

The Existence of Traditional Law on Ethical Marriage in Ganting Village, Salo District Linked to Islamic Law

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Abstract—Indonesia is a country consisting of various tribes or multi-ethnic, and each tribe has a different marriage system. Customs are habits that apply in a particular area. Marriage is physically and mentally between a man and a woman caused by legal consequences based on the applicable laws and regulations. This marriage is an important event for the community which is a legal entity, marriage is a means of community life on a regular and regular basis which will produce a new generation as the successor of descendants, and marriage will form a kinship system. Kampar adheres to a matrilineal kinship system based on maternal lineage with a very strong culture with religious teachings, namely Adat coded for Syarak, Syarak coded for Kitabullah. The kinship system in Kampar Regency adheres to the exogamous marriage system, which is mandatory marriage outside the tribe. This aims to maintain the mother's lineage and based on customary law in force in Kampar. However, in the practice of community life in Kampar Regency, there are still couples who carry out ethnic marriages, even though ethnic marriages are traditionally prohibited or not allowed in the lives of indigenous peoples in Kampar Regency. Ethnic marriages occur in several villages in Kampar, especially in Ganting Village, Salo District. Related to this research, where previously there had been research conducted by Melly Dwi Saputry entitled about same-sex marriage in Tanjung Village, Koto Kampar Hulu District, Kampar Regency, the author also took references from this research and of course this research has differences from previous research. This study aims to determine the existence of customary law against ethnic marriages in Ganting Village, Salo District, Kampar Regency with Islamic law and to find out the views of traditional leaders in Kampar Regency towards ethnic marriage. The type of research used in this research is empirical juridical research or sociological legal research. Empirical juridical research is research conducted by identifying the law and how effective the law applies to society. The sociological juridical method and the research location are in Ganting Village, Salo District, Kampar Regency. In this study, researchers will collect data consisting of primary data, secondary data and tertiary data. Data collection techniques used by researchers are interviews and literature study.

Keywords—*customary law, ethnic marriage, Islamic law, Kampar*

I. INTRODUCTION

Customary law (Adat Rechts) as living law in native Indonesian society has the characteristics of a legal system and can be distinguished from other legal systems. As law that lives in society, customary law tends to have an important influence in the life of the nation and state, so that in the formation of national legislation (*wetelijk regelingen*), it is necessary to pay attention to customary law. The diversity of customary law should not be an obstacle to the development of national law, because in this diversity there are actually basic concepts, principles, and legal institutions that are relatively the same [1]. Customary law is basically the entire legal regulation that contains the provisions of the customs of the entire Indonesian nation which consists of hundreds of ethnic groups, each of which has customs based on their respective views of life [2].

In one perspective of legal science, it is said that good law is law created based on living law. to the place and time of enactment of the law, and the law must be seen as the embodiment of the soul or spirit of a nation. This school is strengthened by the sociological jurisprudence school which emphasizes the importance of living law [3]. According to Friedrich Carl Von Savigny as a historical school figure, law is one of the factors in the common life of a nation, such as language, customs, morals, state administration. Therefore, the law is something that is supra individual, a symptom of society. But a society is born in history, develops with history and disappears in history, apart from the development of society there is no law at all [4].

Culture is a form of all human power or effort in carrying out activities to process and change nature itself and maintain traditional values contained in a particular area which are used as guidelines or benchmarks in people's lives, which culture is of a very different form. simple turns into more complex. Culture is not only an art in life, but also objects around

humans that are made by humans, and because of that, culture is often defined as a way of life or way of life of the community or developed by the community to fulfill their basic needs for life. survive, continue their descendants, and maintain and maintain traditional values or local customs.

Society is groups of living things and with new realities that develop according to their own laws and develop according to their own pattern of development. Humans are bound in group life because of their immediate social sense and need [5]. In everyday life, we all know that we do not only take shelter in positive law or formal law and religious law, as part of our society we still have customary law that binds very strongly, so that every member of the community who violates The customary provisions will receive the consequences directly given by the *ninik mamak* or traditional leaders in the area.

In the process of life on this earth, humans are destined to live in pairs, in the teachings of Islam it is also stated that Allah SWT created men and women to live in pairs. Every human being, both male and female, wants the best life partner according to their respective versions. Longing for this life partner is human nature and before adulthood is felt by every human being, which is sometimes even difficult to contain after stepping into the adult phase. Therefore, religion requires a meeting between a man and a woman, which then directs or recommends the meeting in a form of a legal bond, namely in a marriage bond. Ahmad Azhar Basyir said, with a legal marriage, the association of men and women occurs honorably according to their position as honorable creatures [6].

Marriage is a divine decree and the Sunnah of the Prophet that must be lived by every human being who lives on this earth. Even the Prophet appealed to every human being or to young people who are able to get married to immediately carry out the marriage. Marriage is a very important event in people's lives, which is also a very important history in human life which is used as a sacred moment to be remembered for life. Marriage does not only talk between a man and a woman, but also relates to the relationship between the two families of a man and a woman or both parents between a man and a woman, besides that it also talks about the rights and obligations of the wife and husband, as well as all matters relating to marriage. various forms of provisions and regulations contained in marriage, both legally and customary.

So very important is a marriage, so that everyone who wants to carry it out must obey and submit to the applicable rules, both those originating from religious teachings, or those made by humans themselves. In Indonesia, the regulations governing marriage are contained in Law Number 1 of 1974 concerning Marriage which has been updated to Law Number 16 of 2019 concerning Marriage.

Marriage in Islam is a *sunnatullah* to preserve life as living beings, marriage is not only a bond between humans and other humans, but also a bond between humans and Allah or the creator. Therefore, the rules related to marriage must also be based on considerations of the relationship or based on the applicable provisions. Everyone is obliged to comply with the

provisions contained in the teachings of their respective religions, and serve as guidelines in carrying out their lives.

Today, the problem in people's lives is the rise of ethnic marriages in each region, especially in Kampar Regency, precisely in Ganting Village, Salo District. Some time ago, there was a case of ethnic marriage in Ganting Village, and previously there was also an ethnic marriage in another village that still has the Kampar area, Salo District. Ethnic marriage is a prohibition contained in the culture or customary law that applies in the Kampar area. The provisions contained in the tradition or culture of the Kampar people, that ethnic marriage is a reinforcement that must be avoided, because by doing such tribal marriage, it means the same as marrying one's own brother. That's the customary provisions contained in the Malay culture of Kampar. However, even though *adat* strictly forbids carrying out such tribal marriages, there are still some people who do not heed the provisions of the customary law, even they violate the provisions on the prohibition of ethnic marriages, by forcing themselves to continue carrying out the tribal marriages.

The people of Ganting Village, Salo District, Kampar Regency, their lineage is based on Matrilineal lineage or (mother's lineage). A person born in a family will be included in his mother's relative group, not his father's relative group. For a child, the relatives from his father's side are called "Bako". A father is outside the family of his wife and children. According to custom, a woman does not leave her family home after marriage, it is the man who will come down from his house, and go up to his wife's house.

Society basically has its own prohibitions that must be obeyed by members of the community in marriage. In certain societies, one form of customary rules in terms of marriage that is often discussed in society is the prohibition of ethnic marriage which is a form of marriage in which both the bride and groom have the same ethnicity. For example, both come from the Domo Tribe. In urban society, such prohibitions almost no longer exist, except for the prohibition of marriage with siblings. However, as with people in rural areas, the prohibition on ethnic marriage still exists and is used as a guideline or provision in people's lives. The prohibition of same-sex marriage in Ganting Village, Salo District, Kampar Regency is a cultural order or tradition that is always maintained and respected by the local indigenous community. Because, marriage customs are a guide to behavior in carrying out a marriage. The implementation of a marriage that meets customary rules is considered as evidence of community obedience to the values of customary law or traditions and culture that upholds the moral and socio-cultural values of the community or maintains the existence of customary law that applies in the local community.

Based on the description above, this research study emphasizes the problem of the existence of customary law against ethnic marriages in Ganting Village, Salo District, Kampar Regency. This study aims to find out the empirical evidence and a detailed description of the existence of

customary law against the same-sex marriage. This research is expected to contribute to the government, and the local community.

II. RESEARCH METHODS

This research is derived from empirical juridical research using a qualitative approach. This research was conducted in Ganting Village, Salo District, Kampar Regency. The research was conducted by conducting interviews with local traditional leaders related to the object of research. While the data sources used are primary and secondary data sources. Secondary data sources include informants from traditional leaders, religious leaders, and the community with the help of recorded interview documentation. While secondary data sources include books or references related to the object of research.

III. RESULTS AND DISCUSSION

Based on the theory of customary law, customary law comes from two words "law" and "custom", so it is easy to understand that customary law is closely related to customs, namely behavior in society that is carried out repeatedly, deemed appropriate to be followed and is steady. or stay. Customary law is derived from this custom. Soekanto defines customary law as "a complex of customs that are not written down, are not codified and are coercive, so they have legal consequences" [7]. Thus, the criteria that can be used to identify customary law among customs that take place in the community are the presence or absence of legal consequences. There are three legal consequences [7]:

1. The birth, change, or abolition of a legal situation
2. The birth, change, or abolition of a legal relationship
3. and sanctions

From this understanding, it can be understood that customs include two aspects, namely aspects of customary law that are legal in nature called customary law, and aspects of customs that are not legal in nature called customs. customary law which was agreed upon by the experts in the Seminar on Customary Law and National Law Development in Yogyakarta in 1975. In the conclusion of the seminar it was stated that customary law is "original Indonesian law, which is not written in the form of laws and regulations of the Republic of Indonesia, which -It contains elements of religion [8]. From this formulation, it can be understood that customary law can be qualified in the form of unwritten law, in the sense of unwritten law in the form of laws and regulations of the Republic of Indonesia.

According to Ter Harr, who is known as the Beslissingenleer theory (Decision Theory) states that customary law is all regulations that are embodied in the decisions of legal officials and their implementation is binding and obeyed by those who are regulated in those decisions. Based on Ter Harr's view, we can conclude that customary law is a written or unwritten norm or rule that lives and grows in

people's lives that must be obeyed communally and has its own customary sanctions.

Customs are a form of habit or tradition that is occupied in the life of a particular community. Social habits that have existed for a long time in society have become a form of order in people's lives that have norms and sanctions. In addition, customs are also referred to as rules of politeness or manners that are passed down from generation to generation as a tradition or culture. Adat is rooted in something sacred or sacred and is directly related to community traditions that have been passed down from generation to generation.

Regarding the existence of customary law on ethnic marriages in Ganting Village, Salo District, Kampar Regency, the author has conducted direct interviews with ninik mamak or traditional leaders of the local community. Based on interviews conducted with Datuk Permato Said, Kampar Regency is called *limo koto*, namely Rumbio, Salo, Air Tiris, Kuok and Bangkinang. The limo koto area is the custom. Then, that in Salo village there were cases of same-sex marriage, namely in Ganting Village, Siabu, and Salo [9]. As for the sanctions in the event of an ethnic marriage, namely those who carry out ethnic marriages will be expelled from the village or will change tribes, those who move tribes are men, because Kampar adheres to the Matrilineal system or maternal descent, if the women change tribes, it will many tribes are exhausted, therefore the customary provisions are the men who have to change tribes, and look at the mamakk tribe or the place where the tribe moves. For example the Domo Ethnic group. There are 4 kinds of "Domo Ethnic group, namely *Domo nanbosau*, *Domo penghulu bosau*, *Domo paduko bosau*, and *Domo tasek*, this *domo tasek is domo kobau*", which means the penalty is a buffalo, and the other 3 tribes are a goat. For example, if you move to the *Domo Tasek* Ethnic Group then the buffalo must be slaughtered, and vice versa, if you move to the *ethnic group Domo nanbosau*, *paduko bosau*, *penghulu bosau* or called the goat Ethnic group then the goat will be slaughtered. Meanwhile, if you move to the Ethnic group *Muajo Malay*, the fine is slaughtering 8 goats. A person can have an ethnic marriage as long as it is not carried out in the limo koto area mentioned above. They must marry outside the limo koto area. As for the other sanctions, they are not allowed to go home together or together to their village, they are only allowed to go home alone. Ethnic marriage is also known as brother-sister marriage. Because our country is a traditional land, the custom cannot be changed, therefore there are "*ninik mamak*" and customary density. The customary law against ethnic marriages in Salo is still categorized as original or still exists today. In this tribal marriage, there are several kifarats or consequences received by the person who performs the tribal marriage, including [9]:

1. Having a physically handicapped offspring
2. Having no children or being infertile
3. Dies suddenly, or there has been a case, before the goat is slaughtered, the person dies [9].

The ban on same-sex marriage is a form of oath from the ancestors. In the past, if there was an ethnic marriage, the hair would be shaved on the other side, and paraded around the village with “*Kubono Sayak*”. If you are not expelled from this village, you must change one's tribe. The case that occurred in Siabu came from the Domoethnic group, which occurred around 2017, after marriage both parties disappeared and never returned to their village or never received any news.

As for the philosophy of paying the fine by cutting the buffalo or goat, that the perpetrator is the same as the person who killed the custom, then they must revive the custom. Killing means slaughtering one goat or buffalo, for example the “Domo ethnic group”, then he is fined with a buffalo from the consequences of killing the custom, and if he moves to another Domo tribe, then he must pay a fine to revive the custom with a goat, and this means The fine he got was 1 buffalo and 1 goat. Apart from the sanction of moving from one tribe to another, being expelled from the village, moral or social sanctions are also obtained for such tribal marriages to their offspring, they will be ostracized in society, and even considered to be non-existent, and will not be involved in the social life of the community.

In Ganting Village, Salo District, Kampar Regency, customary law still exists today, which has 5 units, namely “*Pucuok, Sambuektan, Dubalang, Malin, and Saudagar*”. This merchant is a rich person, which if there is a problem or is called a “*yang tasanguik inyolah manote, topek atau indak topek, inyo yang akan manyalosaikan* “. These five devices work together with each other. “*Dubalang*” has a heavier workload or responsibility than the others, also known as the “*Panglimo*”, which is “*boyiek inyo kan manationg, yag jauh inyo kan manjopuik*”. That is, he is the one who will solve the customary problems that occur, after that they are only transferred to the top of the custom.

In Islamic law itself, in fact there is no prohibition on ethnic marriage, it's just that because our area is nagohi baadat or customary land, the ins and outs of life are based on the provisions of applicable customary law. This customary law existed long before Indonesia's independence.

Customary rules that prohibit ethnic marriages are made to maintain the custom itself, because in customary law ethnic marriage is prohibited because it can damage the lineage. In addition, this is also a form of customary violation or in the local language it is called killing adat. The perpetrators of this ethnic marriage are defined as people who do not have customs, because nagohi kito is nagohi baadat, then the customary law is used as a guide in social and community life.

The benefits of the existence of customary rules against the prohibition of ethnic marriage are as follows:

- The niece and nephew will be spared from various kinds of kifarot or calamities as a result of the occurrence of tribal marriages
- The nephew will have positive values in society

- To maintain the existence of applicable customary law
- Not used as gossip material by the community
- Not ostracized in society
- Not being kicked out of the village
- The nephew will get good and intelligent offspring
- If the same-sex marriage occurs, then the kinship in the community does not develop or increase
- The nephew will get additional family or relatives
- The niece and nephew will feel that the actions they do have good value in the eyes of “*ninik mamak*” or traditional leaders and also the community.
- The nephew has obeyed and followed the customs well [9].

As has been explained above, that ethnic marriage has various kinds of negative impacts, including ethnic marriages can cause bad impacts such as creating offspring who are physically and mentally disabled, thus, the prohibition of ethnic marriage is justified in Islamic teachings as confirmed in the letter. An-Nisa verse 9 which means [10]:

"And fear Allah those who should leave behind them weak children, whom they fear for their welfare. Therefore, let them fear Allah (SWT) and let them speak the truth."

Based on the verses of the Qur'an above, it can be concluded that Allah and the Messenger of Allah want quality people or servants who are serious in seeking and getting the pleasure of Allah SWT. So that if an ethnic marriage can be avoided with the aim of getting God's blessing in order to have good and strong offspring, then the act is a noble act in the sight of Allah and gets a reward because it is included in the category of avoiding makruh actions.

IV. CONCLUSION

The conclusion of this paper is related to the existence of ethnic marriage in Ganting Village, Salo District, Kampar Regency, which is associated with Islamic law still based on applicable customary provisions, or it can be categorized that customary law is still very strong in the life of the local community, which in the event of ethnic marriage occurs then the perpetrators will receive strict sanctions, namely in the form of being expelled from the village, or if the perpetrators do not want to be expelled, then they must pay a fine of a buffalo or goat based on the ethnic group they have and move from one ethnic group to another. Furthermore, the perpetrators also cannot return to their villages or return to their villages at the same time, because the community does not accept their presence alone in the village. Perpetrators will be ostracized in community life and will never be involved in the social life of the community. So very strongly this customary law applies in the lives of the Kampar indigenous people, especially in Ganting Village, Salo District, Kampar Regency, even though

according to Islam, ethnic marriage is not prohibited, but according to custom, ethnic marriage should be avoided because it will cause various kinds of disasters or misfortunes because it is a form of oath of ancient ancestors.

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