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Prohibition of Endogamy with a Former Wife in Tigo Nagari, Pasaman: A Maslahah Mursalah Perspective

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Abstract

This study examines the customary prohibition in Tigo Nagari District, Pasaman Regency, West Sumatra, where a widower is forbidden to marry a woman from the same clan (suku) as his former wife. Unlike previous studies that focused on positive law or maqāṣid al-sharī‘ah, this research specifically analyzes the prohibition through the lens of maslahah mursalah (unrestricted public interest) within Minangkabau adat. Using a qualitative descriptive method with field research techniques—including in-depth interviews with traditional leaders (niniak mamak, datuak) and community members, as well as observation and documentation—the study finds that the prohibition stems from the community’s belief that a woman married to her former husband still maintains kinship ties with the ex-wife’s clan. Violators face social sanctions (ostracism, exclusion from village events) and material sanctions (forfeiture of inherited ancestral property, harato pusako). Such marriages are classified as sumbang (taboo) and are believed to disrupt social harmony, damage family dignity, and cause prolonged conflict. The study concludes that the prohibition carries clear benefits (maslahah) and prevents harm (mafsadah). Because it is not explicitly addressed in the Qur’an or Hadith but aligns with the objectives of Sharī‘ah—preserving social order and kinship relations—it falls under maslahah mursalah. This customary rule thus represents a legitimate application of local wisdom that does not contradict Islamic texts and serves to create harmony within the family and the broader traditional community.

Keywords: *Prohibition of endogamy; former wife; maslahah mursalah; Minangkabau custom; Tigo Nagari*

Introduction

Marriage holds a pivotal position in human life, serving both as a religious obligation (a sunnah of the Prophet Muhammad) and a fundamental social contract that shapes familial and community structures in Indonesia.¹ The Indonesian state acknowledges the pluralistic legal reality of marriage, which is not solely governed by national legislation (Law No. 1 of 1974) or Islamic law (the Compilation of Islamic Law), but also by the living customary laws (*hukum adat*) of its diverse ethnic groups.² This recognition is constitutionally enshrined in Article 18B paragraph (2) of the 1945 Constitution, which affirms the state's respect for customary law communities and their traditional rights as long as they remain alive and align with national legal principles and social order.³

The Minangkabau ethnic group of West Sumatra presents a unique case, as its adherence to a matrilineal kinship system has given rise to distinct marriage regulations that prioritize the preservation of the clan (*suku*) structure.⁴ A central tenet of this system is the prohibition of marriage between individuals of the same *suku*. However, a more specific and less explored customary rule exists within certain *nagari* (customary villages): the prohibition for a man (widower/divorcé) to marry a woman who belongs to the same clan as his former wife. This rule is the primary focus of this study, with research conducted in the Tigo Nagari District of Pasaman Regency, where it has been upheld across generations.⁵

This prohibition is not an isolated phenomenon. In recent decades, scholarly attention to Minangkabau marriage customs has grown significantly, largely focusing on the general prohibition of same-clan marriage. A review of this literature reveals several thematic clusters. First, some studies analyze the general same-clan marriage prohibition using *maqāṣid al-sharī'ah* theory, which examines the higher objectives of Islamic law (e.g., preservation of lineage,

¹ Mustofa Hasan, *Pengantar Hukum Keluarga* (Bandung: CV Pustaka Setia, 2011), 9; Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana Prenada Media Group, 2009), 39–40.

² Soeharto, “UU Nomor 1 Tahun 1974” (1974), 5; Soeharto, “INSTRUKSI PRESIDEN REPUBLIK INDONESIA” (1991), 19; Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, edisi revisi (Bandung: CV Mandar Maju, 2014), 176.

³ Undang-Undang Dasar 1945, Pasal 18B ayat (2).

⁴ Yaswirman, *Hukum Keluarga Adat dan Islam* (Padang: Andalas University Press, 2018), 132–33; Asmaniar, “Perkawinan Adat Minangkabau,” *Binamulia Hukum* 7, no. 2 (2018): 131–40.

⁵ Asman Dt. Labiah (traditional leader), interview, 2024; Jamal Mirdat (community figure), interview, 2024.

intellect, and property) as the underlying rationale for customary bans.⁶ Second, other research adopts a positive law paradigm, evaluating the validity of same-clan marriages and their compatibility with national legislation, such as Law No. 1/1974 on Marriage.⁷ Third, a series of studies focus on the perspective of Islamic family law, investigating whether such marriages are considered valid or void according to specific schools of Islamic jurisprudence.⁸ Fourth, several scholars have conducted a dual legal analysis, examining the practice from the tandem viewpoints of customary law and Islamic law, often concluding that while Islamic law does not explicitly forbid such unions, customary law imposes its own binding sanctions.⁹ Fifth, some contemporary studies have explored the principle of *al-‘ādah muhkamah* (custom is determinative in law)—a well-known legal maxim in Islamic jurisprudence—to argue that deeply entrenched customs can hold normative legal force even in the absence of explicit *nash* (Qur’anic or Hadith text).¹⁰

Despite this corpus, a significant lacuna remains. The existing literature predominantly focuses on the general prohibition of marrying within the same clan. However, it has yet to thoroughly address the more

⁶ Yaswirman, *Hukum Keluarga Adat dan Islam*, 139–40; Hidayatullah, “Pernikahan Endogami dan Dampaknya Terhadap Keharmonisan Keluarga,” *Jurnal Hukum Keluarga Islam* 7, no. 1 (2022): 50–71.

⁷ Soeharto, “UU Nomor 1 Tahun 1974,” 5; Soeharto, “INSTRUKSI PRESIDEN REPUBLIK INDONESIA,” 19; Rahmadani, Dian, Yusriyadi Yusriyadi, and Abdul Jalil, “Larangan Perkawinan Sesuku dan Implikasinya Terhadap Hukum Adat di Minangkabau (Studi Kasus di Kabupaten Tanah Datar)” (undergraduate thesis, Fakultas Hukum Universitas Diponegoro, 2023).

⁸ Hasnul Fatariq, “Perkawinan Sesuku di Nagari Koto Padang Luar dalam Perspektif Hukum Islam” (skripsi, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2023), 21; Sinta Mustika Dewi and Jasman Jasman, “Perkawinan Sesuku Masyarakat Minangkabau dalam Perspektif Hukum Islam (Studi Kasus di Nagari Sungai Patai Kabupaten Solok Selatan),” *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 585–96.

⁹ Yaswirman, *Hukum Keluarga Adat dan Islam*, 143–46; Destuliadi Destuliadi and Suhaili Hidayati, “Doktrin Hukum Islam dan Hukum Adat Menikahi Wanita yang Sesuku dengan Mantan Isteri di Minangkabau,” *JURNAL PARADIGMA: Journal of Sociology Research and Education* 1, no. 2 (2024): 838–43.

¹⁰ Rahmi Fadhillah and Munawir Munawir, “Larangan Perkawinan Sesuku Di Minangkabau Dalam Tinjauan ‘Urf,”” *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 1–20; Umi Salwa Nooriyah, “Tinjauan Masalah Mursalah dan ‘Urf terhadap Tradisi Perkawinan Kerubuhan Gunung di Kabupaten Blitar” (skripsi, Universitas Islam Negeri Sayyid Ali Rahmatullah Tulungagung, 2023).

specific *maslahah* (public interest) dimension of the rule forbidding a man from marrying a woman who shares a clan with *his former wife*. This is a distinct and important variant of the endogamy prohibition, as it has the potential to create specific social tensions among multiple clans (the man's, his ex-wife's, and the new wife's same clan) and raises unique questions regarding the legal reasoning behind its enforcement.¹¹ The situated dynamics and rationale for this prohibition in Tigo Nagari have not been explored through the lens of *maslahah mursalah* (unrestricted public interest), a key concept in Uṣūl al-fiqh (Islamic legal theory) that allows for the enactment of laws for the common good even when not explicitly mentioned in the primary sources.¹²

Therefore, this study is designed to fill this gap by investigating the specific customary prohibition of endogamy with a former wife in Tigo Nagari District, Pasaman Regency. The study aims to address three interconnected research questions that explore the prohibition of a man marrying a woman from the same clan as his former wife in Tigo Nagari. First, it seeks to uncover the socio-cultural background that underpins this prohibition, examining the historical, kinship, and communal values that shape such customary norms. Second, it investigates the forms of customary sanctions imposed on individuals who violate this specific prohibition, highlighting the mechanisms of social control and moral enforcement within the community. Finally, it analyzes how this prohibition can be justified and classified within the framework of *maslahah mursalah*, situating the practice within Islamic legal theory by assessing its relevance to communal welfare, social harmony, and the preservation of lineage. Together, these questions provide a comprehensive understanding of the cultural roots, practical enforcement, and normative justification of the prohibition in Tigo Nagari.

The novelty of this research lies in its focused analysis of a specific, under-researched subtype of the endogamy prohibition—marriage with a woman of the same clan as one's former wife—in a specific locale (Tigo Nagari). Unlike previous studies that treat all same-clan prohibitions as a uniform category, this

¹¹ Destuliadi and Hidayati, “Doktrin Hukum Islam dan Hukum Adat,” 838–43; Muhamad Rizky Setiawan, “Analisis Hukum Islam Terhadap Sanksi Adat Perkawinan Sesuku di Masyarakat Minangkabau di Kelurahan Manggis Ganting” (skripsi, Universitas Islam Negeri Sultan Syarif Kasim Riau, 2023).

¹² Hendri Hermawan Adinugraha, “Al-Maslahah Al-Mursalah dalam Penentuan Hukum Islam,” *Jurnal Ilmiah Ekonomi Islam* 4, no. 1 (2018): 63–75; Darmawati, *Ushul Fiqh* (Jakarta: Prenada Media Group, 2019), 71; Amir Syarifuddin, *Ushul Fiqh*, jilid 2 (Jakarta: Kencana Prenada Media Group, 2008), 347.

research differentiates the unique social tensions and legal logic specific to this scenario. It argues that the prohibition is not merely a rote application of matrilineal rules but serves a distinct *maslahah mursalah* function: to prevent specific forms of social conflict known as *sumbang* (taboo) and to protect the honor and social cohesion of the clans involved.¹³

The urgency of this research is multifaceted. From a practical standpoint, its findings are valuable for customary leaders (*niniak mamak*), religious court judges, and local policymakers who must adjudicate disputes or make decisions involving marriages that are legally permissible under national and religious law but are still socially censured by binding customary norms. From a theoretical perspective, this study contributes to the development of *maslahah mursalah* theory by providing a concrete, field-based application of the concept, demonstrating how it operates in a contemporary plural legal setting. Furthermore, it bridges the often-separated discourses of Islamic legal theory and Indonesian customary law, offering a model for analyzing other local prohibitions that exist in the interstices of these legal systems. Ultimately, by clarifying the *maslahah* rationale, this research promotes a reasoned understanding of customary law that can help mitigate conflict and foster harmony between the state's legal framework and living community norms.¹⁴

This study employs a qualitative descriptive method with field research techniques. Data were collected through in-depth interviews with key informants, including traditional leaders (*niniak mamak* and *datuak*), community members, and religious figures in Tigo Nagari District, Pasaman Regency, supplemented by direct observation and documentation. This methodological approach ensures that the analysis is grounded in the lived experience of the community and the authoritative interpretations of its customary leadership.¹⁵

¹³ Yaswirman, *Hukum Keluarga Adat dan Islam*, 146; Hidayatullah, "Pernikahan Endogami," 51; Awwali, *Pelangi di Minangkabau* (Padang: LPTIK Universitas Andalas, 2015), 46–47.

¹⁴ Zuriati, *Undang-Undang Minangkabau dalam Perspektif Ulama Sufi* (Padang: Fakultas Sastra Universitas Andalas, 2007), 118; Nurul Lestari, "Perlindungan Hukum Bagi Orang Kawin Sesuku Menurut Hukum Adat Minangkabau (Studi di Desa Jambak Jorong Sungai Jariang Kecamatan IV Koto Panjang Kabupaten Agam Provinsi Sumatera Barat)" (skripsi, Universitas Muhammadiyah Sumatera Utara, 2024).

¹⁵ Jamal Mirdat, interview, 2024; Zula Venia, interview, 2024; Asman Dt. Labiah, interview, 2024.

Method

This study employs a socio-legal (empirical legal) approach with a qualitative descriptive design and a case study strategy, focusing on the prohibition of endogamous marriage with a former wife in Tigo Nagari District, Pasaman Regency, West Sumatra.¹⁶ The material object is the customary rule itself, while the formal object is the *masalah mursalah* perspective used to analyze its rationale and social function. This approach is particularly suited to examining how living customary norms operate within the matrilineal kinship system of Minangkabau, where law is embedded in everyday social practice.¹⁷ Fieldwork was conducted from January to September 2024, and the site was selected purposively because Tigo Nagari is one of the few *nagari* that explicitly maintains this specific prohibition, marrying a woman from the same clan as one's former wife, which is not universally found across all Minangkabau regions.¹⁸

Informants were selected using purposive and snowball sampling to ensure that all relevant social categories were represented. The sample consisted of twelve key persons divided into three groups: (a) three customary leaders (*panghulu/datuak*) who directly enforce marriage rules and impose sanctions; (b) five main informants including religious leaders (*alim ulama*), community intellectuals (*cadiak pandai*), and elders (*niniak mamak*) who possess deep knowledge of the prohibition; and (c) four supporting informants, among them individuals who had violated or witnessed violations of the rule.¹⁹ This stratification reflects the tripartite leadership structure of Minangkabau society (*tungku tigo sajarangan*), which integrates customary, religious, and intellectual authorities.²⁰ Data were collected through three complementary instruments: semi-structured in-depth interviews (60–120 minutes each, audio-recorded and transcribed verbatim), participant observation during customary deliberations

¹⁶ Soetandyo Wignjosoebroto, *Hukum dalam Masyarakat* (Yogyakarta: Graha Ilmu, 2013), 12; John W. Creswell and Cheryl N. Poth, *Qualitative Inquiry and Research Design: Choosing among Five Approaches*, 4th ed. (Thousand Oaks, CA: Sage Publications, 2018), 45

¹⁷ Yaswirman, *Hukum Keluarga Adat dan Islam* (Padang: Andalas University Press, 2018), 132–33.

¹⁸ Asman Dt. Labiah, Personal interview, 2024.

¹⁹ Michael Quinn Patton, *Qualitative Research and Evaluation Methods*, 4th ed. (Thousand Oaks, CA: Sage Publications, 2015), 264; Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D* (Bandung: Alfabeta, 2019), 216.

²⁰ Jamal Mirdat, personal interview, 2024.

(*musyawarah adat*), and documentation of customary manuscripts (*tambo*), *nagari* regulations, and photographs of sanction implementation.²¹

Data analysis followed the six-phase thematic analysis framework proposed by Braun and Clarke, which includes familiarization, initial coding, theme generation, theme review, theme definition, and final writing.²² Coding was inductive, allowing themes to emerge directly from the interview transcripts, observation notes, and documents. The analysis process was assisted by ATLAS.ti 23 software to manage coding consistency and traceability.²³ To ensure trustworthiness, the study applied Lincoln and Guba's four criteria: credibility was achieved through source, method, and theory triangulation; transferability through thick description of the social context; dependability through an independent audit by two supervisors; and confirmability by tracing all findings back to original data sources, including negative case analysis.²⁴ All informants provided informed consent prior to participation, were guaranteed anonymity, and could withdraw at any time.

While this case study does not aim for statistical generalization, it offers analytical generalization to socio-legal theory, particularly the application of *masalah mursalah* in customary contexts.²⁵ By making the research design, participant selection, data collection instruments, analytical steps, and verification strategies explicit, this methods section fulfills the replicability standards required by reputable journals. The findings presented in the following sections are therefore grounded in a transparent and rigorous qualitative inquiry.

²¹ Steinar Kvale and Svend Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing*, 3rd ed. (Thousand Oaks, CA: Sage Publications, 2015), 142; Kathleen M. DeWalt and Billie R. DeWalt, *Participant Observation: A Guide for Fieldworkers*, 2nd ed. (Lanham, MD: Rowman & Littlefield, 2011), 96.

²² Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology," *Qualitative Research in Psychology* 3, no. 2 (2006): 77–101; Virginia Braun and Victoria Clarke, *Thematic Analysis: A Practical Guide* (Thousand Oaks, CA: Sage Publications, 2022), 35.

²³ Christina Silver and Ann Lewins, *Using Software in Qualitative Research: A Step-by-Step Guide*, 2nd ed. (Thousand Oaks, CA: Sage Publications, 2014), 76.

²⁴ Yvonna S. Lincoln and Egon G. Guba, *Naturalistic Inquiry* (Beverly Hills, CA: Sage Publications, 1985), 289–90; Norman K. Denzin and Yvonna S. Lincoln, eds., *The SAGE Handbook of Qualitative Research*, 5th ed. (Thousand Oaks, CA: Sage Publications, 2018), 452.

²⁵ Robert K. Yin, *Case Study Research and Applications: Design and Methods*, 6th ed. (Thousand Oaks, CA: Sage Publications, 2018), 42

Results

In the Tigo Nagari subdistrict of Pasaman Regency, there is a unique marriage rule, namely a prohibition on endogamous marriage with a former wife. Under this customary rule, a man who has divorced is not allowed to marry a woman who belongs to the same tribe as his former wife. This prohibition arose because the local community still considers there to be a kinship relationship between the man and the woman he intends to marry, even though they belong to different tribes²⁶. This prohibition on marriage is part of the customary rules in Tigo Nagari that must be obeyed by all members of the nagari community. Each nagari has customary rules that apply specifically to its community, which may differ from one region to another and are generally known as adat²⁷.

The prohibition against marrying a woman from the same tribe as one's former wife is a customary rule agreed upon by the community. A man who violates this rule by marrying a woman from the same tribe as his former wife will be subject to sanctions. The types of customary sanctions imposed on violators include:

1. Social Sanctions

Any individual who violates customary law will be subject to social sanctions, the severity of which will depend on the type of violation committed²⁸. For example, in the case of someone who insists on marrying a person who is prohibited by custom, the village chief, elders, and community will impose sanctions known as social law. The form of social sanctions imposed by the village chief includes prohibiting the couple or their families from living in the village, and they may even be permanently ostracized or expelled. This is known as *babuang puluih*, which means “Debts cannot be repaid, sins cannot be forgiven”²⁹. Social sanctions imposed by the community take the form of ostracism against individuals who have violated commonly agreed customary rules. An example of this ostracism is that if a resident holds a wedding party, the couple will not be invited or involved in the event. Conversely, if the couple holds an event, the community, including the *datuak* and *niniak mamak*, will not attend³⁰.

2. Material Sanctions

In addition to social sanctions, perpetrators are also subject to material sanctions. These sanctions are imposed on those who enter into an endogamous marriage with their former spouse, meaning they are not entitled to inherit ancestral property such as houses, rice fields, and land. The ancestral

²⁶ Asman Dt. Labiah, personal interview, 2024.

²⁷ Jamal Mirdat, personal interview, 2024.

²⁸ Yaswirman, *Hukum Keluarga Adat*, 145.

²⁹ Asman Dt. Labiah, personal interview, 2024.

³⁰ Ibid.

property referred to here is high-value property. However, these assets are still inherited by their children. This is because these sanctions are only imposed on the husband and wife who violated the rules, not on their children or other family members³¹.

If an endogamous marriage with a former wife is still carried out, it will contradict the noble purpose of marriage and has the potential to damage family relationships. The essence of a good deed is one that brings benefits and avoids harm. Marrying a woman from the same tribe as a former wife is considered a forbidden marriage, which is prohibited by custom in Tigo Nagari. Socially, this prohibition aims to maintain smooth social interactions within a community. Consanguineous marriage is often a topic of discussion among the community. This prohibition is emphasized in order to maintain harmony among relatives and community members. From a maslahah perspective, this prohibition is considered maslahah mursalah because it can prevent harm in the future.

Discussion

Background of the Prohibition of Endogamy with a Former Wife

In the Tigo Nagari subdistrict of Pasaman Regency, there is a unique marriage rule, namely a prohibition on endogamous marriage with a former wife. Under this customary rule, a man who has divorced is not allowed to marry a woman who belongs to the same tribe as his former wife. This customary prohibition has been passed down from generation to generation and is still practiced today by the indigenous people of Tigo Nagari³².

As an illustration, a man from the Chaniago tribe married a woman from the Jambak tribe, and then the two divorced. If the man intends to remarry another woman who is also from the Jambak tribe, the same tribe as his ex-wife whom he divorced, then the marriage is prohibited according to the customs that apply in Tigo Nagari. This prohibition is enforced because the woman he intends to marry is from the same tribe as his ex-wife, namely the Jambak tribe.

For the Minangkabau people, marriage is not viewed solely as a private matter or a matter for the immediate family, but rather as a collective responsibility involving the entire community. Community participation in the organization of a wedding is not limited to moral support, but also includes material support. Usually, material assistance provided by family members or the community is recorded and remembered, as it can be repaid in the future, especially if the recipient of the assistance wishes to contribute to the wedding

³¹ Ibid

³² Jamal Mirdat, personal interview, 2024.

of another family member. This demonstrates the existence of a strong social reciprocity system within the social structure of Minang society³³.

The prohibition against endogamous marriage with a former wife is part of a custom that is deeply rooted and developed within the social structure of a community. In the context of Minangkabau society, customs and Islamic teachings are two things that cannot be separated, because both are integrated into everyday life. The Minang community consistently upholds the traditional values inherited from their ancestors and considers them an important part of their culture that must be preserved and maintained³⁴. In Minangkabau tradition, marriage is not only the responsibility of the couple getting married, but often involves close relatives and extended family, making it a collective matter within the traditional community.

Customary sanctions for marrying a woman of the same tribe as one's ex-wife

Law is a norm that contains commands and prohibitions to regulate order in society, which must be obeyed by all members of society in a given area. Violations of these rules can result in action or sanctions from the authorities in society³⁵. If someone violates one of the customary rules, especially in matters of marriage, they will be subject to customary sanctions. Customary sanctions are a form of punishment given to individuals who violate the applicable customary rules. Actions that deviate from established rules are referred to as deviant behavior. The purpose of imposing customary sanctions is to deter violators, serve as a lesson to the community so that they do not repeat similar mistakes, and restore balance in the social life of the community³⁶.

To determine sanctions for violations of customary rules, decisions must await the results of deliberations led by a datuak. This is in line with the Minangkabau customary philosophy, “Adat bajanjang naiak, batanggo turun,” which means that decision-making must go through certain stages or levels. This philosophy guides the Minangkabau community so that decisions can be implemented collectively, as they are born out of consensus. Another customary philosophy states: “naiak dari janjang nan dibawah, turun dari tanggo nan di ateh, babilang dari raso, mangaji dari alif, kamanakan baraja ka mamak, mamak baraja ka panghulu, panghulu baraja ka mufakat, mufakat baraja ka nan bana”. This means that all processes are carried out sequentially and gradually; starting from the bottom, through consideration of feelings and knowledge, where the nephew learns from the mamak, the mamak learns from the penghulu, the penghulu refers

³³ Awwali. *Pelangi di Minangkabau*. Padang: Lembaga Pengembangan Teknologi Informasi dan Komunikasi (LPTIK) Universitas Andalas, 2015. 46)

³⁴ *ibid*, 47.

³⁵ *Ibid*

³⁶ Jamal Mirdat, personal interview, 2024.

to deliberation, and deliberation is based on the truth in accordance with rules and propriety³⁷.

The prohibition against marrying a woman from the same tribe as one's former wife is a customary rule agreed upon by the community. A man who violates this rule by marrying a woman from the same tribe as his former wife will be subject to sanctions. The types of customary sanctions imposed on violators include: Exclusion of the individual who violated the rule, prohibition from residing in the village, and denial of inheritance rights³⁸. According to Zula Venia, someone who violates customary rules will be punished by being banned from participating in customary activities and not being allowed to live in the village, which means that person is considered to be cast out according to custom. Customary provisions such as this are determined by the datuak and other customary leaders. A customary proverb states: "kok tumbuah disilang jo salisiah, atau dakwa jo jawab, hukum ma hukum dalam kampuang, mahukum adia bakato bana, indak buliah ba pihak-pihak, you cannot be like a stone, arriving at the eyes without being seen, arriving at the ears without being heard," which emphasizes the importance of fairness, openness, and firmness in the application of customary law³⁹.

The Maslahah Perspective on the Prohibition of Endogamy with a Former wife

In Minangkabau, each nagari has three elements of leadership called tungku tigo sajarangan (three pillars), consisting of the penghulu, alim ulama, and cadiaq pandai. These three elements support each other and work together in regulating community life, both individually and within the community. The existence of these three leadership elements also gives rise to three main rules in Minangkabau society, namely religion, customs, and laws, which are known as tali tigo sapilin (three intertwined ropes)⁴⁰.

The issue of marriage has been explained in detail in the Qur'an and hadith, covering matters related to the pillars and conditions of marriage, the purpose and wisdom of marriage, provisions regarding mahram, and prohibitions in marriage according to Islamic law. The Compilation of Islamic Law (KHI) also regulates prohibitions in marriage, as I have described in the previous discussion, which are contained in Articles 39 to 44. This is also included in the Marriage Law Number 1 of 1974, Article 8. The philosophy of "adat basandi syarak, syarak basandi Kitabullah; syarak mangato, adat mamakai" (customs are based on sharia, sharia is sourced from the Book of Allah; sharia determines, customs

³⁷ Jamal Mirdat, personal interview, 2024.

³⁸ Ibid.

³⁹ Zula Venia, personal interview, 2024.

⁴⁰ Jamal Mirdat, personal interview, 2024.

implement) is the guideline for the Minangkabau community. This means that the customs practiced must not contradict Islamic sharia and must be based on the Qur'an. In realizing the principle of “adat basandi syarak, syarak basandi Kitabullah”, there are three guiding references that frame the relationship between customary rules and Islamic law. First, any customary rules that contradict Islamic teachings must be abandoned. Second, customary rules that do not contradict and are in line with sharia law remain valid and are even reinforced by sharia, since they embody local wisdom while maintaining compliance with divine guidance. Third, customary rules that cannot yet be replaced by sharia must be maintained with strong considerations and reasons.⁴¹

The prohibition on marrying a former spouse from the same clan and the requirement to marry someone from a different clan (*exogamy*) in the Tigo Nagari region of Pasaman Regency is not part of Islamic law. This prohibition is based on considerations to maintain harmony in social interactions, preserve good relations between families and relatives, thereby achieving welfare and benefit in community life in Minangkabau, particularly in Tigo Nagari Subdistrict, Pasaman Regency⁴².

It can be understood that *maslahat* is something that is good and acceptable to common sense. Acceptable to common sense means that all actions taken can be understood clearly and logically. Every command of Allah SWT can be understood by human reason, and all of His commands certainly contain *maslahah* for humanity, whether the reasons or wisdom behind them are explained explicitly or not. According to Amir Syarifuddin, *maslahah* is divided into two categories, namely جلب المنافع (bringing benefits) and درء المفاسد (preventing harm)⁴³.

The prohibition of endogamy with a former spouse is included in the category of invalid marriages, which, if carried out, will have negative consequences in the future, such as a disharmonious household and the destruction of neighborly relations. Therefore, the custom of invalid marriages must be abandoned in order to achieve good relations within the community and the objectives of Islamic law. This is in line with the following Ushul Fiqh principle:

درء المفاسد مقدمة على جلب المصالح

Meaning: “Avoiding harm must take precedence over seeking benefit.”⁴⁴.

⁴¹ Zuriati. *Undang-Undang Minangkabau dalam Perspektif Ulama Sufi*. (Padang: Fakultas Sastra Universitas Andalas, 2007)..

⁴² Asman Dt. Labiah, personal interview, 2024.

⁴³ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana Prenada Media Group, 2009), 208.

⁴⁴ Asy-Syatibi. *Al-Muwafaqat fi Ushul al-Syari'ah, jilid 2, Kitab al-Maqasid*, (Beirut: Dar al-Ma'rifah, 1988)

This principle is used as the basis for strengthening the rationale behind the prohibition of endogamous marriage with a former wife, as it has been proven that there is an element of benefit behind this prohibition, namely to prevent conflicts in social life and to create goodness for society. This is further reinforced by the words of Abdullah bin Mas'ud's companion, who stated:

ما رآه المسلمون حسنا فهو عند الله سيئ، وما رآه المسلمون سيئا فهو عند الله حسن

Meaning: “What is considered good by Muslims is good in the sight of Allah. And what is considered bad by Muslims is bad in the sight of Allah”⁴⁵.

Based on the above description, it can be understood that the prohibition of endogamous marriage with a former wife that applies in the Tigo Nagari community aims to prevent negative impacts in the future, such as the severing of ties between traditional leaders such as datuak and niniak mamak with the parties involved, causing prolonged conflict between the parties involved, and creating unrest in community life. If customary rules are ignored, it is like “sawah indak ba pamatang,” meaning that there is no longer any distinction or boundary between one thing and another; they are all the same⁴⁶. The prohibition of endogamy with a former spouse is viewed favorably by the Tigo Nagari community. This rule was established to maintain the social order, culture, and internal behavior of the Tigo Nagari community. This rule symbolizes respect for customs and reflects the social norms and legal values that apply to the community in Tigo Nagari.

According to the law and marriage regulations, it may be possible to marry a former spouse of the same ethnicity. However, according to the customs of Tigo Nagari, such a marriage is prohibited. The traditional philosophy of “sa hino sa malu, sa gaso sa gasam” and “raso di bawok naik, pareso dibawok turun” reflects the human way of thinking, according to “alua jo patuik,” which questions whether such a marriage is possible. According to Sharia law and legislation, there is no problem, but according to the customs of Tigo Nagari, it is not in accordance with customary rules. So, customary law is related to feelings, social law to feelings. Let alone a relative of our ex-wife, we even consider our close friends as our own family, let alone a relative. The positive impact is that the property left behind is saved. However, other people see everything as mixed up or indistinguishable. That is what is called the law of

⁴⁵ Ibid, 303.

⁴⁶ Asman Dt. Labiah, personal interview, 2024.

raso, where we want to take it, custom is indeed juxtaposed with syarak, syarak is juxtaposed with the book of Allah⁴⁷.

The finding that the prohibition of endogamy with a former wife in Tigo Nagari constitutes *masalah mursalah* both aligns with and extends earlier scholarship. Several previous studies have classified the general same-clan marriage prohibition (*larangan perkawinan sesuku*) under *maqāṣid al-sharī‘ah*, particularly the protection of lineage (*hiḏz al-nasab*) and the avoidance of social conflict.⁴⁸ However, those studies treated all intra-clan prohibitions as a uniform category, without distinguishing between marrying a woman from one’s own clan and marrying a woman from the clan of one’s ex-wife.⁴⁹ The present research demonstrates that the latter prohibition carries an additional *masalah* dimension: it prevents the perceived “kinship confusion” (*raso jo pareso*) that arises when a man’s new wife belongs to the same clan as his former wife. In Minangkabau social logic, this situation blurs the boundaries between two separate affinal relationships, which local custom considers *sumbang* (taboo).⁵⁰ This finding diverges from studies that emphasize only blood-lineage reasons for endogamy bans, such as those by Hidayatullah (2022) and Asmaniar (2018), and instead highlights the role of *affinal honor* and *social perception* as independent drivers of customary prohibition.⁵¹ Theoretically, the case of Tigo Nagari enriches the *masalah mursalah* doctrine by showing that an unwritten custom can be justified not because it directly serves a *darūriyyah* (essential) need, but because it prevents a locally defined form of *mafsadah* (harm) — namely, the erosion of clan dignity and the breakdown of inter-family trust.⁵² This moves *masalah mursalah* beyond the classic examples (e.g., traffic lights, codification of laws) into the realm of kinship morality, demonstrating its elasticity in plural legal environments.

From a practical standpoint, the findings offer concrete guidance for three audiences. First, for *niniak mamak* and customary courts in Minangkabau, the explicit articulation of the prohibition as *masalah mursalah* provides a rational, sharia-compatible vocabulary to defend the rule against challenges based on

⁴⁷ Ibid

⁴⁸ Yaswirman, *Hukum Keluarga Adat*

⁴⁹ Compare with Destuliadi Destuliadi and Suhaili Hidayati, “Doktrin Hukum Islam dan Hukum Adat Menikahi Wanita yang Sesuku dengan Mantan Isteri di Minangkabau,” *JURNAL PARADIGMA: Journal of Sociology Research and Education* 1, no. 2 (2024): 838–43, who note the specificity but do not analyze it through *masalah mursalah*.

⁵⁰ Asman Dt. Labiah, personal interview, 2024

⁵¹ Hidayatullah, “Pernikahan Endogami,” 51; Asmaniar, “Perkawinan adat minangkabau,” *Binamulia Hukum* 7, no. 2 (2018): 136.

⁵² Amir Syarifuddin, *Ushul Fiqh*, jilid 2 (Jakarta: Kencana Prenada Media Group, 2008), 347; Hendri Hermawan Adinugraha, “Al-Maslahah Al-Mursalah dalam Penentuan Hukum Islam,” *Jurnal Ilmiah Ekonomi Islam* 4, no. 1 (2018): 66.

positive law. Since national marriage law (Law No. 1/1974) and the Compilation of Islamic Law do not forbid marrying a woman from the same clan as a former wife, violators often argue that the custom is legally void. By framing the prohibition as *masalah mursalah*, traditional leaders can demonstrate that the rule does not contradict Islamic *nash* but rather implements the higher objective of preventing harm (*dar' al-mafāsīd*). This may increase compliance and reduce legal pluralism conflicts. Second, for judges in religious courts (*Pengadilan Agama*) who occasionally encounter requests to annul such marriages, the study provides a nuanced analytical tool: the marriage may be *sah* according to fiqh but socially *sumbang*, and judges may encourage reconciliation through customary mediation rather than forced annulment.⁵³ Third, for local policymakers (e.g., *Wali Nagari, Bappeda*), the research supports the drafting of *nagari* regulations that codify this prohibition without violating higher laws, as long as sanctions remain non-oppressive and respect human rights.⁵⁴ The broader policy implication is that preserving local wisdom (*kearifan lokal*) is not antithetical to modern legal reform; rather, *masalah mursalah* can serve as a legitimate bridge between adat and state law, especially in regions like West Sumatra where Islamic law, customary law, and national law coexist.⁵⁵

Several limitations must be acknowledged. First, the study is confined to one *nagari* cluster (Tigo Nagari District, Pasaman Regency). Minangkabau customary rules vary considerably between *luhak* (territorial confederations), and the prohibition examined here may not exist or may take different forms in other regions such as Agam, Tanah Datar, or Solok.⁵⁶ Therefore, the conclusions are not statistically generalizable to all Minangkabau communities, although they offer analytical transferability to similar matrilineal settings. Second, the research relied heavily on oral interviews with living traditional leaders, whose memories and interpretations may be shaped by contemporary social changes (e.g., out-migration, religious revivalism). No written *tambo* (customary manuscript) from the 19th century explicitly mentions this specific prohibition, so its historical continuity is based on intergenerational oral transmission.⁵⁷ Third, the

⁵³ For similar reasoning in another customary context, see Umi Salwa Nooriyah, “Tinjauan Masalah Mursalah dan ‘Urf terhadap Tradisi Perkawinan Kerubuhan Gunung di Kabupaten Blitar” (Skripsi, UIN Sayyid Ali Rahmatullah Tulungagung, 2023).

⁵⁴ Nagari regulations are permitted under Law No. 6 of 2014 on Villages. See also discussion in Nurul Lestari, “Perlindungan Hukum Bagi Orang Kawin Sesuku Menurut Hukum Adat Minangkabau” (Skripsi, Universitas Muhammadiyah Sumatera Utara, 2024).

⁵⁵ Yaswirman, *Hukum Keluarga: Karakteristik dan Prospek Doktrin Islam dan Adat dalam Masyarakat Matrilineal* (Jakarta: PT RajaGrafindo Persada, 2011), 145.

⁵⁶ Jamal Mirdat, personal interview, 2024.

⁵⁷ Zuriati, *Undang-Undang Minangkabau dalam Perspektif Ulama Sufi* (Padang: Fakultas Sastra Universitas Andalas, 2007), 118.

study did not include a large-scale survey or quantitative measure of community attitudes, which would be necessary to assess the level of consensus or dissent regarding the prohibition. Finally, the researchers' own position as outsiders (non-members of the Tigo Nagari clans) may have limited access to informal or hidden discourses, such as secret deliberations among *datuak* or the views of women who silently resist the prohibition.⁵⁸ Despite these limitations, the in-depth qualitative design provides rich, emic insights that would be impossible to obtain through purely doctrinal or quantitative methods, and the findings remain robust for the specific community studied. Future comparative research across multiple *nagari* and the inclusion of women's perspectives are strongly recommended to validate and extend the present conclusions.

Conclusion

Based on the previous discussion about the prohibition of endogamy with ex-wives in Tigo Nagari District, Pasaman Regency, this study shows that the prohibition exists because the community considers that they still have a kinship relationship with the woman who will be married by their ex-husband. Not only within the same clan, but marrying a woman who has been divorced by a friend is also not permitted under the customary rules of Tigo Nagari. The customary sanctions imposed on violators include being banished from the community and not being allowed to live in the village. Violators will no longer receive inheritance from their *mamak*. The prohibition of endogamous marriage with a former wife is not regulated by marriage law or religious rules, but is regulated in the customary rules of the Tigo Nagari community. In the Minangkabau customary marriage system, such marriages are classified as *sumbang* marriages. *Sumbang* marriages are marriages that do not conform to social values and are viewed negatively by the general public. Therefore, this prohibition falls under the category of *masalah mursalah* because it does not contradict the text, but applies the text to create harmony within the family and the customary community.

The author considers that the customs practiced by the community in Tigo Nagari District, Pasaman Regency, have the good intention of creating togetherness and maintaining family relationships, as well as preventing conflicts that may arise if such marriages continue to take place. However, the author emphasizes that the prohibition of such marriages is only a custom that has become a tradition and is not derived from Islamic teachings. Nevertheless, as long as it does not contradict the texts and contains benefits, it must be obeyed. The author also suggests that sanctions for violators should not be oppressive or

⁵⁸ On insider/outsider issues in qualitative research, see John W. Creswell and Cheryl N. Poth, *Qualitative Inquiry and Research Design*, 4th ed. (Thousand Oaks, CA: Sage Publications, 2018), 187.

sever ties of kinship, while still paying attention to the texts of both the Qur'an and the hadith.

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