



Settlement of Marital Problems By Using The Traditional Institutions of Married Brothers

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Article Info	Abstract	
<p>Keywords: Marriage Settlement; Customs; Married Brother.</p>	<p>Introduction: Many marital problems arise in the household so that many households end their marriages in court, but settlement in court faces many obstacles due to the accumulation of unresolved marriage cases.</p> <p>Purposes of the Research: To find out and analyze the settlement of marital disputes using the customary institutions of married brothers in Central Maluku district.</p> <p>Methods of the Research: This research was conducted using an empirical juridical approach which is a descriptive study of qualitative analysis. This research attempts to describe the settlement of marital problems by using the traditional marriage system in Haruku Island District, Central Maluku Regency.</p> <p>Results of the Research: The results of the study show that the settlement of marriages using the customary institution of married brothers in the Haruku Island sub-district is very beneficial for husbands and wives who have problems in their marriage which can be resolved by their married relatives, both world problems and their afterlife problems that exist in their married life so that no longer are settlement issues settled in court.</p>	

1. INTRODUCTION

The development of national law must be rooted and lifted from the existing people's law, so that Indonesian national law must serve the interests of the people and the nation of Indonesia.¹ The results of the Seminar on customary law and National Law Development, one of the items formulated, said: that customary law is one of the important sources to obtain materials for national development towards legal unification and especially to be done through the act of legislation by not ignoring the emergence/ growth and development of Customary Law and courts in legal development.² Marriage is a permanent relationship between a man and a woman that is recognized legally by the society concerned based on the applicable marriage regulations.³ The form of marriage depending on the local culture can vary and the purpose can vary as well.. A valid marriage bond is evidenced by a

¹ Soerjono Soekamto, *Masalah Kedudukan dan Peranan Hukum Adat*, (Jakarta: Akademika, 1978), p. 1.

² Badan Pembinaan Hukum Nasional (BPHN), *Seminar Hukum Adat dan Pembinaan Hukum Nasional*, (Jakarta: BPHN, 1976), p. 251.

³ Gunsu Nurmansyah, Nunung Rodliyah, Recca Ayu Hapsari (2019). *Pengantar Antropologi: Sebuah Ikhtisar Mengenal Antropologi*. (Aura Publisher. 2019), p. 100

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document in the form of a marriage certificate. Definition of marriage according to Act Number 1 Year 1974 and Act Number 16 Year 2019 concerning marriage in Chapter 1, namely "the inner bond between a man and a woman as husband and wife with the aim of forming a family (household) happy and eternal based on God Almighty"

Understanding marriage according to the compilation of Islamic law (KHI) in Article 1, namely marriage is marriage, which is a very strong contract or to obey the commands of ALLAH and carry it out is worship. Marriage in Islamic law always begins with Taaruf from the male side to the female side, after this taaruf is accepted will be followed by periods of knowing each other or in today's modern world known as courtship, this is the process leading to the level of marriage and after preparations have been made by the bride and groom and their families the wedding will take place⁴

Moluccas as an integral part of the Republic of Indonesia also has a patrilineal customary law society, whose blood arrangement follows the fatherly line. Patrilineal customary law communities, especially in Central Moluccas, which follow the fatherly line have a kinship system following the father's lineage where children born from marriage enter the father's relatives. The marriage system of Indigenous Peoples follows customs adapted to religious law and remains subject to the provisions of the law. Where after a legal marriage is performed will be followed by the registration of marriage at the agency in charge of the marriage. Marriage does not always run smoothly because there are things that can lead to separation in a marriage that is done. In the villages in the central Moluccas there is one tradition that is different from other communities, namely when you want to marry the family of the bride and groom will appoint one of the close and distant relatives to be a marriage brother for the bride and groom whose job is to take care of the bride and provide solutions and solutions to problems in the household later. The marriage brother who is appointed must be an adult man who has the ability and skill to act in law so that if there is a problem the marriage brother can resolve without having to submit their problem to the court.

2. METHOD

This research was conducted using an empirical juridical approach which is a descriptive study of qualitative analysis. This research attempts to describe the settlement of marital problems by using the traditional marriage system in Haruku Island District, Central Maluku Regency

3. RESULTS AND DISCUSSION

3.1 The Meaning of Brothers Marriage

Before the birth of the Marriage Act, the provisions, procedures and validity of a marriage for Indonesians were generally based on religious law and customary law respectively. According to customary law, marriage is a bond between a man and a woman to form a household that is carried out by custom and religion within involving the families of both brothers and relatives.⁵ Differences in the way of conducting marriage as the influence of arrangement of marriage, bringing consequences to the family way of life, family and

⁴ Barzah Latupono, Akibat Hukum dalam Perkawinan yang Dilakukan oleh Suami Tanpa Ijin Istri Sahnya, *Batulis Civil Law Review*, 1 no 1 (2020): 60 – 67.

⁵ Soerjono Wignjodipoere, *Asas-asas Hukum Adat*, (Jakarta: Gunung Agung, 1988), p. 55.

wealth in a person's life.⁶ After the enactment of the Marriage Act, then there is legal unification in marriage in Indonesia, where marriage has a very closely related to religion / spirituality. Scholten explained that marriage is a legal relationship between a man and a woman to live together eternally recognized by the state.⁷ According to Subekti quoted in the book has written by Soetomo Prawirohamidjojo, marriage is a legitimate relationship between a man and a woman for a long time.⁸ Marriage for Indigenous Peoples is carried out in accordance with the religious laws adopted and the customs prevailing in the area. The definition of custom is "custom". The term adat itself there are various kinds, including adat (aceh), ngadat (gayo); institution/ customary institution (minang); custom (minahasa/ maluku). The definition of customary law according to Ter Har, is the decisions of legal functionaries. According to Van V. Hoven, customary law is a rule of conduct that has sanctions and is not codified. Customary law is a living law (the living law), because the rules that develop grow by themselves without coercion.

Theoretically, the understanding of Legal Society and Legal Society customs are different. Kusmadi Pujosewojo as a society that establishes, bound and subject to governance law itself, while the customary law community is a community arise spontaneously in certain areas whose establishment is not established or commanded by a higher ruler or other ruler, with or very great solidarity among its members, who view members of the community not as outsiders and use its territory as a source of wealth that can only be fully utilized by its members. Utilization by outsiders must be with permission and grants in the form of recognition and others. Developing communities characteristics of customary law (communal, bonding due to factors geneological, Territorial) that is what Indigenous peoples are called.

According to Maria SW Sumarjono, some basic characteristics of Legal Society custom is that they are a group of people, have own wealth regardless of individual wealth, has a limit certain areas and have certain powers.⁹ Understanding society is an association of life or a group of humans or human unity that live together occupy an area, and life together is an association of life. Customary marriage is a social institution that has been institutionalized in among the Islamic community in Maluku, especially certain areas, one of which is in the District of Haruku Island, Central Moluccas regency, the existence of married brothers has existed for a long time hundreds of years ago since the existence of people on Haruku Island. The custom of marrying brothers has norms contained in Islamic law and customary law basically the people of haruku Island, Central Moluccas regency generally have gotong royong customs. This custom relates not only to activities of a general nature, but also to the work of individual members of the local community. For example, the construction of houses of community members is generally done by mutual cooperation, as well as in the event of the implementation of marriage cost living done by mutual cooperation.

In contrast to that, in terms of handling marital conflict, each members of the public are not entitled to engage in seeking or providing peaceful solutions to resolve the marital conflict. This is because the conflict is so personal that it does not involve anyone else unless

⁶ Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*, (Bandung: Mandar Maju, 2007), p. 12

⁷ Soetomo Prawirohamidjojo dkk, *Hukum Orang dan Keluarga*, (Bandung: Alumni, 2000), p. 8

⁸ *Ibid*

⁹ Maria. S. W. Sumardjono; Sumardjono. *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, (Jakarta: Kompas, 1996).

requested by both parties. Such a principle is not generally accepted among Indigenous peoples concern for their families, especially the wife who is in conflict with her husband. People who have a concern to help the husband and wife who are in conflict that has the custom of marriage. Factually, the implementation of customary marriage has two customary dimensions. The first is that the marriage process is carried out in an Islamic manner. In it there is consent-qabul, there is a dowry, witnesses, and so on. But on the other hand, when there is a marriage process, there is also a local community custom known as Brother Marriage. This indicates that the implementation of marriage has been accumulated by two cultures, namely Islamic culture and local culture/customs. The presence of married brothers in the marriage process is included core components according to the custom of the local community. The presence of married relatives at the time the marriage ceremony takes place means: 1) Rights and powers of parents over their daughter at delivery to the husband through family representatives, namely married relatives; 2) The responsibilities of parents towards their daughter in certain matters are Related to the problems faced by those who are rotten (household conflicts are left to married brothers)¹⁰ According To M. Ramia Lestaluhu, that the roots of traditional marriage actually lies in the concern of the community to protect and fight for the rights of their brothers and sisters who are in conflict with her husband. Basically, the custom has long been applied by the local community.

According to H. Samad Tuharea (in Kalsum Lestaluhu), that such concern is based on people's unwillingness to see their sister live in a state of suffering at the hands of her husband. This reluctance prompted them not only to provide assistance to their sister in the event of a conflict with her husband, but also in material form when in need. When compared with the process of marriage in Islam, as enshrined in the books of fiqh, not at all incorporated elements of other customs as in the custom of this marriage brother. Therefore, it can be suspected that the construction of marriage processions carried out in Leihitu and Salahutu districts is an initiative of scholars who spread Islam to the region.

3.2 Marriage Using The Traditional Institutions Of Marriage In The People Of Haruku Island

To perform the marriage must meet the conditions specified in the Marriage Act and also through the established procedures that start from the notification of marriage, research by officers of the institution for those who are Mosleem by KUA and for those who are of a religion other than Islam by KCS after there is no obstacle then the announcement of the: 1) Bride and groom; 2) Mahar; 3) Witnesses; 4) Ijabqabul. The term nikah comes from the Arabic language, that is (النكاح), there are also those who say marriage according to fiqh terms used the word nikah and the word zawaj.¹¹ In Indonesia, the term is marriage. Today there is often a distinction between marriage and marriage, but in principle marriage and marriage differ only in appealing to the root of the word.¹² Marriage is an expression of a very clear and concise contract on the pillars and conditions.¹³ The scholars of fiqh followers of the four schools (Shafi'i, Hanafi, Maliki, and Hanbali) in general they define marriage in :the contract that carries the permissibility (for a man to have intercourse with a woman)

¹⁰ Gazali Rahman, Pengangkatan Adat Saudara Kawin Di Negeri Tulehu Kecamatan Salahutu Kabupaten Maluku Tengah Dalam Menyelesaikan Konflik Dalam Rumah Tangga, *Tahkim* XII no 2 (2016). p. 3.

¹¹ Kamal Mukhtar, *Asas-asas Hukum Islam Tentang Perkawinan*, (Jakarta: Bulan Bintang, 1974), h. 79.

¹² Sudarsono, *Hukum Keluarga Nasional*, (Jakarta: Rineka Cipta, 1997), h. 62

¹³ Al-Imam Taqi al-Din Abi Bakr bin Muhammad al-Husaini al-Damsyiqi al-Syafi'i, *Kifayah al-Akhyar fi Halli Ghayat al-Ikhtishar*, (Searang: Usaha Keluarga), p. 36

with (beginning in the contract) the pronouncement of *nikah* or marriage, or the meaning similar to both words.¹⁴ In the compilation of Islamic law it is explained that marriage is marriage, that is, a strong contract or *mitsaqan* to obey Allah's commands and carry them out is worship. From some of the terminology that has been put forward it seems clear that marriage is a divine *fitrah*. And of his signs is that he has created for you Wives of your own kind, that you may find comfort in them, and he made between you a sense of love and affection between them marriage is a form of sacred agreement made by two parties, namely husband and wife for that this agreement should not be decided but in its development there are many conflicts that exist in marriage so that the parties always resolve through the institution of the court and the end will end their marriage bond.

In certain indigenous peoples who are Moslems on the Moluccan islands, there is a traditional tradition that is done before marriage, namely raising a married brother to maintain and provide advice to both spouses regarding issues in this world and the hereafter. Marriage system in the sub-districts of Central Maluku Haruku Island (Kabauw, Rohomoni, Kailolo, Pelauw and Ory) is not much different that applies until now in general the existence of marriage among clans or *fam* that there is a blood relationship but a distant blood relationship such as marriage between a man and a woman who have a kinship relationship *tete* ancestors of the two, and also the custom in this country that is forbidden to be violated is different religious marriages even though in Maluku itself the kinship of Moslems and Christians is very harmonious with each other.

Marriage in the district of haruku island is carried out in customary and in accordance with Islamic law. Before marriage, there are several stages of the procession to marriage that are carried out according to custom, namely: First there is a proposal event that sends one or several members of the male relatives to come to the woman's residence to convey the intention of the man's family to the woman's family regarding the approval of the woman related to will accept the man to be used as a bride to carry out the marriage, if the family agrees then the betrothal will be made. Before the betrothal is carried out, it is first determined when the betrothal will be held by the male family by going to the female family at the female family's house to convey the intention of the betrothal, then there is an answer from the female family about the receipt of the proposal from the male or the rejection of the betrothal. If accepted then the next will be discussed about the consequences related to marriage later in the form of marriage fees (commonly called property), cloth or breast milk customary terms as a substitute for the mother's labor of women who want to marry during her pregnancy, breastfeeding and caring for the girl and also talk about when and where the wedding will be held. After an agreement at the time of application, it will continue with the preparation of the wedding procession.

Before *ijabqabul* carried out the day before the marriage Council who will be present were told by some people to inform their relatives by visiting the house (giving the word) and given greetings and greetings of respect from the host who has *hajang*, this is in the traditional tradition of the countries in the Sub-District of haruku island called *maurutuwariwaa* (gathering of brothers) in order to discuss marriage and determine the marriage brother for his daughter who will be married and when the family gathered then the bride's parents will inform that her child's marriage brother is the A. the maintenance of married brothers is also based on several criteria including a man who has a good personality, a man who has the ability to communicate in solving problems, a man whose

¹⁴ Abdurrahman al-Jaziri, *al-Fiqh 'ala Madzahib al-Arba'ah*, (Beirut: Dar al-Fikr, 1986), p. 212

wife has a good personality and can protect.¹⁵ And if someone who is considered to meet these criteria is often asked over and over again to be a married brother, for that island haruku brother married not just for one bride but could be that one has 10 couples whose parents ask to make him a married brother¹⁶. Customary brother marriage is a social institution that has been institutionalized among the Islamic community in the Pelau District of Haruku Island. From several sources of information that the author interviewed no one knows for sure when the beginning of the emergence of the custom of brothers married there brothers married custom has been going on for a long time, hundreds of years ago, brothers married custom has norms contained in Islamic law and customary law in the countries on the island of Haruku. Basically, the people of Central Maluku generally have gotong royong customs. This custom relates not only to activities of a general nature, but also to the work of individual members of the local community. For example, the construction of houses of community members is generally done by mutual cooperation, as well as in the event of marriage. In contrast to the married brother, in terms of handling problems in marital marriage, every member of the community is not entitled to involve themselves to find or give a peaceful solution to overcome the marital problem unless the married brother.

This is because the issue of marriage is so personal that it does not involve anyone else unless requested by both parties. Such a principle is not generally accepted among Indigenous peoples concern for their families, especially the wife who is in conflict with her husband. People who have a concern to help the husband and wife who are in conflict that has the custom of marriage. Factually, the implementation of customary marriage has two customary dimensions. The first is that the marriage process is carried out in an Islamic manner. In it there is consent-qabul, there is a dowry, witnesses, and so on. But on the other hand, when there is a marriage process, there is also a local community custom known as Brother Marriage. This indicates that the implementation of marriage has been accumulated by two cultures, namely Islamic culture and local culture/customs.¹⁷ the roots of the custom of Brother Marriage actually lie in the community's concern to protect and fight for the rights of their sisters who are in conflict with their husbands.

Basically, the custom has long been applied by the local community, therefore it can be suspected that the construction of the wedding procession held in the District of Haruku Island is an initiative of the scholars who spread Islam to the region. There is no concrete data about who initiated the custom of brothers marrying in the marriage process in the area and when it was implemented, but the custom of brothers marrying has existed since the existence of marriages performed during the time of tete ancestors. The wedding procession is carried out on a predetermined day prepared location / place of the contract for the marriage contract will be held in that place were treated to dishes wage boxes containing rice, fish / meat and side dishes, also treated to snacks wage cakes and fruits then undangan (marriage Assembly) in the Welcome to sit cross-legged place that has been prepared, then the, then recited a prayer led by the head of the mosque after the completion of the prayer berulah consent implemented. After the completion of consent since then the brother married by the bridegroom will be called as " you " means brother in law and by the bridegroom will be called as " le u " means brother.

¹⁵ Interview with ibu UmiasalamSalampessy

¹⁶ Interview with bapak Mohamaing Angkotasan

¹⁷ Interview with Bapak Dullah Karepesina

3.3 Marriage Issues That Are Resolved By Using The Traditional Institution of Marriage In The Community of Haruku Island

Divorce is part of marriage, because there is no divorce without first marriage. Marriage is the beginning of life together between a man and a woman who are regulated in religious law and legislation in a country, while divorce is the end of life with the husband and wife. In Indonesia, the rules governing divorce are Act Number 1 year 1974 which was amended by Act Number 16 year 2019 concerning marriage. Government regulation Number 9 year 1975 on the implementation of Act Number 1 year 1974, but in it there is no interpretation of the term divorce. According To R. Subsection of divorce is the abolition of marriage by decision of the judge or the demands of one of the parties during the marriage.¹⁸ While the definition of divorce according to Indonesian comes from the syllable divorce, and divorce according to the language means separation, regarding divorce between husband and wife, division, divorce.¹⁹ Divorce according to jurists is called talaq or firqoh. Talaq is derived from the word talaq, which means to let go, or to leave. while in the term of syara', divorce is to release the marriage bond, or the breakdown of marital relations.²⁰ Everyone wants their marriage to remain intact for the rest of their lives, but not a few hard-built marriages must end in divorce.

Divorce or talak in Islamic law in principle is permissible but hated by Allah, but divorce is the last solution that can be taken when domestic life can no longer be maintained. In Islamic law, it is emphasized that before a divorce, peace efforts are taken between the two parties, because the marriage bond is the most sacred and solid bond.²¹ In line also with the principle of marriage that divorce should be difficult, this is in accordance with the Hadith of the Prophet Muhammad who stated that divorce or divorce is the most hated halal act by Allah, as the Hadith of Ibn Umar Radliyallaahu 'anhu that the Prophet Sallallaahu 'alaihiwa Sallam said: "the most hated halal Act of Allah is divorce. (Narrated Abu Dawood and Ibn Majah. The expression that "halal matters that God hates" is divorce is a relief from God and is a law that is Shari'a in emergency conditions, namely when the relationship between husband and wife is unable to maintain, the two no longer love and expect each other, so to enforce God's law will be difficult because there is no divorce is the best way; and if they divorce, Allah will provide for each of them out of his bounty. God is all-encompassing, all-wise.²²

Every married couple, of course, wants their marriage to last until death separates, but if there are small pebbles in the household that trigger the emergence of problems that if there is no understanding to give in between the parties, most of the parties will divorce. Problems that trigger a household rift in the community dikedamatanharuku island is usually caused by the condition of the husband who has a rough behavior, there is a husband who is a drunkard or gambler, there is a husband who likes to cheat and also because of economic conditions. If there is one of the problems as mentioned above, it will trigger a quarrel in the household, if there is a commotion and the wife returns to the parents' house then she will be rejected on the grounds that they no longer have the right to interfere in her marriage for that she should not return to her parents' house but should go to her married brother's house so that her household problems can be resolved. If there is a

¹⁸ R. Subekti, *Pokok-pokok Hukum Perdata*, p. 42

¹⁹ W J S. Poerwadarminta, *Kamus Besar Bahasa Indonesia*, p. 200.

²⁰ Slamet Abidin, Aminuddin, *Fikih Munakahat*, p. 9.

²¹ Ahmad Rofiq, *Hukum Islam di Indonesia*. (Jakarta: Raja Grafindo, 1995), p. 268

²² Departemen Agama RI., *Al-Quran dan Terjemahnya*. (Jakarta: Sari Agung, 2002), h. 178

condition in which one of the husbands triggers household damage, namely there is abusive behavior, there are husbands who are drunkards or gamblers, there are husbands who like to cheat and also because of the economic conditions of things like the above, the woman or wife will go to her married brother's House and he will be accepted and treated, and married brothers after being notified by the wife will take steps to meet with the husband so that their problems do not drag on which will later be under the legal shutter.

Divorce, of course, will be done before the court as mandated in Article 39 of the marriage act. In the Marriage Act, This article is coercive so that if the marriage issue that cannot be resolved finally the parties agree to end the marriage but is not done before the court, this kind of divorce has no legal consequences because the legal rules related to divorce are coercive so that if it is not done before the court it is considered that there has not been a divorce. However, in the development of traditional traditions carried out through brothers and sisters marriage when there is a problem both heavy and light in the family will be resolved by brothers and sisters marriage dispute resolution can no longer be relied on legislation alone, but more than that it must be combined and combined with existing local wisdom, so that the settlement material is easier to understand, respected, and practiced because it is in accordance with legal feelings and legal ideals of Indonesian society.

The issue of marriage that occurs between a married couple in the district of haruku island should not be returned to their parents but is a responsibility and must be done by the married brother who has a position in the indigenous people of haruku island as the parents of the married couple. If there is a problem in the household, a wife will go to her married brother's House and the married brother will ask related to his arrival whether there is anything that needs to be helped or there is a problem that must be solved. If there is a problem then the married brother will ask why until a problem arises that can cause a rift in the relationship between husband and wife then after knowing the problem sitting married brother will tell the wife to stay temporarily in his house until the problem is resolved. Then the married brother will meet the husband to ask once again related problems that arise which is the trigger for this rift to hear also from the husband whether the wife told the same or not and usually married brothers never side with one person either husband or wife. After sitting the problem and the trigger is known then the married brother will advise the husband and wife separately after the parties can accept it will be met to be reconciled so the married brother in its development acts as a mediator in the issue that is resolved peacefully without having to go to court by giving advice and then find a-both husband and wife can enjoy the blessings of marriage in their homes. Household problems that have been resolved by the married brother should no longer arise the problem again because there is a notion of society in the district of haruku island if what is decided married brother for the good of both parties and will not harm the other party to it if violated then the parties in addition to not respecting the married brother as a parent as well as the person who will be responsible for both husband and wife and this will cause the emergence of community sanctions for the parties.

4. CONCLUSION

Marriage in the district of haruku island is carried out in customary and in accordance with Islamic law. Before marriage, there are several stages of the procession to the wedding which is carried out according to custom, namely: First there is a proposal ceremony, the proposal is then followed by talking about the cost of marriage (commonly called property),

carrying cloth or breast milk the term custom as a substitute for the efforts of the mother of the woman who wants to get married while she is pregnant, breastfeeding and caring for the girl and also talking about when and where the wedding will be held. Before *Ijab Qabul* carried out the day before the marriage Council who will be present were told by some people to inform their relatives by visiting the house (giving the word) and given greetings and greetings of respect from the host who has hajad, this is in the traditional tradition of the countries in the Sub-District of Haruku Island called *maurutuwariwaa* (gathering of brothers) in order to discuss marriage and determine the marriage brother for his daughter who will be married and when the family gathered then the bride's parents will inform that her child's marriage brother is the A. the maintenance of married brothers is also based on several criteria including a man who has a good personality, a man who has the ability to communicate in solving problems, a man whose wife has a good personality and can protect.

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