



## **A Review of Customary Law and Islamic Law on Marriage of Couples Motivated by Behavior Violating Norms**

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### **Abstract**

This study aims to examine the practice of marriage motivated by behavior that violates norms, both from the perspective of customary law and Islamic law. This phenomenon is often found in various communities, especially when couples who commit social offenses, such as extramarital relationships, are then "married" as a form of problem solving. In the traditional context, this kind of marriage is often seen as a way of preserving family honor and restoring a disturbed social order. Meanwhile, from the perspective of Islamic law, marriage is not merely a solution to transgression, but must meet the legal requirements and principles of sincerity, and place repentance as an important moral requirement. Using a qualitative approach and literature study, this study analyzes how both legal systems—customary and Islamic—view, respond, and shape norms for these practices. The results of the study show that there is a common point between customary law and Islamic law in maintaining social stability, but there are also differences in the emphasis on the moral aspects and legality of marriage. This study recommends the need for constructive dialogue between traditional stakeholders and religious leaders in formulating a more equitable and educational approach for the younger generation in facing the dynamics of social change.

**Keywords:** Customary Law; Islamic Law; Wedding; Breaking Norms

### **Abstrak**

Penelitian ini bertujuan untuk mengkaji praktik pernikahan yang dilatarbelakangi oleh perilaku melanggar norma, baik dari perspektif hukum adat maupun hukum Islam. Fenomena ini kerap ditemukan di berbagai komunitas, khususnya ketika pasangan yang melakukan pelanggaran sosial, seperti hubungan di luar pernikahan, kemudian "dinikahkan" sebagai bentuk penyelesaian masalah. Dalam konteks adat, pernikahan semacam ini sering dianggap sebagai cara menjaga kehormatan keluarga dan memulihkan tatanan sosial yang terganggu. Sementara itu, dalam perspektif hukum Islam, pernikahan tidak semata-mata menjadi solusi atas pelanggaran, tetapi harus memenuhi syarat sah dan prinsip-prinsip keikhlasan, serta menempatkan pertobatan sebagai syarat moral penting. Dengan menggunakan pendekatan kualitatif dan studi kepustakaan, penelitian ini menganalisis bagaimana kedua sistem hukum—adat dan Islam—memandang, merespons, serta membentuk norma atas praktik tersebut. Hasil kajian menunjukkan bahwa terdapat titik temu antara hukum adat dan hukum Islam dalam menjaga stabilitas sosial, namun juga terdapat perbedaan dalam penekanan aspek moral dan legalitas pernikahan. Kajian ini merekomendasikan perlunya dialog yang konstruktif antara pemangku adat dan tokoh agama dalam merumuskan pendekatan yang lebih adil dan edukatif bagi generasi muda dalam menghadapi dinamika perubahan sosial.

**Kata Kunci:** Hukum Adat; Hukum Islam; Pernikahan; Melanggar Norma

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## Introduction

A worrying phenomenon related to the association of young people through the organization of large celebration receptions carried out by legally unmarried couples according to religious and state laws.<sup>1</sup> In practice, the community seems to ignore the customary norms and Islamic sharia that have been the guideline of life, by still holding parties openly even though the relationship status of the two brides is not halal.<sup>2</sup> This not only injures the values of purity in Islamic teachings, but also weakens the function of customary law which should be the guardian of morality and social order of society.<sup>3</sup> In fact, in some cases, traditional officials and community leaders seem to allow, or even participate in the event, giving the impression that this kind of practice has gained social legitimacy. This condition raises deep concern because it is feared that it will set a bad precedent for the younger generation and damage the social structure that upholds local religious and cultural values.

Marriage is a form of worship, marriage is one of the Islamic teachings that is very important to continue the generation of humans on earth, marriage is also one of the human needs in the biological aspect because humans are creatures that Allah SWT created with lust that makes them interested in doing good things between men and women, humans are the most perfect creatures created by Allah swt because Allah created them with reason and a mind that can distinguish between good and bad and what is beneficial or not, unlike other creatures created by Allah such as animals, animals created by Allah SWT with reason but do not have a mind so that animals only obey their desires with their intellect does not have a mind so that the fulfillment of oneself is only based on mere lust.

Allah swt has revealed the teachings of Islam, one of which is the issue of marriage, in the Qur'an Allah swt states that every creature on this earth must have a partner, both male and female.<sup>4</sup> The way taught by Islam for marriage is through good things and not

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<sup>1</sup> Vincent Odoom dkk., "Agents and challenges associated with the celebration of parallel marriage ceremonies in Winneba township in the Efutu municipality of Ghana," *African Journal of Social Issues* 7, no. 1 (2024): 791-814.

<sup>2</sup> Abdul Basid dkk., "INTERFAITH MARRIAGE CONTROVERSIES IN SEMARANG: AN ANALYSIS OF QUR'ANIC LEGAL EXEGESIS," *Malaysian Journal of Syariah and Law* 12, no. 3 (2024): 762-77.

<sup>3</sup> Ishtiaque Ahmed dkk., "The Confluence of Divine Law and Modern Legal Systems: Insights from Sharia on Achieving Balance Between Justice and Equity," *J. Islamic L. Resch.* 25 (2024): 83.

<sup>4</sup> Rizka Herliana dan Nurlia Maulida, "THE ROLE OF WOMAN IN ISLAM," *Islamologi: Jurnal Ilmiah Keagamaan* 1, no. 2 (2024): 771-88.

arbitrary.<sup>5</sup> Namely through several processes, from introduction, the process of marriage and finally with the marriage process then only between men and women can establish an intensive and intimate relationship, because after having sex something that was originally forbidden now becomes halal to do, in essence humans do have a sexual instinct that Allah SWT has given to humans, biologically this must also be channeled so as not to cause a negative impact on health of the human body. As for through marriage, the health of the body, both physical and spiritual, will be more perfect and the mind will also be much calmer.

Research on the practice of marriage conducted in response to behavior that violates norms has been a concern in various studies of customary law and Islamic law. For example, a study conducted by Imran, the study shows that this kind of marriage is often seen as a solution to avoid family disgrace, even though it is contrary to the principles of sincerity in marriage contracts according to Islamic law.<sup>6</sup> Furthermore, research by Rahmami on communities in West Sumatra highlights how customary institutions have an important role in resolving violations of sexual norms through the forced marriage approach, which in some cases has the potential to violate women's individual rights.<sup>7</sup> On the other hand, a study by Sholehuddin examines the fiqh's view on marriage after adultery, showing that despite differences of opinion among scholars, the majority agree that this kind of marriage is not recommended if it does not go through a legal process of repentance.<sup>8</sup> Meanwhile, a study by Ismail combines legal anthropology and Islamic studies approaches to explore how local communities interpret norm violations and deal with them through the symbolization of customary marriage, although this sometimes ignores aspects of justice and women's willingness. These findings confirm that marriage due to norm violations has a complex dimension involving social pressure, the role of traditional and religious leaders,

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<sup>5</sup> Anang Wahid Cahyono, "ISLAMIC FAMILY LAW AND SOCIAL TRANSFORMATION: A STUDY ON MARRIAGE, DIVORCE, AND INHERITANCE IN THE SHARIA SYSTEM," *Berajah Journal* 4, no. 7 (2024): 1421-30.

<sup>6</sup> Mohd Imran, *Nikah-Halala in India: Practice, Precept, and Perception*, 2025, <https://www.cambridge.org/engage/coe/article-details/67bcd50081d2151a02e25fb0>.

<sup>7</sup> Nailur Rahmi dkk., "Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 416-37.

<sup>8</sup> Miftahus Sholehudin dkk., "Cancellation of marriage due to apostasy in Islamic law and human rights: A comparative analysis of Indonesia and Malaysia," *De Jure: Jurnal Hukum dan Syari'ah* 17, no. 1 (2025): 33-51.

and the clash between local values and Islamic normative teachings.<sup>9</sup> Therefore, further studies are needed that are able to bridge the approach of customary law and Islamic law in a contextual and equitable manner.

This research offers a new contribution by examining the practice of marriage due to violation of norms not only from the legal-formal side of customary law and Islamic law, but also from an integrative perspective that emphasizes the importance of social justice and educational approaches in responding to such cases. In contrast to previous research, this study presents a simultaneous comparative analysis between customary legal value systems and Islamic legal principles within the framework of balanced social settlement. In addition, the approach used in this study does not solely see marriage as a solution to norm violations, but also assesses how social dynamics and collective pressures can affect the authenticity of marriage decisions, especially in relation to individual rights and the future of couples. This research also seeks to offer a space for dialogue between local norms and sharia principles, as well as raise the importance of reformulating customary practices in line with the values of holistic Islamic justice. Thus, this research contributes to formulating a more contextual and ethical understanding in responding to marriage as a form of response to norm violations.

## Method

The research in this article uses qualitative methods. This research is a qualitative research, which was conducted in Aek Goti Village, Silangkitang District.<sup>10</sup> In this discussion, an exploratory descriptive method was used, namely research that aims to describe the situation and explore extensively about the implementation of the normalization of the celebration of reciprocal marriage outside marriage or adultery in Aek Goti Village, Silangkitang District. The data collection technique in this study is in the form of interviews. In conducting the interview, the author uses the snowball sampling technique, which is an interview based on the main instructions, namely the perpetrators of the celebration, then religious leaders, traditional leaders, and finally several

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<sup>9</sup> Muhamad Ismail dkk., "Marriage and Divorce in Islamic Law: Sociological Implications for Modern Muslim Societies," *Journal of Islamic Law El Madani* 4, no. 1 (2024): 25–37.

<sup>10</sup> John W. Creswell dan Cheryl N. Poth, *Qualitative inquiry and research design: Choosing among five approaches* (Sage publications, 2016).

communities. After the data is collected, the author then processes the data using analytical descriptive analysis techniques. That is, the data obtained is not expressed in the form of numbers or statistical numbers, but remains in qualitative form. The author analyzed the data by providing an overview of the situation studied in the form of narrative variants.

The data analysis technique, based on the nature or form of this researcher, the data that has been collected is analyzed qualitatively, namely by using theories in science related to this research and associated with facts in the field.<sup>11</sup> Because this research is a field research, the method of analysis is from things that are special and then drawn to things that are general or called inductive. The location of the research, location or research area is Aek Goti Village, Silangkitang District, South Labuhan Batu Regency, North Sumatra Province.

## Results and Discussion

### The Basis of Marriage in Islam

In Indonesian, marriage comes from the word "marriage" which according to the language means forming a family with the opposite sex, having sex or having intercourse.<sup>12</sup> Marriage is also called "marriage", derived from the word "Nikah" which "نكاح" is which according to the language means to gather, include each other, and is used for the meaning of intercourse (*wathi*).<sup>13</sup> The word "nikah" itself is often used for the meaning of intercourse (*coitus*), as well as for the meaning of the marriage contract.<sup>14</sup> According to the term fiqh of Islamic law, there are several definitions, including: "Marriage according to sharia' is an agreement stipulated by sharia to allow fun between men and women and legalize the fun of women and men". This understanding concludes that marriage is about the legal ability in law to have a relationship between a man and a woman that was originally prohibited to be permissible. In fact, every legal act has a purpose and consequences or influence. These things are what make human attention in general in daily life such as divorce, lack of balance between husband and wife, so that it requires affirmation of the meaning of marriage itself, not only in terms of its legal purpose and consequences. From this

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<sup>11</sup> Sugiyono, *Metode Penelitian Kuantitatif Kualitatif* (Alfabeta, 2017).

<sup>12</sup> Dep Dikbud, *Kamus Besar Indonesian*, (Jakarta: Balai Pustaka, 1994), cet.3. Second edition, p.456.

<sup>13</sup> Muhammad bin Ismail Al-Kahlaniy, *Subul al-Salam*. (Bandung: Dahlan.tt), volume 3. H.109, See also Al-Syarif Ali bin Muhammad Al-Jurjaniy, *Kitab Al-Ta'rifat*. (Bairut: Dar al-Kutub al-'Ilmiyah, 1988), cet, 3rd, p.246.

<sup>14</sup> Wahbah Al-Zuhaily, *Al-Fiqih Al-Islam wa Adilatuh*, (Bairut: Dar al-Fikr, 1989)cet. 3rd, p.29

understanding, marriage contains aspects of legal consequences, continuing marriage is getting mutual rights and obligations as well as the purpose of establishing a relationship based on helping others, because marriage includes the implementation of religion, so it contains a purpose/intention to expect the pleasure of Allah SWT.

Sayid Sabiq further commented that marriage is one of the *sunatullah* that applies to all of God's creatures, both humans, animals and plants. Marriage is a way chosen by Allah SWT as a way for humans to reproduce, reproduce, and preserve their lives after each couple is ready to perform their positive role in realizing the goals of marriage. Allah SWT does not make humans like other creatures who live freely according to their instincts and interact in anarchy without rules. In order to maintain the honor and dignity of human dignity, Allah SWT carries out punishment according to his dignity, so that the relationship between men and women is regulated in an honorable manner and based on mutual merit, with the *ijab qabul* ceremony as a symbol of a sense of *meridai* and by being attended by witnesses who witness that the male and female couples have been bound together. This form of marriage has provided a safe path to the sexual instinct, nurtured offspring well, and kept women from being like grass that can be eaten by livestock at will. Marriage according to Islamic teachings is placed with maternal and paternal instincts like a good field which will later grow good plants and produce good fruits.<sup>15</sup>

In the Qur'an it is stated that living in pairs, living in pairs is the instinct of all creatures of Allah SWT, including humans, as Allah SWT says in Surah Az-Zariyat verse 49 *We have created all things in pairs so that you may remember (the greatness of Allah).*" In this verse there is a clarity that Allah SWT created creatures on this earth in pairs, and the above verse also explains the greatness of Allah SWT, he is the most perfect substance with all his power to create anything. Then in another verse Allah SWT said to explain that actually humans do not know most about the meaning of the couple itself. In Surah Yasin verse 36 Allah SWT states *The Most Holy (Allah) has created everything in pairs, both from what the earth grows and from themselves and from what they do not know.*" In this verse it is explained that from the creatures that Allah SWT created in pairs, then Allah SWT created both humans, animals and plants can become many and can multiply and last from the next generation, which is also stated in other verses, namely in Surah An-Nisa verse 1. Allah SWT said: *O man, fear your Lord Who created you from one (Adam) and He created from him his mate (Eve). From both of them Allah multiplied many males and females. Fear Allah in whose name you ask each other and (maintain) family relations. Indeed, Allah is always watching over you.*

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<sup>15</sup>Sayid sabiq, *Fiqh al-Sunah*, (Bairut: Dar al-Fiqr, 1983), cet, 4th, volume 2, p.5

### **Marriage Viewed From the Perspective of Islamic Law**

Islamic law is established for the welfare of the ummah, both individually and in groups in society, both for life in this world and in the hereafter. Human welfare will be achieved in society by creating prosperous welfare if it is appropriate and follows the applicable legal rules that have been written and stipulated in the written laws in the Qur'an and As-Sunnah, because family life is the smallest institution of the purpose of marriage, so the welfare of the community is highly dependent on the welfare of the family, and in creating a family must be through marriage. Islam regulates family life not only in outline but also in small and detailed matters, which shows great concern for the welfare of the family. The family is formed in marriage, therefore marriage is highly recommended by Islam for those who have the ability to.

The purpose of marriage according to Islam is to fulfill religious instructions in order to establish a harmonious family in using the rights and obligations of prosperous family members, which means the creation of inner and inner peace due to the fulfillment of the needs of life both physically and mentally so that happiness arises, namely affection between family members. Humans were created by Allah SWT to have human instincts that need to be fulfilled. In the meantime, humans were created by Allah SWT to devote themselves to the khalik of their creator with all their life activities. The fulfillment of human instincts, which includes biological needs, including life activities so that humans obey the purpose of events, Allah SWT regulates human life with the rules of marriage.

So the rules of marriage according to Islam are religious guidelines that need attention, so the purpose of holding a marriage should also be shown to fulfill religious instructions. So if summarized, there are two purposes that people carry out marriage, namely fulfilling their instincts and fulfilling religious instructions. In the above statements of the definition, harmony and conditions of marriage as well as the purpose of marriage, this is very clear for Muslims all over the world, especially to the people in Aek Goti village, Silangkitang district to carry out marriage. People who live and live in Aek Goti dea, Silangkitang District in general and almost all of them carry out this, especially for people who understand religion. However, there are things that are not in accordance with reality, there are some people who carry out marriages that deviate from this religious rule, in religion it is very clear that halal marriages are carried out and carried out in a good way and not because of pressure or coercion and arbitrariness and the pleasure of the perpetrators, especially in the aim of fostering a happy and prosperous household.

### **Married for Violating Norms**

As for the opinions of religious scholars and community leaders and several village and sub-district officials in Aek Goti Village, Silangkitang District, some say that marriage because it violates norms is still acceptable, there are those who think it is ugly and inappropriate, regardless of the pros and cons of it, then this is the explanation. According to Raden Hasibuan,<sup>16</sup> as a religious leader he mentioned that getting married is forced because it violates norms, so this is very bad because this is a disgrace to the family, but inevitably it must also be married because this has become a law in religion, but what is very unfortunate should be done after the contract not even before the contract, And it should not be a luxury for the wedding reception event, holding a small event and being attended by witnesses, namely the families, is enough, so that the news that does not wear is not widely spread.

According to Mukti Ali,<sup>17</sup> as a traditional leader he is very hard for the normalization of marriage with a big celebration because indirectly even the pelau himself wants to reveal his own shame to be known by the general public, this is very unfortunate for him why in this era things have been done or normalized even though in the past this is a disgrace that other people should not know even if they Other people or the general public know, it is very embarrassing for the perpetrators, especially for the parents of the child who commits adultery. He explained that the lack of education from parents about customs matters to children, so that the children do not understand this, because the disgrace of the family in ancient times is very firmly held, and in this day and age it seems to be fragile like weeds that are easily carried by the wind.

According to Sarino<sup>18</sup>, as the Apparatus of the sub-district, social problems related to religion that should be done in a good way actually deviate from the norms, both religion and norms in society. According to Eko Syaputra<sup>19</sup>. According to him, this is okay, because in social life in the community, wedding receptions or wedding celebrations have indeed become commonplace for brides, but unfortunately they should be done with good things and by following the applicable laws and rules. Indeed, it is customary to carry out a party if the parties or perpetrators have the money to make a celebration, but if they don't have the money, it doesn't matter, as long as the marriage is considered valid by religion and the state. He said that in this day and age something that was once considered a disgrace is

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<sup>16</sup> Raden Hasibuan. (*Religious Figures*)

<sup>17</sup> Mukti Ali (*Traditional Figure*)

<sup>18</sup> Sarino., (*District Office Apparatus*)

<sup>19</sup> Eko Syaputra (Residents of Aek Goti Village, Silangkitang District)



now considered to be an ordinary thing, and now it has been done a lot and this is very unfortunate.

From the results of the interview, the author does almost all pro or agree that the implementation of wedding receptions or celebrations is carried out by the community, although basically they also do not justify the existence of adultery because until any time adultery is a sin and mistake, this is a disgrace or secret for the family parties, but nowadays it has become a common thing to do. And even normalized, as for here, the fault is indeed in the lack of faith and awareness for the perpetrators because for the perpetrators of adultery do not care about the punishment that will be received in the hereafter, they only care about their lust without caring that the reward that will be obtained is very heavy. Moreover, Allah SWT has forbidden to commit adultery in the verse mentioned above, but for the perpetrators who do not care about it, here it is indeed necessary to have very relevant education that must be carried out periodically both to parents and young people in Aek Goti Village, Silangkitang District.

## **Conclusion**

Marriage is a form of religious commandment, and marriage is also a part of the system of worship, because in it there are many very great and many goodnesses, therefore one of the tasks of the devils and devils is to destroy a marriage relationship, and if it succeeds then they will get great appreciation from their friends because it can destroy the crown of the human household. Then when they find an unmarried couple, then they tell people to commit adultery between a man and a woman, and this is one of the challenges for people to face the temptations of Satan and Satan who always come to tempt and destroy the faith of a Muslim.

Allah SWT has explained about committing adultery and it has also been enshrined in the Qur'an and in his sunnah the Prophet has also explained that the perpetrator of adultery will get a painful retribution in the hereafter, not only in the hereafter, in the world will also get punishment such as *derah* and whipping, some are even punished by having their lives lost because this sin is very great for Islam. Therefore, all Muslims should not do it.

The community in Aek Goti Village, Silangkitang District, has religious and customary values that play an important role in shaping social norms, especially related to the behavior of the younger generation. In this context, Islamic teachings and local customary rules both emphasize the importance of maintaining behavior in accordance with applicable moral and ethical values. One of the issues that is often a concern is extramarital relationships that are considered not in accordance with local religious values

and customs. The public's view generally associates this behavior with potential social impacts, such as the disruption of family harmony and the shift in the values of politeness. Historically, indigenous communities in this area have tended to pay serious attention to efforts to maintain the honor of families and social groups through the strengthening of collective values. Therefore, understanding religious teachings and customary norms is seen as important to strengthen collective awareness in shaping social behavior that is in line with cultural identity and community beliefs.

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