden for them, because it is a compulsory tradition in the Romben Guna village. This is different for Wardi. He often feels that the *toloh* is burdensome because he has to borrow some money to fulfil the *toloh*. This implies that the people's point of view regarding the practice of *nyabek toloh* vary. However, most of the people obey the tradition, even if it is burdensome or not.

Harmonization of Nyabek Toloh with Islamic Law

Indonesian people is a religious society. Indonesia is not a country based on religion, but it is undeniable that Indonesia is a religious country and not a secular country that ignores religion completely. Religion is part of the life of the Indonesian people.

Madurese people are religious, maintaining Islam as their religion and belief. This is shown by their fanatics attitude toward Islam. The religion of Madurese people is Islam. Islam has been crystallized and color their social life, as can be seen in their way of dressing up. Religion is considered a sacred and holy matter that should be defended. The religion has become the guidance for human life. Whoever insults the religion should be dead.

As a consequence, the above attitude influences their daily life, including in performing the prevailing cultures and traditions. The dialectic of religious teaching and culture becomes inseparable in the Madurese society. This reality implies that religion cannot be understood as a singular reality. Religion is a teaching as well as behavior within the sphere of culture.

Madurese people are known for their religious fanaticism. This also applies when Madurese people consider their culture and tradition, especially that are related to the synchronization between the culture and Islam. This tendency influences the common people who do not know the origin of the traditions, but they follow them, or in Islamic language called *taklid*.

The *taklid* among Madurese people is affirmed by the statement from Anshori, as one of the religious figures in Madura. He said that Madurese people often do *taklid* to matters stipulated by the elders. With this statement, it is obvious that not all Madurese culture consists of Islamic values. D. Zawawi Imron argues that there are some rituals in Romben Guna that do not have an Islamic nuance in it, such as the tradition of *mamaca* dan *mamapar* in marriage.

Recognizing *nyabek toloh* tradition as a culture with Islamic nuance (or without), depends on how we see the ritual. In the Islamic perspective, it is clear that *nyabek toloh* is not an Islamic teaching. However, it is different when we see the meaning behind the tradition, in which part of it is comprising Islamic teaching. As is explained by the informants of this research that *nyabek toloh* means maintaining a good relationship (*silaturrahim*), giving (*hibah*), etc., which are parts of Islamic teaching.

As is explained by Anshor, giving toloh is a grant from a man to his fiancé. If the engagement is void, that there should be no return of the goods because they are given as grants (*hibah*). The meaning of *hibah* in Islamic is giving something to someone without expecting any replacement (compensation). The gift or grant generates the loving feeling among the people.

Nyabek toloh tradition is a part of giving that has a purpose similar to *hibah* in Islam. The purpose is to maintain the harmony between two families that establish a relationship or in the Madurese language

mapolong tolang. In *abhakalan*, the male fiancé brings gifts for the female fiancé. In Javanese culture, this gift is called *peningset* or the symbol of love. So, the gift is similar to *hibah*.

Islam allows the cancellation of a marriage proposal, with plausible reasons. Without plausible reasons or if the reason is not in accordance with Islamic law, then the cancellation is not allowable, because it will disappoint one of the parties.

According to Shafii *madhhab*, because the goods given by the male fiancé to the female fiancé are *hibah*, then she should return them, in a good or bad condition. If they are broken, then the female fiancé should replace them according to the prevailing price. According to Maliki *madhhab*, if the one who cancels the engagement is the man, then he has no rights to ask the goods to be returned. This is different if the one who cancels the engagement is the woman. In this case, the man can request the goods to be returned in good condition. All damages should be replaced, except if they have a different agreement before, or based on the prevailing custom (*urf*).

The similarity between *nyabek toloh* and Islamic teaching is that if a cancellation happens, then there is no obligation to return the gift because it is *hibah*. *Ulama* have different opinions about the return of the gift. Some believe that it should be returned, while some do not. It depends on the *urf* within the society.

Nevertheless, there is one *fiqh* principle stating that *al-aadatu syari'atul muhakkamatu* (custom is a *shariat*, confirmed as law). This means that prevailing custom in the society can turn into law. The giving of *toloh* is part of customs and should be obeyed, if not, then the *abhakalan* will be void. The consequence, after that, is that there is no obligation to return the goods because the tradition does not regulate the return of the gift.

According to Rahman, the tradition of *nyabek toloh* is to maintain the relationship bond (*tali silaturrahIm*) between male *bhisan* (co-father in law) and female *bhisan* (co-mother in law). The giving of *toloh* influences the harmony of the two parties.

Islam commends to maintain a relationship, as is mentioned in the hadith from the Prophet:

عَنْ أَبِي هُرَيْرَةَ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: (مَنْ سَرَّهُ أَنْ يَبْسُطَ لَهُ فِي رِزْقِهِ، وَأَنْ يُنْسَأَ لَهُ فِي أَثَرِهِ، فَلْيَصِلْ رَحْمَهُ)

From Abu Hurairah RA, he stated that: “I heard the Prophet PBUH Said: “Anyone who is happy with the provision of his fortune and is well remembered for his name until after his absence, then maintain the *silaturrahim*”

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا، زَوْجِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: (الرَّحْمُ شِجْنَةٌ، فَمَنْ وَصَلَهَا وَصَلَتْهُ، وَمَنْ قَطَعَهَا قَطَعَتْهُ).

From Aisha RA, the wife of the Prophet PBUH, from the Prophet PBUH, he said (Allah says): ‘*Rahim is a word (from ar-Rahman). Whoever maintains it, I will maintain it, whoever breaks it, I will break it.*’

Those are the hadith from the Prophet PBUH about the importance of keeping *silaturrohim*. *Nyabek toloh* tradition is one way to maintain the *silaturrahim*. This means that the ignorance of the tradition will lead to *mafsada* (the broken) relationship between male *bhisan* and female *bhisan*. One *fiqh* principle mentions *dar ul mafasid muqaddimu ala jalbil masholih* (avoiding harms should be prioritized than maintaining goods). The compulsory of giving *toloh* should not be a burden, but it is better to maintain the *silaturrahim* bond in order to avoid the cancellation of *abhakalan*.

On the one hand, the *silaturrahim* is recommended by Islam, but in the *abhakalan*, these is a tradition that should be reconsidered, which is the meeting between the male fiancé and female fiancé. During *silaturrahim*, both male and female fiancé shall meet. Islamic law determines the way of meeting with *bhakal*, as Allah says in QS. An-Nur (24): 31

“and not to display their adornment except what is apparent of it.”

This means that the time to see a *bhakal* is also regulated by Islam. The majority of *Ulama* agree upon the time when a man can see his proposed woman, which is when he has *azam* (strong will), and is capable physically and materially. Another condition with relates to a woman to be married is that she is not a wife of another man, and not a prostitute. Consequently, seeing a proposed woman is allowable during

the proposal time. Imam al Shafi'I explained that it is suggested to see a woman before proposing her, but with an intention to marry her. This can be done with or without any acknowledgement from her and her family. This is because the law allows seeing the woman and does not require any permission from the woman and her guardians.

Within Romben Guna society, it is a tradition that both bhakals meet every year, especially during the celebration of *Eid al Fitr*. The purpose of this meeting is to maintain *maslaha* (benefit/ goodness) by keeping the relationship between two families. This is different from the opinion of the majority of *Ulama* stating that the permission to see a woman is based on man's strong will to marry her.

The law is made by God to regulate the relationship between human and God, human with human, and human with nature. With regards to the practice of *abhakalan*, it is the relationship between human and human to create a horizontal relationship so they can live in peace and harmony, and avoid any violation that may harm oneself and others.

The practice of *nyabek toloh* in *abhakalan* is a part of the harmonization among human beings, especially in the procession of *abhakalan*. This tradition builds *ukhuwah* (bond) among the couple and their families, as is explained by those who practice *nyabek toloh*.

Apart from the meaning of giving *toloh*, there also goods that are stipulated by Islamic law, which are cosmetics, perfumes, and clothes. Islamic regulates the use of cosmetics and perfumes. Basically, those are *mubah* (allowable), except if *nas* (Quran and Hadith) prohibits it. As Allah says in QS. Al-A'raf (7): 32;

“Say, “Who has forbidden the adornment of Allah which He has produced for His servants and the good [lawful] things of provision?”
Say, “They are for those who believe during the worldly life [but] exclusively for them on the Day of Resurrection.” Thus do We detail the verses for a people who know.

This verse illustrates the permission to use them, and also a *sunna*, especially when a woman dresses up for her husband.

The above *nas* regulates the permissions to use adornment, as well as perfumes and cosmetics, which are parts of adornment to beautify a woman. The Prophet PBUH said:

عَنْ أَبِي هُرَيْرَةَ، قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ (مَنْ عُرِضَ عَلَيْهِ

طَيْبٌ فَلَا يُرَدُّهُ، فَإِنَّهُ طَيْبُ الرَّيْحِ، خَفِيفُ الْمَحْمَلِ).

From Abu Huraira, he says: The Prophet PBUH says: “People who are offered (given) perfumes, shall not refuse them. They smell good and have little side effects.”

عَنْ أَبِي مُوسَى، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: إِذَا سَتَعَطَّرْتَ الْمَرْأَةَ، فَمَرَّتْ عَلَى الْقَوْمِ لِيَجِدُوا رِيحَهَا، فَهِيَ كَذَا وَكَذَا. قَالَ: قَوْلًا شَدِيدًا.

From Abu Musa, he says: The Prophet PBUH says: If a woman put on some perfumes and purposefully walk among the people so that they smell it. By this, accordingly, (she commits adultery)”(HR: Abu Daud: 4173).

This hadith suggests to accept perfumes given from someone, and use it with the way that is acceptable by Islamic law. *Nyabek toloh* tradition involves perfumes to make the woman smells good during the meeting on *Eid* day. On the one hand, giving the perfume is not a problem, referring to the above hadith, but using it in the present of a man, who does not have any familial relationship, is likely to pose harms (*mafsada*) than benefits (*maslaha*).

A man and a woman, in the *abhakalan* relationship, are “*ajnabiya*” (strangers). This means that the relationship between the man and the woman who are not *mahram* have certain limitations that should not be violated. The status of *non-mahram* limits both male and female *bhaka*. Therefore, giving the woman perfumes is allowable as long as she does not use it in the present of the male *bhaka*.

Furthermore, the tradition of *nyabek toloh* has similarities with giving livelihood (*nafkah*) and dowry (*mahr*), even though, referring to Anshori’s statement, the difference is that the *nafkah* is given after the marriage, and *nyabek toloh* is before the wedding. Islam determines three causes that lead to the giving of *nafkah*: 1) a marriage, 2) kinship, and 3) ownership. In *nyabek toloh*, there is no genetic relationship and marriage between to families. This implies that *nyabek toloh* and *nafkah* are different in its application.

With regards to the relationship between *nyabek toloh* and *mahr*, the *mahr* is presented when a man marries a woman, while *nyabek toloh* is presented during the *abhakalan* period. There is no requirement of returning *mahr* and *nyabek toloh* shall the cancellation, or a divorce happens. However, both should be presented to women, with *nyabek toloh* is according to the custom, while the *mahr* is according to Islamic

law. In Islam, *mahr* is properties that should be given by a man to a woman that he will marry in an official marriage contract.

This explanation is not attempting to equate between *nyabek toloh*, *nafkah*, and *mahr*, even though they seem to be similar in terms of giving something to a woman. However, they are significantly different, in terms of the time of giving those three matters, and their legal basis: Islamic law and customary law.

Therefore, this article concludes that the tradition of *nyabek toloh* is the harmonization of Islamic law and custom, even not as a whole. There are some Islamic elements in this tradition. The tradition is not Islamic teaching, but it is the product of the society, especially the people of Romben Guna village, Dungkek Sub-District, Sumenep District, Madura. The neighboring villages of Romben Guna also apply *nyabek toloh*, but this they have started to abandon the tradition. The informants suggest that most of the villages to the East of Sumenep still maintain this tradition with different names and rituals.

Conclusion

The philosophical meaning of *nyabek toloh* is to build a relationship between two *bhisan*, to maintain the elders' tradition (*sangkolan*). *Nyabek toloh* is to respect women by giving the toloh; to maintain men's responsibility to women since the marriage proposal, and to maintain men's dignity.

The basis of *nyabek toloh* is a customary obligation and following the steps of the elders, because the absent of toloh will lead to the cancellation of the engagement. There is an assumption among the people that without toloh means there is no more interest, from the man of the parents, to continue the engagement.

There are various understandings in the implementation of *nyabek toloh* among the people, for the way of giving to the kind of goods to be given. However, the main point of *nyabek toloh* is the same, which is to present goods to women every year after the marriage proposal. []

References

- Abbas, Ahmad Sudirman. *Pengantar Pernikahan Analisis Perbandingan Antara Mazhab*. Jakarta: PT. Prima Heza Lestari. 2006.
- Abdullah, Abdul Gani. *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia*. Jakarta: Gema Insani Press. 1994.

- Abu Abbas, Adil Abdul Mun'in. *Ketika Menikah Jadi Pilihan*, Penerjemah: Gizi Said. Jakarta: Almhara. 1987.
- Al-Albani, Muhammad Nasaruddin. *Ringkasan Shahih Bukhari Jilid 5*. Penerjemah: Amir Hamzah Fachrudin dan Hanif Yahya. First edition. Jakarta: Pustaka Azzam. 2007.
- Al-Albani, Muhammad Nashiruddin. *Shahih Sunan Abu Daud Seleksi Hadits Shahih dari Kitab Sunan Abu Daud*. Penerjemah: Abd. Mufid Ihsan. Second edition, Jakarta: PustakaAzzam. 2007.
- Al-Asqalani, Al-Hafizh Ibnu Hajar. *Bulughul Maram*. Penerjemah: Zaid Muhammad Ibnu Ali dan Muhammad Khuzainal Arif. Jakarta: Pustaka As-Sunnah. 2007.
- Al-Albani, Muhammad Nasaruddin. *Ringkasan Shahih Muslim*. Penerjemah KMCP, Imron Rosadi, Jakarta : Pustaka Azzam. 2007.
- Al-Barudi, Syaikh Imad Zaki. *Tafsir Wanita*, Penerjemah Samson Rahman. Seventh edition, Jakarta: Pustaka Al-Kautsar, 2010.
- Al-Bukhori, Imam Abi Abdullah Muhammad bin Ismail. *Shahihul Bukhori*. Arab Saudi: Baitul Afkar Ad-Dauliyah Linnasyer Wal Tauzi'. 1997.
- Al-Qardhawiy, Yusuf. *Anatomi Masyarakat islam*. Penerjemah: Setiawan Budi Utomo. Jakarta: Pustaka Al-Kautsar. 1999.
- Al-Zuhaili, Wahbah. *al-Fiqh al-Islam wa Adillatuhu*. Jilid 9. Damaskus: Dar al-fikr 2007.
- Azzam, Abdul Aziz Muhammad dan Hawwas, Abdul Wahhab Sayyed. *Fiqh Munakahat Khibitbah, Nikah, dan Talak*, Penerjemah: Abdul Majid Khon. Jakarta: Amzah, 2011.
- Djunaedi, Subki. *Pedoman Mencari dan Memilih Jodoh*. Bandung: CV. Sinar baru. 1992.
- Ghozali, Abdul Rahman. *Fiqh Munakahat*. Fifth edition, Jakarta: Kencana. 2012.
- Hadi, Abdul. *Pergaulan Calon Suami Istri Pada Masa Pra Peminangan Di Sawunggaling Wonokromo Surabaya*. Jurnal Al-Hukama Vol 04. Number 02. December 2014.
- Hadikusuma, Hilman. *Hukum Perkawinan Adat*. Third edition, Bandung: P.T. Citra Aditya Bakt. 1990.
- Hadikusuma, Hilman. *Hukum Ketatanegaraan Adat*. Bandung: Penerbit Alumni. 1981.
- Haryanto, Joko Tri. *Relasi Agama dan Budaya dalam Hubungan Intern Umat Islam*, Jurnal Smart Vol 01 number 01 June, 2015, h. 50
- Hasil tulisan tertulis dari narasumber Rahman sebagai tokoh masyarakat di Desa Romben Guna Kecamatan Dungek Kabupaten Sumenep Madura (Written documentation from informant Rahman as a central figure of society at Romben Dungek, Sumenep Madura).
- Hefni, Moh. *Bhuppa'-Babhuh-Ghuru-Rato*, Jurnal Karsa, Vol.XI Number. 1 April 2017.
- Hidayati, Tatik. *Perempuan Madura antara Tradisi dan Industrialisasi*. Jurnal Karsa. Vol. XVI. Number.2 October 2009.

- Ihromi, T.O. *Pokok-pokok Antropologi Budaya*. cet ke-10. Jakarta: Yayasan Obor Indonesia. 1999.
- Kamus Bahasa Madura-Indonesia* Jakarta: Pusat Pembinaan Dan Pengembangan Bahasa Departemen Pendidikan dan Kebudayaan. 1977.
- Madjid, Nurcholish. *Kehampaan Spritual masyarakat Modern respon dan transformasi nilai-nilai Islam menuju Masyarakat madani*. Fifth edition, Jakarta: Mediacita. 2001.
- Mardani. *Hukum Keluarga Islam di Indonesia*. Jakarta: Kencana. 2016.
- Mardhatillah, Masyithah. *Perempuan Madura Sebagai Simbol Prestise dan Pelaku Tradisi Perjodohan*. Jurnal Musawa. Vol.13. Number 2. Desember. 2014.
- Natsir, M. *Kebudayaan Islam dalam Perspektif Sejarah*. Bandung: PT Girimukti Pasaka. 1988.
- Rifai, Mien Ahmad. *Manusia Madura: Pembawaan, Perilaku, Etos Kerja, Penampilan, dan Pandangan Hidupnya Seperti Dicitrakan Peribahasannya*. First edition, Yogyakarta: Pilar Media. 2007.
- Saniyah. *Kontestasi Kelas dalam Budaya Abakalan (Studi Hubungan Perayaan Abakalan dengan Prestise Sosial di Desa Banuaju Barat Kecamatan Batangbatang Sumenep Madura)*. Skripsi Fakultas Ushuluddin dan Pemikiran Islam Universitas Islam Negeri Sunan Kalijaga Yogyakarta. 2016.
- Soegianto. *Kepercayaan, Magi dan Tradisi dalam Masyarakat Madura*. Jember: Tapal Kuda. 2003.
- Sopyan, Yayan. *Islam Negara Transformasi Hukum Perkawinan Islam dalam Hukum Nasional*. Jakarta: RMBooks. 2012.
- Suhaimi. *Praktik Khitbah Di Madura Perspektif Hukum Islam dan Hukum Adat*. Jurnal Al-Ihkam. Vol. 9. Number 2.
- Suhendi, Hendi. *Fiqih Muamalah*. Jakarta: PT RajaGrafindo Persada. 2002.
- Sulaiman, Imam Hafiz al-Mushannif al-Muttaqin Abi Daud. *Sunan abu daud*. Jilid III. Beirut: Daar Ibnu Hazm. 202 H.
- Tumanggor, Rusmin dan Ridho, Kholis. *Antropologi Agama*. Ciputat: UIN Press. 2015.
- Uwaidah, Syaikh Kamil Muhammad. *Fiqih Wanita*, Penerjemah: M. Abdul Ghoffar E.M. twenty-fourth edition, Jakarta: Pustaka Al-Kausar. 2007.
- Wibisono, Bambang dan Haryono, Akhmad. *Wacana Perkawinan di Tapal Kuda*. Jember: Tapal Kuda. 2016.
- Zubairi, A Dardiri. *Rabasia Perempuan Madura Esai-Esai Remeh Seputar Kebudayaan Madura*. Surabaya: Andhap Asor dan Al-Afkar Press. 2013.



AHKAM Jurnal Ilmu Syariah (ISSN: 1412-4734/E-ISSN: 2407-8646) is a periodical scientific journal published by Faculty of Sharia and Law of Syarif Hidayatullah State Islamic University Jakarta in collaboration with Indonesian Scientist and Sharia Scholar Association (HISSI). This journal specifically examines the science of sharia and obtains to present various results of current and eminence scientific research. The administrators receive articles as contributions Sharia and Islamic law disciplines from scientists, scholars, professionals, and researchers to be published and disseminated. The article will be situated in a selection mechanism, a review of proved reders, and a strict editing process. All articles published in this Journal are based on the views of the authors, but they do not represent the authors' journals or affiliated institutions.

AHKAM has been accredited based on the determination of Director General of Research Reinforcement and Development, Research, and Technology Ministry of Higher Education of Republic of Indonesia, No. 36/a/E/KPT/2016 (valid until 2021).