

## Islamic and Cultural Negotiations in Endogamous Marriage in Kerinci

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### Abstract

This article was analyzes the principle of Willingness in the Execution of fiduciary guarantees after the decision of the Constitutional Court Number 18/PUU-XVII/2019, in practice Parate execution can be carried out either with or without the consent of the debtor, such conditions often lead to acts of coercion and violence from fiduciary guarantee holders, even giving opportunities to arbitrary acts committed by fiduciary recipients (creditors) and degrading the dignity of the debtor. From the research conducted, it was found that the application of the principle of willingness in the Parate Execution of fiduciary guarantees by the Constitutional Court provides benefits and prevents harm to debtor and creditors, this can be seen from the main idea of the Court which states that parate Executions should no longer be carried out without an agreement of the customer's and the customer's willingness to return the collateral. If the customer does not admit the defaulted, then the fiduciary holder can submit an application through fiat Execution to the Court.

**KEYWORDS** *Agreement, Fiduciary Guarantee, Parate Execution, Sharia Bank, Taradhin*

### Abstrak

Artikel ini menganalisis Prinsip Kerelaan dalam parate eksekusi jaminan fidusia pasca putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019,



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dalam prakteknya Parate eksekusi dapat dilakukan baik dengan persetujuan maupun tanpa persetujuan debitur, kondisi demikian sering menimbulkan adanya perbuatan paksaan dan kekerasan dari Pemegang jaminan fidusia, bahkan melahirkan perbuatan sewenang-wenang yang dilakukan oleh penerima fidusia (kreditur) serta merendahkan harkat dan martabat debitur. Dari penelitian yang dilakukan ditemukan bahwa penerapan prinsip kerelaan dalam parate eksekusi jaminan fidusia oleh Mahkamah Konstitusi memberikan maslahat dan mencegah kemudharatan bagi pemberi dan penerima fidusia, hal tersebut terlihat dari pokok pemikiran Mahkamah yang menyatakan bahwa parate eksekusi tidak boleh lagi dilakukan tanpa adanya kesepakatan mengenai wanprestasi nasabah dan kerelaan nasabah untuk menyerahkan agunannya, jika nasabah tidak mengakui bahwa ia wanprestasi, maka pemegang fidusia dapat mengajukan permohonan melalui fiat eksekusi pada pengadilan.

**KATA KUNCI** *Jaminan Fidusia, Parate Eksekusi, Perbankan Syariah, Perjanjian, Taradhin*

## Introduction

Through the Decision Number 18/PUU-XVII/2019 the Constitutional Court stated that Article 15 paragraph (2), paragraph (3), and the explanation of Article 15 paragraph (2) of the Fiduciary Guarantee Under Law Number 42 of 1999 were contrary to the Constitution so that no longer has binding legal force. In the decision, the Court stated that the Execution of fiduciary guarantees can only be carried out by the creditor in the event that there is an agreement for the creditor and debtor regarding the debtor's defaulted and the debtor or the owner of the guarantee voluntarily submits the guarantee to the creditor to be sold through auction. Parate execution is a simplification of bail Execution without involving a court bailiff.<sup>1</sup> The goal is that fiduciary holders can obtain faster repayment of receivables. However, in practice, the Execution of a fiduciary guarantee on a parate basis tends to be carried out arbitrarily by the creditor by forcibly confiscation or confiscation of the object of the

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<sup>1</sup>Teddy Anggoro, "Parate Execution: Creditor Rights Derogating Formal Law (A Basic and Deep Understanding)", *Journal of Law and Development* Vol. 37, No. 4, 2007, 535-565, p. 43.

fiduciary guarantee. In this case, the creditor exclusively and unilaterally assesses and determines whether there has been a "breach of promise" **without giving the debtor (fiduciary) the opportunity to rebut and or defend.** On the other hand, The Execution of fiduciary guarantees tends to be carried out by degrading the dignity of the debtor. Often the creditors with the help of *debt collectors* withdrawing collateral on public roads so that it embarrass the debtor. On this basis, the Constitutional Court issued Verdict Number 18/PUU-XVII/2019.

Consideration of the Constitutional Court in the decision almost the same with consideration in the case of *John v Trimble* 1902 TH 146<sup>2</sup> who decided that the sale of collateral object without the consent of the debtor cannot be allowed. The reason is because there is often oppression of debtors when giving creditors permission to take their own actions. The court stated the obstacles that might arise in the implementation of the Parate Execution. The creditor can be honest, but can also be wrong in ensuring that the debtor is in default condition. The creditor then sells the debtor's house without notification to the customer, making the sale to them in good faith. The debtor may still be trying to repay the debt but a customer then comes and informs him (the debtor) that he is no longer the owner of the collateral, and says that he (the debtor) has to move. It will prejudice the debtor by preventing him from filing a defense such as a payment, or a misrepresentation or breach of contract by the creditor.

The Supreme Court Decision Number 3210/K/Pdt/1984, dated January 30, 1986, is very similar to the Constitutional Court Decision 18/PUU-XVII/2019. Creditor conducts a public auction in the city of Bandung through his auctioneer because the debtor is in default. The District Court and High Court stated that the action was not detrimental and strengthened the auction. However, at the cassation level, the Supreme Court reversed the decisions of the District Court and the High

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<sup>2</sup>Isakow, LE (1971). Parate Execution. South African Law Journal, 88(3), 310-311. page. 310

Court and ruled that the action was against the law.<sup>3</sup> The supreme Court has opinion that. Whereas based on Article 224 of HIR, the auction conducted as a result of the grosse mortgage deed entitled "For Justice Based on the One Supreme God" which has the same legal force as a court decision, must be carried out by order and based on the leadership of the head of the district court if there is no reconciliation . "Even though it is visible to the naked eye, it should be noted that the creditor in the above case actually exercised his parate execution rights, not his executorial title rights. Therefore, Article 224 HIR should not apply to this case at all. However, from that time until today, all land mortgages must exercise executorial rights. Not only that, even the Execution of mortgage rights cannot be carried out due to the decision.<sup>4</sup>

From the two decisions it can be said that The substance of the Constitutional Court's decision has long been a polemic in its implementation, even before the appear of Mortgage and Fiduciary Guarantees, Parate Executions have been widely carried out by creditors and those authorized by creditors to withdraw collateral with their own power, in order get a faster debt repayment. In such cases, agreement by the debtor is not required. The spirit contained in both decisions are accordance with the principle of muamalat in Islam, where transactions based on Islamic principles must not contain usury, maisir, gharar and do not prejudice the other parties, and must be transparent. In addition, all transactions carried out must be consensual or voluntary between each other, there must be no pressure, coercion, fraud, and mis-statements. If this is not fulfilled, then the transaction is carried out in a vanity way.<sup>5</sup> As explained in the Qur'an Surah Annisa (4): 29 which means:

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<sup>3</sup>Antonius Nicholas Budi, "Abolition of Parate Execution As a Result of Constitutional Court Ruling Number 18/Puu-Xvii/2019," *Journal of Law and Justice* 9, no. 2 (2020): 255. Pg. 268

<sup>4</sup> *Ibid.*

<sup>5</sup>Gemala Dewi, Wiryarningsih, and Yeni Salma Barlinti, *Islamic Binding Law in Indonesia*, Faculty of Law, University of Indonesia, Prenadamedia Group, Depok, 2020, Pg. 30.

*O you who believe, do not eat each other's wealth in a false way, except by way of commerce which is carried out with mutual consent between you.*

The verse above shows that transactions should be based on the willingness of each other. In a muamalat relationship, transactions made by coercion or fraud cannot be justified. If that happens, then the transaction is void. The voluntary element in a transaction shows the sincerity and good faith of the parties.

In the Compilation of Islamic Economic Law (KHES) it is explained in article 403 paragraph 1 of the Compilation of Islamic Economic Law regarding the sale of rahn assets which states that murtahin must warn Rahin to immediately pay off his debt when it is due. If there is no warning from the murtahin to pay off the debt from rahin, then the confiscation cannot be carried out. In addition, the auction must be based on the willingness of rahin and murtahin<sup>6</sup>.

On the other hand, The Constitutional Court added provisions in the Execution of fiduciary guarantees in the form of a statement from the seller that the auctioned goods were in the possession of the seller and had been submitted voluntarily by the debtor/fiduciary giver, and the debtor/fiduciary giver had agreed that there had been a breach of contract/default and there were no objections from debtor/fiduciary for the implementation of the auction. This study examines the principle of willingness to parate Execution which is the basis of the Constitutional Court in Decision Number: 18/PUU-XVII/2019 and its compliance with the principles of Sharia Guarantee Law.

Marriage is a mirror of culture. It represents a complex, long-lasting, and sometimes complicated cultural process. In the discussion about the acculturation of Islam and local culture in the archipelago, marriage

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<sup>6</sup>Asna Jazillatul; Nasyiah Chusna Iffaty, "Implementation of Sharia Principles on Confiscation of Fiduciary Collateral," *De Jure: Journal of Law and Sharia*, no. Vol 4, No 2: December 2012 (2012), p. 155-156

traditions are themes that deserve to be presented as examples, because apart from being unique, they contain elements of religion or belief, law, kinship, and tradition<sup>7</sup>, and applies universally.<sup>8</sup> Therefore, marriage is not only about sex, but also about rights and obligations, protection of offspring, maintenance of the property, social status, and social interaction.<sup>9</sup>

Quite a lot of researchers direct their attention to the tradition of marriage to get a picture of the relationship between religion and culture. Lutfiyah, for example, points out that marriages held in Javanese customs mean at the same time the implementation of marriages according to Islamic provisions, because among the traditional processions is the fulfillment of the provisions of the pillars and conditions taught by Islam.<sup>10</sup> Likewise, research by Ahmad Isnaeni and Kiki Muhammad Hakiki on traditional marriages in the people of Lampung Pepadun shows the harmonious fabric of Islam and culture.<sup>11</sup> The meeting of Islam and culture in the two studies can be categorized as accommodated acculturation, namely acculturation that adapts to each other and can suppress conflict.<sup>12</sup>

Besides being accommodating, Islam and culture sometimes meet in conflict relations. As stated by Juhansar et al. that in the *dui menre'* tradition of Bugis marriages, religion and culture can be compromised at one time, but can also conflict at other times. This conflict is usually triggered by differences in social strata, differences in interests, and

<sup>7</sup> Yayan Sopyan and Helma Suryani, "Marriage with Same Tribes in the Customary Law of Minangkabau Batipuh Ateh (A Legal Anthropology Approach)", *Jurnal Hukum Islam* 18, No. 2 (2020): 157–72, <https://doi.org/https://doi.org/10.28918/jhi.v18i2.3262>.

<sup>8</sup> Hattama Rosid, Nyayuk Khotijah, and Amilda, "Penyerapan Nilai-Nilai Budaya Lokal Dalam Kehidupan Beragama di Palembang (Studi Tentang Budaya Lokal di Palembang)," in *Harmonisasi Agama dan Budaya di Indonesia*, ed. Rusdi Muchtar (Jakarta: Balai Penelitian dan Pengembangan Agama Jakarta, 2009), 357–447.

<sup>9</sup> Koentjaraningrat, *Beberapa Pokok Antropologi Sosial* (Jakarta: Dian Rakyat, 1980).

<sup>10</sup> Luthfiah Luthfiah, "Relasi Budaya dan Agama dalam Pernikahan," *Jurnal Hukum Islam* 12, No. 1 (2014): 1–8, <https://doi.org/10.28918/jhi.v12i1.524>.

<sup>11</sup> Ahmad Isnaeni and Kiki Muhamad Hakiki, "Simbol Islam Dan Adat Dalam Perkawinan Adat Lampung Pepadun," *Kalam* 10, No. 1 (2017): 193, <https://doi.org/10.24042/klm.v10i1.341>.

<sup>12</sup> Muhammad Taufik, "Harmoni Islam dan Budaya Lokal," *Ilmu Ushuluddin* 12, No. 2 (2013): 255–70.

conflicts of interest of local elites.<sup>13</sup> Likewise, Asliah Zainal and Sudarmi Suud's study of tolaki marriages in Southeast Sulawesi shows that there is symbolic conflict and violence in the process of bargaining for marriage terms, even though religion has provided clear terms and conditions.<sup>14</sup>

The conflicts revealed in the last two studies occur in practical aspects, not at the level of values and norms. The conflict in question is a disagreement between religious leaders and traditional leaders at the implementation stage. This is similar to the study of Abdur Rahim and Wisma Nugraha Christianto Richardus on negotiations on the nyongkolan tradition in Sasak customs, Lombok. This study reveals that kecimol activities that are often carried out in the nyongkolan tradition often trigger social problems, such as traffic jams, eroticism, rah-rah on the streets, and the like. Because of this, Sasak religious and customary leaders then negotiated and agreed to ban this tradition.<sup>15</sup>

However, there is a marriage tradition that shows that Islam and adat build negotiating relations at the level of values and norms, not just a matter of casuistic practice. The negotiation relationship in question is in the tradition of endogamous marriage in Kerinci, Jambi. If the study of Luthfiyah (2014) and Taufik (2013) shows the negotiation of Islam and culture as a historical event (while the traditions that are preserved today are the product of past acculturation), then the negotiation of Islam and tradition in endogamous marriages in Kerinci is certainly today. also connected to the past. Even if the study of Juhansar, et al (2021), Zainal, et al. (2019), and Rahim & Christianto (2019) show that there are religious

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<sup>13</sup> Juhansar, Mustaqim Pabbajah, and Hasse Jubba, "Relasi Agama dan Budaya dalam Tradisi Dui Menre' Pada Pernikahan Masyarakat Bugis," *Dharmasmrti: Jurnal Ilmu Agama dan Kebudayaan* 21, No. 2 (2021): 15–28.

<sup>14</sup> Asliah Zainal and Sudarmi Suud, "Kekerasan Simbolik dalam Tradisi Perkawinan Masyarakat Tolaki Sulawesi Tenggara," *Al-Izzah: Jurnal Hasil-Hasil Penelitian* 13, No. 2 (2018): 192–209, <https://doi.org/10.31332/ai.v13i2.1068>; Asliah Zainal, Sudarmi Suud, and Muhammad Asrianto Zainal, "Negosiasi Adat dan Agama dalam Tradisi Perkawinan Masyarakat Tolaki di Sulawesi Tenggara," in *Islam and Humanities (Islam and Malay Local Wisdom)*, 2019.

<sup>15</sup> Abdul Rahim and Wisma Nugraha Christianto, "Negosiasi Atas Adat dalam Sistem Pelaksanaan Tradisi Nyongkolan Sasak Lombok," *Jurnal Kawistara* 9, No. 1 (2019): 28, <https://doi.org/10.22146/kawistara.36125>.

and cultural negotiations at present, this phenomenon occurs at the level of practice. Meanwhile, endogamous marriage in Kerinci demonstrates the negotiating relationship between Islam and culture at the level of norms and values and is still ongoing today.

So far there have been no studies that specifically highlight this point. For this reason, this research will be directed at two things. First, how is the influence of Islam on the endogamous marriage tradition in Kerinci. Second, how is the pattern of Islamic and cultural negotiations reflected in the marriage of Endogamy in Kerinci. This research is expected to make a theoretical contribution to religion, culture, and the relationship between the two, as well as their practice in society.

Therefore, this study uses qualitative data with the consideration that this research is to find the depth of meaning for the phenomenon of endogamous marriage, motives, context, social dynamics, and social factors that are more relevant to be approached with qualitative methods.<sup>16</sup> In addition, this study tries to provide an interpretation of social action by utilizing narrative data and detailed stories. Analysis that involves interpretation is more relevant to qualitative methods because the qualitative method itself is often termed interpretive research.<sup>17</sup>

This type of research is field research with the location setting in Kerinci Regency, Jambi Province. The samples were chosen purposively, namely Semerap Village, Keliling Danau District, and Kemantan Village, East Air Warm District. These two villages already represent the downstream Kerinci region and the homecoming section which in certain cases are considered to have their cultural characteristics. Data were obtained through interviews with religious leaders, traditional leaders, and communities involved in endogamous marriages; observations on the implementation of endogamous marriages; and review of relevant

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<sup>16</sup> J. R. Raco, *Metode Penelitian Kualitatif: Jenis, Karakter, Dan Keunggulannya*, ed. Arita L. (Jakarta: Grasindo, 2010).

<sup>17</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*, 19th ed. (Bandung: Alfabeta, 2013).



documents. The validity of the data was tested using triangulation techniques on different data, information, and sources then followed up by building a coherent theme justification. These themes are built based on several data sources or participant perspectives to increase the validity of the study.<sup>18</sup>

## The Influence of Islam on Endogamous Marriage Traditions in Kerinci

Long before religions came into existence, the people of Kerinci had practiced endogamous marriages. Hindu-Buddhist religion is thought to have entered Kerinci in the 14th century<sup>19</sup>, while Islam, based on strong evidence, around the 17th century<sup>20</sup>. The arrival of these religions to Kerinci certainly influences the culture of the community, because religion comes with a set of norms that require its adherents to practice it properly.<sup>21</sup> However, the influence of these religions did not eliminate endogamous marriage from the culture of the Kerinci society.

The marriage system of traditional communities tends to be endogamous, including in Kerinci. Their main reason is to keep the inheritance from falling into the hands of others<sup>22</sup>. When Islam came, this type of marriage was not eliminated, but only gained influence and adjustments. Since its first arrival, Islamic elements have slowly entered

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<sup>18</sup> John W. Creswell, *Research Design: Pendekatan Metode Kualitatif, Kuantitatif, Dan Campuran*, ed. Achmad Fawaid and Rianayati Kusmini Pancasari, 4th ed. (Yogyakarta: Pustaka Pelajar, 2019).

<sup>19</sup> Uli Kozok, *Kitab Undang-Undang Tanjung Tanah: Naskah Melayu Yang Tertua* (Jakarta: Yayasan Obor, 2006).

<sup>20</sup> Aulia Tasman, "Membongkar Adat Lamo Pusako Usang," *Tasman1959.Blogspot.Com*, 2015; Iskandar Zakaria et al., *Penelitian Dan Pengkajian Naskah Kuno Daerah Jambi I*, 1st ed. (Jakarta: Departemen Pendidikan dan Kebudayaan RI, 1989).

<sup>21</sup> Syaiful Hamali, "Agama Dalam Perspektif Sosiologis," *Al-Adyan: Jurnal Studi Lintas Agama* 12, No. 2 (2017): 86–105, <https://doi.org/10.24042/ajsla.v12i2.2111>.

<sup>22</sup> Ema Lestari and Fatmariza Fatmariza, "Kerentanan Perempuan Dalam Pernikahan Nalok Judoh Balik Ke Lubuk Pada Masyarakat Semurup," *Marwah: Jurnal Perempuan, Agama Dan Jender* 19, No. 1 (2020): 77, <https://doi.org/10.24014/marwah.v19i1.9583>; Azwar, "Masyarakat Minangkabau Dengan Kerinci Di Kota Sungai Penuh, Provinsi Jambi," in *Seminar Internasional Kerjasama Universitas Andalas Dengan Universitas Kebangsaan Melayu Malaysia* (Bukittinggi, 2009).

into people's lives, so that many community rituals have become media for da'wah, and Islam is increasingly accepted by the people of Kerinci.<sup>23</sup>

Islam influences the marriage tradition in Kerinci, starting from the earliest process in the form of engagement and application, to the contract and wedding ceremony. This series of wedding processions, if observed in every detail of the activities, shows that there are elements of Kerinci culture and Islam that are intertwined so that they seem to have become one unit. Before the arrival of Islam, the marriage procession was carried out based on traditions preserved from previous generations. Usually, in cultures that still preserve traditions from ancient times, every important event in their life, including marriage, is celebrated with dance <sup>24</sup>. In the pre-Islamic period, the marriage system of the Kerinci people did not have pillars and conditions and did not consider mahrams (people who were forbidden to marry) as explained in the fiqh of munakahat. Regarding this, an informant said that: *Before Islam came, in this area there was no marriage like now. His name is also still ignorant, if you get married it's just a question: do you want it or not with the man or vice versa? Then it takes place*<sup>25</sup>

Apart from not taking into account the pillars and conditions as well as mahram, the period before Islam in Kerinci also often encountered cases of pregnant women out of wedlock and abortions. The act of abortion is usually carried out because couples who have already had a husband-wife relationship are constrained in carrying out their marriage legally according to custom, it could be due to age constraints, unfulfilled customary requirements, not obtaining family approval, or other reasons. Regarding this, the informant said, "before Islam entered Kerinci, there were many cases of abortion or throwing away fetuses that were already in

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<sup>23</sup> Hafiful Hadi Sunliyensar, "Ritual Asyeik Sebagai Akulturasi Antara Kebudayaan Islam Dengan Kebudayaan Pra-Islam Suku Kerinci," *Siddhayatra* 21, No. 2 (2016): 107–28.

<sup>24</sup> Curt Sachs, *World History of the Dance* (New York: Norton Library, 1963).

<sup>25</sup> Nuzul Iskandar, "Catatan Wawancara Tokoh Adat Kemantan" (Kerinci, 2021).

shape. The people of Kerinci call him '*Kampa*'<sup>26</sup>. This statement illustrates that the influence of Islam on marriage in Kerinci is not only on the procession and wedding party but also on the norms of decency in the society.

From before the Islamic period, the Kerinci people have followed the tradition of marrying close relatives, except for the children of their mother's sisters (cousins), because this kind of relationship is called "*sapadik*" which textually means "brothers". This illustrates how strong the kinship relationship from the mother line (female) in Kerinci indeed adheres to the matrilineal system.<sup>27</sup> However, the matrilineal system in Kerinci does not adhere to the tribal or clan system as practiced by the Minangkabau community, although in many ways Kerinci customs have had a lot of Minangkabau influence.<sup>28</sup>

In addition, there is also a prohibition against marrying the child of the father's brother who is also termed "*keturunan wali*". This provision seems to have been in effect before the arrival of Islam because in Islam there is no prohibition against marrying cousins from such kinship lines. In fact, people with these criteria in Islam are called "*wali tharfain*" (two-sided guardians), namely people who can act as guardians and can also marry them <sup>29</sup>. Although the term "wali" comes from Islam, the terms are not used by the Kerinci people, but they still refer to customs that consider close cousin relations from the father's brother line. Although the Kerinci people adhere to a matrilineal kinship system, for the criteria for this prospective husband/wife, the father's kinship relationship is also calculated by considering the closeness of kinship. Regarding this, the informant said:

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<sup>26</sup> Iskandar.

<sup>27</sup> Hafiful Hadi Sunliyensar, *Tanah, Kuasa, Dan Niaga: Dinamika Relasi Antara Orang Kerinci Dan Kerajaan-Kerajaan Islam Di Sekitarnya Dari Abad XVII Hingga Abad XIX* (Jakarta: Perpusnas Press, 2019).

<sup>28</sup> Sopyan and Suryani, "Marriage with Same Tribes in the Customary Law of Minangkabau Batipuh Ateh (A Legal Anthropology Approach)."

<sup>29</sup> Wahbah Al-Zuhaily, *Al-Fiqh Al-Islami Wa Adillatuh*, 2nd ed. (Damaskus: Dar al-Fikr, 1985).

It is not permissible to marry the child of the father's brother because according to the Kemantan custom, such a relationship is called "*keturunan wali*" and the child of our father's brother can become our guardian. However, it is also not allowed with the children of the mother's sister, because according to custom, the relationship with the children of the mother's sister is the same as the siblings which in the former language are called *sapadik*.<sup>30</sup>

The informant's statement above shows that in addition to cousins from the mother's line, the Kerinci people are recommended to marry the closest relatives, namely the child of the mother's brother termed "*pobisan anak mamak*" or the child of the father's sister termed "*pobisan anak datang*". If there are no close relatives with these criteria, then they look for relatives more distant. This provision has been in place for a long time before the arrival of Islam and has been preserved after the arrival of Islam because there are no prohibitions.

Marriage with a *pobisan* is considered an ideal marriage in the Kerinci custom because this system can maintain the inheritance of a people (clan) from falling into the hands of others. The Kerinci people term this "*pusko ideak bakuak*"<sup>31</sup>. In this regard, a traditional leader in Keliling Danau District, Uyub (titled "Tuan Kodi") said that:

People's habits assume that instead of supporting other people's children or families, it is better to support their own family. Even though later the wife will spend her husband's property, her husband's family will not feel harmed, because it is their niece who spends it<sup>32</sup>.

The informant's explanation above shows that the motive for endogamous marriage in Kerinci is not only due to customary considerations and close kinship lines, but also economic considerations.

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<sup>30</sup> Iskandar, "Catatan Wawancara Tokoh Adat Kemantan."

<sup>31</sup> Lovena Mentari Rerisanti, "Kulok Dalam Upacara Perkawinan Masyarakat Suku Kerinci, Jambi" (Universitas Negeri Jakarta, 2018).

<sup>32</sup> Nuzul Iskandar, "Catatan Wawancara Uyub (Tuan Kodi)" (Kerinci, 2021).

Motives like this are not unusual and specific to Kerinci but can be found in almost all areas or communities that practice endogamous marriage<sup>33</sup>.

In addition to the criteria above, there is a form of endogamous marriage that is conditionally permitted by the Kerinci custom, namely marriage with distant nieces and nephews. In terms of kinship based on the matrilineal system, the woman is still counted as a niece by her husband, but not a close or direct relative. This form of marriage is referred to as "discreet marriage". Neither custom nor Islam prohibits this kind of marriage, because what is prohibited by both is marriage with biological nieces and nephews. However, because kinship lines are still counted as nieces and nephews, adat provides an additional condition that they must pay a fine which is termed "budendo" during the *akikah* event or when the child takes a bath later. The fine is one coin, a banana with its roots, sugar cane, and a coconut. This budendo process is carried out with traditional procedures before eating the *akikah* dish<sup>34</sup>.

The Kerinci manuscripts, which were generally written in the range 1727-1833 and then compiled by Voorhoeve under the name "Tambo Kerinci", show that until the 18th century, Islamic law in matters of marriage (*fikih munakahat*) had not been fully implemented in Kerinci. Kerinci, which at that time was under the Jambi Sultanate, was ordered by the Sultan to tighten Islamic law in four respects. First, do not perform the ritual procession with drums, gongs, chrysanthemums, or rifles at the time of death. Second, there is no longer any mixing of men and women in singing events, and do not worship spirits, ghosts, and demons which are believed to exist in stone, wood, and other places. Third, do not marry women without a guardian. Fourth, don't eat food and drinks that are forbidden by Islam anymore<sup>35</sup>.

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<sup>33</sup> Heri Zulhadi and Mohsi, "Pandangan Hukum Islam Terhadap Adat Perkawinan Endogami Masyarakat Sade," *Ulumuna: Jurnal Studi Keislaman* 5, No. 1 (2019): 78–92, <https://doi.org/https://doi.org/10.36420/ju.v5i1.3637>.

<sup>34</sup> Dedi Armain, "Dendo Kawin Sumbang, Tradisi Semurup Kerinci," *Kemendikbud.Go.Id*, 2018.

<sup>35</sup> Petrus Voorhoeve, "Tambo Kerinci," hawaii.edu, 2021.

The important point emphasized by the letter of the Sultan of Jambi is the issue of marriages that are not carried out by proper guardians as stipulated by Islamic law. This shows that the form of Islamic influence in marital issues in Kerinci is to emphasize the issue of guardianship. This influence persists to this day and is even stronger after the entry of state power through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. This influence can be seen in every marriage procession for Moslems in Kerinci which is generally carried out according to the provisions of the *fikih munakahat*. Even if there is a marriage without a guardian or by a guardian who does not meet the requirements of *fikh munakahat*, it is considered an oddity or deviation, and even then, the amount is quite minimal.

The influence of Islam on more specific aspects of endogamous marriage in Kerinci can be traced through the concept of “*kafaah*” (equality) which is part of the concept of Islamic marriage. Through this concept, Muslims are taught about equality between men and women who will establish a relationship as husband and wife <sup>36</sup>. However, the concept of *kafaah* is only a consideration, not an element that determines the validity of marriage.

There are five elements to consider in weighing *kafaah*. First, the status of free or slave. Thus, a free man is considered not commensurate with a slave woman or vice versa. Second, religion, so that a Muslim is considered not commensurate with non-Muslim women or vice versa. Third, *nasab* or lineage. Thus, a man who has a high or honorable lineage or lineage is considered unequal to a woman from a lineage or lineage below him, and vice versa. Fourth, the type of work. There are certain types of work that are considered nobler and occupy a high social stratum in society, and conversely, there are certain jobs that show low social strata. Fifth, the disgrace of marriage. With understanding <sup>37</sup>. In the

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<sup>36</sup> Mushthafa Al-Khin, Mushthafa Al-Bugha, and Ali Al-Syarbaji, *Al-Fiqh Al-Manhaji 'Ala Madzab Al-Imam Al-Syafi'*, 14th ed. (Damaskus: Dar al-Qalam, 2013).

<sup>37</sup> Nawawi Al-Bantani, *Nihayah Al-Zain* (Beirut: Dar al-Fikr, 1898).

concept of *kafaah*, there is no consideration of the closeness of the kinship line.

These five points were initially not considered by the Kerinci community. Their previous consideration was the closeness of the line of kinship. After Islam entered, some points were considered, and some were not. The first point about free or slave status is also not considered, because in Kerinci there is no free or slave status. The second point, religion, actually becomes the main consideration, overcoming the consideration of the closeness of the kinship line. The third point regarding *nasab* or lineage is also not considered, because in Kerinci there is no caste system or social class. Even if previously, there were considerations of kinship, it was only based on closeness, not because there was a certain lineage or lineage that was more honored than others, as in the caste system or social class. The fourth point about the type of work, at first this was not very obvious, but over time, the type of work became one of the considerations at this time, although not the main one. However, the emergence of this consideration is not due to the influence of Islam, but the trend of modernization or even the perspective of colonial heritage. The fifth point about the disgrace of marriage was not widely disclosed to the public, both before and after the arrival of Islam, because it was considered taboo to be discussed openly.

As for the second point, regarding religious observance, this is where the momentum for the change in the trend of endogamy occurs. Because religion has become the main consideration, the following considerations refer to religious guidance. Meanwhile, religion does not consider the closeness of kinship lines. Therefore, in the daily life of the people of Kerinci often appears the phrase "*what is important is the same religion, let it not be close relatives*". On the other hand, there is almost no expression of "let it be not of the same religion, as long as it is closely related" because the majority of the people of Kerinci are Muslim.

From here, many Kerinci people started marrying people outside their relatives, even outside the village to outside their area. Religion builds awareness that the most important thing to consider in choosing a partner is religion itself, while others can be adapted to conditions. Islam seems to have warned long ago that times will continue to develop, and interactions will continue to expand so that endogamous marriages will be increasingly difficult to maintain. This means that Islam has guided the marriage system of the Kerinci society following the times.

Indeed, there are still many villages or families that are very strict in maintaining endogamous marriages. However, their main consideration remains religion (both are Muslims). Those who still maintain endogamous marriages argue that it is one of the easiest ways to find out the religion of their prospective spouses or family members, with the assumption that the closer the kinship, the more religious they will be known. Regarding this, the informant said:

According to Kemantan custom, it is permissible to marry someone from an outside village, but adat will first find out about the customs of the candidate and what his family is, what his religion is, and what his background is. Meanwhile, marrying another person in the village of Kemantan, according to custom, the background of the candidate is already known, and everything is clear <sup>38</sup>.

The informant's expression above shows that although in this endogamous marriage there are already two elements, namely elements of adat and elements of religion, both can be in line and mutually reinforcing. Adat uses its authority to verify a person's religion, while religion acts as the foundation of adat. Adat plays a role no longer just for custom, but at the same time for religion. Meanwhile, religion plays a role not with itself, but with custom. There may be other motives that can still be traced in this context, but these motives will be described further in the third part of this chapter.

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<sup>38</sup> Iskandar, "Catatan Wawancara Tokoh Adat Kemantan."



After the Islamic period, the implementation of marriage in Kerinci, both endogamy and exogamy, was framed in the unity of adat and religion. All traditional processions, from proposals to banquets, that existed before the arrival of Islam were maintained as long as they did not conflict with Islamic teachings<sup>39</sup>. At several stages, the Islamic content is very obvious, especially in the procession of the marriage contract. The involvement of traditional leaders and religious leaders in stages is also like a unit. This condition shows that kinship closeness is no longer a top priority in the marriage tradition because there are traditional processions and religious processions, as well as the involvement of traditional leaders and figures in the stages.

## Pattern Negotiation of Islam and Kerinci Culture in Endogamous Marriage

There are many factors, considerations, or motives that encourage endogamous marriage so that it becomes a tradition. There are religious, regional, caste, economic, or other motives<sup>40</sup>. The Arab community in Indonesia, for example, preserves the tradition of endogamous marriage to maintain their lineage or lineage<sup>41</sup>. Certain castes in Bali forbid the marriage of members with lower castes because it is considered degrading to their dignity<sup>42</sup>. However, in general, endogamous marriages are preserved to keep family assets from falling into the hands of others<sup>43</sup>.

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<sup>39</sup> Refisrul and Ajisman, *Orang Minangkabau Di Kerinci: Dari Kemerdekaan Sampai Reformasi 1945-1998* (Padang: BPNB Sumatera Barat, 2015).

<sup>40</sup> Zuhadi and Mohsi, "Pandangan Hukum Islam Terhadap Adat Perkawinan Endogami Masyarakat Sade."

<sup>41</sup> Dewi Ulya Rifqiyati, "Dinamika Perkawinan Endogami Pada Keturunan Arab Di Yogyakarta" (Universitas Islam Negeri Sunan Kalijaga Jogjakarta, 2017).

<sup>42</sup> I Nyoman Budiana, *Perkawinan Beda Wangsa Dalam Masyarakat Bali* (Yogyakarta: Graha Ilmu, 2009).

<sup>43</sup> I Wayan Lali Yogantara, *Perkawinan Endogami Di Desa Tenganan Pegringsingan Karangasem*, ed. I Ketut Sudarsana (Bali: Jayapangus Press, 2018).

Likewise, in Kerinci, endogamous marriages are preserved to keep property from being transferred to someone else's hands after the owner dies<sup>44</sup>. A Kerinci man, even though he acts as a husband in his wife's house and a father to his children, he is still a *mamak* (uncle) in the house of his parents or sister whose role is very important. In fact, in his wife's house, his role is only that of a *semendo* who can only use his wife's inheritance but has no authority over the property. The authority of a man or husband over the inheritance in the house of his parents or sister. The heirlooms in the parents' house cannot be passed on to their children, because they can only be inherited from their nieces and nephews from a sister's line.

If a woman is married to a man who is not from her line of relatives, the woman's family will regret it when her inheritance is used by the *semendo* who their relatives are not. On the other hand, when a man marries a woman who is not from his kinship line, the men's family also regrets it because their inheritance is used by people who are not relatives. Therefore, so that the obligation of a man to protect the family heirlooms (parents and sisters) is not neglected, and at the same time his wife's family does not feel "lost" because their inheritance is used by people who are not their relatives, endogamous marriage is the best choice. realistic for the people of Kerinci.

However, endogamy is not obligatory and consequently exogamous marriage is strictly prohibited, as some castes in Bali. Endogamous marriage is not included in the Kerinci customary norms. It is simply understood and applied in people's daily lives based on an exclusive agreement. Even if it is violated, there are no customary sanctions, although it is possible that it can damage social interactions between individuals or families.

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<sup>44</sup> Azwar, "Masyarakat Minangkabau Dengan Kerinci Di Kota Sungai Penuh, Provinsi Jambi."

The arrival of Islam to the land of Kerinci played a role in repositioning Indogamous marriages in social life. Before Islam, it seemed as if there was a mutual agreement—although it couldn't be said that it was the norm—that endogamous marriage was highly emphasized. After Islam came, endogamy was positioned as an indirect and non-binding agreement, because it did not exist in customary norms and was not required. The arrival of Islam to Kerinci has opened the public's perspective that endogamous marriage is only an individual choice that is exclusive and traditional, not customary norms. Islam teaches them that marriage with people outside the kinship line, even outside the region, is permissible as long as they are of the same religion (Islam) and meet the requirements and pillars of marriage.

The relationship between Islam and culture that is built through the pattern of acculturation in Kerinci can be seen in many aspects, both products, expressions, ethics, and the daily interactions of the people. Acculturation in cultural products in Kerinci, for example, can be seen in decorative motifs or carvings in ancient houses of worship, one of which is the Pondok Tinggi Grand Mosque <sup>45</sup>, which is currently administratively located in the Sungai Penuh City area.

In the marriage procession, Islamic norms are accepted, absorbed, synergized with the original culture, then expressed as a new culture. However, it is not new at all, because it still contains the values of both elements. Islamic values which at the beginning of their arrival were considered as something foreign, were gradually accepted and integrated into the local culture. The meeting of these two elements in Kerinci was almost without conflict. It is within this framework that endogamous marriages live in society.

However, endogamous marriage in Kerinci still leaves problems. There is a tug of war between Islam and culture in viewing marriage

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<sup>45</sup> M. Faisal Alamsyah, "Tinjauan Arsitektur Dan Ragam Hias Masjid Agung Pondok Tinggi Kerinci" (Universitas Indonesia, 2001).

between cousins. In Islam, marriage between cousins, both from the mother's line and the father's line, is not at all prohibited. However, in the Kerinci custom, there is a segregation of the position of cousins in marriage. Some cousins are highly recommended to marry and some cousins are strongly discouraged from marrying. The first category is the child of the mother's brother and the child of the father's sister, while the second category is the child of the father's brother and the child of the mother's sister. For each of these categories, the Kerinci people have their designations. The child of the mother's brother is called "*pobisan anak mamak*". The child of the father's sister is called "*pobisan anak datang*". The child of the father's brother is called the "*keturunan wali*". The child of the mother's sister is called "*sapadik*".

*Pobisan anak mamak* and *pobisan anak datang* is highly recommended to be married because religion does not prohibit it, while socially there is a close kinship that is worth maintaining. Meanwhile, *sapadik* relationship is not recommended to get married because it is considered like two people who are siblings. Lexically, *sapadik* means brothers or sisters. *Sapadik* is considered to be siblings because Kerinci adheres to a matrilineal kinship system. However, Kerinci does not fully apply the concept of ethnicity in Minangkabau, although in many ways its customs are influenced by Minangkabau. As for the prohibition of marriage with the *keturunan wali*, because according to custom, custom itself does not prohibit it, but it is religion that forbids it, even when it is confirmed into the fiqh of munakahat <sup>46</sup>. It can be said that the prohibition against marrying a *keturunan wali* is based on the traditional version of the religion (Islam), not the religious version of the religion itself.

For the categories of *pobisan anak mamak* and *pobisan anak datang*, basically there is no conflict because Islam does not prohibit it at all. Although the Kerinci custom contains elements of advice against the

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<sup>46</sup> Ferlan Niko, "Konsep Nikah Sepupu Dalam Perspektif Adat Minangkabau Dan Islam: Studi Kasus Di Luhak Agam, Lubuk Basung, Sumatera Barat (Antara Syari'ah Dan Adat)" (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2016).

two groups, the recommendation cannot be categorized as opposition to Islamic provisions. However, for the category of *sapadik* and *keturunan wali*, Islam also does not provide a prohibition, but the Kerinci custom confirms the prohibition. In fact, for the prohibition on the *keturunan wali*, adat uses Islamic terminology to prohibit it, even though Islam itself does not state the prohibition, so it seems that there is a distortion of the adat community's understanding of Islamic teachings, even further reflecting the negotiation between the two. Regarding this, an informant explained:

In this village, a person is not allowed to marry the child of his father's brother because according to custom, such a relationship is called a *keturunan wali*, because he can become our guardian. It is also not allowed to marry the child of the mother's sister because according to custom, the relationship is the same as the younger siblings, which in the village language is called *sapadik* <sup>47</sup>.

The informant's statement above shows that marriage to cousins of *keturunan wali* and *sapadik* descent are both prohibited. However, the basis for the prohibition is different. The prohibition of marrying a *sapadik* is based on customary considerations that position *sapadik* cousins as siblings. Meanwhile, the prohibition of marrying *keturunan wali* is based on religious considerations according to customary interpretations.

If confirmed on the concept of mahram in fikih munakahat which is based on QS al-Nisa'(04): 22-24, people who are forbidden to be married by a Muslim man (termed "*mahram*") consist of mother (including grandmother and so on), daughters (including grandchildren and so on), sister, father's sister, mother's sister, sister's child, brother's child, nursing mother, sister, mother-in-law, stepdaughter, daughter-in-law, mother-in-law brothers, and father's ex-wife <sup>48</sup>. Thus, it means that cousins (children)

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<sup>47</sup> Iskandar, "Catatan Wawancara Tokoh Adat Kemantan."

<sup>48</sup> Al-Zuhaily, *Al-Fiqh Al-Islami Wa Adillatuh*.

from the path of the father's brother and the daughter of the mother's sister are not included in the mahram category. Indeed, the father's sister and mother's sister are mahrams, but their respective children are not mahrams.

However, if this provision is violated, adat also does not have a sanction mechanism, with the understanding that it is actually just a mutual agreement, not a customary norm. The informant continued his explanation that:

There are no sanctions if something like this happens, because religion is also allowed. However, in this village until now there has never been a marriage in such a family relationship <sup>49</sup>.

This statement shows that the traditional leaders and community of Kerinci are basically aware that Islam does not prohibit marriage with the descendants of these guardians and *sapadik*. The prohibition is based more on traditional and social considerations. In the Kerinci kinship system, the relationship with the wali and *sapadik* descendants is very close, so they are like brothers. Psychologically, people who are considered like siblings have no interest in getting married. If enforced, this can affect the sustainability of marriages and household resilience.

As for the children of the mother's brother (pobisan anak mamak) and the child of the father's sister (pobisan anak datung), they are also not included in the mahram. Regarding this, the informant said, "Those who are allowed to marry with pubis are the children of the father's sister or the child of the mother's brother." This informant's statement shows that the application of customary provisions does not conflict with the fikih munakahat in this aspect.

In determining who is allowed to marry, who is recommended to marry, and who is prohibited from marrying, it seems that there is still a tug of war between adat and Islam. This attraction is even more obvious when a family member is strongly emphasized to marry a *anak mamak* or

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<sup>49</sup> Iskandar, "Catatan Wawancara Tokoh Adat Kemantan."

*anak datang*. In fact, according to an informant <sup>50</sup>, it is not uncommon for Kerinci youths who are wandering outside the region, even in Malaysia, to be deliberately sent home only to be married off to *pobisan anak mamak* or *pobisan anak datang*, and then allowed to return to the overseas after the marriage takes place. This is done to preserve inter-relative marriages and prevent family members from marrying people outside the area or people in overseas lands.

On the other hand, if a marriage occurs with someone outside the village, on average the village applies the “*ngisi adat*” rule, which is a sum of money that must be paid to the local customary institution. Regarding this, the informant explained:

Married to an outsider must pay customary money / or fill in customary money as much as 1,500,000 if there is a request for permission from the customary person. In many divisions of the money, one of them is development money on betel nut to taste <sup>51</sup>.

For people who do not have enough money, this customary filling rule can be an obstacle to marrying people outside the village, so that they tend to choose a potential partner from their own village. Islam does not regulate the contents of this custom, but custom regulates it. Thus, this rule reflects again the attraction between Islam and adat.

The description above shows that endogamous marriages were carried out by the Kerinci people before the arrival of Islam. The motive is the economy in the form of maintaining a large family heirloom. After the Islamic period, endogamous marriage was maintained, but no longer as strictly as before. The Islamic values adopted by the people of Kerinci, including the marriage tradition, have encouraged them to reposition endogamous marriage proportionally, that in fact it is not a demand that is regulated through customary norms, but merely an exclusive individual choice and occurs on a massive scale.

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<sup>50</sup> Nuzul Iskandar, “Catatan Wawancara Tokoh Adat Kerinci-Sungai Penuh” (Sungai Penuh, 2021).

<sup>51</sup> Iskandar, “Catatan Wawancara Uyub (Tuan Kodi).”

Although Islam has been acculturated with local culture and the trend of endogamous marriage has changed, there are still some aspects that reflect that negotiations between Islam and culture are still ongoing. For many people, endogamous marriage is still maintained with the same motive. On the other hand, the negotiation is obvious when adat positions which cousins are preferred to be married (*pobisan anak datang* and *pobisan anak mamak*) and which cousins are prohibited from marrying (*keturunan wali* and *sepadik*), even though Islam does not provide rules about that.

## Conclusion

Endogamous marriage is one of the traditions that have been influenced by Islam through the process of acculturation. Endogamy, which was previously highly emphasized in marriage, turned into just an option after the arrival of Islam, because according to the concept of *kafaah* taught by Islam, there was no consideration of the closeness of kinship lines. Indeed, there is something similar in the concept of *kafaah* with the practice of endogamy in Kerinci, namely the consideration of nasab or lineage which is usually calculated through the male line. However, upon closer inspection, the two are very different, so it can be concluded that the practice of endogamy in Kerinci is not the same as the consideration of *kafaah* in Islam. The presence of Islam has stimulated the Kerinci people to position the endogamy tradition proportionally, that it turns out that this tradition is not a necessity that is regulated through customary norms, but simply an individual choice that occurs massively and from generation to generation. After the Islamic period, the emphasis on endogamous marriage began to loosen, so the people of Kerinci began to marry outsiders.

Acculturation in endogamous marriage still leaves room for tug of war between Islam and culture. Although it has been realized that



endogamous marriage is only a rational choice for the reason of maintaining the property, not a requirement that is regulated through customary norms, there is still often an emphasis on community members so that they continue to carry out endogamous marriages, thus suggesting that negotiations between Islam and adat are still ongoing. Another aspect that still shows negotiation is in positioning cousins. There are cousins with certain relationship patterns that are highly recommended for marriage, namely the *pobisan anak mamak* and the *pobisan anak datang*; while cousins with other relationship patterns are strictly prohibited from marrying, namely cousins of guardian and *sepadik* descent. The positioning of cousins with such a pattern does not exist in the concept of *fikih munakahat* but is only regulated by adat. However, at a certain point, adat bases its argument on Islam, even though Islam does not teach it.

This study only looks at the negotiation of Islam and adat in one segment of the marriage tradition of the Kerinci community, namely endogamous marriage. There are still many traditions, even segments in marriage, that need to be studied further to see other patterns, complement, and even correct the thesis built in this research. In addition, this research only looks at the negotiating elements of the expressions and products of the community's culture. More confirmation is needed of more authoritative historical documents, such as ancient manuscripts that specifically contain endogamous marriages in Kerinci. It is recommended that further research can complement the shortcomings of this research.

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