

## ANALYSIS OF ISLAMIC LAW ON THE PROHIBITION OF THE MANDAILING CUSTOMARY SEMARGA MARRIAGE IN HUTAPUNGKUT TONGA VILLAGE

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**Abstract:**

Marriage is a sunnatullah given by God to its creatures, while the clan rules are called the rules in the Dalihan Na Tolu customary institution so that those concerned can behave and speak properly. So same-sex marriage is a marriage carried out by a pair of humans, a man and a woman where both have the same clan, for example, if a man has the Lubis surname and a woman also has the Lubis surname in the perspective of Mandailing customary law where marriage with the same clan is prohibited. even though the man and woman are not from the mother's and father's sides, the prohibition according to Mandailing customs in same-name marriages is because in Mandailing customs both do not have a clear status for both parties who carry out a same-name marriage. According to the beliefs of traditional leaders, if there is a man and a woman marrying the same clan, the child to be born has abnormal potential. This research is Empirical Normative Research by looking at the Phenomena that occur in the Hutapungkut Tonga Village Community in carrying out Adat in Semarga marriages, the sources in the research were taken from the information of the Hatobangon/traditional stakeholders so the research could unravel the problems that occurred and analyzed with Islamic Law. Al-Qur'an, Sunnah, and the opinion of the scholars do not prohibit the practice of same-sex marriage, but this is not a freedom to do so because custom is part of the norms that live in a society that has noble values and needs to be considered where a person is located. stay.

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### INTRODUCTION

Before providing an analysis of one-clan marriage according to adat, it is better in this paper to state the notion of adat, this is important to provide an understanding that is useful for explaining and elaborating on matters relating to one-clan marriage according to adat. Custom is a reflection of the personality of a nation, and is the soul of the nation concerned from century to century, therefore every nation in this world has its customs which are not the same as one another. (Wignjodipoero, 1994)

Judging from the above understanding that customs are good and growing habits and have values that can be obeyed by people who can obey them, and if they are violated then those who violate these customs will receive punishment, and the form of punishment is as imposed depending on the offense committed by that person.

Apart from the explanation above, there is also a writing that needs to be stated, namely the definition of Customary Law. As is known together in this customary law, the customs owned by Hutapungkut Village are different, although the basis and nature are one, namely Indonesian. As for giving the meaning of customary law as unwritten or oral law in the regulations in Hutapungkut Village includes the rules of life which, although not set by the authorities, will be obeyed by the people of Hutapungkut Village.

In adat where marriage and the nature of the family structure have a close relationship, in which the community has norms or norms in society, norms serve as guidelines that can be used to regulate patterns of behavior and conduct that are ultimately mutually agreed upon by members of the community group. (Sayimah, 2016).

The function of norms is to give instructions to humans about how a person should act in society, as well as which actions must be carried out and which must be avoided, so as to create peace in society. This norm can be maintained with sanctions, namely the threat of punishment against anyone who violates it.

## **THEORETICAL STUDY**

The theory that the writer uses in this study is the Uruf/Adat Theory. Habits or known as 'uruf are things that are habituated by society and are carried out continuously, both in the form of words and deeds. (Thaib, 2002)

The letters are different from ijma' because 'the letters are formed from the habits of people of different levels. Meanwhile, ijma' is formed from the special agreement of the mujtahidin. General people did not participate in the formation of the ijma'. There are 2 (two) types of letters, namely: (Musbikin, 2001)

- a. 'Uruf shahih is a custom that is carried out by people who do not conflict with the Shari'a propositions', do not justify what is unlawful, and do not cancel what is obligatory. For example, customs that apply in the world of commerce regarding indents, customs in payment of dowries, in cash or debt, customs of someone who proposes to a woman by giving something as a gift, not as a dowry, and so on. (Thaib, 2002)
- b. 'Uruf fasid is a custom that is carried out by people contrary to the provisions of the Shari'a because it leads to justifying what is unlawful or canceling what is obligatory. For example, habits in contracts that are usury, habits in seeking funds by holding various prize coupons, collecting taxes on gambling proceeds, and so on. (Thaib,

2002) 'Uruf fasidah does not have to be considered, because keeping it means going against the Shari'a proposition' and nullifying the Shari'a law'.

Customary law is carried out in various ways through customary institutions that exist in every village, so that customary law becomes a means of exercising social control that functions legally. (Harahap, 2004)

Selain teori Uruf penulis juga menggunakan teori perubahan hukum yang dicetuskan oleh imam Ibnu Qayyim al-Jauzi dimana hukum itu bisa berubah disebabkan tempat dan waktu.

(تغيير الأحكام بتغيير الأزمنة والأمكنة)

*Changing A Law Should Be Adapted To The Situation, Condition, Time, And Place*  
(Jauzi, 1423 H)

According to this theory, the implementation of the Prohibition of Mandailing customary same-sex marriages in the village of Hutapungkut Tonga is an accumulation of social and legal changes in society that require Islamic law to apply in addition to customary law that has long been developed.

Referring to the general objective of Islamic law, namely eliminating harm and prioritizing the public good (دفع المفسد مقدم على جلب المصالح). The two principles of Islamic law can be used as material for legal considerations to explain the existence of a positive relationship between law and community habits to benefit.

## **RESEARCH METHODS**

The research in this article is normative-empirical legal research that is descriptive-analytic which reveals the method of qualitative data analysis. Several sources were used, namely, data obtained directly and sources taken from interviews conducted with customary and Hatobangon Stakeholders of Hutapungkut Tonga Village.

## **DISCUSSION AND RESEARCH RESULT**

### **A. Definition of Marriage**

Marriage is a sunnatullah given by Allah to his creatures where marriage is a nature for every human being which is intended for the sake of the continuation of life. Allah SWT gives these blessings so that every human being is able to carry out his life in accordance with Islamic law that has been determined by Allah SWT. Marriage is also a blessing from Allah SWT where these favors are given to men and women who then make promises of engagement to look after each other in order to achieve marriage which is Sakinah mawaddah warahmah. there are several definitions of the meaning of marriage in the Indonesian

dictionary, marriage comes from the word 'married' which means gathering which according to language means forming a family relationship with the opposite sex if he is a man then partners with a woman and vice versa, who then has a relationship or have sex. Marriage or marriage in Arabic fiqh literature is referred to by two words, namely *nikah* and *zawaj*. Where these two words are used in everyday life. Islamic law regulates that marriage is carried out with a contract or legal agreement between the parties concerned and two men. (Umamah, 1439 H)

Marriage according to Islamic law is a holy agreement that is strong and sturdy to live together legally between a man and a woman to form an eternal family, polite, loving, safe, peaceful, happy, and eternal. Article 2 of the Compilation of Islamic Law, gives the understanding that marriage, namely a very strong contract to obey Allah's commands to do so, is worship. While the definition of marriage in law No. 1 of 1974 concerning Marriage has 4 (four) elements, namely :

1. Spiritual and Spiritual Bonds, meaning that in a marriage there are not only birth bonds which are manifested in the form of a Kabul consent made by the guardian of the bride and the groom witnessed by two witnesses accompanied by the handing over of the dowry, where there is no element of coercion from one party to another who also plays a very important role in strengthening the marriage contract in creating a happy and eternal family.
2. between a man and a woman, meaning that in a marriage bond according to the Marriage Law it can only occur between a man as husband and a woman as a wife.
3. Forming a happy and eternal family means that marriage aims to obtain peace of pleasure, comfort, and inner and outer peace forever in married life.
4. Based on Belief in the One and Only God, it means that marriages must be based on religious provisions. Marriages are not allowed to be separated by religion. In the sense that the validity of a marriage is measured by the provisions stipulated in religious law.

Article 1 of Law Number 1 of 1974 concerning marriage is

*"a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family based on Belief in One Almighty God"*.

The system of descent and kinship between Indonesian ethnic groups is different, including the environment and religions adhered to are different, so the goals are different, as

are the legal consequences and marriage ceremonies. (Hadikusuma, Hukum Perkawinan Indonesia, 1990)

### **B. The concept of Semarga in the Mandailing Natal Custom**

Marga in Mandailing society has an important role in determining a person's position in the implementation of life, family, and society which is a rule called the order of rules in the Dalihan Na Tolu customary institution so that the person concerned can behave and speak well. (Nasution, 2005)

Those rules by themselves should not be violated and ignored. If it is violated or ignored, it will get customary sanctions. In the Dalihan Na Tolu customary institution which consists of the elements of *suhut* and *kahanggi*, *Anak Boru*, and *mora* are a single unit that cannot be separated from one another

*Shutt* is a party that is domiciled as the host in every implementation of traditional events. *Anak boru* is the party that is domiciled as a family that takes a wife from the *suhut* family, while *mora* is the party that gives *boru* to be the wife of the *suhut* family. To find out who is positioned as a *suhut*, *Anak Boru*, or *mora*, they will be sorted according to their respective clans. (Lubis & Harisdani, 1999)

This will continue to be guided even though in the next generation there is no marital relationship. That is why if someone is merged as a family member, but does not yet have a clan identity, a surname can be given to him so that his position in the family becomes clear and that is why giving a surname is something very important in indigenous peoples.

*Marga* was born when a family formed a group or formed a village. With the birth of this clan, every descendant will continue to use the same surname. In other words, the father's surname will be passed on to his son (*patrilineal*). (Khairuddin, *Khazanah Adat dan Budaya Singkil : Mengungkap keagungan Tradisi dan Memelihara Kebudayaan*, 2020) If the child born is a daughter, even though she still uses her father's surname but after marriage and having children, the child born will not follow the mother's clan, but the father's surname (meaning another clan) therefore the daughter's clan is only for herself and cannot be passed on to their offspring.

The importance of this clan in the Mandailing customary kinship, so in Mandailing for those who do not yet have a clan but are united and live in the Mandailing kinship, a surname can be given so that the person concerned knows how and where his position is in the indigenous community.

The clan that a person gets is basically a clan that is based on descent from the male side in accordance with customary principles which are based on the patrilineal meaning that there must be blood relations. However, according to the development of the times, there are still surnames that are not based on heredity, although they are very selective and must be given through customary deliberation with various considerations. Such surnames are given out of service, because of marriage, and there is also respect for someone. In short, there are several reasons a person can be given a surname, namely :

1. The clan is passed down from generation to generation (the surname that is obtained by descent).

The clan that is passed down from generation to generation is the clan that was obtained from their parents (father's side) according to the patrilineal kinship system. In the mandailing marriage system, which is exogamous, it is not permissible to marry under the same clan, which means that clan A can only marry with clan B or C and so on. If the husband is of the surname A and the wife is of the surname B, the offspring will be surnamed A (the father's surname). If the father's surname is B, then his descendants are surnamed B, and the surname of his children or his descendants must remain the same as the father's surname, he may not take his mother's surname.

2. Marga was given due to marriage between tribes or nations

The clan was given due to inter-ethnic or inter-national marriages where one of the parties previously did not have a surname. For the granting of a surname based on marriage, it is necessary to determine in advance which family's surname will be given. The surname given must be clear and there must be approval from the family from which the surname to be given is given. By giving the surname, the family giving the surname officially accepts the person given the surname as a member of their family. In the granting of a surname due to marriage, who gives the surname, and what clan will be given, depends on who will receive the surname :

- a. If the recipient of the surname is the prospective wife, then the surname given according to custom is the surname of the mother of the prospective husband or the surname of the mother of the prospective father-in-law. If so, it is the family of the prospective husband's mother or the family of the prospective father-in-law? In other words, mora from the future husband
- b. On the other hand, if the clan to be given is the prospective husband, then the surname given is the surname of the husband of the prospective father-in-law's

sister or the surname of the husband's father-in-law's father's sister (husband of the prospective wife's ompung sister). future wife

3. Marga gave based on dedication and service

Giving a surname like this is given to a migrant from another area who is willing to become a member of the community of a village. Someone who has integrated into the community of a village and has served and contributed to that village, for example, helps build the needs of the people, such as:

- a. Irrigation
- b. Education
- c. Street

The granting of this surname can occur at the request of the person concerned or the discretion of the king with certain considerations, for example, the person concerned benefits the village because he has expertise such as a datu, "carpenter" or benefactor.

4. The name is given as an honor

The surname given as a tribute is given to someone from another ethnic group who is not a resident of the village and does not live in that village. The granting of this surname is based on extraordinary services to the community in a village or an area. Also given to someone who has the potential to provide services for the public interest, so kinship needs to be maintained. In this gift, careful and accountable consideration is needed as well as certain reasons and must be discussed in the customary density.

### **C. Kinship in Mandailing Customs**

The origin of name Mandailing is one of the ethnic groups in Indonesia. This name is a collective term to identify several ethnic groups who live and originate from Tapanuli, North Sumatra. Mandailing is the name of the ethnic group that inhabits Mandailing Natal District, South Tapanuli, Padang Lawas, North Padang Lawas, and Padangsidempuan City, North Sumatra. The name Mandailing has been widely debated until now with many different versions.

The name Mandailing comes from the word lost mande (Minangkabau language) which means lost mother and the word mundagulung means also Munda who fled. (Lubis & Harisdani, 1999)

In indigenous peoples in Indonesia, there are 3 (three) types of main lineage principles, viz : (Hadikusuma, Pengantar Ilmu Hukum Adat Indonesia, 1992):

### 1. Matrilineal Kinship System

The matrilineal kinship system is the opposite of the patrilineal kinship system. The matrilineal kinship system is a kinship system based on the mother's lineage. As consequence of this kinship system is to prioritize children of women rather than men.

### 2. Parental Kinship System

The parental kinship system is a kinship system based on the lineage of the father and mother. In this kinship system, there is no distinction between sons and daughters in inheritance.

### 3. Patrilineal Kinship System

The patrilineal kinship system means kinship ties based on the father's lineage. As a consequence, sons are more important than daughters, so if a family does not have sons, they will adopt sons.

The kinship system of the people of Hutapungkut Tonga Village adheres to a patrilineal system. With the principle of patrilineal lineage, the indigenous people of Hutapungkut Tonga Village will know their genealogy and most importantly, everyone will know who they can marry. The ideal marriage in the Hutapungkut Tonga Village community is a marriage between a rumpal (marpariban) person, namely a man, and his mother's brother's daughter. Thus a Batak man abstains from marrying a woman from his clan and also the child of his father's sister. (Koentjaraningrat, 2004) Every son or daughter only draws his lineage up through the father as a channel of one blood, from his father to his grandfather and so on connecting his descendants to the men.

The factors for the occurrence of semarga marriages in Hutapungkut Tonga Village, namely : (Nasution M. R., 2022)

#### 1. Factor Because of Love

Humans were created to need a life partner in the process of their development to continue their offspring. Marriage without love may be tasteless and there is no point in living without love because with love humans can live happily. No one can define the meaning of love, but love can be expressed by humans. The love factor will cause consensual impulses between the two male and female partners so that affection will be formed in family life..

From the results of our research, it is known that perpetrators of semarga marriages stated that their marriages were based on love, meaning that there was no forced marriage from any party. For couples who do same-sex marriages because of economic factors, the basis is also because of love. This can be seen from the author's observation of their harmonious and happy life. And in this recognition, the author observes that semarga marriages in the Mandailing Batak community do not become a social burden on society, because families and communities do not make a problem of clans, clan marriages that are carried out occur of their own volition.

## 2. Due to Religious Factors

The results of this study reveal that religion is the biggest trigger for the occurrence of same-sex marriages in the Mandailing Batak community. Islamic religious education has been introduced to children regularly from an early age. Raised in a stable religious atmosphere, including learning to read the Koran, reciting the Koran, school holidays in the month of Ramadan, Friday prayers, commemorating major Islamic holidays and important events in the stages of human life from birth, death, and marriage which were all held in an Islamic atmosphere. This is also due to the existence of a madrasa which was established in the village of Hutapungkut Tonga.

## 3. Economic Factors

Semarga marriage occurs because of the economic condition of a man who does semarga marriage in terms of his ability to manage the economic needs of his family. Judging from the family background, it does not support marrying a woman who is used as a potential wife. The poor, even from economic conditions, are not supportive but, because of their ability to manage the world of globalization and marketing cycles in overseas people, finally, the desired goals are achieved. Talking about economic factors, of course, the related problem is the problem of money. So, the problem of money is more owned by someone from both the male and female sides. Even though the two of them are still in the same clan, the family or relatives consider it okay to marry two people of the same clan. If one of the men turns out to be richer, then the family of the woman's side no longer cares about the prohibition on semarga marriages.

## **D. Views of traditional leaders in the village of Hutapungkut Tonga on Semarga marriages**

Talking marriage in the Mandailing tradition was originally called honest marriage. Honest marriage is a marriage that is patriarchal exogamy. There are three types of traditional marriages, namely: First, in exogamy, namely a man is prohibited from marrying a woman of the same clan as him. Second, endogamy, namely that a man is required to marry a woman within his own family (tribe, family clan) and is prohibited from marrying a woman outside his family. Third, eleuttrogamy, namely that a man is no longer required or prohibited from marrying a woman outside or within his circle of relatives, but within the limits determined by Islamic law and applicable statutory law. (Hadikusuma, 1990)

If there is a clan marriage, both husband and wife will be given sanctions. Based on the author's interview with Mr. Muhammad Ridwan Nasution a traditional leader in Hutapungkut Tonga Village, some factors cause the prohibition of Semarga marriages, namely : (Nasution M. R., 2022)

1. There is a blood relationship

People with the same surname are still descended from the same grandfather, therefore they are seen as people who are blood-related or are still related to siblings in the Mandailing Julu custom. if they do their marriage is seen as having an incestuous relationship which is strictly prohibited by custom.

2. Can damage the manner of speech/manners

Mandailing customs is very thick with regulations. Partuturan comes from the word speech, which is the term for greeting when we greet other people. The speech will determine the position of a person in the life of the Mandailing Julu indigenous people. With the occurrence of a marriage of clans, it will damage and cause changes in the manner in which speech was originally the position of kahanggi (brother) becomes boru's child or vice versa.

From the description above, it gives an understanding that the views of community leaders regarding semarga marriage, that the Mandailing community adheres to an exogamous marriage system. Anthropologically, semarga marriages are considered abstinence or violate Mandailing customary rules. Marriage of a man with a woman of the same clan is considered as a sibling and blood from the father (patrilineal).

**E. Customary sanctions are given to same-sex marriages in the Mandailing Julu custom according to Hatobangon (religious figure) in the village of Hutapungkut Tonga**

In the marriage process in the village of Hutapungkut Tonga, if there is a marriage with the same clan, the sanctions will apply accordingly. Traditional leaders and religious leaders will not discriminate against anyone who commits a violation. Whether he is from the king or ordinary people, the applicable law will still be implemented as it should be. Based on the results of the author's interview with the father as a hatobangon figure (religious figure) in the village of Hutapungkut Tonga, the author asked about the sanctions given to marriages with the same clan. His answer was : (Nasution A. , 2022)

1. It is no longer applied to the two couples for customary events as usual. In the Mandailing Hutapungkut Tonga traditional marriage process, couples who commit violations will no longer wear traditional clothes, traditional headscarves, and no more markobar (giving advice in turn by the hatobangon to the two prospective couples who are getting married)..
2. It is not permissible for both partners to have horja godang (large wedding feast). This sanction applies to both potential partners, so in their marriages usually, the two partners only make a makeshift party and the only people who are invited are the closest people to the two potential partners..
3. it is not permissible for both spouses to enter the village after the completion of the marriage.

After the completion of the marriage contract, next, the father of the prospective bride and groom will take a rooster. Then the chicken will be brought to the city limits to be released with the two prospective couples who will carry out the marriage in the same clan. The purpose of releasing the chicken is as a figure of speech for the two potential partners, just as the flight or release of the chicken is like that, the two prospective husbands are no longer allowed to enter the village. as the chicken is released, so is its right to live in the village. (Nasution M. R., 2022)

#### **F. Permission to perform semarga marriages in the village of Hutapungkut Tonga**

Islam entered the land of Mandailing around 1800 years ago. Islam first entered Barus. Barus is a sub-district in Central Tapanuli Regency, North Sumatra, Indonesia. The capital of this sub-district is the Padang Masiang sub-district. Barus was an emporium city and center of civilization in the 1st-17th centuries AD. Islam first entered from there and then spread widely to Mandailing areas, one of which is the village of Huta Pungkut Tonga which is in the Kotanopan sub-district. The existence of Islam in the region is growing rapidly, with the entry of Islam into the village.

The causal factor is that it is currently permissible to marry with the same clan due to the influence of the inclusion of religious teachings (Islam, which is the majority religion adhered to by the Mandailing community). Demands in Islam do not prohibit the occurrence of same-sex marriages as long as the two married people are not two people who have blood relations (nasab) and are also related by marriage (semenda). then further developmental factors of the times that make changes in the mindset of society. With the development of technology, it has increasingly opened people's perspectives, including addressing semarga marriages. (Nasution A. , 2022)

There are no problems with same-sex marriages, but it would be better for the community to follow steps that are by culture and customs. Looking at it from the side of custom, it will be justified if the custom says it is wrong. Socially, custom will be an option, because in modern times people are more interested in love or compassion.

#### **G. Mandailing Natal Customary Semarga Marriage According to Islamic Law**

Marriage was recommended by the Prophet Muhammad SAW to his Ummah and is a part of religion. To find out whether semarga marriage is permissible or prohibited by religion, of course, look at the provisions of Islamic law (Siahaan, 2016)

Semarga marriage in the view of Islamic law is not prohibited because there is no argument in the Qur'an, sunnah, and the opinion of scholars that prohibit it. Rules regarding marriage can be seen in the Pillars of Marriage in Islam, namely :

1. Prospective Wife, in which case the wife is married and legally valid in syar'i.
2. The prospective husband, who in this case must meet the requirements, such as the prospective husband is not a relative or mahram of the wife, is not forced, and is not currently in ihram for Hajj (Hamdani: 2000, 87).
3. Guardians Regarding the guardians for the bride-to-be, they are divided into two, namely close guardians and distant guardians. Guardians according to Islamic law are divided into two. 1) Nasab guardian, namely the male family member of the prospective bride who has blood relations with the prospective bride. These lineage guardians are classified into two, namely mujbir guardians and ordinary lineage guardians; 2) the judge's guardian is the ruler or deputy ruler in the field of marriage.
4. Two witnesses. There were two fair witnesses. This fairness could only be seen in terms of outward appearance at that time so it was not visible physically. So if in

the future his evil nature occurs after the marriage contract is made, the marriage contract is valid.

5. Ijab and Kabul, marriage must begin with consent and continue with Kabul, consent is an affirmation of the will to bind oneself in this marriage bond from the guardian, while Kabul is an affirmation to accept this marriage bond from the groom.

In addition to completing the harmony, it also completes the conditions of marriage. If these conditions are not met, then the marriage is invalid and the marriage will create obligations and rights for the husband and wife. And they will be able to achieve life happily in the fabric of household life. (Nuruddin & Tarigan, 2004), In Islamic law, if the conditions and pillars of marriage have been completed, the marriage will be valid even if the two husbands and wives are of the same clan because marriage in the same clan in Islam is not prohibited. (Khairuddin, 2021)

The prohibition on semarga marriages in Hutapungkung Tonga Village has become a tradition and has been passed down from generation to generation and is a custom that has become law for the community. As long as these customs do not conflict with Islamic law, the tradition of banning Semarga marriages may be carried out. This is following the rules

الثابت بالعرف كالثابت بالنص

*Legal provisions based on tradition are the same as provisions based on syara*

استعمال الناس حجة يجب العمل بها

*The customs of many people are the legal basis that must be followed*

This legal rule of course requires conformity and does not conflict with religious principles or maqashid Al Shari'ah

Imam Syihab al-Din al-Qarafi (w.1285 M), a major figure in the Maliki school, in his famous book al-Furuq, said :

فمما تجدد في العرف اعتبره ومما سقطت أسقطه ولا تجمد على المسطور في الكتب طول عمرك بل اذا جاءك رجل من غير إقليمك يستفتيك لا تجره على عرف بلدك واسأله عن عرف بلده وافته به دون عرف بلدك والمقرر في كتبك. فهذا هو الحق الواضح والجمود على المنقولات أبدا ضلال في الدين وحمل بمقاصد علماء المسلمين والسلف الماضين) "الفروق, ج 1 ص 176-177)

When tradition is renewed, take it, if not, let it be. Do not be rigid about the written sources in your books all your life. If someone comes to you from another country intending to ask you for a fatwa, do not submit a fatwa based on the traditions of your country. Ask beforehand about the tradition, and give a fatwa based on the tradition, not yours and not

according to what is in your books. This is the right and clear way.”(Al-Qarafi, al-Furuq, I/176-177).

Of course, customs that can be used as law have limitations, that is as long as they do not conflict with the textual propositions. Every custom that applies to society and does not violate the provisions of the Shari'ah, must be maintained and practised. On the other hand, customs that deviate from the provisions of the Shari'ah, even though many people do it, still cannot be practised. (Musbikin, 2001)

## **CONCLUSION**

The prohibition on Semarga marriages is a customary regulation in the Mandailing culture, there are areas in the Mandailing Natal region that apply these customary rules, one of which is Hutapungkut Tonga Village. the meaning of the prohibition is so that there are no irregularities that occur in the marriage process because marriage with the same clan is considered to have blood relations if a search is carried out, however, this still needs to be tested because kinship has several forms and conditions. The development of people's mindset and understanding of marriage laws Currently, Hutapungkut Tonga Village does not impose a ban on semarga marriages since Islamic teachings have developed rapidly in the village and have become the basis of all community activities.

Semarga marriage in Islam is not prohibited as long as the terms and pillars of marriage in Islamic law are implemented. And Islam does not necessarily abolish customary law that has lived in society (*Living Law*), but rules can be implemented as long as they do not conflict with Shari'ah law, especially Maqasid Shari'ah.

## **SUGGESTION**

Changing the culture that begins with a mental change in viewing things, takes time. Therefore, several solutions are offered in studying the law of marriage so that there is no longer a law that is known except based on Islamic law: first, education by providing in-depth material about marriage can change the culture that has existed from the past, starting with education, because education is a tool to transfer the norms of society, their knowledge and abilities. secondly, speakers and influential religious leaders should convey laws related to same-sex marriages so that people know about same-sex marriages. Don't ban something even though it doesn't have a basis that comes from the Qur'an, sunnah or the opinion of the clergy

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