



## **Batak Customary Marriage: A Study of the Prohibition of Same-Clan Marriage and Its Relevance in the Contemporary Era**

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### **Abstract**

This study discusses Batak customary marriage focusing on the prohibition of same-clan marriage and the practice of same-clan marriage in Batak custom. The main problem studied is the prohibition of intermarriage in Batak society from a fiqh perspective in relation to modern times. This study used a qualitative approach, i.e., a humanistic approach that places humans in research as the main subject in social events. The study was a type of field research, which involves direct observation and examination of facts in the research site, taking the data as primary sources. The findings of this study reveal that the concept of marriage in Batak custom is exogamy, which prohibits marriages between people of the same clan. In Batak custom, people of the same clan are blood relatives or descendants from the father's line. Batak people who violate this customary law will be subject to customary sanctions. In the current context, the decline in customary values has been influenced by urbanization and higher education, which prioritize modern thinking over traditional one. Education provides certain values for humans, e.g., opening people's minds, accepting new ideas, and thinking scientifically. Education teaches humans to be able to think objectively, which will give them the ability to assess whether or not their community's culture can meet the needs of the times. Further, from the perspective of *fiqh munakahat*, not all family ties are forbidden to marry. Only those related to the provisions of *muabbad* (permanent prohibition) and *ghairul muaabad* (temporary prohibition) are prohibited. People from the same clan who have no kinship relationship are still lawful to marry.

**Keywords:** Marriage prohibition, custom, contemporary era

### **Abstrak**

*Penelitian ini membahas tentang perkawinan adat Batak yang berfokus pada larangan perkawinan sesama marga dan praktik perkawinan sesama marga dalam adat Batak. Permasalahan utama yang dikaji adalah larangan perkawinan semarga pada masyarakat Batak dalam perspektif fiqih kaitannya dengan zaman modern. Penelitian ini menggunakan pendekatan kualitatif, yaitu pendekatan humanistik yang menempatkan manusia dalam penelitian sebagai subjek utama dalam peristiwa sosial. Penelitian ini merupakan jenis penelitian lapangan, yaitu pengamatan langsung dan pemeriksaan fakta di tempat penelitian, dengan mengambil data sebagai sumber primer. Temuan penelitian ini mengungkapkan bahwa konsep perkawinan dalam adat Batak bersifat eksogami, yaitu melarang perkawinan antara orang-orang yang satu marga. Dalam adat Batak, orang yang satu marga merupakan saudara sedarah atau keturunan dari garis ayah. Masyarakat Batak yang melanggar hukum adat ini akan dikenakan sanksi adat. Dalam konteks saat ini, kemunduran nilai-nilai adat dipengaruhi oleh urbanisasi dan pendidikan tinggi yang lebih mengutamakan pemikiran modern dibandingkan tradisional. Pendidikan memberikan nilai-nilai tertentu bagi manusia, misalnya membuka pikiran masyarakat, menerima ide-ide baru, dan berpikir ilmiah. Pendidikan mengajarkan manusia untuk dapat berpikir secara objektif, yang akan memberikan mereka kemampuan untuk menilai apakah budaya masyarakatnya dapat memenuhi kebutuhan zaman atau tidak. Lebih lanjut, dalam perspektif fiqh munakahat, tidak semua ikatan keluarga diharamkan dalam pernikahan. Hanya yang berkaitan dengan ketentuan muabbad (larangan tetap) dan ghairul muaabad (larangan sementara) yang dilarang. Orang satu marga yang tidak mempunyai hubungan kekerabatan tetap sah untuk menikah.*

**Kata Kunci:** Larangan pernikahan, adat, perkembangan terkini, hukum keluarga Islam

### **Introduction**

Marriage is an essential part of human life because marriage allows humans to fulfill and obey the commands of Allah SWT and the Sunnah of the Prophet Muhammad PBUH.<sup>1</sup> Humans are created in pairs, male and female, to

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<sup>1</sup> Ridwan Nurdin, et.al., "The Gayonese Culture of Marriage System: The Islamic Law Perspective," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, No. 1 (2021). Mursyid Djawas, et.al., "The Integration Between Syara' and Ade' in Marriage Tradition Bugis Bone,

fulfill their desires. To maintain a perfect life, Allah provides an honorable path by way of marriage.<sup>2</sup> Marriage does not only involve the relationship between the spouses but also affects the family relationships of both parties. In Indonesia, couples are expected to obey the regulations that have been implemented in accordance with Islamic teachings and community customs, although at times customs may conflict with Islamic law.<sup>3</sup>

Indonesia is a nation-state with abundant natural resources, comprising over a thousand ethnic groups, diverse religions and cultures, and thousands of islands. Life in Indonesia is profoundly influenced by major religions such as Hinduism, Buddhism, Christianity, Islam, and Confucianism.<sup>4</sup> Consequently, the growth and development of socio-cultural life in Indonesia are heavily influenced by religious values. Each ethnic group possesses distinct customary marriage systems, reflecting their cultural richness and unique identities.<sup>5</sup>

Batak is one of the largest ethnic groups in Indonesia. Batak is a collective term used to identify several ethnic groups that reside and originate from the West and East West coasts of North Sumatra Province. Batak has several sub-ethnic groups recognized in Indonesia, including Batak Toba, Karo, Pakpak, Simalungun, Angkola, and Mandailing. The Batak people have their own customary rules to regulate their society, especially in matters of marriage.<sup>6</sup>

Customary marriage law is an unwritten legal system that regulates the order of marriage outside of state law. In this case, certain cultural groups create their own laws or regulations that are recognized by the group, with the aim of creating harmony within the group.<sup>7</sup> There are three types of customary

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South Sulawesi,” *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 18, No. 2 (2023). Qur’an Surah An-Nur verse 32.

<sup>2</sup> S. R. Dewi, “Manfaat dan Signifikansi Perkawinan bagi Kesejahteraan Psikologis Individu,” *Jurnal Psikologi Keluarga* 5, No. 2 (2019), p. 8-9

<sup>3</sup> Supardi Mursalin, et.al, “Pecoah Kohon: The Restriction on Inter-Cousins Marriage in Indigenous the Rejang Society,” *Juris: Jurnal Ilmiah Syariah* 22, No. 1 (2023), p. 69-80. A Arfiansyah, et.al., “Matrifocality and Its Implication to The Practice of Islamic Family Law in The Patriarchal Muslim Society of Gayo, Indonesia,” *Jurnal Ilmiah Islam Futura* 23, No. 2 (2023). Luthfi Auni and Nidawati Nidawati, “The Semiotic Meaning and Philosophy of Symbols in the Gayo Ethnic Marriage Processions in Central Aceh,” *Jurnal Ilmiah Peuradeun* 11, No. 1 (2023).

<sup>4</sup> Rosdiana, et.al., “Legitimacy on Inter-Faith Marriages: An Analysis of the Role of Religious Councils on the Legal Policy in Indonesia,” *Ahkam: Jurnal Ilmu Syariah* 19, No. 1 (2019), p. 81-96. N. Azizah, *Hukum Perkawinan Beda Agama di Indonesia*, Jakarta: Rajawali Pers, 2018, p. 90.

<sup>5</sup> A. Pramudya, *Kajian Sosial Budaya Tentang Tradisi Pernikahan Adat Jawa*, Yogyakarta: Ombak, 2020, p. 87-88.

<sup>6</sup> Putri Sitanggang, Perkawinan Dengan pariban Pada Suku Batak Toba Di Kota Jambi, *Jurnal JOM FISIP Universitas Riau* 6, No. 1 (2019), p 3.

<sup>7</sup> B. Santoso, “Peran Penting Perkawinan dalam Pembentukan Generasi Penerus Bangsa,” *Jurnal Kesejahteraan Keluarga* 5, no. 2 (2020), p. 11.

marriage, namely: exogamy, endogamy, and eleutherogamy.<sup>8</sup> In Batak society, an exogamous marriage system is practiced: Batak society prohibits marriage within the same clan as people consider it a violation to the customary rules.<sup>9</sup>

Although Batak people hold their cultural values in high regard, especially in terms of marriage, it is undeniable that with the changing times, there has been a decline in the value of these cultural regulations. The case of same-clan marriage, for example, suggests that this prohibition is often ignored and violated by people in modern times. This phenomenon has resulted in same-clan marriages, known as '*sumbang*'.<sup>10</sup> The system of marriage outside the clan, which should be upheld, has experienced a decline in value within Batak society.

As time progresses, Batak society has undergone significant changes in various aspects of their lives. Urbanization, education, and exposure to outside cultures have influenced the perspectives and values applied in Batak customs, including in the context of marriage.<sup>11</sup> The development of the times has also brought about changes in marriage patterns, cultural values, and social dynamics. The question arises whether the prohibition of marriage between *marga* (clan) still holds the same place in Batak society today and how the implications of this prohibition affect the way Batak people view marriage, inter-family relationships, and their cultural identity.

However, from an Islamic legal perspective, not all family ties are prohibited in marriage, only those related to the provisions of *mahram muabbad* (permanent prohibition) and *mahram ghairu muabbad* (temporary prohibition). The prohibition of same-clan marriage in Batak customary law is not a *lizatihi* prohibition, which means that the prohibition of marriage between people of the same clan is not a direct prohibition determined by the Qur'an and Hadith. Islam also regulates people who are forbidden to marry. Women who are forbidden to marry are mentioned in Surah an-Nisa (4) verse 23 consisting of three

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<sup>8</sup> Yusdani, et.al., "The Jejuluk in Komering Tribe Weddings in The Globalization from A Siyasa Perspective," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, No. 2 (2023), p. 211-234.

<sup>9</sup> T. Abdullah, *Hukum Adat perkawinan di Indonesia*, Makassar: Penerbit Refleksi, 2019, p. 102.

<sup>10</sup> P. Manurung, *Pemertahanan Tradisi Larangan Perkawinan Semarga di Masyarakat Batak*, Medan: Pustaka Sinar Harapan, 2019, p. 111-112. David Adrian, et.al., "Akibat Perkawinan Semarga Menurut Hukum Adat Batak Toba.," *NOVUM: Jurnal Hukum*, 3, No. 3 (2016), p 3.

<sup>11</sup> Nur Avita, et.al., "Integration of Tradition and Sharia: Dowry and Dui Menre in the Marriage of the Bugis Community in Bone Regency," *El-Mashlahah* 12, No. 2 (2022), p. 124-138,

relationship categories, i.e., kinship, *mushaharah* (marriage), and *mudara'ah* (breastfeeding) relationships.<sup>12</sup>

This present study aims to examine marriage in Batak custom, focusing on the prohibition of same-clan marriage, and to identify the social, cultural, and legal impacts as well as implications in the context of changing times. This study provides deeper insights into how cultural traditions interact with the changing times and how Batak people navigate between preserving their cultural heritage and responding to the demands of the modern era.

To avoid duplication, the authors reviewed several previous studies related to this study as follows. A study by Tommy Christian Silalahi of the Faculty of Law, University of Riau in 2021 titled “*Perkawinan Semarga Menurut Hukum Adat Batak Toba, Sumatra Utara* [Same-Clan Marriage according to Batak Toba Customary Law, North Sumatra]” concerned with the causes of same-clan marriage and the sanctions for same-clan marriage in Batak Toba society. The difference with the present study lies in the formulation of the research problem.<sup>13</sup> Another study is carried out by Frans Sembiring, Marnan A.T. Mokorimban and Prissilia F. Worung of the Faculty of Law, Sam Ratulangi University in 2023 titled “*Larangan perkawinan semarga bagi masyarakat suku batak karo dan sanksi adat perkawinan semarga berdasarkan hukum adat dan undang undang perkawinan* [Prohibition of Same-Clan Marriage for the Batak Karo Tribe and Customary Sanctions for Same-Clan Marriage based on Customary Law and Marriage Law]”.<sup>14</sup> The difference with their study is that this present study focuses on the perspective of *fiqh munakahat*, while Sembiring et al. (2023) focused on customary law and positive law. In addition, research by Widyastutik in 2023 titled “*Aturan Perkawinan Masyarakat Batak Toba dalam Naskah Patik-Patik Dohot Uhun-Uhun Ni Halak Naipospos* [Marriage Rules of the Batak Toba People in the Manuscript *Patik-Patik Dohot Uhun-Uhun Ni Halak Naipospos*]”<sup>15</sup> examined the contents and rules of Batak customary marriage law in the Manuscript of *Patik-Patik Dohot Uhun-Uhun Ni Halak Naipospos*. Her research is different from this study as the present study links the customary rules to the development of the times and technological progress.

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<sup>12</sup> Abdur Rahman Ghazali, *Fiqh Munakahat*, Jakarta: PT. Kencana, 2008, p. 103.

<sup>13</sup> Tommy Christian Silalahi, “Perkawinan Semarga Menurut Hukum Adat Batak, Sumatra Utara,” *JOM Fakultas Hukum Universitas Riau* 8, No. 2 (2021), p 11-13.

<sup>14</sup> Frans Sembiring, et.al., “Larangan perkawinan semarga bagi masyarakat suku batak karo dan sanksi adat perkawinan semarga berdasarkan hukum adat dan undang-undang perkawinan.” *Jurnal Fakultas Hukum Universitas Sam Ratulangi* 7, No. 2 (2023), p. 6.

<sup>15</sup> Iin Tri Widyastutik, “Aturan Perkawinan Masyarakat Batak Toba Dalam Naskah Patik-Patik Dohot Uhun-Uhun Ni Halak Naipospos,” *ALFABETA: Jurnal Bahasa, Sastra, Dan Pembelajarannya* 6, no. 1 (2023).

This present study employed a qualitative field research method.<sup>16</sup> This involved examining facts gathered directly at the research site to answer the research questions. The data collected served as the primary source for this study. The study posed the following research questions: 1) How is the concept of the prohibition of same-clan marriage in Batak customary law? 2) How is the practice of same-clan marriage in Batak customary law? and 3) What is the view of *fiqh munakahat* (Islamic jurisprudence of marriage) regarding the prohibition of same-clan marriage?

### **The Concept of Prohibited Marriage within the Same Clan in Batak Customary Law**

Batak people recognize *marga* (clan) as an identity that indicates which family a person comes from. Several categories within the Batak tribe share the same clan. The family origin of Batak people can be traced to the clan that they have possessed since birth. According to Vergouwen, *marga* is a sign that people using it have the same grandfather. Therefore, all Batak indigenous people put their father's *marga* name behind their first name. Having a *marga* behind the name holds some importance, e.g., when fellow Batak people meet, they will ask each other's *marga* first with the aim of knowing the *Tutur Poda* (title/calling) system.

Exogamous marriage (marriage outside the clan group) is a characteristic of the Batak people's marriage system. Therefore, the Batak people strictly prohibit same-clan marriage because same-clan marriage (*namariboto*) is considered an incestuous marriage. In Batak customary law, a marriage is not yet valid if it is not carried out according to customary law. In Batak customary law, the term for a prohibited marriage is *marsumbang*. If someone commits *marsumbang*, he/she will be punished by the customary leaders of the *marga* concerned. Basically, the prohibition of same-clan marriage has existed since ancient times. The concept of marriage in Batak customary law is known as exogamous marriage, which forbids marriage between members of the same clan.<sup>17</sup>

The Batak people adhere to a patrilineal kinship system, where men are the ones who carry on the family lineage. There is a concept of "*marga*" in the Batak kinship system, which is not used carelessly and has a profound meaning as a symbol of brotherhood. *Marga* is taken from the father, a consequence of the patrilineal system practiced. For Batak women, after marriage, they are tied to the family of their husbands' *marga*, without completely abandoning the

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<sup>16</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2016.

<sup>17</sup> D A H Siahaan, "Akibat Perkawinan Semarga Menurut Hukum Adat Batak Toba," *Novum: Jurnal Hukum* 3, no. 3 (2016).

*marga* they received from their fathers. This places women in an ambiguous position because they are bound to both, yet not fully part of either one.<sup>18</sup>

In Batak customary weddings, women are handed over to men to become their property, so that the identity of the women is subjected to their husbands. Women are provided with a dowry called *sinamot* or *tuhor ini boru* (the cost of paying for the woman), which is given from the prospective husband's family, called *paranak*, to the prospective wife's family, called *parboru*. In general, the wedding party is organized by the *paranak*, and the ones working, termed *marhobas*, have to take care of all the details of the party; they are the women from the *paranak* side along with their husbands. The *parboru* are not obliged to work at the party and must even be served because their position is as a family that must be respected by the *paranak* as the party organizer. However, if the party is held by the *parboru*, the *marhobas* consisted of the women from the *parboru* as well as their husbands. Whoever the organizer of the customary party is, the women from the organizer's side are obliged to work.<sup>19</sup>

Luto Solin, a Batak Pakpak customary law expert, describes that the prohibition of same-clan marriage in Batak customary law is because people believe that the same clan people share the same ancestry, even to the point of being considered siblings. Marrying within the same clan is therefore akin to marrying one's own sibling, a practice that is highly taboo in Batak society. Customary chiefs and elders encourage young people to marry outside of their own clans, not only to uphold customary law, but also to expand their network of relatives beyond their clans and ethnicities. Those who engage in same-clan marriages face customary sanctions, including ostracism and exile from the community. Their marriages are not recognized under customary law and they are barred from participating in customary ceremonies.<sup>20</sup>

The interview with the chair of the Tampubolon women's gathering association also indicates that the concept of prohibiting same-clan marriages in Batak customary law follows the lineage/kinship system from the father's line. Therefore, the clan inherited is from the father, and it is forbidden to marry if the biological fathers of the prospective bride and groom are of the same clan, even though the clan is not listed on the child's birth certificate. This is because, in modern times, not all parents include their clan names behind their children's names. However, marrying a child of the father's sister (cousin) is allowed

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<sup>18</sup> Hasbullah Abimanyu Anwar, et.al., "Sistem Kekerabatan Suku Batak Dan Pengaruhnya Terhadap Kesetaraan Gender," *Jurnal Ilmiah Sosiologi Agama UINSU Medan* 4 No 1 (2021).

<sup>19</sup> Riri Saputri, et.al., "Sistem Kekerabatan Suku Batak Dan Pengaruhnya Terhadap Kesetaraan Gender." *Jurnal Ilmiah Sosiologi Agama UInSu Medan* 4 No 1 (2021).

<sup>20</sup> Interview with Luto Solin, Customary Head of Ampeng Village, Tinada Subdistrict, West Pakpak District, North Sumatra, and Tini Br Manik (Wife), April 15, 2024.

because the child of the father's sister (cousin) is certainly of a different clan and even of a different ethnicity.<sup>21</sup> In fact, Batak customary law provides great opportunities for Batak people to marry outside of the Batak tribe in order to increase the number of relatives. Therefore, the belief of the Batak people in the past regarding the prohibition of same-clan marriages was highly strong and same-clan marriages were seen unharmonious as they violated customary law.<sup>22</sup>

### **The practice of Same-Clan Marriage in Batak Custom**

According to customary law, marriage is a bond between a man and a woman to form a new household or family that will eventually produce offspring. This marriage is related to matters of status, property, and inheritance.<sup>23</sup> The validity of a marriage under customary law in Indonesia depends on the religious marriage ceremony practiced by the indigenous community.<sup>24</sup> If the marriage has been conducted according to religious law, then the marriage is considered valid under customary law. The purpose of the marriage ceremony is to recognize officially the individuals as members of the indigenous community.<sup>25</sup>

However, the uniqueness of Batak customary law is that, in addition to a marriage being valid because it follows the procedures of the respective religion and belief, Batak customary law also recognizes a valid marriage if the marriage is conducted according to customary law, e.g., performing a customary ceremony.<sup>26</sup> In this case, there is a sanction for a marriage between people of the same clan, e.g., the marriage will not be carried out according to customary law, suggesting that the marriage between people of the same clan is not valid under Batak customary law.<sup>27</sup>

Rona Sitanggang explains that today same-clan marriages often occur, mainly due to love between the couple and lack of concern among parents to teach their children about traditional values and rules. In practice, traditional marriages usually happen in big cities since many Batak people urbanize there

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<sup>21</sup> Ahmad Izzuddin, "Problematika Implementasi Hukum Islam terhadap Perkawinan Dibawah Umur di Indonesia," *De jure: Jurnal Hukum dan Syar'iah* 1, No. 1 (2009), p. 2-10.

<sup>22</sup> Interview with Lusni Tampubolon (Chair of Women's Association of Tampubolon Clan, Medan Helvetia, North Sumatra).

<sup>23</sup> Anwar Rachman, et.al., *Hukum Perkawinan Indonesia Dalam Perspektif Hukum Perdata, Hukum Islam Dan Hukum Administarsi*, Jakarta: Prenada Media, 2020, p. 13.

<sup>24</sup> Zein Firdaus, et.al., "Banjar Cultural Marriage Taboos and Analysis of the Prohibition of Marriage in Kitabun Nikah by Sheikh Muhammad Arsyad Al-Banjari," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 1 (2023), p. 183-192.

<sup>25</sup> Anwar Rachman, et.al., *Hukum Perkawinan Indonesia*, p. 15.

<sup>26</sup> Ramadhan Syahmedi Siregar, et.al., "The Role of Marriage Guardian of the Same Clan in the Traditional Marriage of Batak Toba Muslims in Samosir Regency in the Perspective of Islamic Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, No. 1 (2023), p. 41-52

<sup>27</sup> Interview with Sairun Ujung, Regional Secretary of Subulussalam City, May 4 2024.



to study and work, to aim for a more decent life than in rural areas. They later start a family and settle in the city. Hence, in big cities, there is a lack of concern about traditional thinking among Batak people, as they prioritize a modern mindset due to the mixing of cultures from various tribes.<sup>28</sup>

Marriages between different customs and/or ethnic groups are not as complicated as interfaith marriages, i.e., marriages between different religions. Therefore, the difference in custom only concerns the difference in culture of the community, and not the difference in belief or faith. Marriage according to customary law has a broader meaning than marriage according to rules and legislations. Customary marriages are characterized as follows:

- a. Patrilocality (in patrilineal and matrilineal systems), i.e., the husband and wife living with the husband's family (temporarily or permanently);
- b. Matrilocality, i.e., the husband and wife live with the wife's family (in the matrilineal and parental order; in the latter, it sometimes alternates between patrilocal or matrilocal, after the new family has moved into their own home);
- c. Customary ceremonies of marriage are rooted in customs and beliefs; religious ceremonies are performed on the day before the wedding and continue until after the wedding ceremony, and wedding ceremonies differ in each region.<sup>29</sup>

In Batak customary law, there are several groups or groupings of clans that, despite having different names, are still considered the same due to the kinships between the clans/ancestors. For example, the descendants of Si Raja Borbor include the Lubis, Batubara, Sagala, Malau, Manik, Harahap, Tarihoran, Matondang, and Lembong clans. Another example is the descendants of Toga Sinaga, such as the Sinaga, Simaibang, Peranginangin, Sidahapintu, and Simanjorang clans.<sup>30</sup> There are many more clans whose descendants are considered the same in Batak customs. Therefore, it is crucial to understand this customary law and ensure that the person one is going to marry is not of the same clan in order to create obedience to the customary rules that have emerged since before Islam entered the Batak land.

Jubaidah Banurea also adds that modern Batak society is no longer concerned with the prohibition of same-clan marriage. In her opinion, same-clan marriage is caused by the lack of instilling cultural values from the parents and

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<sup>28</sup>Interview with Rona Sitanggang, Batak Community Figure, a *muallaf* who has urbanized to Aceh and actively involved in various events of customary law in the place of origin, Barus, North Sumatra, May 18, 2024.

<sup>29</sup> Anwar Rachman, et.al., *Hukum Perkawinan Indonesia*, p. 14.

<sup>30</sup> R.Soetojo Prawirohamidjojo, *Pluralisme Dalam Perundang-Undangan Perkawinan Di Indonesia*, Surabaya: Penerbit Airlangga University Press, 1974, p. 34.

the mixing of Batak culture with others. For example, Batak people, who migrate to study in big cities, marry people from other ethnic groups, and live in those big cities, do not include the *marga* on their children's names, which should be the identity of the Batak people. Therefore, when their children grow up and later die, their next descendants will marry within the same *marga*, as there is no prohibition from their extended family. This is one reason same-clan marriage occurs in this era. Indeed, many of these customary laws have been forgotten due to the increasingly modern development.<sup>31</sup> Further, Jubaidah Banurea also explains that in the past Batak people were very afraid to violate all customary rules because older generations held them in high esteem. There were even unwanted incidents that occurred if people disobeyed their parents' orders, such as encountering misfortunes and children born with physical disabilities.<sup>32</sup>

### **The View of *Fiqh Munakahat* on the Prohibition of Same-Clan Marriage**

Islam has regulated the provisions of marriage in the Qur'an, including the pillars of marriage, types of prohibited marriages, types of people permissible to marry, and criteria for spouse selection. In marriage, certain communities should follow many traditions and customs to create peace and harmony.<sup>33</sup>

Linguistically, *nikah* (marriage) means "to gather" or "to unite". It also carries the meanings of "sexual intercourse" and "contract". According to the experts of etymology and language, sexual intercourse is the *hakiki* (denotative) meaning of *nikah* while contract is the *majāzī* (connotative) meaning. Therefore, if the word *nikah* appears in the Qur'an or hadiths without any accompanying indicators, its meaning is sexual intercourse, as in the Qur'an [4:22]:

لَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ ؕ إِنَّهُ كَانَ فَجِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا

Meaning: "Do not marry former wives of your fathers—except what was done previously. It was indeed a shameful, despicable, and evil practice."

<sup>31</sup> Anwar Hafidzi, et.al., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Al-Ahkam* 3, No. 2 (2022), p. 153-168.

<sup>32</sup> Jubaidah Banurea, a local Muslim of Batak Pakpak who has urbanized from Sukarame, Kerajaan Subdistrict, West Pakpak District, North Sumatra Province to Subulussalam, April 18, 2024.

<sup>33</sup> Khairuddin Khairuddin, "Tinjauan Hukum Islam Terhadap Larangan Perkawinan Se-Marga Di Desa Lae Balno Danau Paris Aceh," *Jurnal Mediasas : Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyah* 3, no. 2 (2020), p. 129.

The above verse states that it is prohibited for a man to marry a woman who has committed sexual intercourse with his father.<sup>34</sup> The prohibition of marrying a woman who has been married (through *akad* or contract) to his father is established based on *ijma'* (consensus of Islamic scholars). In contrast to the above view, the *fiqh* scholars argue that the *hakiki* meaning of *nikah* is *akad* (marriage contract) whereas its *majāzī* meaning is sexual intercourse, as these meanings are prevalent in the Qur'an and Hadith.<sup>35</sup>

In Islamic matrimonial law, the first aspect to be fulfilled by each party who wants to get married is equality, known as *kafaah* in the *fiqh* term.<sup>36</sup> Therefore, Islam teaches about choosing the right spouse. The *ulema* (Muslim scholars) agree on four criteria regarding the equality in question, namely equality in terms of wealth, descent, beauty, and religion.<sup>37</sup> In this case, equality in religion is something that is highly significant and more prioritized. The priority in selecting a spouse lies in the matter of religion. Having the same religion should be the main priority in choosing a spouse. The reason is that marriage has a goal, which is to form a family of *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (mercy).<sup>38</sup>

According to Wahbah al-Zuhaili, a marriage is valid if the pillars and conditions of marriage are perfectly fulfilled. The pillars of marriage consist of the prospective bride and groom, the *wali* (guardian), the two witnesses, and the *ijab* (offer) and *qabul* (acceptance). In addition, the Maliki school of thought also includes *mahar* (dowry) as a pillar of marriage.<sup>39</sup>

Based on these pillars of marriage, there are certain conditions to meet for a marriage to be valid according to the *ijtihad* (independent reasoning) of *ulema*. The conditions for the prospective groom are Muslim, male, recognized and identified, permissible to marry the prospective bride, fully recognizing/understanding the bride is lawful for him to marry, having consent

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<sup>34</sup> Rudi Mayandra, "Regulation of Marriage Dispensation Against Marriage of Children Under The Age of Post Decision of The Constitutional Court Number 22/PUU-XV/ 2017," *Syariah: Jurnal Hukum dan Pemikiran* 20, No. 2 (2020), p. 187-200.

<sup>35</sup> Iffah Muzammil, "Fiqh Munakahat (Hukum Pernikahan Dalam Islam)," *Journal of Chemical Information and Modeling* 53, no. 9 (2019), p. 1.

<sup>36</sup> Taufiq Hidayat, et.al., "Jeulame in Marriage in Banda Aceh: Looking for a Common Thread between Culture and Sharia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, No. 1 (2020), p. 115-130.

<sup>37</sup> Ahmad Rajafi, et.al., "The 'Double-Faced' Legal Expression: Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia," *Journal of Islamic Law* 5, No. 1 (2024), p. 19-43.

<sup>38</sup> Al Yasa Abubakar and Novita, "Pandangan Imam Ibnu Taimiyah Tentang Perkawinan Laki-Laki Muslim Dengan Wanita Ahlul Kitab," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 1, no. 2 (2017).

<sup>39</sup> Ali Sibra Malisi, "Pernikahan Dalam Islam," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 1, no. 1 (2022), p. 26

to the marriage, not being in *ihram* (pilgrimage consecration) for Hajj or Umrah, not having a wife prohibited for polygamy, and not having four wives. The requirements for the prospective bride are Muslim, woman (not a *khunsa*, i.e., having both male and female genitalia), specifically identified, *halal* (permissible) for the groom to marry, not being in a marriage, not being in the *'iddah* (i.e., waiting period after divorce or death of a husband), not being coerced into marriage, and not being in a state of *ihram* for Hajj or Umrah. In terms of the witnesses attending the *aqad nikah* (marriage contract), there must be two men who are Muslim, *baligh* (adult), sane, and have seen, heard, and understood the meaning of the marriage contract. The conditions for a *wali* are male, Muslim, *baligh*, free, sane mature being in a marriage contract, and just.<sup>40</sup>

Marriage must be performed with the utterance of “*ijab*” and “*qabul*” by word of mouth. This is known as the *aqad nikah*. For mute people, their marriage is valid with hand or head gestures that can be understood. The “*ijab*” is carried out by the guardian of the bride or her representative, while the “*qabul*” is performed by the groom or his representative.<sup>41</sup>

Indonesia has also determined the valid requirements of marriage through Law No. 1 of 1974 in Article 2 paragraph (1) which states, “Marriage is valid if it is performed according to the law of each religion and belief.” The rules on marriage prohibitions, according to Law No. 1 of 1974 Concerning Marriage Article 8, stipulate that marriage is prohibited between two people who: 1) are related by blood in a straight line downwards or upwards, and 2) are related collaterally, namely between siblings, between a person and a parent’s sibling, and between a person and a grandparent’s sibling. In the Compilation of Islamic Law Chapter IV on the Prohibition of Marriage Article 39, it is prohibited to conduct a marriage between a man and a woman because of kinship ties, including: a) with the person who gave birth or descended from her or her descendants, b) with a woman who is a descendant of the father or mother, and c) with a woman who is a sibling of the person who gave birth to him.<sup>42</sup>

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<sup>40</sup> Rini Prunama and Mukhsin Nyak Umar, “Persyaratan Pernikahan Menurut Mazhab Hanafi,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018), p. 31. Muchamad Coirun Nizar, “The Religious Court's Decisions on Divorce: A Maqāṣid Shari‘a Perspective,” *Ulumuna: Journal of Islamic Studies* 24, No. 2 (2020). Abidin Nurdin, “Mut’ah and Iddah: Post-divorce Payment Practices in Aceh,” in John R. Bowen and Arskal Salim, *Women and Property Rights in Indonesian Islamic Legal Contexts*, (2018).

<sup>41</sup> Rusdaya Basri, *FIQH MUNAKAHAT 4 Mazhab Dan Kebijakan Pemerintah*, Parepare: Kaffah, 2019, p. 20.

<sup>42</sup> Annotation of the Law based on the Decision of the Constitutional Court, Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. Presidential Instruction No. 1 of 1991 concerning the compilation of Indonesian Islamic law.

The classical *ulema* are of the opinion that the prohibition in marriage is the prohibition for a man to marry a woman. According to Islamic law, this prohibition is divided into two categories: permanent prohibition (*haram ta'bid*) and temporary prohibition (*haram gairu ta'bid/ta'qit*). A woman prohibited to be married is called *mahram* based on the origin of the word "*harama*", which means not allowed or forbidden. In legal terms, there are two types of *mahram*: permanent prohibition (*muabbad*) and temporary prohibition (*ghairu muabbad*).<sup>43</sup>

Permanently prohibited marriages are due to *nasab* (lineage), *mushaharah* (marriage), and breastfeeding relationships. Temporary prohibited marriages include people who are not allowed to marry for a certain period of time, or due to several obstacles being the reasons people are prohibited from carrying out marriages. Thus, if those barriers no longer exist, then marriage is permissible. The obstacles include women who are still married to someone else or still legally married, women who are still in the period of *'iddah*, women who are *kafir* (disbelievers) as mentioned in Surah Al-Baqarah verse 221, and two sisters from the same family/marrying a woman along with her sister, as well as women who are in the state of *ihram*.<sup>44</sup>

Marital prohibitions in the perspective of *fiqh munakahat* refer to the Qur'an Surah An-Nisa [4:23]:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَعَةِ وَأُمَّهُنَّ نِسَائِكُمْ وَرَبِّبَاتُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِّن نِّسَائِكُمُ اللَّاتِي دَخَلْتُم بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَخَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَن تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا

Meaning: "(Also) forbidden to you for marriage are your mothers, your daughters, your sisters, your paternal and maternal aunts, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your mothers-in-law, your stepdaughters under your guardianship if you have consummated the marriage with their mothers—but if you have not, then you can marry them—nor the wives of your own sons, nor two sisters together at the same time—except what was done previously. Surely Allah is All-Forgiving, Most Merciful."

In the above verse, Allah SWT has stipulated several categories of women who are *haram* (forbidden) to marry. The verse describes women who are *haram* to marry due to breastfeeding relationships, including milk mothers.

<sup>43</sup> Agus Hermanto, "Larangan Perkawinan Perspektif Fikih Dan Dengan Hukum Perkawinan Indonesia," *Muslim Heritage* 2, no. 1 (2017), p. 3.

<sup>44</sup> Sifa Mulya Nurani, et.al., "Larangan Pernikahan Menurut Kompilasi Hukum Islam Dan Relevansinya Dengan Al-Qur'an," *Jurnal Hukum Pelita* 2, no. 2 (2021), p. 54.

Milk mothers are equivalent to one's biological mother in terms of breastfeeding. All women who have breastfed children following the standards set by Allah SWT and the Prophet are equal to biological mothers. It is also *haram* to marry any woman with a maternal relationship with the milk mothers, both by lineage or breastfeeding. Similarly, it is also *haram* to marry milk sisters, i.e., women who are breastfed from the same milk mothers as the man, whether before, during, or after the breastfeeding period. Allah also forbids marrying women based on lineage relationships, including the father's female siblings; that is, all women who are related to the father from the origin of their mother's birth, either both parents or only one of them. Prohibited marriage due to lineage relationships also includes the mother's female siblings from one's male siblings, either full or half-siblings, and the daughters of one's female siblings.<sup>45</sup>

Islamic law also regulates the types of prohibited marriages, as follows:

- 1) *Nikah mut'ah*: This is a temporary marriage contract in which a man marries a woman using the phrase "*tamattu, istimta*" or the like. *Nikah mut'ah* is also known as temporary marriage. According to Wahbah Zuhaili, *nikah mut'ah* is a marriage that is terminated. *Nikah munaqathi* is a marriage in which the marriage contract is limited to a certain period, as the man marries the woman only for one day, one week, one month, and so forth. All *madhhab imams* stipulate that *nikah mut'ah* is *haram*.
- 2) *Nikah muhallil*: *Muhallil* is also known as *kawin cina buta* in Indonesian, which is when a man marries a woman who has been divorced three times after her *'iddah* period and then divorces her with the intention of allowing her former husband to remarry her. This type of marriage is *haram*, and is even considered a major sin and *munkar* (evil) that is prohibited and whose perpetrators are cursed by Allah. In one hadith narrated by Abu Hurairah, the Prophet Muhammad PBUH said, "Allah curses the *muhallil* (the man who marries) and the *muhallal* (the former husband who orders someone to be a *muhallil*)."<sup>46</sup> (Narrated by Ahmad; *sanad* grade Hasan).
- 3) *Nikah syighar*: Linguistically, *syighar* means *arrafu* or lifting. The perpetrators of *syighar* are like those who raise their feet facing each other as a form of belittlement of the bargaining they are doing. In terms of its terminology, it is when a guardian marries off a girl, he has raised

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<sup>45</sup> Thoat Setiawan, "Persuasan (Ar-Radhaa') Menjadikan Kemahraman Dalam Perkawinan (Kajian Tafsir Maudu'i Alquran Surat an-Nisa Ayat 23)," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (2017), p. 21.

<sup>46</sup> Jamaluddin and Nanda Amalia, *Buku Ajar Hukum Perkawinan*, Lhokseumawe: Unimal Press, 2017, p. 49–50.

to a man on the condition that the guardian also marries the girl the man has raised. In other words, the marriage is carried out by exchanging each other's daughters or sisters to be each other's wives without a dowry. Thus, *syighar* marriage is similar to bartering commodities in trade.

- 4) Same-sex marriage: In Islam, same-sex marriage is prohibited. Anything that is prohibited in Islam is *haram*, and those who violate it will sin, as the marriage is man-made without any reference to the holy book and religion. Muhammad Ali as-Sabuni in his *tafsir* states that the first people to commit homosexuality (sodomy) were the people of Prophet Lut a.s., as explicitly stated in the Qur'an, Surah an Naml verses 54-55: "And (remember) Lut, when he rebuked (the men of) his people, "Do you commit that shameful deed while you can see (one another)?" "Do you really lust after men instead of women? In fact, you are (only) a people acting ignorantly".<sup>47</sup>

In light of the aforementioned explanations, in terms of people who are prohibited from marrying from the perspective of *fiqh munakahat*, which refers to Surah An-Nisa verses 22-24, there is No. provision that prohibits marriage with the same clan name. The groups of people who are forbidden to marry because of lineage are mothers, biological daughters, biological sisters, aunts from the father's side and from the mother's side, daughters of brothers, and daughters of sisters. Being in the same clan is not necessarily included in the groups of people prohibited to marry according to the word of Allah in Surah An-Nisa verse 23. Likewise, the descriptions of marriages that are forbidden by Islam, e.g., *mut'ah*, *muhallil*, *syighar* and same-sex marriages, also indicate that as long as same-clan marriage does not violate the rules forbidden by Islam, *fiqh munakahat* views that same-clan marriage is permissible. Therefore, the prohibition of the same-clan marriage in Batak customary 76awi s contrary to *fiqh munakahat*. This is also perhaps one of the factors that same-clan marriages are prevalent among Batak Muslim communities. Nevertheless, as Batak people, they should also obey customary law for their identity and culture even though Islamic law and positive law allow same-clan marriage. In essence, however, the three laws complement each other with the same goal, namely to provide peace and harmony for the Muslim community.

## Conclusion

This study concludes that the concept of prohibiting same-clan marriage in Batak customary law basically follows the lineage from the father's clan since

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<sup>47</sup> Joni Zulhendra and Abd.Rahmad, "Kajian Hukum Islam Terhadap Pernikahan Sesama Jenis Di Era Milineal," *NORMATIVE Jurnal Ilmiah Hukum* 11, no. 1 (2023), p. 4.

Batak people adhere to the patrilineal system. Marriage between people of the same clan is prohibited because the society believes that people of the same clan are descended from the same ancestors, and are even blood relatives. Therefore, those who violate customary rules will be subject to customary sanctions. In addition, same-clan marriages now commonly occur. The underlying factors include love and lack of concern from parents to teach their children about customary values and rules. In practice, these customary marriages typically happen in big cities because many Batak people urbanize there to study, work, and seek a better life. They later have families and settle in the city. In such big cities, they have a lack of concern for customary law as they prioritize modern thinking as a result of the mixing of cultures from various ethnic groups. Further, from the perspective of *fiqh munakahat*, the prohibition of marriage refers to Surah An-Nisa verses 22-24, which restrict marriage only for *mahram muabbad* (permanent prohibition) including by kinship, marriage, and breastfeeding relationships, and *ghairu muabbad* (temporary prohibition) such as a triple-divorce former wife, a legally-married woman, and a two-sister marriage bond, among others. On the other hand, same-clan marriage is only limited to people of the same clan and does not necessarily include the categories of people who are prohibited from marrying in Islam. This is because a legal marriage according to customary law also follows the rules of their respective religions and beliefs. Thus, the customary rules prohibiting same-clan marriage in Batak is still permissible from the perspective of *fiqh munakahat* because this marriage is not included in the types of prohibited marriages in Islamic family law.

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Interview with Luto Solin, Customary Head of Ampeng Village, Tinada Subdistrict, West Pakpak District, North Sumatra, April 15, 2024.

Interview with Lusni Tampubolon, Chair of the Women's Association of the Tampubolon Clan, Medan Helvetia, North Sumatra, May 15, 2024.

Interview with Rona Sitanggang, Batak community figure, a *muallaf* who has urbanized to Aceh and actively participated in various customary law events in the area of origin, Barus, North Sumatra, May 18, 2024.

Interview with Jubaidah Banure, a Local Muslim of Batak Pakpak who urbanized from Sukarame, Kerajaan Sub-district, West Pakpak District, North Sumatra Province to Subulussalam, April 18, 2024.