

Human Rights Perspective on the Prohibition of Marriage between Members of the Same Tribe in Minangkabau Culture, Specifically Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia

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Abstract

Marriage between tribes is prohibited in Minangkabau culture, because Minangkabau society considers people of the same tribe to be people of the same blood according to matrilineal and sekaum, even though they are from different villages but have the same tribe, so they are still considered to be of the same blood. Article 18B Paragraph 2 of the 1945 Constitution explains that the state respects the unity of customary law communities and their traditional rights as long as they are still alive in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the Law. From a Human Rights perspective, there is no prohibition on marriage between tribes, it is also explained in Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia that everyone has the right to form a family and continue their descendants through a legal marriage. The data collection technique is normative sociological because it uses books, scientific journals, laws and regulations, legal instruments, as well as the results of direct interviews and relevant field research.

Keywords: *Human Rights, Inter-ethnic Marriage, Minangkabau Culture*

INTRODUCTION

Humans are social beings who cannot live on their own and humans are destined to have a life partner since birth, one way for the couple to be related to each other is through the marriage process (Effendi, 2020) . Marriage is a social bond that recognizes the relationship between men and women, including sexual aspects, family formation, and the division of husband and wife tasks (Ahmad Agung Setya Budi, 2023) . The important functions of marriage include fostering affection, providing a sense of security, purpose, togetherness, social status and moral learning. In addition to fulfilling a pillar and conditions of marriage that give rise to legal consequences. The marriage contract also gives rise to rights and obligations between husband and wife. The fulfillment of peace, harmony and tranquility in the family are rights and obligations that must be carried out by each party (Trisnawati, 2023) .

Likewise, the customs that apply in Minangkabau, where in understanding marriage between one tribe, the Minangkabau customary rules led by the "Penghulu" or customary institution

only prohibit marriage between one tribe in the same Nagari, while if marriage between one tribe in a different Nagari is allowed but remains a concern and consideration for the "PENGHULU" in deciding it, because in essence each "PENGHULU" has an active role in maintaining the family, nephews and members of his clan, one of the roles or efforts that can be carried out by the "PENGHULU" in maintaining and overcoming the occurrence of marriage between one tribe is by providing guidance and advice and developing customary values to the family, nephews and members of his clan. One of the reasons why marriage between one tribe is not allowed is because the people in Minangkabau believe that the relationship between one tribe is a family relationship and if this is violated, it will certainly be contrary to and not in accordance with what has been regulated by customary law and this will reflect the position and existence of customary law today which is increasingly weakening (Amalia, 2016) . Basically, marriage will unite two different families, not just unite a husband and wife. In the customary rules in Minangkabau, the couple who will marry are couples from different tribes (exogamy) not one tribe (endogamy) (Diah Puspayanthi I Ketut, 2017) .

The provisions regarding Human Rights in the constitution are regulated in Articles 28A to J of the 1945 Constitution. Historically, the formulation of Human Rights in the constitution has been a dynamic among *the founding fathers* of Indonesia. This is considering that the draft of the 1945 Constitution discussed at the BPUPKI session did not accommodate points regarding Human Rights. However, the drafters agreed that the Constitution to be drafted was based on the principle of family, a principle that contradicts liberalism and individualism (*Ini Babak Akhir Judicial Review Kawin Beda Agama* , nd) . The application of Human Rights in a state based on Pancasila as a source of law seeks to create harmony and balance between both individual interests and national interests (collective/community) (Enggar Wijayanto, 2023) .

Society is a social creature that needs guidance in its life, Human rights that are sovereign of the people are the ideals to be achieved. Aims to provide justice that is appropriate in its place (Khairazi, 2018) . Human rights are norms or moral principles that describe the standards of human attitudes that are systematically protected as national or international human rights law. Human rights are generally understood as absolute rights to become basic rights where people inherently have rights because their position is human which includes aspects of nation, location, language, religion, ethnicity, and other status (Makrifah N, 2021) . As the principle of the rule of law in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides an overview of the form of organizing national and state life based on law as a basis. On the other hand, recognition of Human Rights is an inseparable part of the concept of a state of law. Marriage is a

right that cannot be reduced or eliminated (*non-derogable right*) as regulated in Article 28B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Enggar Wijayanto, 2023) .

This writing aims to discuss what the Prohibition of Marriage between the same tribe in Minangkabau culture is like from the perspective or point of view of Human Rights where there are two principles behind the concept of Human Rights itself, namely the principle of freedom and equality. These two things are the basis for the existence of justice. Human Rights are basic rights recognized in Indonesia, but there are restrictions set by law, morals, ethics, and religious values that emphasize that every human being besides having human rights to be protected, they also have an obligation to respect the human rights of others and also the order of the surrounding community (Putri DW D, 2022)

Based on the significance of the implementation of marriage between one tribe and a different Nagari, it is useful to implement, especially for those who have distant kinship but are bound by the same tribe in order to be able to marry and avoid adultery, that is why researchers are interested in discussing the title of the study on the Perspective of Human Rights on the Prohibition of Marriage Between One Tribe in Minangkabau Culture, especially Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia. The benefits of this study to re-emphasize the reasons why marriage between members of the same ethnic group is not permitted and the perspective of Human Rights (HAM), especially in Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia regarding the prohibition of inter-ethnic marriage. Previous studies only discuss or explain related to marriage within one tribe in Minangkabau from the perspective of Islam and cultural perspectives only. None have discussed it from the perspective of Human Rights. Therefore, here the author will explain marriage within one tribe in Minangkabau culture but from the perspective of Human Rights.

METHOD

The approach used in this research is normative sociological. The normative approach is an approach that is based on texts. The laws are the 1945 Constitution of the Republic of Indonesia, the Human Rights Law and the Marriage Law, as well as literature studies in the form of books, articles, scientific journals, legal instruments and direct interviews and relevant field research. The sociological approach is an approach that is associated with social theories, especially the sociology of society from Minangkabau culture or customs.

The research specification used is descriptive analytical, namely a study that describes clearly, in detail and systematically the object to be studied. To see clearly, in detail and systematically the prohibition of marriage between the same ethnic group in the Minangkabau community from a Human Rights Perspective. The types of data used by the author in the research are as follows . Primary Data; Field data is data obtained from the results of direct research on the object being studied or research objects that are related to the main problem, which is related to the study of the Human Rights Perspective on marriage between ethnic groups in Minangkabau culture. Secondary Data; Secondary data is data obtained by studying library materials in the form of laws and regulations and other literature related to the problems discussed. The research is directed at the phenomena of society related to the Minangkabau wedding tradition using a normative sociological research type, namely where the researcher compiles the research, and concludes and compiles the results of the research on marriage of one tribe in Minangkabau Custom. While the approach used in this study is a qualitative approach, in a qualitative approach the researcher conducts direct interviews with the Minangkabau community of West Sumatra to seek and explore information about marriage of one tribe. Here the researcher interviews the marriage actors, Elders or Chiefs (Datuak), figures and some of the Minangkabau community regarding marriage of one tribe in Minangkabau Custom, after that the researcher observes the results of the interview, so as to find accurate truth.

RESULTS

Marriage Law of One Tribe According to Minangkabau Customs

Customary law is recognized by the state as a valid law. So it is our collective obligation to comply with these regulations. If there is a violation based on this law, then everyone who violates it will receive a sanction that must be paid. Likewise in Minangkabau customs (Dewi & Nizam, 2023) . Each tribe and ethnicity in Indonesia has its own uniqueness and characteristics (Fauzan Al Amin, Syofiani, Arif Rahmat, Fidyah Novita, 2023) . Minangkabau is one of the cultural tribes in West Sumatra Province, Indonesia. The Minangkabau tribe has many uniqueness and cultures that are different from other tribes in Indonesia. The implementation of traditional marriage in the Minangkabau community is carried out with several series of traditional ceremony processions involving elders and traditional leaders. The marriage procession is called *Baralek* (Febria et al., 2022) . The forms of Minangkabau traditional marriage (Febria et al., 2022) :

a. Ideal Marriage

One of the purposes of marriage in Minangkabau is to preserve heirlooms. For this, long-term steps are needed. One of them is by marrying close relatives, such as marrying a mother's child, commonly called "pulang ka mamak" or marrying a father's nephew, commonly called

"pulang ka bako" as a manifestation of "children are held in the lap of nephews and guided". Another form is a "mutually taking" marriage to strengthen the relationship between in-laws. This marriage, commonly called "*cross-cousin*", is very prominent in areas that use "pick-up money" so that the pick-up money does not move into the hands of others.

b. Consanguinal Marriage

In Minangkabau, in addition to building a household for two, marriage is also a matter of two family groups. The groups in question are a group of unilateral descendants from one mother of origin (grandmother). If there is a conflict between the two candidates and the group, the interests of the group are prioritized. Therefore it is called a consanguineous marriage.

c. Respected Son-in-law

Minangkabau society is the same as other societies that long for a son-in-law who is respected/has a position. In some nagari, what is meant by respected people is people of origin. Namely, people who have been in one nagari before others or from immigrants who are called *kamenakan* under *lutuik* (people who come to join one clan).

d. Abstinance Marriage

According to Minangkabau custom, in addition to religious prohibitions on marriage, there are also "taboo marriages". Taboo marriages are marriages that can damage the kinship system, namely blood relatives according to matrilineal descent, one clan or one tribe even though they do not have genealogical relations or are not from the same nagari. Marriage within the same clan or tribe is not a prohibition as a prohibition in the religious sense, but only a taboo set by custom. This has been going on for a long time along with the history of matrilineal kinship. Until now it is still firmly held by its people.

e. Inconsistent Marriage

The term "sumbang" is used for actions that are done inappropriately or are not good according to the judgment of many people, such as a man visiting a girl's house, especially a widow. The mother of the girl or the man will be offended and considered unable to take care of her niece. The word "sumbang" when combined with the word "wrong" (*sumbang salah*), then it means a mistake that is no longer considered immoral, such as committing adultery, insulting the *penghulu* and so on.

The perpetrator can be said to have no sense of shame or is not polite, because he has committed an act that is not commendable and offends customary norms. To carry out a traditional marriage in Minangkabau, it is carried out through several stages or processes, namely: **Maresek**; Maresek is the first exploration as the beginning of a series of wedding ceremonies. In accordance with the kinship system in Minangkabau, the woman's family visits the man's family. Usually the family who comes brings gifts in the form of cakes or fruits in accordance with the etiquette of eastern culture. **Proposing and Exchanging Signs**; The family of the prospective bride comes to the family of the prospective groom to propose. If the engagement is accepted, it continues with exchanging signs as a symbol of the binding agreement and cannot be broken unilaterally. The event involves parents or ninik mamak and elders from both sides. **Mahanta / Ask for permission**; The prospective groom informs and asks for blessings for the wedding plan to his mothers, his father's siblings, his brothers who are married and respected elders. For the prospective groom, he brings a selapah containing nipah leaves and tobacco (but now it has been replaced with cigarettes). While for the prospective bride's family, this ritual includes complete sirih. **Babako-Babaki**; The family of the father of the bride (called bako) wants to show their affection by contributing to the costs according to their ability. The event takes place a few days before the marriage contract. **Bainai Night**; Bainai means attaching finely ground red henna leaves or inai leaves to the nails of the bride-to-be. This grounding will leave a bright red mark on the nails. Usually takes place the night before the marriage contract. This tradition is an expression of affection and blessings from the elders of the bride's family. The philosophy: The last guidance from a father and mother who have raised their daughter with honor, because after marriage, the one who will guide her again is her husband.

1. Picking up Marapulai/Pick up: The Groom The groom is picked up and taken to the bride's house to carry out the marriage contract. This procession is also accompanied by the giving of an inheritance title to the prospective groom as a sign of his maturity. The prospective bride's family must bring a complete set of betel in a cerana which indicates the traditional arrival, complete groom's clothes, yellow rice and chicken stew, side dishes, cakes and fruit.
2. Reception at the House of Anak Daro/Reception at the Bride's House. Welcoming the arrival of the prospective groom at the prospective bride's house. Accompanied by the sound of traditional Minang music, namely talempong and gandang tabuk, as well as a

line of the Reciprocal Customary Wave consisting of young men dressed in silat, and greeted by maidens dressed in traditional clothes who offer betel.

3. Marriage contract; It begins with the reading of holy verses, *ijab kabul*, marriage advice and prayers. *Ijab Kabul* is generally done on Friday afternoon. The dowry after the marriage contract process is completed and has been declared valid, then the handover (*Pemasrahan*) is carried out. The handover is the process of handing over the groom to the bride's family and the acceptance from the bride's family to the groom.
4. *Basandiang* on the bridal dais/*Basandiang* on the bridal dais; The bride and groom will sit side by side on the prepared dais. The bride and groom will wait for the guests *alek salinga alam* and enlivened by typical Minangkabau music.
5. Jewels of the Trail

One week after the marriage contract, usually on Friday afternoon, the newlyweds go to the groom's parents' house and *ninik mamak* with food. The goal is to honor each other's parents (Febria et al., 2022) .

In the Minangkabau culture itself, there is a marriage within the same tribe that becomes a barrier for someone to be able to marry someone from the same tribe. In Minangkabau customs, there is a culture of marriage prohibitions or called "prohibited marriage". Prohibited marriage is a marriage that can damage the kinship system, namely those who are related by blood according to matrilineal lineage or one tribe. Where each tribe is led by a "PENGHULU". A "PENGHULU" is a title given to a leader of a tribe or *korong* in the Minangkabau ethnic population area. A "PENGHULU" must be chosen from a figure who is considered the wisest, most capable, and a man with the clearest views among his family members. In addition, the *PENGHULU* also has a position as *Ninik Mamak* in his tribe or community. According to Minangkabau customary law, a person is prohibited from marrying someone from the same tribe because lineage in Minangkabau is seen based on the mother's lineage, while the marriage system uses a matrilineal or exogamy system (Yustim et al., 2022). Some of the reasons why the Minangkabau people prohibit marriages between members of the same tribe include (Rezi Dwi Fadilla, 2017) :

1. Pioneer of Corruption in the Race; Marriage in the same tribe can cause major conflicts. This is because the husband and wife come from the same tribe, which means they are *badunsanak*. If there is a dispute, they will complain to their respective parents and can destroy the tribe. Just like a country that is more easily destroyed if there is a dispute between people than if it is in conflict with another country.



2. Narrowing Down Social Circles; Those who are of the same tribe are people who are of the same blood and have the same lineage that has been determined by Minangkabau figures and ulama for generations. So that marriages of the same tribe do not create developments in the family or tribal order.
3. Disturbing Children's Psychology If inter-tribal marriage is carried out, it will create customary consequences, namely for those who carry it out, they are not considered by their relatives and are expelled from the traditional community. This can create racist treatment and exclusion which results in psychological disorders in children.
4. Loss of Customary Rights; Couples who marry within their tribe are considered within their tribe and are not accepted by other tribes in the region. For men, the right to hold office (uphold the sako) which exists in the Perpatih Adat system will be lost. Meanwhile, women will lose their rights to all tribal inheritance.
5. Bringing Material Loss; Because they have committed a customary mistake, the perpetrators of inter-tribal marriages must fulfill the conditions set out in the assembly supervised by the Tribal Chief. To accept them to join the family and tribal ties, for example, the couple must provide 50 gantang rice and donate one buffalo or cow for the assembly, pick up the Traditional Chiefs with full ceremony to attend the assembly, admit their mistakes and apologize in front of the community, especially the tribal members who are present (Editorial Team, 2020) .

The prohibition of marriage within the same tribe has existed since our ancestors first pioneered the area in Minangkabau, West Sumatra Province, which consisted of only a few people. It was not like today which has developed so that it is difficult to know the original lineage. They believe that when marrying people from the same tribe, if a problem occurs it is very difficult to solve it (Danil, 2019) . In Minangkabau culture, the matrilineal system is strongly adhered to, which is a system that allows someone to marry someone from a different tribe, thus giving a strong influence to their future descendants. Marriage between one tribe that has been passed down from generation to generation and is also called a sakampung family (one village) or a group of people who gather in several traditional houses with one descendant or one ancestor, so this creates the opinion that marriage between one tribe is marri

In understanding marriage within the same tribe, Minangkabau customary rules led by the Penghulu or customary institution only prohibit marriage within the same tribe in the same Nagari, whereas if marriage within the same tribe in a different Nagari is permitted but remains a concern and consideration for the Penghulu in deciding it, because in essence each Penghulu has an active role in protecting the family, nephews and members of his clan. One of the roles or efforts that can be carried out by the Penghulu in maintaining and overcoming the occurrence of marriage within the same tribe is by providing guidance and advice as well as developing customary values to the family, nephews and members of his clan. The role of customary institutions or penghulu in resolving problems of tribal marriage includes:

- a. Mediation and Conflict Resolution; In resolving conflicts arising from inter-tribal marriages, customary institutions often act as mediators. They can help conflicting families reach an agreement that is acceptable to all parties.
- b. Implementation of customary rules; Customary institutions often refer to customary norms that regulate marriage and family relationships. They ensure that marriages within the tribe or between members of the tribe are followed according to the usual rules.
- c. Facilitating Family Negotiations; Customary institutions can facilitate negotiations between families involved in intermarriage. They help reach agreements where compromises are made and the interests of all parties are taken into account.
- d. Determining the consequences; If inter-tribal marriage violates customary norms, then the customary institution can determine the consequences or sanctions that must be borne by the parties involved. This can include compensation, exchange of property or certain customary ceremonies.
- e. Maintaining tribal harmony; One of the important functions of traditional institutions is to maintain harmony and unity within a tribe or community group. They try to avoid the possibility of conflict that can damage social relations in society.
- f. Providing Cultural Advice; Traditional institutions also provide cultural advice to families who marry within the same tribe. They ensure that the entire wedding process and traditional ceremonies are carried out properly.
- g. Improving Education and Awareness; Customary institutions have a role in increasing public understanding of the importance of following customary norms and cultural values in marriage. They educate the public about applicable customs (Fauzan Al Amin, Syofiani, Arif Rahmat, Fidya Novita, 2023) .

One of the reasons why marriage between tribes is not allowed is because the Minangkabau community believes that a relationship between tribes is a family relationship and if this is violated, it will certainly be contrary to and not in accordance with what has been regulated by customary law and this will reflect the position and existence of customary law which is getting weaker (Amalia, 2016) . In Minangkabau customs, the punishment by the Customary Head is to leave the Nagari for 2 (two) years, be banished from the village, be fined, or be ostracized and humiliated by society. With this punishment, no one will commit a violation.

The Law on Marriage of One Tribe According to Human Rights

The right to marry is a human right that is a constitutional right of citizens as stated in Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that " **Everyone has the right to form a family and continue their lineage through a legal marriage** ". In addition to being regulated in the 1945 Constitution of the Republic of Indonesia, the right to marry is also further regulated in several laws and regulations.

The Declaration of Human Rights not only regulates family security, but also states that adult men and women have the right to marry and form a family without restrictions on nationality or religion (Siswandi, I., & Supriadi, 2023) .

Marriage in terms of human rights itself is a right that is owned in a marital status. This means that marriage also has a guarantee that the rights of a man and woman who carry out the marriage are guaranteed by a rule that regulates human rights regarding marriage. The *Universal Declaration of Human Rights* or UDHR has adjusted the rules on marriage that have been ratified by Law Number 39 of 1999 concerning Human Rights, which was then also stated in positive law in Indonesia, namely Law Number 1 of 1974 concerning Marriage (TRS Cakraningtyas, 2023) . In Law Number 39 of 1999 concerning Human Rights, Article 10 states the following:

- (1) Everyone has the right to form a family and continue their lineage through a legal marriage.
- (2) A valid marriage can only take place with the free will of the prospective husband and wife concerned, in accordance with the provisions of statutory regulations.

For further provisions on guaranteeing the right to carry out marriage, this is regulated in separate regulations, namely Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 as a derivative regulation of Law Number 1 of 1974 concerning Marriage.

The regulation regarding the guarantee of the right to marry for citizens has been clear and has been rigidly regulated, which is the state's commitment to guarantee that citizens' rights are fulfilled in carrying out marriage. In various provisions regarding marriage, the most basic thing regulated is that it is carried out according to the religious provisions of the prospective husband and wife. The state only provides protection to citizens to carry out marriage and is guaranteed to be legalized if the marriage is legalized or approved by the religion of the prospective husband and wife.

From the provisions above, it is clear that the state has provided a guarantee that people have the right to form a family in order to have children, of course in a way that is legal according to religion and the state. Related to the marriage of one tribe which is prohibited in Minangkabau when viewed from the perspective of human rights. Tribes in Minangkabau are associations of kinship based on maternal lineage led by a mamak kepala kaum or also called Datuak. In one tribe there can be many datuak, this is because of the increasing development of society in Minangkabau, because the more developed this is part of kinship based on maternal lineage forming a separate sub-tribe led by a datuak.

It is not uncommon for there to be many Datuak from one tribe, for example in the Malay tribe there are several Datuak. Datuak leadership is passed down from generation to generation based on maternal descent which is passed on to sons from mothers of the same tribe.¹

In line with the development of the times and life that is increasingly developing. Society is increasingly developing life must continue and when they start to grow up, Minang people will look for a soul mate to live together to build a complete and happy family. However, when they have found a soul mate, problems often arise, causing a few problems when they are going to continue the relationship to a more serious stage, namely marriage.

The most common thing that often becomes an obstacle in marriage is the similarity of the prospective couple's tribe. When they are of the same tribe, it will be a problem which is usually a marriage of the same tribe is still taboo for the Minangkabau people. However, is marriage of the same tribe not allowed? Does Minangkabau custom violate Human Rights related to marriage?

Minangkabau customs do not prohibit marriages between tribes, but there are conditions that must be met when carrying out marriages between tribes. The most important condition is that it is permitted by Islamic teachings because in Minangkabau there is something called adat basanti sarak, sarak basandi kitabulla which means custom based on religion and religion based on the

¹ Interview with the Elder of the Malayu Minangkabau Tribe, Mr. Armensis in South Solok Regency, West Sumatra Province.



Qur'an. In marriages between tribes, as long as they are in accordance with Islamic rules that allow within certain degrees of kinship, it is certainly permitted by custom.² The second requirement that must be met is to carry out the process of moving tribes from the male party who will marry also called the term "mangaku induak" to a different tribe by following the customary process according to the customs in the region. This is a form of respect for Human Rights by Minangkabau Custom when there is a problem of marriage between the same tribe where Minangkabau custom will provide a way out of the problem of marriage between the same tribe as long as it is permitted by Islam, because custom follows religion, not religion that follows custom.

DISCUSSION

In this paper, the author tries to provide a different perspective related to marriage of the same tribe in Minangkabau customs reviewed in the context of Human Rights which has been widely written in the perspective of Islam. This paper presents a different perspective in the context of Human Rights regarding whether or not marriage of the same tribe is permissible, whether it is contrary to human rights or not. In this paper, marriage of the same tribe is permitted with the conditions specified, including the existence of differences in the datuk of the tribal or village head and following the process of mangaku induak kesuku which is different and most fundamentally does not conflict with Islam and the concept does not conflict with Human Rights. So it can be concluded that Minangkabau Custom does not violate Human Rights in terms of the right to marry. The results of this study are expected to provide an important contribution to the understanding and handling of these sensitive issues in society.

CONCLUSION

Minangkabau custom does not prohibit marriage between the same tribe, but there are conditions that must be met when carrying out a marriage between the same tribe, namely carrying out the process of moving tribes from the male party who will marry, also called "mangaku induak" to a different tribe by following the customary process according to the customs in the region. This is a form of respect for Human Rights by Minangkabau Custom when there is a problem with marriage between the same tribe, where Minangkabau custom will provide a way out of the problem of

² Interview with the elders of the Malay Minangkabau tribe, namely Mr. Armensis and Mr. Zulkifli in South Solok Regency, West Sumatra Province.

marriage between the same tribe as long as it is permitted by Islam, because custom follows religion, not religion that follows custom.

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