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**DAYAK NGAJU CUSTOMARY FINES IN PRE-MARRIAGE AGREEMENT
TO MINIMIZE DIVORCE IN THE PERSPECTIVE OF MASLAHAH
MURSALAH RAMADHAN AL-BUTHI**

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ABSTRACT

Before the wedding, the prospective husband and wife in the Dayak Ngaju Palangka Raya community made a pre-marriage agreement in the presence of the Damang (Adat figure). One of the core points of the agreement is that there is a fine for whoever causes a divorce in the household. This is unique and different from marriage agreements in general and in Islam. This study aims to analyze Dayak Ngaju customary fines in pre-marriage agreements implemented by the Dayak Ngaju community to minimize divorce. This research is empirical legal research using a case approach. The primary sources of this research are interviews, documentation, observations, and secondary sources in the form of books, as well as the views of scholars who have discussed this issue. Then this problem is analyzed using the theory of *Maslahah Mursalah* Ramadhan Al-Buthi. The results of this study indicate that according to the perspective of Adat figure regarding customary fines in pre-marriage agreements carried out by the Dayak Ngaju community, it is a good thing, not only to maintain the customs of their ancestors but also to contain far more meaningful values, namely protecting the existence and maintaining commitments in the marriage. From the perspective of *Maslahah Mursalah* Ramadhan Al-Buthi, these customary fines are not contrary to Islamic law, if they do not exceed the specified corridors, do not conflict with the higher Al-Quran, Sunnah, Qiyas, and *Maslahah*, and customary fines may be carried out if the four conditions these limits are not violated.

Keywords: Customary Fines; *Maslahah Mursalah*; Pre-Marriage Agreement; and Dayak Ngaju;

ABSTRAK

Sebelum dilangsungkannya pernikahan pihak calon suami dan istri pada masyarakat Dayak Ngaju Palangka Raya membuat perjanjian pernikahan di hadapan Damang (tokoh Adat). Salah satu poin inti dari perjanjian tersebut yaitu adanya denda bagi siapa yang menyebabkan sebuah perceraian dalam rumah tangga tersebut. Inilah hal unik dan berbeda dari perjanjian pernikahan secara umum maupun dalam Islam. Penelitian ini bertujuan untuk menganalisis denda adat Dayak Ngaju dalam perjanjian pra-nikah yang dilaksanakan oleh masyarakat Dayak Ngaju untuk meminimalisasi perceraian. Penelitian ini merupakan penelitian hukum empiris dengan menggunakan pendekatan kasus.

Adapun sumber primer dari penelitian ini adalah wawancara, dokumentasi serta observasi dan sumber sekunder berupa buku, serta pandangan para sarjana yang pernah membahas masalah ini. Kemudian permasalahan ini dianalisis menggunakan teori *Maslahah Mursalah* Ramadhan Al-Buthi. Hasil penelitian ini menunjukkan bahwa menurut pandangan tokoh masyarakat mengenai denda adat dalam perjanjian pra-nikah yang dilakukan oleh masyarakat Dayak Ngaju merupakan hal yang baik, tidak hanya menjaga adat dari leluhur, tetapi juga mengandung nilai yang jauh lebih penting yaitu melindungi eksistensi pernikahan dan menjaga komitmen dalam pernikahan tersebut. Dilihat dari perspektif *Maslahah Mursalah* Ramadhan Al-Buthi, denda adat ini tidaklah bertentangan dengan hukum Islam, asalkan tidak melebihi koridor yang ditetapkan, tidak bertentangan dengan Al-Quran, Sunnah, Qiyas dan *Maslahah* yang lebih tinggi, dan denda adat boleh dilaksanakan selama keempat syarat batasan tersebut tidak dilanggar.

Kata Kunci: Denda Adat; *Maslahah Mursalah*; Perjanjian Pra-Nikah; dan Dayak Ngaju;

Introduction

In 2020, as many as 13,941 couples registered marriages in Central Kalimantan, and around 1,595 couples divorced that year, in 2021 12,136 couples registered marriages in Central Kalimantan, then 3,468 couples divorced in that year. In this case, there is an increase in divorce from these two years.¹

The pre-marriage agreement carried out by the Dayak Ngaju indigenous people has something unique, namely it is made and ratified in front of traditional leaders and for those who violate the contents of the agreement that has been made both husband and wife will be subject to customary sanctions. In the Dayak Ngaju custom, there are sanctions in the form of fines for anyone who breaks the sacred bond. Customary fines carried out by the Dayak Ngaju indigenous people are inherent and have become a tradition that has been passed down from generation to generation. The existence of customary fines in the pre-marriage agreement is a brake in order to minimize the occurrence of a divorce because those who deny the contents of the customary marriage agreement and cause a divorce will be subject to a fine.² This tradition exists for the good of society, to become a brake to prevent the sacred thing from being cut off.

On the other hand, some views do not agree with the customary fine, the amount of the fine that must be paid is the main factor, such as what Ali said that a Dayak Ngaju traditional couple mentioned who violated the provisions mentioned and caused a divorce

¹"Badan Pusat Statistik," 2021, <https://kalteng.bps.go.id/>.

²Suriansyah Murhaini, *Singer Dalam Pusaran Perubahan Masyarakat Dayak Ngaju* (Kalbar: Lembaga Literasi Dayak, 2016).

in the household, he is obliged to leave the house with nothing but the clothes they are wearing.³

The *maslahah* explained by Ramadhan Al-Buthi is something useful that is meant by Sharia (Allah and His Messenger) for the benefit of His servants, both in maintaining religion, soul, intellect, lineage, and property according to a certain order contained in it. In the category of maintenance, from here the focus is on gaining benefits and avoiding harm and safeguarding the goals of *syara'*, namely religion, soul, mind, lineage, and property.⁴

Many studies have been conducted to examine marriage agreements and pre-marriage agreements, such as Felipe Frank,⁵ Iryna Dikovska,⁶ and Gita Ramadhanti.⁷ However, research that examines pre-nuptial agreements in the Dayak Ngaju community has not been carried out. Research discussing the Ngaju Dayak customs is still quite rare, such as Syaikhu,⁸ and Cahya Wulandari.⁹ The purpose of this study is to analyze the customary fines of Dayak Ngaju in pre-marriage agreements to minimize divorce which are analyzed using the theory of *mashlahah mursalah* Ramadhan Al-Buthi.

³Ali, *Interview*, (3 January 2022)

⁴Abbas Arfan, "Maslahah Dan Batasan-Batasannya Menurut Al-Buthi (Analisis Kitab Dlawabith Al-Mashlahah Fi Al-Syari'ah Al-Islamiyyah)," *De Jure: Jurnal Hukum Dan Syar'iah* 5, no. 1 (2013): 87–96, <https://doi.org/10.18860/j-fsh.v5i1.2999>.

⁵Felipe Frank, "Prenuptial Agreements and Inheritance Rights: Analysis of the Validity of a Provision Which Mutually Overrides the Existing Right to Inherit Between Marriage Partners," *Revista de Direito Civil Contemporaneo* 28, no. 8 (2021): 217–46, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85150387815&partnerID=40&md5=6ee7ebed51a389191b30a07aa57df3c3>.

⁶Iryna Dikovska, "Can a Choice-of-Court Agreement Included in a Marriage Contract Meet the Requirements of Both EU Succession and Matrimonial Property Regulations?," *Croatian Yearbook of European Law and Policy* 15, no. 1 (2019): 270–300, <https://doi.org/10.3935/cyelp.15.2019.348>.

⁷Gita Ramadhanti, Nurul Elmiyah, and Lauditta Humaira, "Kepastian Hukum Perjanjian Perkawinan Yang Tidak Didaftarkan (Studi Kasus Putusan Pengadilan No.449/PDT/2016/PT.BDG)," *Lex Patrimonium* 2, no. 1 (2023): 1–19, <https://scholarhub.ui.ac.id/lexpatri/vol2/iss1/7/>.

⁸S Syaikhu et al., "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia," *Samarah* 7, no. 1 (2023): 195–215, <https://doi.org/10.22373/sjkh.v7i1.12410>.

⁹C Wulandari et al., "Penal Mediation: Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju," *Lex Scientia Law Review* 6, no. 1 (2022): 69–92, <https://doi.org/10.15294/lesrev.v6i1.54896>.

Method

This research was compiled using the type of empirical legal research,¹⁰ using a case approach.¹¹ The location of this research is in Palangka Raya, Central Kalimantan. The data processing in this study uses 5 ways, namely data checking (editing), classification, verification, analysis, and conclusion. In testing the validity of the data, the researcher analyzed it using triangulation techniques, and was supported by extended observations and persistence in mind. By checking the data that has been obtained through several sources so that the truth of the information becomes valid, then it is analyzed using the theory of *mashlahah mursalah* Ramadhan Al-Buthi.

Findings and Discussion

Pre-Marriage Agreement in the Dayak Ngaju Community

The pre-marriage agreement with the Ngaju Dayak is maintained by the community and strengthened by the rules contained in the Central Kalimantan provincial regulation No 16 of 2008 which was amended by the Central Kalimantan provincial regulation No 1 of 2010, specifically regarding dispute resolution in Chapter X article 27. And within the rules, there are sanctions contained in Chapter XI article 32.

Dayak Ngaju traditional marriages are carried out based on rules that are by customary law, religion, and the State. In the Dayak Ngaju customary community, marriage agreements are made before the marriage takes place, starting from pre-marriage. The Ngaju Dayak customary marriage agreement is made based on the principle of freedom and mutual agreement, this is in line with the marriage agreement in article 29 of the Marriage Law, but the thing that distinguishes the two is in terms of ratification.

The Dayak Ngaju traditional marriage agreement was ratified by the customary Mantir and strengthened by the Damang customary head in the area concerned, the marriage agreement signed by the two prospective brides, parents, and witnesses from both parties was then confirmed by the Adat Mantir and the Adat Damang, this shows

¹⁰Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram Press, 2020); Surya Sukti, Munib, and Imam S. Arifin, "Pernikahan Adat Dayak Ngaju Perspektif Hukum Islam (Studi Di Kabupaten Gunung Mas Kalimantan Tengah)," *El-Mashlahah* 10, no. 2 (2020): 65–75, <https://doi.org/10.23971/maslahah.v10i2.2284>; Sabarudin Ahmad, "Hukum Aborsi Akibat Perkosaan (Analisis Hukum Islam Terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi)," *El-Mashlahah* 8, no. 2 (2018): 162–83, <https://doi.org/10.23971/el-mas.v8i2.1321>.

¹¹Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenamedia Group, 2014); Dinda Bestari and Eka Kurnia Sari, "Bridal Bath Prohibition as a Local Wisdom Among Lampung Communities on Islamic Law Perspective," *El-Mashlahah* 12, no. 1 (2022): 37–51, <https://doi.org/10.23971/elma.v12i1.3826>.

that the marriage is valid according to Ngaju Dayak customary law. The validity of the marriage has been witnessed by the people present at the wedding. As proof they are witnesses.

The marriage agreement according to Dayak Ngaju custom is a written agreement whose contents have been mutually agreed upon and signed by the bride and groom, the parents or guardians of the bride and groom, witnesses from both parties, Damang or Mantir adat. Broadly speaking, the marriage agreement consists of three parts, that is: first, statement from the bride and groom. Second, fulfillment of the provisions of Dayak Ngaju customary law regarding the *jalan hadat* that must be fulfilled by the groom and given to the bride. Third, the marriage agreement between the two parties, regarding the rights and obligations of each, legal sanctions for those who make mistakes, arrangements for the distribution of hand-drawn assets, including the distribution of children's rights and the rights of heirs if the marriage does not get children.

Religious Harmony

Harmonis religius¹² is a person's way of behaving by respecting and loving his family members based on the religious values they profess.¹³ The customary fines outlined in the marriage agreement carried out by the Dayak Ngaju indigenous people are proof that marriage is a very sacred thing for them, not only because it has become a tradition passed down from their ancestors, but for the sake of maintaining the commitment of love that will be said in marriage.

The characteristics of a harmonious family include: First, there is a balance of rights and obligations of husband and wife.¹⁴ Second, fostering good relations between the husband and wife's extended family and the community. Third, increased faith. Among the goals of marriage is for the bride and groom to get peace in one's life.¹⁵ In Surat Ar-

¹²Amru Almu'tasim, "Penciptaan Budaya Religius Perguruan Tinggi Islam (Berkaca Nilai Religius UIN Maulana Malik Ibrahim Malang)," *J-PAI* 3, no. 1 (2016): 105–20, <https://doi.org/10.18860/jpai.v3i1.3994>.

¹³Iskandar Zulkarnain and Sondang Mariana Marpaung, "Proses Komunikasi Antar Pribadi Pasangan Tunanetra Pemijat (Studi Kasus Proses Komunikasi Antar Pribadi Pasangan Suami Istri Tunanetra Pemijat Dalam Membina Keluarga Harmonis Di Kota Medan)," *Analytica Islamica* 3, no. 2 (2014): 236–57, <http://jurnal.uinsu.ac.id/index.php/analytica/article/view/449>.

¹⁴Ahmad Sainul, "Konsep Keluarga Harmonis Dalam Islam," *Al-Maqasid* 4, no. 1 (2018): 86–98, <http://jurnal.iain-padangsidempuan.ac.id/index.php/almaqasid/article/view/1421>.

¹⁵Ahmad Atabik and Khoridatul Mudhiiyah, "Pernikahan Dan Hikmahnya Perspektif Hukum Islam," *Yudisia* 5, no. 2 (2014): 286–316, <https://journal.iainkudus.ac.id/index.php/Yudisia/article/view/703>.

Rum verse 21, it is explained that the purpose of marriage is to get a happy family filled with the peace of life and love.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً

The facts show that domestic violence is a criminal act against women, and this has a significant negative impact on victims.¹⁶ The role of women has a big enough share in the growth and development of a country, it is from the wombs of women that warriors are born and the nation develops towards its civilization.¹⁷ With the existence of the customary marriage agreement, it is hoped that the problem of domestic violence can be minimized, intended for prospective husbands and prospective wives who will carry out the marriage.

The purpose of a traditional marriage agreement is a preventive attitude to anticipate conflict if unwanted things occur in a marriage that is binding on both parties, namely the prospective husband and the prospective wife.¹⁸ This is in harmony with what is said in the Koran (Q.S Al-Baqarah: 195):

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

The principle of welfare is the main thought of actors who implement customary marriage agreements. To realize benefits that may not cause harm or aggravate circumstances.¹⁹ This is in line with the Hadith Rasulullah SAW from 'Uqbah Bin 'Amir Rasulullah SAW said:

عن عقبه بن عامر رضي الله عنه مرفوعاً: إن أحقَّ الشروط أن توفوا به: ما استحللتم به الفروج²⁰

From a historical point of view, customary marriage agreements have existed for a long time. Even the article that summarizes the provisions of the provisions existed before Indonesia's independence, for more than 1 century. There are several similarities between this traditional marriage agreement and the general marriage agreement, such as this customary agreement carried out with the consent of each of the parties concerned.²¹

¹⁶Aroma Elmina Martha, *Perempuan Dan Kekerasan Dalam Rumah Tangga Di Indonesia Dan Malaysia* (Yogyakarta: FH UII Press, 2012).

¹⁷Nabella Puspa Rani, "Penerapan Sanksi Adat Melayu Kerajaan Siak Sri Indrapura Terhadap Kekerasan Dalam Rumah Tangga," *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya* 1, no. 2 (2016): 291–314, <https://journal.iainnumetrolampung.ac.id/index.php/jf/article/view/16>.

¹⁸Haedah Faradz, "Tujuan Dan Manfaat Perjanjian Perkawinan," *Jurnal Dinamika Hukum* 8, no. 3 (2008): 249–52, <https://doi.org/10.20884/1.jdh.2008.8.3.82>.

¹⁹Fatkur Huda, *Dinamika Keilmuan Islam Masa Pandemi* (Surabaya: UMS Publishing, 2022).

²⁰The most appropriate conditions to fulfill are those relating to marriage.

²¹Nadimah Tanjung, *Islam Dan Perkawinan* (Jakarta: Bulan Bintang, 2011).

This customary agreement is part of *muamalah* in the Dayak community, originating from customs that apply in certain areas and then developing into a legal system that grows and develops from habits in society.²² The purpose of *maqasid syariah* is for the establishment of justice and benefit for society.²³ The implementation of the Dayak Ngaju traditional marriage agreement is very relevant to what *maqasid syariah* aspires to.

Cultural Transmission

Cultural transmission is the passing on of values concerning mind and reason from one generation to the next.²⁴ It has been more than a century since 96 articles on the life of the Dayak people have been made. To be precise, in 1984 the community leaders of the Ngaju Dayak community gathered more than 400 tribes which gave birth to 96 articles.

Customary fines are not a compulsion but are a choice for the perpetrators who carry them out. Even though the Dayak Ngaju people have different religious patterns, the implementation and position of the marriage agreement follow the provisions of their respective religions. This custom reflects the Ngaju Dayak community regarding belief in family.²⁵ This belief is grown since they are born without any special training.²⁶ So people who have been born as Dayak Ngaju residents are very proud of their customs.

For the Dayak Ngaju people, marriage is a sacred bond for them with the philosophy of "*belum behadat*" which means living in a culture. So that marriages carried out by applicable customs aim to regulate the relationship between men and women so that they have behavior that is not reprehensible (*belum behadat*), and organize a polite and

²²Prasetio Rumondor, "Kebiasaan Yang Menjadi Hukum Adat Lintas Keluarga (Studi Kasus Kunjungan Setiap Hari Raya Besar Antar Umat Beragama Di Sulawesi Utara)," *Al-Mahbats* 4, no. 2 (2019): 19–34, https://www.researchgate.net/publication/337812728_KEBIASAAN_YANG_MENJADI_HUKUM_AD_AT_LINTAS_KELUARGA_Studi_Kasus_Kunjungan_Setiap_Hari_Raya_Besar_Antar_Umat_Beragama_Di_Sulawesi_Utara.

²³Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Al-Himayah* 2, no. 1 (2018): 109–10, <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/582>.

²⁴Fadjri Kirana Anggarani, "Internet Gaming Disorder: Psikopatologi Budaya Modern," *Buletin Psikologi* 23, no. 1 (2015): 1–12, <https://doi.org/10.22146/bpsi.10572>.

²⁵Ulfah Annajah and Nailul Falah, "Pengaruh Lingkungan Sosial Terhadap Motivasi Berprestasi Anak Panti Asuhan Nurul Haq Yogyakarta," *Hisbah: Jurnal Bimbingan Konseling Dan Dakwah Islam* 13, no. 2 (2017): 102–15, <https://doi.org/10.14421/hisbah.2016.132-07>.

²⁶Abd Muid N, Muhaemin B, and Terry Arya Viratama, "Enkulturası Perspektif Al-Qur'an," *Mumtaz* 4, no. 2 (2020): 195–210, <https://jurnalptiq.com/index.php/mumtaz/article/view/136>.

dignified household life so that public order can be maintained.²⁷ The Dayak Ngaju people avoid unusual forms of marriage because for them it is very embarrassing, not only for the prospective bride and groom but also for the whole family and for their future descendants. In the Al-Quran Surah Al-A'raf verse 199 explains:

حُذِيَ الْعَفْوَ وَأُمِرَ الْعُرْفُ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

Ali Mohammad Bin Ibrahim, the author of Khazin's commentary, supports the meaning of 'urf with the meaning "good according to *syara*".²⁸ So it can be concluded that as long as the customary transmission that applies does not violate the boundaries of religion, law, then this is permissible. The hadith codified by Imam Bukhari was narrated by Aisyah. He narrated that there was a woman, Hindun Binti Utbah, who complained to the Prophet about her husband Abu Sufyan who did not provide maintenance for her and her children, then the Prophet answered the complaint by saying:

خدمنا يكفيك وولدك المعروف²⁹

Ibn Hajar AlAsqalani interpreted the content of the word ma'ruf in this Hadith as "all the habits that are well known in society."³⁰ From a historical point of view, there is an example of cultural transmission carried out by Arab society which is considered good, namely the Aqiqah tradition. During the Jahiliyah period it was done by smearing animal blood on the baby's head, so after the arrival of Islam there was still the Aqiqah tradition with the stipulation that if a baby boy slaughters two goats and if a baby girl slaughters one goat and does not smear the animal's blood on the baby's head.³¹ The existence of customary traditions originates from actions or behavior in the association of a group of people who are considered beneficial and good for their group. So it is done repeatedly and becomes a habit among them.³² So from this cultural transmission, especially regarding the Ngaju Dayak customary marriage agreement, when compared to Islamic

²⁷Tim Khusus Dewan Adat Dayak Provinsi Kalimantan Tengah, *Perkawinan Menurut Adat Dayak Kalimantan Tengah*, n.d.

²⁸Moh. Hipni, "Urf Sebagai Akar Hukum Islam Yang Responsible," *Et-Tijarie: Jurnal Hukum Dan Bisnis Syariah* 3, no. 2 (2016): 86–99, <https://doi.org/10.21107/ete.v3i2.3913>.

²⁹Take something to suffice for you and your children in an acceptable way.

³⁰Ibnu Hajar Al Asqalani, *Fath Al-Bari* (Mesir: Maktabah Ash Shofa, 2003).

³¹Suluri, "Pendidikan Islam Berwawasan Budaya," *Ta'allum: Jurnal Pendidikan Islam* 7, no. 1 (2019): 191–202, <https://doi.org/10.21274/taalum.2019.7.1.191-202>.

³²Suluri.

law, it must have a common thread, namely based on benefit. People believe because this is a good thing and can help them overcome problems in the household.

Magical Emotional

Magical emotions are thoughts that think that there are things that are non-technical (religious) that can affect life.³³ Marriage is a sacred thing and must be done concretely legally (legal standing) and in cash (magical and religious). There are two important aspects, namely the relationship between humans and humans, and magical relationships.³⁴ The belief in Kaharingan is a belief that has always been held by the Dayak Ngaju people. Kaharingan comes from the word Haring which means existing by itself. This Kaharingan belief believes in all things and creatures that have spirits, and that there is only one God.³⁵

Acculturation and assimilation are factors that influence the beliefs of the Ngaju Dayak people. So, from this there is a strong thought that has been passed down from generation to generation even though it has changed the belief that this marriage agreement can minimize aspects of bad luck. So that there is a magical emotional creation of the Dayak Ngaju community in carrying out customary marriage agreements. In Islam itself there is no bad luck. Bad luck or bad luck imposed on someone has nothing to do with creatures. Allah is the one who gives harm or happiness to someone. This is in harmony with what is said in the Koran (QS. al-A'raf: 131) and Hadith³⁶:

فَإِذَا جَاءَهُمُ الْحُسْنَىٰ قَالُوا لَنَا هَذِهِ وَإِنْ تُصِيبُهُمْ سَيِّئَةٌ يَطَّيَّرُوا بِمُوسَىٰ وَمَنْ مَعَهُ أَلَا إِنَّمَا طَائِرُهُمْ عِنْدَ اللَّهِ وَلَكِنَّ أَكْثَرَهُمْ لَا يَعْلَمُونَ

Based on that, it can be understood that the meaning of being able to minimize unlucky aspects is a preventive action carried out by the Dayak Ngaju community. Which is expected to minimize the things that can cause a divorce.

³³Rani Setyaningrum, Hamidah Nayati Utami, and Ika Ruhana, "Pengaruh Kecerdasan Emosional Terhadap Kinerja (Studi Pada Karyawan PT. Jasa Raharja Cabang Jawa Timur)," *Jurnal Administrasi Bisnis (JAB)* 36, no. 1 (2016): 211–20, <http://administrasibisnis.studentjournal.ub.ac.id/index.php/jab/article/view/1419>.

³⁴Bambang Samsul Arifin, *Psikologi Agama* (Bandung: Pustaka Setia, 2008).

³⁵Linggua Sanjaya Usop, "Peran Kearifan Lokal Masyarakat Dayak Ngaju Untuk Melestarikan Pahewan (Hutan Suci) Di Kalimantan Tengah," *ENGGANG: Jurnal Pendidikan, Bahasa, Sastra, Seni, Dan Budaya* 1, no. 1 (2020): 89–95, <https://doi.org/10.37304/enggang.v1i1.2465>.

³⁶Muhammad bin Ismail Al-Bukhari, *Shahih Bukhari* (Beirut: Dar Al-Kutub Al-Ilmiyyah, 2004). It is not justified to assume that a disease is contagious by itself (without God's provision), it is not justified to assume that it is bad luck, it is also not justified to assume bad luck because of the location, nor is it justified to assume that it is unlucky in the month of Shafar.

Love Commitment

Commitment is an indicator of how much a person tends to continue a serious relationship with their partner, looking to the future and continuing to be together.³⁷ While love is an important element in a relationship. Love is one of the factors for the success of a marriage, with love one can get happiness and success in that relationship.³⁸

In the 96 articles of customary law and its practice in the life of the Indigenous Dayak community, from articles 1 to 13, several variables are strictly regulated regarding customary fines. Not only for the husband or wife but also for third parties who try to destroy someone's household. It is explained in Article 8 regarding the fine for getting pregnant with someone else's wife in the dark. An example of a case: Man A, dares to disturb, seduce and even commit adultery of woman B, wife C, with sufficient evidence, party C can sue for objections, where the sanction is if his wife has never had children, then party A can be punished with a penalty of 30 to 75 *Rati Kamu*. However, if the wife already has children, they can be threatened with 120 to 180 *Rati Kamu*.

The article above tries to fortify marriage from third parties which can damage a relationship. This is a serious blow to anyone who wants to take someone else's wife or husband. The large fine that will be received for those who try to destroy someone's household is expected to be a reminder not to do that. The marriage agreement reflects their love commitment so that these things don't happen. Because commitment is fundamental in a relationship. Several aspects are seen for the sake of the realization of a commitment, namely the tendency not to ignore or insult the choice of a partner, the willingness to sacrifice or the tendency to leave unwanted negative activities in marriage, accommodative behavior, or the tendency to acceptance of a partner's shortcomings, and cognitive interdependence or a tendency to think in terms of "we" rather than "mine."³⁹

This is also mentioned in the Koran regarding the commitment to love in marriage which is a form of a very strong bond. (Q.S An-Nisa: 21):

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

³⁷Suryawati Utami, "Komitmen Dan Kepuasan Pernikahan Pada Pasutri Dengan Rentang Usia Jauh," *Psikoborneo: Jurnal Ilmiah Psikologi* 6, no. 2 (2018): 267–72, <https://doi.org/10.30872/psikoborneo.v6i2.4568>.

³⁸Siti Fatimah, "Hubungan Cinta Komitmen Dengan Kepuasan Pernikahan Dimoderatori Oleh Kebersyukuran," *Psikodimensia* 17, no. 1 (2018): 26, <https://doi.org/10.24167/psidim.v17i1.1428>.

³⁹Dyah Astorini Wulandari, "Kajian Tentang Faktor Komitmen Dalam Perkawinan," *Psycho Idea* 7, no. 1 (2009): 1–10, <https://jurnalnasional.ump.ac.id/index.php/PSYCHOIDEA/article/view/168/0>.

So this *misaqan galiza* is the first principle in building a harmonious family in the pleasure of Allah.⁴⁰ This is very much in harmony with the spirit carried in the Dayak Ngaju traditional marriage agreement. The implementation of the marriage agreement is not only as a cultural transmission but as a reflection of their seriousness that marriage is a very sacred thing and must be maintained. The existence of legal certainty by agreeing to a customary marriage agreement is one of the factors why the Dayak Ngaju people still adhere to this tradition. One of the pre-requisites for complaints is that they must be made with a high spirit of honesty from those who feel aggrieved. If all the evidence has been collected and the parties have gathered, a traditional basara event will be held, namely the process of holding a case or trial in the Ngaju Dayak customary law system.⁴¹

Rasulullah SAW called for muamalah by doing good to partners, being kind and gentle and educating women with patience and easy forgiveness:

اسْتَوْصُوا بِالنِّسَاءِ خَيْرًا، فَإِنَّ الْمَرْأَةَ خُلِقَتْ مِنْ ضِلْعٍ، وَإِنَّ أَعْوَجَ مَا فِي الضِّلْعِ أَعْلَاهُ، فَإِنْ ذَهَبَتْ تُقِيمُهُ كَسَرْتَهَا،
وَإِنْ تَرَكْتَهُ لَمْ يَزَلْ أَعْوَجَ، فَاسْتَوْصُوا بِالنِّسَاءِ خَيْرًا⁴²

Imam Ibn Hajar Al-Asqalani said the words of the Messenger of Allah, *fastausu*, I will instruct you to do good to your wives. Then Imam Ibn Hajar Al-Asqalani added the words of Rasulullah SAW regarding *bi-nisaa'i khairan* as if there was a hint for the husband to gently straighten his wife, not to exaggerate to break it. Nor let it continue on top of the bend.⁴³ So it is with this spirit of commitment to love that the Dayak Ngaju indigenous people try to protect love so that undesirable things such as divorce do not occur, and this safeguards the welfare of religion, soul and lineage.

Dayak Ngaju Customary Fines in Pre-Marriage Agreement to Minimize Divorce in The Perspective of *Maslahah Mursalah* Ramadhan Al-Buthi

The customary fines in the Dayak Ngaju pre-marriage agreement to minimize divorce from the perspective of *maslahah mursalah* Ramadhan Al-Buthi namely, first,

⁴⁰Khabib Sholeh, "Pembelajaran Bahasa Indonesia Dalam Buku Ajar Berbasis Multiple Intelligences Dalam Kurikulum 2013," *Publikasi Ilmiah UMS* 1, no. 2 (2013): 144–61, <https://publikasiilmiah.ums.ac.id/handle/11617/3356>.

⁴¹Putri Fransiska Purnama Pratiwi, Suprayitno Suprayitno, and Triyani Triyani, "Upaya Hukum Untuk Menjerat Tindakan Pelakor Dalam Perspektif Hukum Adat Dayak Ngaju," *Jurnal Cakrawala Hukum* 10, no. 2 (2019): 209–17, <https://doi.org/10.26905/idjch.v10i2.3469>.

⁴²Ask from you a will of goodness in matters of women, for indeed women were created from a rib. The most crooked part of the rib is the top one.

⁴³Asqalani, *Fath Al-Bari*.

does not contradict the Koran. In the book *Dhawabitul Maslahah* it is explained that there are two types of limits on *maslahah* which do not conflict with the Koran. *Maslahah* which is vague or has no basis for *qat'i* arguments.⁴⁴ This *maslahah* contradicts the clear *qat'i* argument (*zahir*) that it should not be done, for example (QS, Al-Baqarah: 275):

وأحل الله البيع وحرم الربا⁴⁵

This verse explains that buying and selling is lawful and usury is unlawful. So, if someone does usury with an element of benefit in it, then that is considered vanity because it is not by the *qothi* argument.

Maslahah which relies on the *qoti* argument by confirming it:

أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً
وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا⁴⁶

Zahir's verse covers all assets and all times, and this is against the law that it is permissible to take something that does not belong to us because there is an emergency element by enforcing the permissibility of eating carrion because of an emergency, and this is already within the realm of *ijtihad*, and this is in accordance with the schools of thought of the madhab imam that the generality of the verses of the Koran can be devoted to this law because it has the correct *qiyas* backed up on clear texts in the Koran. Waqar Ahmed Husaini stated that Islam pays great attention to traditions and community agreements to be used as a source for jurisprudence. This is in accordance with what has been exemplified by the Prophet Muhammad SAW where his policies related to the laws contained in his Sunnah reflect his wisdom towards the traditions of his friends or society at that time.⁴⁷

If you look at it from an '*urf*' point of view, the customary fines carried out by the Dayak Ngaju people are included in the *al-'urf khas*, namely certain habits that are

⁴⁴Muhammad Sa'id Ramadhan Al-Buthi, *Dhawabitul Maslahah Fi Al-Syari'ah Al-Islamiyyah* (Damaskus: Dar Al-Fikr, 2005).

⁴⁵And Allah has permitted trading and forbidden usury.

⁴⁶O you who believe, do not eat each other's wealth in a vanity way, except by way of commerce that applies with mutual consent between you. And do not kill yourselves; verily Allah is Most Merciful to you.

⁴⁷Fatmah Taufik Hidayat and Mohd Izhar Ariff, "Kaedah Adat Muhakkamah Dalam Pandangan Islam (Sebuah Tinjauan Sosiologi Hukum)," *Jurnal Sosiologi USK (Media Pemikiran & Aplikasi)* 9, no. 1 (2016): 67–83, <https://jurnal.usk.ac.id/JSU/article/view/9262>.

known to the community but whose scope is only in certain areas or areas.⁴⁸ And there it is widely known by the traditional community. So based on the limitations of the first *masalahah*, namely not contradicting the Koran, the author does not find that the implementation of customary fines carried out by the Dayak Ngaju Muslim community contradicts verses of the Koran. Although there are several articles in the Ngaju Dayak pre-marriage agreement reference book which explain that if there is a conflict between husband and wife and then reconcile, then a traditional party is held as an expression of gratitude, and one of the meals is alcoholic drinks and pork, but this is not found in the author's pre-marriage agreement. carried out by the Dayak Ngaju community who are Muslims.

Second, not against the Sunnah. The definition of Sunnah is everything that is based on either word, namely the hadiths of the Prophet Muhammad SAW which he said, actions, namely something that the Prophet Muhammad did, or provisions are actions that were done by friends in the presence of the Prophet Muhammad or he knew someone was doing the deed. but he SAW kept silent.⁴⁹ As for there are three divisions of *masalahah* that are contrary to the Sunnah, namely *masalahah* whose provisions use pure logic, are contrary to *qiyas*, and do not conflict with higher *masalahah*.

First, namely, *masalahah* whose determination uses pure logic. Indeed, the scale of the truth of the use of logic is that there is no contradiction between the Al-Quran and Sunnah. Therefore, a friend who has a logical view it clashes with the Sunnah of the Prophet Muhammad SAW, then he must stop that view and return to following the Sunnah of the Prophet SAW narrated by Imam Syafi'i from Sufyan from Zuhri from Sa'id formerly Umar bin Khattab who said *diyath* for *'aqilah* (*Asabah* and relatives from the Father's side), women cannot inherit even a bit of her husband's *diyath*, that Adh Dahkaha bin Sufyan told her that Rasulullah gave Asyiyam Adhdahbbi's wife from *diyath*. So, this opinion is taken.⁵⁰

⁴⁸W T P Ariyanto, "Adat 'Nyuwito' Dalam Pernikahan Suku Samin Perspektif Fenomenologi (Studi Di Dusun Jepang Desa Margomulyo Kecamatan Margomulyo Kabupaten Bojonegoro)," *Sakina: Journal of Family Studies* 3, no. 4 (2019): 1–11, <http://urj.uin-malang.ac.id/index.php/jfs/article/view/305>.

⁴⁹Fery Eko Wahyudi and Muhammad Ashabul Kahfi, "Hadist Sebagai Sumber Peradaban," *Al-Asas* 2, no. 1 (2019): 112–20, <https://ejournal.iainpalopo.ac.id/index.php/aliasas/article/view/1194>.

⁵⁰Al-Buthi, *Dlowabith Al-Maslahah Fi Al-Syari'ah Al-Islamiyyah*.

Sunnah is also synonymous with customs, and community actions that have existed for a long time and have become a habit. Regarding the traditional fines carried out by the Dayak Ngaju custom, the author did not find any prohibitions from the words, deeds, and decrees of the Prophet Saw. also, alcoholic beverages, but the author does not find anything like this in the customary fine agreement where the parties involved are Muslims, so if these things are not carried out, then there is nothing that conflicts with the second limitation, namely As-Sunnah. Even in the Ngaju Dayak customary agreement several customary fines oblige to give something in the form of a souvenir to a child that has high value and is beneficial to the child in the form of money or gold. This is done so that children who become victims of a divorce have guaranteed to continue their lives.

Second, that is not against *qiyas*. *Qiyas* is equating a law from an event that does not have a legal text with an event that already has a legal text because there are similarities in the legal *illat*.⁵¹ One of the parameters for assessing traditions or customs that exist in society may be carried out in Islam, whether in that tradition some things are prohibited by Islamic law. If the tradition or custom has a *maslahah* value or does not result in negative effects or harm. The researcher concluded that the legal minimum is *mubah*. If these traditions, customs, or customs are not related to worship or enter the technicalities of worship, and if no *qat'i* text prohibits it, then it is not prohibited.

At least the absorption of adat in Islamic law has three actions. The first is *tahmil* or appreciative which is defined as an attitude of accepting or allowing the enactment of a tradition, such as trade and respect for the forbidden months. Second, prohibiting it (destructive) is defined as an attitude that rejects the validity of a community tradition. This attitude is shown by the prohibition of habits or traditions referred to by the verses of the Koran, for example, such as the prohibition of gambling habits, drinking intoxicants, and the practice of usury. The last three are to accept it but with a note that it modifies a few things if there are things that conflict, for example, clothes and female genitalia, laws related to family marriage, adopted children, inheritance law, and *qisasdiyat*.⁵²

⁵¹Al-Buthi.

⁵²Ansori, "Prinsip Islam Dalam Merespon Adat/Urf," UNU Purwokerto, 2020, <https://unupurwokerto.ac.id/prinsip-islam-dalam-merespon-tradisi-adat-urf/>.

Seeing from the three actions above the customary fines carried out by the Dayak Ngaju Community also belong to the third type, namely accepting them with a note of modifying things that the perpetrators object to if they are done because there are things that might conflict with their beliefs.

Third, that is not in conflict with a higher *maslahah*. In the use of *maslahah*, three levels must be known, namely: *maslahah daruriyah*, is everything that must exist for the upholding of human life both *diniyah* and mundane, with the meaning that if *maslahah* is not materialized then human life in the world will be damaged.⁵³ *Maslahah hajiyyah*, are all forms of actions and actions that are not related to other basic needs of the community which can still be realized, but can avoid difficulties and poverty in life. *Tahsiniyah*, namely using everything that is appropriate and deserves to be justified by good customs, and all are covered by *mahsinul akhlaq*.⁵⁴

Observing the purpose of customary fines to minimize divorce so that one party, both the husband and the wife, does not go through the signs that must not be passed, as well as reducing the potential for domestic violence, infidelity, and as a commitment to the responsibilities of both husband and wife in carrying out their roles. As husband and wife, it is very clear that here there is no conflict with customary fines against the characteristics of these benefits. Ibn Qayyum Al Jauji explained that extracts from the Koran are *maqasid syariah (kulliatu khams)*. In terms of religion, even though divorce is not something that is forbidden, it is still an act that is hated by Allah SWT. The impact of a divorce seen from a social perspective has a very large influence on life, such as problems of joint property, child custody, and children's lives that require irreplaceable figures of both parents.

Conclusion

The view of community leaders regarding customary fines in marriage agreements carried out by the Dayak Ngaju community is a good thing. The researcher concluded that four positive things can be taken. The first is religious harmony, which is effective in reducing domestic violence. Second, cultural transmission because there are positive values that are maintained from ancestral heritage, namely protecting the existence of marriage, maintaining commitment in marriage which is a very sacred bond, and

⁵³Amrullah Hayatudin, *Ushul Fiqh* (Jakarta: Imprint Bumi Aksara, 2019).

⁵⁴Al-Buthi, *Dlowabith Al-Maslahah Fi Al-Syari'ah Al-Islamiyyah*.

protecting both parties from the collapse of a marriage such as the presence of a third person. The third is emotional magic, which is a preventive action to prevent things that can cause divorce such as domestic violence, and finally is a commitment to love and proof of the seriousness of the Dayak Ngaju people in going through the marriage process. Meanwhile, from the *maslahah* perspective of Sheikh Ramadhan Al Buthi, the customary fines carried out by the Dayak Ngaju community do not conflict with the limitations of Islamic law, provided that they do not exceed the limits set. First, it does not conflict with the Koran. Second, do not conflict with the Sunnah. Third, it does not conflict with higher *qiyas* and *maslahah*.

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