

The Prohibition of Sasuku Marriage in Minangkabau: A Dialectic of Customary Law and Islamic Law in Nagari Tigo Koto Silungkang

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Abstract

This article examines the prohibition of sasuku marriage, the marriage of fellow members of the matrilineal clan in Nagari Tigo Koto Silungkang, Agam Regency, West Sumatra. This study is motivated by the lack of studies that specifically capture this customary initiative through sociological and anthropological approaches to family law, even though similar rules have long been a pillar of the Minangkabau order. Aims to dissect the normative-historical basis of the prohibition; examine its social function in building inter-tribal integration and genealogical identity; and evaluate its position within the framework of Islamic law through the theory of *'urf* and *maṣlaḥah*. The methods used are qualitative with a legal ethnography approach and document analysis; Primary data was collected through in-depth interviews with 18 informants consisting of traditional leaders, scholars, and community leaders as well as participatory observation which was carried out for three months. Key findings suggest that tribal prohibitions operate as a clan exogamous mechanism that is organically connected to matrilineal inheritance systems, intertribal marriages, and genealogical identity constructions. The central argument of this article is that the sasuku prohibition, which has long been rooted as *'urf sahib* according to the parameters of classical ushul fiqh scholars (al-Suyuthi, al-Qaraḥi, Ibn 'Abidin), is not substantially contrary to the principles of Islamic law, but rather represents a form of *living law* that bridges the dialectic of customary and sharia in the context of contemporary Indonesian family law.

Keywords: *sasuku; exogamy clan; minangkabau customary law; islamic law; living law; 'urf*

Introduction

Minangkabau is one of the largest ethnic groups in Indonesia known for its strong and unique matrilineal kinship system. This system not only regulates the lineage through the maternal line, but also forms social, economic, and legal structures that apply organically in the life of

its people.¹ One of the fundamental aspects of the system is the strict marriage arrangements, including the prohibition of marrying fellow members of a clan or *tribe*, namely a group of descendants who are bound to one *mamak head* and one line of Bersama mothers, which in the Minangkabau tradition is known as the *sasuku prohibition*.² This institution has been going on for generations and functionally has become one of the pillars of Minangkabau social integration.

The discourse on dialectics in the current context, between customary law and Islamic law in Indonesia is still dominated by macro discourses that discuss state-religion relations or debates on the formalization of law. Studies that specifically and in-depth examine the mechanism of *living law* at the nagari community level, especially how customary institutions such as the prohibition of *sasuku* are regulated organically by the community, carried out, negotiated, and even framed within the framework of classical fiqh thought, are still very limited. Some scholars such as *Amir Syarifuddin* have studied in depth the relationship between Islamic inheritance law and Minangkabau customs, but the focus is more on the aspect of inheritance than marriage.³ Meanwhile, *Nasrul Hamdani* mapped the Islamic-customary dialectic in the principles of *customary basandi syarak*, *syarak basandi Kitabullah*, and *Ratno Lukito* explored the meeting of Islamic law and customary law in the broader Indonesian context. However, until now there has been no special study that integrates the legal ethnography approach with the analysis of ushul fiqh to trace the status of the prohibition of *sasuku* in a specific country.⁴

The literary gap is not only academic, but also has practical implications: on the one hand, the younger generation of Minangkabau who are increasingly exposed to modernization and globalization are increasingly negotiating and in some cases violating the *sasuku* prohibition; on the other hand, there is no conceptual framework strong enough to justify the position of this institution in the Contemporary Indonesian family law system. Therefore, this article aims to fill this gap by proposing the central argument that the prohibition of satribal marriage in Nagari Tigo Koto Silungkang is a customary law institution that has a strong normative-historical basis and social function, and is not substantially contrary to the principles of Islamic law when placed within the framework of *'urf sahib* according to the parameters of the classical jurisprudence of ushul jurisprudence. The specific contribution of this article, which distinguishes it from previous studies, lies in the integration of three approaches—namely a normative-historical analysis of Minangkabau customary law, a sociological-anthropological analysis of the social functions of clan exogamies, and an analysis of ushul fiqh on the position of *'urf* in Islamic law framed in a single legal ethnographic design at the nagari level.

Methodology

¹ Al-mutanaffas and Sunarto, “Konstruksi Sosial Pernikahan Antar Suku Dalam Masyarakat Muslim Indonesia Analisis Hukum Islam Dan Budaya Lokal.”

² Muhammad Danil, “Larangan Perkawinan Sesuku Dalam Masyarakat Canduang;(Tinjauan Kemaslahatan Dalam Hukum Islam),” *Jurnal Al-Ahkam* 10, no. 2 (2019): 1–29.

³ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan*, 2011, <http://library.stik-ptik.ac.id:8080/detailPid=49175&lokasi=lokal>.

⁴ Ratno Lukito and Marsya Salsabilla Az-Zahra, “Codification of Islamic Law in Comparative Perspective: Between Tradition and Modernity,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 10, no. 1 (2026): 70–104.

This research uses a qualitative approach with legal ethnographic design and document analysis.⁵ The ethnographic approach was chosen because this research aims to understand the phenomenon of customary law as it is understood, lived, and practiced by the Nagari Tigo Koto Silungkang people from the inside (*emic perspective*); this is in line with the principle of *thick description* put forward by Geertz as a way to dissect the layers of meaning, not just describe behavior. The field research was carried out for three months, from February to April 2024, in Nagari Tigo Koto Silungkang, Palembayan District, Agam Regency, West Sumatra. The choice of this location is based on the fact that the nagari is one of the communities that is still very strong in maintaining the tradition of prohibiting sasuku and has active customary institutions. Primary data were collected through *in-depth interviews* and participatory observations. Informants were selected purposively with the following criteria: traditional leaders (*penghulu* and *ninik mamak*), local scholars, community leaders, and residents who have experienced or witnessed cases of violations of the sasuku prohibition; A total of 18 informants were interviewed in depth, with an average duration of 60–90 minutes per session. Secondary data were collected from local customary documents, customary meeting decisions (*density of ninik mamak*), classical Islamic legal literature, national legislation products, and the results of previous research.

The data analysis was carried out thematically using the framework of the theory of *living law* from Eugen Ehrlich, who affirmed that the laws that are truly alive in society are not merely laws written in laws, but norms that actually govern daily behavior. This framework is then supplemented by *the theory of 'urf* in Islamic jurisprudence, which has been classically formulated by al-Suyuthi in *al-Ashbah wa al-Nazā'ir*, al-Qaraḥi in *al-Furuq*, and Ibn 'Abidin in *Radd al-Muhtar*—to analyze the position of the prohibition of satrias in Islamic law. The data is analyzed through a process of reduction, presentation, and iterative drawing of conclusions until it reaches the saturation point, with triangulation of sources and methods as a measure of validity.

Sasuku Prohibition: Normative and Historical Basis in Minangkabau Customs

The ban on satrias in Minangkabau has its roots in the exogamous tradition of clans that have been going on long before the arrival of Islam in the West Sumatra region.⁶ In Minangkabau anthropological literature, *tribe* is understood as a matrilineal unit formed from the maternal lineage (*mamak*), whose members have genealogical relationships and are bound to one *gadang house*, one inheritance system, and one network of communal responsibilities. The prohibition of *inter-tribal* marriage serves as a structural principle that prevents the fusion of internal lineages and simultaneously becomes a mechanism for opening alliances between tribes within the country. The historical narrative of Nagari Tigo Koto Silungkang shows that this nagari was formed from the merger of three *dominant tribal* groups, and the strength of the nagari lies in the ability of the three *tribes* to build a kinship network through intermarriage consistently across generations.

⁵ Hengki Wijaya, “Analisis Data Kualitatif Model Spradley (Etnografi),” *Sekolah Tinggi Theologia Jaffray* 3, no. 1 (2018): 1–10.

⁶ Universitas Bung Hatta, *Larangan Pernikahan Sesuku Di Minangkabau*, 2023, <https://pdfs.semanticscholar.org/a733/48104ceb0c23fb961b11c58c2dfa18488106.pdf>.

Marriage from the perspective of Islamic law, in the same lineage, is strictly regulated through the concept of *mahram* and the provisions of nasab in the Qur'an (QS. al-Nisa: 22–23),⁷ but this rule boils down to the prohibition of direct blood relations, not to the category of matrilineal clans. Therefore, the basis for the prohibition of sasuku marriage cannot necessarily be found in the literal texts of revelation or hadith; rather, this prohibition is a customary construction that must be retested through the appropriate Islamic legal instrument, namely *the theory of 'urf*. 'Urf in the treasure of usul fiqh, is understood as a habit that is alive and widely accepted by the community, and can be used as one of the considerations in determining the law as long as it does not contradict the nash which is qath'i. The rule of *al-'ādah muḥakkamah* (customary customs can be used as a legal basis)⁸ shows that Islam provides space for local social practices to gain legal legitimacy as long as they contain benefits and do not cause harm (*mafsadah*).⁹ Thus, customary is not positioned as a competitor of sharia, but as an instrument that complements the implementation of Islamic law in a certain social context.

The relationship between adat and sharia in the Minangkabau context has long been formulated through the philosophy of *adat basandi syarak, syarak basandi Kitabullah*.¹⁰ This philosophy emphasizes that customary gains legitimacy if it is in harmony with the principles of sharia, while sharia finds its form of social implementation through customary institutions that live in society. Therefore, the prohibition of same-sex marriage is not enough to be judged only by the existence or absence of textual postulates that explicitly prohibit it, but also needs to be analyzed from the social functions it performs, the value of the benefits maintained, and the level of public acceptance of the rule as part of the communal life system.

Based on this framework, the main issue is not whether the prohibition of tribal marriage is part of Islamic law normatively, but whether the customary practice meets the criteria as *'urf ṣaḥīḥ* which can be used as a legal consideration. This analysis becomes even more important when faced with the dynamics of modern society that begins to question the relevance of the prohibition because of the absence of explicit prohibitions in the Qur'an or hadith. Therefore, this study places *the theory of 'urf* as an analysis knife to examine the validity of the prohibition of sasuku marriage in Nagari Tigo Koto Silungkang, so that it can be known whether the practice still has a basis for benefits that are in line with the principles of Islamic law or has actually shifted into a tradition that requires reinterpretation.

The Prohibition of Sasuku: Normative and Historical Basis

Historically, the prohibition of sasuku in Nagari Tigo Koto Silungkang cannot be separated from the process of forming the nagari itself. Based on oral traditions gathered during field research, this nagari was formed from the merger of three tribal groups each of which came

⁷ Anna Muwaffika et al., “Kajian Klasifikasi Wanita Yang Haram Dinikahi Perspektif Al-Qur'an Dan Hadits: Penelitian,” *Jurnal Pengabdian Masyarakat Dan Riset Pendidikan* 4, no. 1 (2025): 311–19.

⁸ Muhammad Mahmud, “Eksistensi 'Urf Dan Adat Kebiasaan Sebagai Dalil Metode Hukum Islam,” *Al-Mau'izhah: Jurnal Ilmu Keislaman Dan Ilmu-Ilmu Sosial* 8, no. 2 (2022): 221–36.

⁹ Khikmatun Amalia, “'Urf Sebagai Metode Penetapan Hukum Ekonomi Islam,” *As-Salam: Jurnal Studi Hukum Islam & Pendidikan* 9, no. 1 (2020): 75–90.

¹⁰ Sulfan Wandu Sulfan Wandu, “Eksistensi 'Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018): 181–96.

from neighboring nagari and carried the long-standing exogamous traditions of the clan.¹¹ Over time, this prohibition was confirmed through customary deliberation and stipulated as part of the customary law (*the twentieth law*) that applied in the country.¹² Historical documentation shows that the exogamous prohibition of clans in Minangkabau existed long before the entry of Islam into the region. Historians note that the Minangkabau matrilineal system is thought to have been formed as early as the 14th century AD, and the prohibition of the tribes was one of the main pillars that sustained the continuity of the system.¹³ When Islam entered and developed in Minangkabau, there was a process of adaptation and negotiation between Islamic values and customary traditions, which ultimately resulted in the formulation of *the traditional basandi syarak, syarak basandi Kitabullah* (customary jointed with sharia, sharia jointed with the Qur'an).¹⁴

The ban on satribes in Minangkabau has its roots in the exogamous tradition of clans that have been going on long before the arrival of Islam in the West Sumatra region.¹⁵ In Minangkabau anthropological literature, *tribe* is understood as a matrilineal unit formed from the maternal lineage (*mamak*), whose members have genealogical relationships and are bound to one *gadang house*, one inheritance system, and one network of responsibilities. The prohibition of *inter-tribal* marriage serves as a structural principle that prevents the fusion of internal lineages and simultaneously becomes a mechanism for opening alliances between tribes within the country. The historical narrative of Nagari Tigo Koto Silungkang shows that this nagari was formed from the merger of three *dominant tribal* groups, and the strength of the nagari lies precisely in the ability of *the three tribes* to build a kinship network through cross-breeding consistently.

Penalties for Violating the Prohibition of Sasuku

Violations of the ban on sasuku in Nagari Tigo Koto Silungkang resulted in very heavy customary sanctions. Based on information from local traditional leaders, violators will be subject to sanctions in the form of: (1) expulsion from tribes and nagari; (2) revocation of the right to inheritance; (3) prohibition of attending all traditional ceremonies; and (4) in certain cases, excluded from the entire social network of indigenous peoples.¹⁶ These sanctions not only fall on the individual concerned, but can also impact their entire nuclear family. Interestingly, the study found that although formal sanctions have been softened in recent decades due to the influence of modernization and state laws, social and moral pressures on violators of the prohibition remain very strong.¹⁷ This shows that the prohibition of sasuku is not just a formal rule, but has been internalized as a social norm that is held with strong conviction by the majority of the people of Nagari Tigo Koto Silungkang.

¹¹ Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 8.

¹² Yanis, "Undang-Undang Dan Adat Minangkabau."

¹³ Kompilasi Hukum Islam, Pasal 39.

¹⁴ Syaifuddin Iskandar, Sosiologi Hukum Adat Minangkabau (Padang: Universitas Andalas Press, 2015), 102.

¹⁵ Zakiatul Husna et al., "Bias Gender Dalam Perkawinan Adat: Studi Tentang Kawin Sasuku Di Kanagarian Simarasok Kecamatan Baso Kabupaten Agam Perspektif Hukum Keluarga Islam," *JISRAH: Jurnal Integrasi Ilmu Syaria* 4, no. 3 (2023): 327–38.

¹⁶ Yulfian Azrial, Budaya Alam Minangkabau (Padang: Angkasa Raya, 1994), 77.

¹⁷ Makmur Hendrik, "Sistem Kekerabatan Matrilineal dan Implikasinya terhadap Perkawinan Adat Minangkabau," *Jurnal Hukum dan Masyarakat* 12, no. 2 (2018): 55–74.

The strong social sanctions show that the prohibition of tribal marriage not only functions as an instrument of controlling individual behavior, but also as a protection mechanism for the sustainability of the Minangkabau matrilineal kinship system.¹⁸ From the perspective of legal sociology, the existence of customary sanctions has a preventive as well as a repressive function. The preventive function can be seen from its ability to form the collective consciousness of the community to comply with applicable norms, while the repressive function appears to provide consequences for violations as an effort to restore the social balance that is considered disturbed.¹⁹ Therefore, the effectiveness of the sasuku ban does not solely depend on the severity of the sanctions, but mainly on the social legitimacy given by indigenous peoples to the norm.

The forms of sanction from the perspective of Islamic law, do not include the categories of *ḥudūd*, *qisās*, or *ta'zīr* that are directly determined by the nash. The sanctions applied are a product of the authority of indigenous peoples in maintaining social order based on shared values. As long as the sanctions aim to realize benefits, maintain community harmony, and do not contradict the basic principles of sharia such as justice, proportionality, and respect for individual rights, their existence can be understood as part of the implementation of '*urf*' in social life.²⁰ However, if its implementation results in excessive loss of a person's basic rights or causes harm greater than the benefit to be achieved, then the legitimacy of the law needs to be critically reviewed.

The findings of this study show that the binding force of the prohibition of sasuku rests more on the strength of cultural legitimacy than on formal coercion mechanisms. The community complies with the ban because they see it as part of a collective identity that is passed down from generation to generation and as a symbol of respect for ancestors and the preservation of customs. Thus, the continuation of the ban on sasuku in Nagari Tigo Koto Silungkang not only reflects the existence of customary norms, but also shows how a tradition is able to survive through the internalization of values, social control, and collective acceptance of society. This condition makes the prohibition of sasuku worthy of analysis through *the theory of 'urf*, to assess whether the social forces that support it are still in line with the goals of Islamic law (*maqāṣid al-syari'ah*) in realizing benefits and preventing harm.

The Social Function of the Sasuku Prohibition: A Sociological and Anthropological Perspective of Family Law

The prohibition of same-sex marriage from the perspective of legal sociology can be understood as a legal institution that has certain social functions that are vital to the continuity of the social system of the Minangkabau society. Therefore, using *Talcott Parsons'* framework of structural functionalism²¹, this prohibition can be analyzed as a mechanism of social integration that ensures cohesion among different tribal groups within a single

¹⁸ Jufri Naldo et al., "Dialectic of Tradition's Strength and Demand for Flexibility: A Study of Minang Families in Yogyakarta," *JSW (Jurnal Sosiologi Walisongo)* 7, no. 1 (2023): 13–24.

¹⁹ Naldo et al., "Dialectic of Tradition's Strength and Demand for Flexibility."

²⁰ Wandī, "Eksistensi 'Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh."

²¹ Siti Munawaroh and Peti Andriyani, "Fungsional Struktural Talcott Parsons Terhadap Tradisi Muharroman Dan Toleransi Beragama Desa Linggoasri," *Studi Analisis Living Qur'an Terhadap Tradisi Masyarakat Linggoasri* 27 (2023), <https://books.google.com/books?hl=id&lr=&id=1G3FEAAQAQJ&oi=fnd&pg=PA27&dq=fungsionalisme+struktural+Talcott+Parsons,+&ots=VyiAPJFIj&sig=JWQ3-bDFsCT9sU0w09mXYtFEWzw>.

country.²² One of the main functions of the sasuku ban is to encourage the formation of social alliances between different tribes. The prohibition of same-tribal marriage, the Minangkabau customary system indirectly encourages intertribal marriages (exogamy),²³ so that a wide social network and kinship relationships are built that bind various *tribal* groups in one nagari community. Anthropological analysis shows that the exogamous system of the Minangkabau clan has structural similarities to the pattern of *reciprocal exchange*—*reciprocal* exchange formalized through marriage—discovered by Claude Lévi-Strauss in his research on kinship-based society. Lévi-Strauss, in his work *Les structures élémentaires de la parenté*,²⁴ asserts that women's inter-group exchanges are a universal mechanism for building social solidarity and preventing internal conflicts; by operationalizing this theory, the prohibition of the tribe can be read as a local variant of the logic of such exchange.

In this perspective, exogamous rules not only govern marriage, but also define social boundaries between "we" (tribes) and "their" (other tribes) groups. By maintaining these boundaries, the Nagari Tigo Koto Silungkang people ensure that their *tribal* identity—with all the rights, obligations, and cultural institutions attached to it—is well maintained from generation to generation. One of the statements of traditional leaders that very clearly shows this connection is, "Tribe is our name, is our origin, is our pride. To marry a tribe is to mess up our own genealogy." This statement shows how the prohibition of sasuku is directly connected to the construction of social identity and self-esteem. This is where Ehrlich's *approach to living law* finds its relevance: it is not written into any formal law, but it remains effectively binding because it is lived, negotiated, and enforced by its own community.²⁵

Integrative Function and Strengthening of Intergroup Alliances

One of the main functions of the tribal ban is to encourage the formation of alliances and social ties between different tribal groups.²⁶ By prohibiting marriage within the same tribe, the Minangkabau customary system indirectly encourages intertribal marriages (*exogamy*). Through this inter-tribal marriage, a wide social network and kinship relationships were built that bound various tribal groups in one solid nagari community.²⁷ Anthropological analysis shows that the exogamous system of the Minangkabau clan has similarities to the pattern found by Claude Lévi-Strauss in his research on the structure of exchange in kinship-based societies. The prohibition of tribes creates what Lévi-Strauss calls *reciprocal exchanges*, i.e. reciprocal exchanges between social groups that benefit each other and strengthen collective solidarity.²⁸

²² Dt. Rajo Penghulu, Tokoh Adat Nagari Tigo Koto Silungkang, wawancara oleh penulis, 17 Maret 2024.

²³ Syarifuddin, *Hukum Perkawinan Islam Di Indonesia*.

²⁴ Claude Lévi-Strauss, *Les Structures Élémentaires de La Parenté*, vol. 2 (Walter de Gruyter GmbH & Co KG, 2020), <https://books.google.com/books?hl=id&lr=&id=nqXiDwAAQBAJ&oi=fnd&pg=PR1&dq=L%C3%A9vi-Strauss,+dalam+karyanya+Les+Structures+%C3%A9l%C3%A9mentaires+de+la+parent%C3%A9,&ots=SgDOSTDkb4&sig=LCdTYdY5zl7XtMk3AeMRvKVINQL>.

²⁵ James F. O'Day, "Ehrlich's Living Law Revisited—Further Vindication for a Prophet without Honor," *Case Western Reserve Law Review* 18, no. 1 (1966): 210.

²⁶ Muhamad Rizky Setiawan et al., "Analisis Hukum Islam Terhadap Sanksi Adat Perkawinan Sesuku Di Masyarakat Minangkabau," *Jurnal Mahasiswa Fakultas Syariah Dan Hukum UIN Suska Riau* 2, no. 2 (2023): 470–84.

²⁷ Chairul Anwar, *Hukum Adat Indonesia: Meninjau Hukum Adat Minangkabau* (Jakarta: Rineka Cipta, 1997), 148.

²⁸ Erdha Widayanti, "Perkawinan Eksogami dalam Hukum Adat dan Hukum Islam: Studi Komparatif," *Jurnal Studi Islam dan Masyarakat* 7, no. 1 (2019): 23–48.

The pattern of inter-tribal marriage in the context of Nagari Tigo Koto Silungkang, not only expands kinship networks, but also strengthens cooperation in various aspects of social life, such as inheritance management, customary dispute resolution, implementation of traditional ceremonies, and mutual cooperation activities. The bond built through marriage creates interdependent relationships between tribes, so that each group has an interest in maintaining harmony and social stability in the country. Thus, the prohibition of sasuku has a much broader social dimension than just a regulation on who can or cannot marry, because it serves as an instrument of social integration that supports the sustainability of indigenous peoples as a whole.

This social function is in line with the purpose of the shari'a (*maqāṣid al-syarī'ah*) from the perspective of Islamic law, especially in realizing benefits (*jalb al-maṣlaḥah*) and maintaining social order.²⁹ Although the sharia does not require an exogamous system between clans as practiced in the Minangkabau customs, Islam provides space for the formation of local traditions that are able to strengthen relationships between communities, expand friendships, and minimize the potential for social conflict. Therefore, if the prohibition of sasuku is proven to contribute to the creation of social cohesion and does not contradict the basic principles of sharia, then its existence can be seen as a form of *'urf ṣaḥīḥ* which has functional value in maintaining the benefit of society.³⁰

Functions of Maintenance of Genealogical Identity and Inheritance Systems

The second crucial function of the prohibition of sasuku is the maintenance of purity and clarity of genealogical identity in the matrilineal system. In Minangkabau customary law, inheritance (*high inheritance*) is inherited collectively by all members of the tribe from the same female ancestor. If a sassuku marriage occurs, there will be confusion in determining inheritance, because both spouses and their descendants will have inheritance claims from the same tribe on both paths.³¹ This phenomenon reflects how customary law functions not only as a norm that governs individual behavior, but also as a system that functionally underpins the order of collective ownership and distribution of resources.³² From this point of view, the prohibition of sasuku is not an arbitrary prohibition, but a legal institution that is rationally connected to the entire Minangkabau customary legal system.

The clarity of lineage in matrilineal systems also has far-reaching implications for the structure of indigenous leadership. A person's status as a member of the tribe determines his or her position in various customary institutions, including the right to obtain protection from the tribe, obligations to the gadang house, and involvement in customary deliberations.³³ Therefore, certainty about genealogical origins is an important prerequisite

²⁹ Muslim Muslim and Muhamad Fajri, "Komunikasi Persuasif Dan Koersif Niniak Mamak Kepada Anak Kemenakan Yang Kawin Sasuku: (Studi Kasus Suku Payobada Jorong Lakuak Dama Nagari Tanjung Haro Sikabu Kabu Padang Panjang Kecamatan Luak Kabupaten Lima Pulu Kota)," *SABER: Jurnal Teknik Informatika, Sains Dan Ilmu Komunikasi* 1, no. 4 (2023): 71–88.

³⁰ Ahmad Auri Aji Zarianto and Nadhira Wahyu Adityarani, "Eksistensi Sosiologi Hukum Pada Masyarakat Indonesia (Literature Review Atas Teori Living Law Eugen Ehrlich)," *Juridische: Jurnal Penelitian Hukum* 2, no. 3 (2025): 203–19.

³¹ Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century* (Leiden: Brill, 1931), 189.

³² Hendra Makmur, "Konflik Norma Antara Hukum Adat dan Hukum Islam dalam Perkawinan Minangkabau," *Jurnal Ilmu Hukum* 10, no. 1 (2020): 88–105.

³³ Ahmad Jamburi and Mohammad Muhibbin, "Matrilineal System Mechanism for The Distribution of Inheritance Rights," *Jurnal Cakrawala Hukum* 15, no. 2 (2024): 122–33.

for the running of the Minangkabau social system. The prohibition of same-sex marriage serves as a preventive instrument to avoid overlapping kinship identities that have the potential to cause conflicts regarding rights, obligations, and authority in the tribal environment.

From the perspective of legal functionalism theory, each customary norm is born to meet certain needs in society and maintain the balance of the social system. The prohibition of sasuku cannot be understood in isolation from the entire structure of Minangkabau customary which rests on matrilineal principles.³⁴ If the ban is abolished without any changes to the inheritance system, tribal structure, and high inheritance management mechanism, then the potential for disputes regarding tribal membership status, inheritance rights, and customary authority will be even greater. Thus, the existence of the sasuku ban has a causal relationship with the stability of customary institutions that have developed and been practiced for generations.

From the perspective of Islamic law, the goal of maintaining the clarity of the lineage (*ḥifẓ al-nasb*) is one of the main goals of the sharia (*maqāṣid al-syari'ah*).³⁵ Although the concept of nasab in Islam is based on biological relationships and is not identical to the Minangkabau matrilineal clan system, the two have common ground in an effort to maintain the certainty of family identity and prevent disputes that can damage social order. Therefore, as long as the prohibition of tribal marriage is understood as a mechanism to maintain genealogical order, protect the customary inheritance system, and realize the benefits of the community without changing the provisions of the sharia regarding parties who are haram to marry, then its existence can be positioned as a form of *'urf ṣaḥīḥ* that has relevance to the purpose of Islamic law. Thus, the legitimacy of the sasuku ban does not solely rely on traditions that are inherited from generation to generation, but also on the function of real benefits in maintaining the sustainability of the social system of the Minangkabau indigenous people.

The Construction of Social Identity and Group Boundaries

From an anthropological perspective, the prohibition of sasuku also serves as a mechanism for the construction and maintenance of social identity.³⁶ In this perspective, exogamous rules not only govern marriage, but also define social boundaries between "we" (tribes) and "their" (other tribes) groups.³⁷ By maintaining these boundaries, the people of Nagari Tigo Koto Silungkang ensure that tribal identity with all the rights, obligations, and cultural values attached to it is well maintained from generation to generation. Interviews with informants revealed that for most of the people of Nagari Tigo Koto Silungkang, tribal identity is an integral part of their identity as human beings and as members of the community.³⁸ A local indigenous leader said: "The tribe is our name, it is our origin, it is our pride. To marry a tribe

³⁴ Akhmad Rizqi Turama, "Formulasi Teori Fungsionalisme Struktural Talcott Parsons," *EUFONI: Journal of Language, Literary and Cultural Studies* 2, no. 1 (2020): 58–69.

³⁵ Husna et al., "Bias Gender Dalam Perkawinan Adat."

³⁶ Tia Sari, "Studi Analisis Historis Antropologi Ragam Pantangan-Pantangan Dalam Adat Perkawinan Masyarakat Minangkabau Di Kecamatan Sangir Kabupaten Solok Selatan," *SEUNEUBOK LADA: Jurnal Ilmu-Ilmu Sejarah, Sosial, Budaya Dan Pendidikan* 9, no. 2 (2022): 302–11.

³⁷ Irwan Abdullah, *Dari Bounded Ethnicity ke Konstruksi Kebudayaan: Kajian Antropologi Terhadap Masyarakat Minangkabau* (Yogyakarta: Tarawang Press, 2006), 113.

³⁸ Abdullah, *Dari Bounded Ethnicity ke Konstruksi Kebudayaan*, 115.

is to mess up our own genealogy." This statement clearly shows how the prohibition of sasuku is closely linked to the construction of social identity and self-esteem.³⁹

The System of Prohibition of Marriage in Islamic Law

Islamic law regulates the prohibition of marriage in detail in the Qur'an Surah An-Nisa' verses 22-24 and is clarified through the hadiths of the Prophet Muhammad PBUH and the ijtihad of the scholars. Prohibitions in Islam fall into two main categories: permanent prohibitions (*muharramat mu'abbadah*) and temporary prohibitions (*muharramat mu'aqqatab*). Permanent prohibitions include mahram because of nasab (blood relations), mahram because of marriage (*musaharah*), and mahram because of milk (*rida'ah*).⁴⁰ The fundamental question that needs to be answered is: what is the position of the prohibition of same-sex marriage within the framework of Islamic law? To answer this question, it is necessary to first examine the system of prohibition of marriage in Islam, then analyze whether the prohibition of sasuku can be recognized as part of Islamic law through *the mechanism of 'urf* and *maslahah*.

Marriage between two people who belong to the same tribe in Minangkabau customs but do not have a close biological blood relationship does not fall under the category of permanent or temporary prohibitions explicitly mentioned in Islamic law.⁴¹ Thus, textually (*nash*), Islamic law does not prohibit sasuku marriage. This is a crucial point that has become an arena for debate between customary authorities and religious authorities in Minangkabau, including in Nagari Tigo Koto Silungkang.

'Urf as a Bridge of Islamic Law and Customary Law

Although not explicitly prohibited by *nash*, the prohibition of sasuku is acceptable in Islamic law through *the mechanism of 'urf* (recognized custom).⁴² In the science of ushul fiqh, *'urf* is defined as a custom that has been common in society, both in the form of words and deeds, which does not contradict *nash* and does not contain *mudharat*.⁴³ The scholars of ushul fiqh have affirmed the rule: *al-'adah muhakkamah* (custom can become law). To be categorized as *'urf shahih* (a valid custom according to Islam), an adat must meet several conditions: (1) be common and consistent; (2) not contrary to the basic principles of sharia; (3) does not cause harm greater than the benefit; and (4) has been in force before or contemporaneously with the emergence of a legal issue.⁴⁴ If the prohibition of sasuku is tested against these criteria, then it can be said that the prohibition qualifies as *'urf saheeh*.⁴⁵

First, from the aspect of enforceability (*al-istifadah*), the prohibition of sasuku has been practiced for generations and is widely accepted by the people of Nagari Tigo Koto

³⁹ Ibnu Rusyd, *Bidayat al-Mujtahid wa Nihayat al-Muqtashid*, terj. Imam Ghazali Said dan Achmad Zaidun (Jakarta: Pustaka Amani, 2007), 2:1.

⁴⁰ Muhammad Abu Zahrah, *Al-'Alaqa al-Dawliyah fi al-Islam* (Kairo: Dar al-Fikr al-'Arabi, 1964), 87.

⁴¹ Busthanul Arifin, *Pelembagaan Hukum Islam di Indonesia: Akar Sejarah, Hambatan dan Prospeknya* (Jakarta: Gema Insani Press, 1996), 54.

⁴² Bismar Siregar et al., "Kedudukan Al-'Urf Sebagai Dalil Hukum," *Al-Ushul: Jurnal Al Abwal As Syakhsyah* 12, no. 1 (2024), <http://jurnal.uinsu.ac.id/index.php/alusrah/article/view/23386>.

⁴³ Hasan Muarif Ambary, *Menemukan Peradaban Islam: Arkeologi dan Islam di Indonesia* (Jakarta: Logos, 1998), 123.

⁴⁴ Syamsul Bahri, "Adat Basandi Syarak: Titik Temu Hukum Islam dan Hukum Adat Minangkabau," *Al-Manahij: Jurnal Kajian Hukum Islam* 9, no. 2 (2015): 193–208.

⁴⁵ Hamda Sulfinadia et al., "Negotiating Islamic Inheritance and Customary Law: Functional Legal Pluralism and Matrilineal Pusako Randah in Minangkabau," *Journal of Islamic Law* 7, no. 1 (2026): 1–30.

Silungkang as a binding norm. Compliance with the ban is not only based on fear of customary sanctions, but also on the collective awareness that the rules are part of the social identity of the community.⁴⁶ The continuity of this practice for several generations shows the continuity and general acceptance (*al-'urf al-'ām*) which is one of the important indicators in the assessment of a custom as *'urf ṣaḥīḥ*. Thus, in terms of social existence, the prohibition of sasuku fulfills the elements as a *living law* and has a real binding force in people's lives.

Second, from the aspect of conformity with the principles of sharia, the prohibition of sasuku cannot be understood as adding the category of women who are haram to marry (*taḥrīm*) as stipulated in the Qur'an and hadith. This prohibition is more appropriately positioned as a social arrangement (*tanzīm ijtīmā'i*) aimed at safeguarding the interests of indigenous peoples. In other words, the custom does not change the law of origin of marriage in Islam, but regulates its implementation in a certain social space based on considerations of benefits recognized by the community. Therefore, the existence of the prohibition of sasuku does not contradict nash as long as it is not believed to be an absolute provision of sharia, but as a customary norm that gains legitimacy through *the mechanism of 'urf*.

Third, if analyzed through the approach of *maqāṣid al-syarī'ah*, the prohibition of sasuku has an orientation that is in line with the purpose of Islamic law in safeguarding the benefits (*jalb al-maṣāliḥ*) and preventing harm (*dar' al-mafāṣid*). The results of the study show that the ban serves to maintain the clarity of the matrilineal kinship system, protect the governance of inheritance, strengthen social integration between tribes, and minimize potential conflicts in indigenous peoples. As long as these benefits are still felt by the community and do not cause a violation of the rights guaranteed by the Shari'a, then the prohibition of sasuku can be seen as *'urf ṣaḥīḥ* which is relevant to the purposes of Islamic law.⁴⁷ Thus, the legitimacy of the prohibition of sasuku does not solely rely on the authority of tradition, but also on its ability to realize benefits that are in harmony with the universal values of sharia.

However, the recognition of the prohibition of sasuku as *'urf ṣaḥīḥ* does not mean that all the legal consequences and customary sanctions that accompany it automatically acquire the legitimacy of the Shari'a. In ushul fiqh, the principle applies that what is assessed is the substance of the benefits of a custom, not every form of implementation. Therefore, if in practice there are sanctions that are excessive, discriminatory, or disproportionately deprive a person of basic rights, then this section needs to be evaluated based on the principles of justice (*al-'adl*), benefit (*maṣlaḥah*), and proportionality which are the characteristics of Islamic law. Thus, the validity of *'urf* is not only determined by the length of time a tradition has been practiced, but also by its conformity with the fundamental values of the Shari'ah in each development of the times.

⁴⁶ Sunan Autad Sarjana and Imam Kamaluddin Suratman, "Konsep 'Urf Dalam Penetapan Hukum Islam," *Tsaqafah* 13, no. 2 (2017): 279–96.

⁴⁷ Afrinald Rizhan, "Kedudukan Al-'Adah Dan Al-'Urf Sebagai Sumber Hukum Islam," *Jurnal Gagasan Hukum* 6, no. 01 (2024): 77–93.

The Perspective of Local Scholars and the Dynamics of Customary-Islamic Dialectics

Field research in Nagari Tigo Koto Silungkang revealed that there are three different positions among local scholars and religious leaders regarding the ban on sasuku. The first group which is the majority argues that the prohibition of sasuku is a valid custom according to Islam as long as it does not cause harm and is based on the values of mashlahatan that can be accounted for.⁴⁸ The second group argues that the prohibition of sasuku has no basis in the Qur'an or the Sunnah, so it cannot be used as a binding legal argument. This group tends to view that tribal marriage is halal according to Islam as long as there is no mahram relationship between the two.⁴⁹ The third group took a moderate position, namely recognizing the positive social function of the sassuku ban, but refusing to impose customary sanctions that were too heavy on violators.

The dynamics of these three groups reflect the dialectical complexity between customary law and Islamic law in Nagari Tigo Koto Silungkang, as well as showing that the local community does not monolithically understand and respond to the sasuku prohibition. This diversity of views actually enriches the treasures of local law and becomes a space for continuous negotiation between two legal traditions that are equally recognized by the community.⁵⁰ The fundamental question that needs to be answered is: what is the position of the prohibition of sasuku within the framework of Islamic law? To answer this, it is necessary to first examine the system of prohibition of marriage in Islam, then analyze whether the prohibition of sasuku can be accommodated as part of Islamic law through *the mechanism of 'urf and maṣlaḥah*.⁵¹

In the treasures of classical jurisprudence, *'urf* is defined as the custom of society, both in the form of words and deeds, which has become common and accepted by common sense; according to al-Suyuthi in *al-Ashbah wa al-Nazā'ir*, *'urf* is one of the legal evidences that stands alone if there is no firmness in the nash. Al-Qaraḥi in *al-Furuq* adds that *'urf* which applies in general and continuous can be an interpreter of mujmal texts and even the basis for the determination of law in matters that are not regulated textually. Ibn 'Abidin in *Radd al-Muhtar* further requires the validity of *'urf* strictly so that it is not abused.

To be categorized as *'urf shahih* i.e. a valid custom according to Islam a custom must meet four conditions that have been classically agreed upon by scholars: first, it is generally and continuously applicable among the related communities; the prohibition of sasuku does not only apply to one family, but becomes a rule that binds the entire Nagari Tigo Koto Silungkang community across generations. Second, it does not contradict the basic principles of sharia (*qawa'id al-kulliyah*); There is no authentic Qur'an or hadith that explicitly prohibits or commands intertribal marriages within a matrilineal clan. Third, Not causing greater harm than the benefits; Instead of causing harm, the ban on sasuku actually expands the family's

⁴⁸ Nursyirwan Effendi, *Adat dan Kebudayaan Minangkabau* (Padang: Pusat Pengkajian Islam dan Minangkabau, 2010), 65.

⁴⁹ Siti Zubaidah, *Tokoh Masyarakat Nagari Tigo Koto Silungkang*, wawancara oleh penulis, 20 Maret 2024.

⁵⁰ Azwar Anas, "Hukum Perkawinan Adat dan Relevansinya dengan Hukum Nasional," *Jurnal Hukum Islam dan Pranata Sosial* 5, no. 1 (2021): 31–52.

⁵¹ Muslim and Fajri, "Komunikasi Persuasif Dan Koersif Niniak Mamak Kepada Anak Kemenakan Yang Kawin Sasuku."

social and economic network through marriage. Fourth, it has been in effect before or along with the emergence of the legal problems it regulates.

If the prohibition of sasuku is tested against these four criteria systematically, then it can be concluded that the prohibition meets the parameters of *'urf saheeh* according to the perspective of classical jurisprudence and, therefore, does not contradict Islamic law.⁵² Field research in this country also identified three positions of local scholars that can enrich this dialogue. *First*, the majority group which is the dominant position argues that the prohibition of sasuku is a valid *custom* according to Islam as long as it does not cause harm and is based on beneficial values; *Second*, the minor group argues that this prohibition has no basis in Nash, and therefore cannot be used as a binding legal argument, and tends to view sasuku marriage as *halal* as long as there is no relationship *between mahram*; *Third*, moderate groups recognize the positive social function of this ban, but refuse to impose customary sanctions that are too severe for violators.⁵³ The first and third positions actually confirm that *urf*, when practiced beneficially, is accepted in the discourse of contemporary Indonesian Islamic law.

This article contributes to the discourse by showing that the customary-Islamic dialectic model that took place in Nagari Tigo Koto Silungkang is not an anomalous case that weakens the authority of the sharia, but rather one of the manifestations of the flexibility of Islamic law in accepting local diversity as long as the benefits and basic principles of sharia are maintained. In this way, the prohibition of sasuku functions as a *living law* that bridges—not separates Minangkabau customs with Islamic law.

Implications of National Law and Court Decisions

The prohibition of same-sex marriage from the perspective of Indonesian national law is not explicitly regulated in Law Number 1 of 1974 concerning Marriage or in the Compilation of Islamic Law (KHI).⁵⁴ Article 8 of the Marriage Law only mentions the prohibition of marriage due to blood relations, semenda relations, and milk relations, without mentioning the prohibition of clan-based customs.⁵⁵ In court practice, cases of tribal marriage brought to the realm of state law are generally resolved by referring to local customary law, considering the recognition of state law on the existence of customary law as guaranteed by Article 18B of the 1945 Constitution and various other laws and regulations.⁵⁶ This shows that in Indonesia's pluralistic legal system, the prohibition of sasuku has a recognized legal status, although it is not formally codified in state regulations.⁵⁷

The state's recognition of customary law shows that the Indonesian legal system is not built solely on the basis of written law, but also provides space for living norms in society.⁵⁸ In the context of Nagari Tigo Koto Silungkang, the prohibition of the sasuku from obtaining

⁵² Husna et al., "Bias Gender Dalam Perkawinan Adat."

⁵³ Sulfinadia et al., "Implementation of Aqiqah in the Bulan Maulid In Nagari Padang Laweh West Sumatra Perspective'Urf."

⁵⁴ Keputusan Pengadilan Negeri Agama Nomor 12/Pdt.G/2019/PN.Lbk.

⁵⁵ Imam al-Nawawi, Raudhat al-Thalibin wa 'Umdat al-Muftin (Beirut: Dar al-Fikr, 1994), 7:11.

⁵⁶ Fachri Ali dan Bahtiar Effendy, Merambah Jalan Baru Islam: Rekonstruksi Pemikiran Islam Indonesia Masa Orde Baru (Bandung: Mizan, 1986), 44.

⁵⁷ Nurcholish Madjid, Islam, Kemodernan dan Keindonesiaan (Bandung: Mizan, 1987), 38.

⁵⁸ Brian Z. Tamanaha, "A Vision of Social-Legal Change: Rescuing Ehrlich from 'Living Law,'" *Law & Social Inquiry* 36, no. 1 (2011): 297–318.

binding power is not because it is stipulated in the law, but because it is recognized and obeyed by the indigenous community as part of the common life system. Therefore, when there are disputes related to sasuku marriage, consideration of the customary values and social structure of the local community is often an important factor in the settlement of cases, especially as long as they do not conflict with constitutional principles and human rights.

However, legal pluralism also poses challenges in determining the boundary between customary autonomy and the protection of individual rights. On the one hand, indigenous peoples have the right to defend their cultural norms and identities; On the other hand, the state is obliged to guarantee the right of citizens to marry in accordance with the provisions of national and religious law. This tension shows that the applicability of the prohibition of sasuku in the realm of state law is not absolute, but depends on the extent to which the customary norm can be maintained as part of the rights of customary law communities without disproportionately eliminating the constitutional rights of citizens.

The position of the prohibition of sasuku from the perspective of Islamic law and national law can be understood as a social-customary norm that gains legitimacy through the collective acceptance of the community and recognition of the existence of customary law in the Indonesian legal system.⁵⁹ Since it does not include the prohibition of marriage explicitly stipulated by the sharia or the law, its binding power is more communal than normative-state. However, as long as the prohibition is still seen as bringing benefits, maintaining social harmony, and not contrary to the basic principles of national law and Islamic law, its existence still has relevance as part of the practice of customary law that lives and develops among the Minangkabau community.

Conclusion

The main findings of this article show that the prohibition of sasuku in Nagari Tigo Koto Silungkang is a customary law institution that has a strong normative-historical basis and is organically integrated with the ecogamic system of clans, inter-tribal marriages, and the construction of the genealogical identity of the community. This prohibition, when operated using *the theory of 'urf shabih* al-Suyuthi-al-Qara'fi-Ibn 'Abidin, proved to be not substantive contrary to the principles of Islamic law; rather, it represented one of the variants of Minangkabau *living law* that succeeded in maintaining the internal coherence of customs without sacrificing harmony with the sharia.

The scientific contribution of this article lies in three things: first, the integration of three approaches normative-historical, sociological-anthropological, and ushul fiqh that have been running separately in the study of Indonesian family law; second, the empirical proof that *the category of 'urf shabih* in classical ushul fiqh can still be operationalized contextually to justify complex customary institutions at the community level; third, the provision of a model of customary-Islamic dialectics that can be used to justify customary-Islamic dialectic. It is used as a reference framework for similar studies in other Minangkabau regions and for the development of national family law policies that are more accommodating to legal pluralism. This article has limitations on geographical coverage that only covers one country, so

⁵⁹ Abdurrahman and Elfia, "Larangan Nikah Beda Suku Bagi Masyarakat Di Kenagarian Guguak Malalo Perspektif 'Urf Dan Maqashid Syariah."

generalization of findings needs to be done carefully. Further research is recommended to examine the prohibition of sasuku in other nagari in Minangkabau comparatively, further explore how the younger generation interprets and negotiate this prohibition in the context of modernization and globalization, and examine the potential integration of *the 'urf sahib* parameter into national family law policy.

This study has limitations in geographical coverage that only covers one country, so generalization of findings needs to be done carefully. Further research is suggested to examine the prohibition of sasuku in other nagari in Minangkabau comparatively, as well as to further explore how the younger generation views and negotiates this prohibition in the context of modernization and globalization. Cross-disciplinary research that combines Islamic law, customary law, and social sciences will hopefully continue to enrich the discourse of Indonesian family law.

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