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I wish to submit an original research manuscript entitled “Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City, Indonesia” for considerations by al Istinbath, Jurnal Hukum Islam. I confirm that this work is original and has not been published elsewhere, nor is it currently under consideration for publication elsewhere.

In this paper, I report on/show that the implementation of the *mbasuh dusun* tradition is a customary sanction for women who become pregnant outside of marriage in Bengkulu City, Indonesia and has an effective impact. This *mbasuh dusun* tradition is the target and goal, so that the perpetrator is ashamed and does not repeat the act again, so that it can effectively reduce and even deter the perpetrator. The application of this customary sanction in the context of developing marriage law in Indonesia, it is necessary to review the legalization of marriage of pregnant women outside of marriage in the Compilation of Islamic Law (KHI), and it turns out that the provision of sanctions for pregnant women outside of marriage has a significant impact on creating a deterrent effect and bringing benefits to the community.

I believe this manuscript is appropriate for publication by al Istinbath, Jurnal Hukum Islam.

We have no conflict of interest to disclose.

Sincerely,

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# Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City, Indonesia

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## Abstract

This research aims to reveal the enforcement of the mbasuh dusun tradition in cases of pregnancy outside marriage in Bengkulu City, Indonesia. The causes of out-of-wedlock pregnancies include: widespread promiscuity between men and women, lack of supervision from parents because children migrate for school/college, and parents are busy working. The focus of this research is: how is the perspective of Islamic law on the implementation of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City in the context of the development of marriage law in Indonesia? This type of research is field research. The nature of this research is descriptive analytic. The result of this research is that: the implementation of the mbasuh dusun tradition is a customary sanction for pregnant women outside of marriage in Bengkulu City and has an effective impact. This mbasuh dusun tradition is carried out by slaughtering a goat, and the perpetrator must be present to be aware and must apologize. Then give charity (and ask for prayers) at the place where the goat was slaughtered or outside the house. This mbasuh dusun tradition is the target and goal, so that the perpetrator is ashamed and does not repeat the act again, so that it can effectively reduce and even deter the perpetrator. The application of this customary sanction in the context of developing marriage law in Indonesia, it is necessary to review the legalization of marriage of pregnant women outside of marriage in the Compilation of Islamic Law (KHI), and it turns out that the provision of sanctions for pregnant women outside of marriage has a significant impact on creating a deterrent effect and bringing benefits to the community.

Keywords: Tradition, Mbasuh Dusun, Pregnant Women Outside of Marriage, Customary Sanctions, Islamic Law

## Abstrak

Penelitian ini bertujuan untuk mengungkap pemberlakuan tradisi *mbasuh dusun* terhadap kasus hamil luar nikah di Kota Bengkulu, Indonesia. Penyebab maraknya kasus hamil luar nikah ini antara lain: meluasnya pergaulan bebas antara laki-laki dan perempuan, kurangnya pengawasan dari orang tua karena anak merantau untuk sekolah/ kuliah, dan orang tua sibuk bekerja. Fokus penelitian ini adalah: bagaimanakah perspektif hukum Islam terhadap pemberlakuan tradisi *mbasuh dusun* bagi perempuan hamil luar nikah di Kota Bengkulu dalam konteks pengembangan hukum perkawinan di Indonesia? Jenis penelitian ini adalah penelitian lapangan (*field research*). Sifat penelitian ini adalah *deskriptif analitik*. Hasil penelitian ini bahwa: pemberlakuan tradisi *mbasuh dusun* merupakan sanksi adat bagi perempuan hamil luar nikah di Kota Bengkulu dan berdampak efektif. Tradisi *mbasuh dusun* ini dilaksanakan dengan menyembelih kambing, dan pelaku harus hadir agar sadar dan harus minta maaf. Kemudian melakukan sedekah (dan minta do'a) di tempat menyembelih kambing tadi atau di luar rumah. Tradisi *mbasuh dusun* ini sasaran dan tujuannya, agar pelaku malu dan tidak mengulangi lagi perbuatan tersebut, sehingga dapat mengurangi bahkan membuat pelaku jera secara efektif. Pemberlakuan sanksi adat ini dalam konteks pengembangan hukum perkawinan di Indonesia, maka diperlukan untuk meninjau ulang pengesahan pernikahan perempuan hamil luar nikah dalam Kompilasi Hukum Islam (KHI), dan ternyata pemberian sanksi bagi perempuan hamil luar nikah berdampak signifikan untuk menimbulkan efek jera dan mendatangkan kemaslahatan bagi masyarakat.

Kata Kunci: Tradisi, Mbasuh Dusun, Perempuan Hamil Luar Nikah, Sanksi Adat, Hukum Islam

## Introduction

In Indonesia, many facts have revealed the practice of freedom of association that results in pregnancy outside of marriage.<sup>1</sup> This deviant phenomenon has reduced the sacredness of marriage, which should be something holy and go through various stages that need attention and seriousness, not just legalizing the marriage of pregnant women outside of marriage.<sup>2</sup> Marriage is not just for biological purposes,<sup>3</sup> but also obtaining offspring in order to form a family is the main purpose of a marriage.<sup>4</sup>

In preserving offspring, Islamic teachings prohibit adultery and all forms of actions that can lead to adultery. Adultery, which is prohibited in Islam, includes not only the criminal act of rape, but also sexual intercourse outside of marriage, even if it is based on mutual consent.<sup>5</sup> The desire to have sex with the opposite sex is human nature, but Islam forbids it without marriage. As mentioned in the Qur'an Surah al-Isrā' verse 32 which reads:

وَلَا تَقْرُبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا - ٣٢

*And do not approach adultery, for it is an abominable deed and an evil way.*

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<sup>1</sup> Jelia Karlina Rachmawati, "Penerimaan Diri Remaja Hamil Pra Nikah: Studi Kasus Pada 2 Remaja Hamil Pra Nikah Di Kota Bandung" (Universitas Pendidikan Indonesia, 2014).

<sup>2</sup> Susi Tilayanti, "Praktek Tajdid Nikah Pada Pasangan Hamil Diluar Nikah Desa Umong Seribee Kecamatan Lhoeng Kabupaten Aceh Besar." (UIN Ar-Raniry Banda Aceh, 2019).

<sup>3</sup> Efrinaldi Efrinaldi, Jayusman Jayusman, and M Yenis, "Revealing The Dilemma Of Marriage Dispensation Regulations In Indonesia," *ADHKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46, <https://doi.org/10.37876/adhki.v5i1.113>.

<sup>4</sup> Muhammad Amin Summa, *Hukum Keluarga Islam Di Dunia Islam*, II (Jakarta: PT. Raja Grafindo Persada, 2005).

<sup>5</sup> Zamakhsyari Hasballah, "Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih" (Cita Pustaka Media, 2013).

The perpetrator of adultery, in Islamic law there are sanctions, namely: 100 volumes for the unmarried and stoning for the married. This punishment aims to create individual and community peace and prevent adultery.<sup>6</sup>

The prohibition of adultery is part of preserving human offspring and their honor.<sup>7</sup> Pregnancy of a woman out of wedlock is a pregnancy that no one wants. When faced with this situation, women are often the ones who feel the strongest psychological pressure.<sup>8</sup> If the situation is allowed to drag on and a marriage is not immediately arranged with the man who impregnated her, it is feared that a worse situation will occur. Cases of suicide and abortion are examples that are usually dominated by psychological distress, due to pregnancy outside marriage. Women feel that their lives are uncomfortable, always haunted by shame, low self-esteem, feelings of sin, depression, and pessimism.<sup>9</sup>

Furthermore, in Bengkulu City, women who become pregnant outside of marriage are subjected to the traditional sanction of *mbasuh dusun*. In 2018, it was seen in the case of Yd and Dy, both of whom were active in youth organizations. Dy became pregnant out of wedlock. When Dy was six months pregnant, her family found out about it, and Dy's father reported to the Imam and the Head of the Neighborhood Association (Ketua RT), asking for an opinion about the problem of his daughter who was six months pregnant. The Imam and RT suggested a customary settlement. Rajo penghulu adat was appointed and the family handed over the matter to adat. The adat meeting decided on the customary sanction of slaughtering a goat for the *mbasuh dusun*. Then Yd and Dy were married at night, without wearing Bengkulu traditional clothing and without a reception.<sup>10</sup> The administration of marriage by the Head of the Religious Affairs Office (KUA) is carried out as in general, in accordance with Marriage Law Number 1 of 1974.<sup>11</sup>

Previous research related to this research is: DY Witanto's research entitled, "Hak dan Kedudukan Anak Luar Nikah, Pasca Lahirnya Putusan Mahkamah Konstitusi Tentang Uji Materil Undang-undang Perkawinan" (The Rights and Position of Extra-Marital Children, After the Constitutional Court Decision on the Materil Test of the Marriage Law). This paper examines children based on their status and position before the law; legitimate children, adulterous children, discordant children, extra-marital children, adopted children, and stepchildren.<sup>12</sup> Nyoman Sujana's article entitled "Kedudukan Hukum Anak Luar Nikah dalam Perspektif Putusan Mahkamah Konsitusi Nomor 46/PUU-VIII/2010" (The Legal Position of Extra-Marital Children in the Perspective of the Constitutional Court Decision Number 46/PUU-VIII/2010). This paper discusses the position of extramarital children from *sirri* marriages.<sup>13</sup> Asep Lukman Daris Salam's article entitled "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010" (Legal Analysis of Nasab Rights of Extra-marital Children According to the

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<sup>6</sup> Makhrus Munajat, "مبادئ الجنائيات الإسلامية وتطبيقها في السياق الإندونيسي," *Journal of Indonesian Islam* 7, no. 2 (2013): 404–26, <https://doi.org/10.15642/JIIS.2013.7.2.404-426>.

<sup>7</sup> Nasruddin S. and Sulaemang L, "Pregnancy Married in the Perspective of Islamic Law and Five Mazhab," *Al-'Adl* 14, no. 1 (2021): 14, <https://doi.org/10.31332/aladl.v14i1.2234>.

<sup>8</sup> A Saiin, "Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach," *Advances in Humanities and Contemporary Studies* 2, no. 1 (2021): 33–40, <https://doi.org/10.30880/ahcs.2021.02.01.005>.

<sup>9</sup> Fatimah, "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia" (Lampung: UIN Raden Intan Lampung, 2021).

<sup>10</sup> "Interview with Ris, Bibik Wt 10 Januari 2021 Di Bengkulu" (n.d.).

<sup>11</sup> "Interview with Bambang, Tokoh Masyarakat Kota Bengkulu, 15 Januari 2021," (2021).

<sup>12</sup> Darmoko Yuti Witanto, *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin: Pasca Keluarnya Putusan MK Tentang Uji Materil UU Perkawinan* (Jakarta: Prestasi Pustaka Publisher, 2012).

<sup>13</sup> I Nyoman Sujana, *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010* (Yogyakarta: Aswaja Pressindo, 2015).

Constitutional Court Decision Number 46/PUU/VIII/2010).<sup>14</sup> This article explains that the Constitutional Court's decision is final. Likewise, Nurul Hak's article entitled, "Kedudukan dan Hak Anak Luar Nikah Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Status Anak Luar Nikah, Studi Persepsi Hakim Pengadilan Agama se-Wilayah Pengadilan Tinggi Agama Bengkulu" (The Position and Rights of Extra-Marital Children After the Constitutional Court Decision Number 46/PUU-VIII/2010 on the Status of Extra-Marital Children (Study of Perceptions of Religious Court Judges in the Bengkulu Religious High Court Region))." This research also emphasizes that the Constitutional Court's decision is final and binding. The decision is the result of the *ijtihad* of constitutional judges.<sup>15</sup> Wahyu Wibisana's article entitled, "Perkawinan Perempuan Hamil di luar Nikah Serta Akibat Hukumnya Perspektif Fiqh dan Hukum Positif" (Marriage of Pregnant Women outside of Marriage and its Legal Effects from the Perspective of Fiqh and Positive Law). The research found that women who are pregnant outside of marriage, the imams of the *mazhab* differ in opinion about the permissibility of marrying them. Meanwhile, in Positive Law, marrying a pregnant woman outside of marriage is legal.<sup>16</sup> Fikri et.al's article entitled, "Perlindungan Anak di Luar Nikah dalam Hukum Negara dan Hukum Islam, Perspektif Hakim Pengadilan Agama Parepare". (Protection of Children Outside of Marriage in State Law and Islamic Law (Perspective of Parepare Religious Court Judges). This paper emphasizes that there is no room or gap to provide protection without marriage registration. Child protection in Islamic law can be done by determining the origin of *nasab* for children in a legal marriage and protection is given to children through recognition. The protection of children outside of marriage can be done through *itsbat nikah* and the application of Article 43 paragraph 1 of Law No.1 of 1974 after the judicial review of the Constitutional Court. The rights that can be given to children out of wedlock without a valid marriage are limited to civil rights regarding the right to live, the right to education and health, and the right to obtain public services, so that civil rights related to inheritance rights and guardianship rights cannot be given to children out of wedlock without a valid marriage.<sup>17</sup> The similarity between this research and the research of Witanto, Sujana, and Fikri is the impact of the marriage of pregnant women outside of marriage, namely on the status of children. Meanwhile, this research and Wibisana's research both focus on the marriage of pregnant women outside of marriage. The difference with the research that will be conducted is the enforcement of the *mbasuh dusun* tradition for pregnant women outside of marriage in Bengkulu City. The focus of this research is how the implementation of the *mbasuh dusun* tradition for pregnant women outside of marriage in Bengkulu City in the context of the development of marriage law in Indonesia?

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<sup>14</sup> Asep Lukman Daris Salam, "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010," *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 35–60, <https://doi.org//10.51729/sakinah11132>.

<sup>15</sup> Nurul Hak, *Kedudukan Dan Hak Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, Tentang Status Anak Luar Nikah (Studi Persepsi Hakim Pengadilan Agama Se Wilayah PA Tinggi Agama Bengkulu* (Lampung: (Disertasi Universitas Islam Negeri Raden Intan Lampung, 2018).

<sup>16</sup> Wahyu Wibisana, "Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya: Perspektif Fiqh Dan Hukum Positif," *At-Ta'lim: Jurnal Pendidikan Agama Islam* 15, no. 1 (2017): 29–35, [http://jurnal.upi.edu/file/03\\_Perkawinan\\_Wanita\\_Hamil\\_Diluar\\_Nikah\\_-\\_Wahyu2.pdf](http://jurnal.upi.edu/file/03_Perkawinan_Wanita_Hamil_Diluar_Nikah_-_Wahyu2.pdf).

<sup>17</sup> Fikri Fikri, Budiman Sulaeman, and Andi Bahri, "Perlindungan Anak Di Luar Nikah Dalam Hukum Negara Dan Hukum Islam (Perspektif Hakim Pengadilan Agama Parepare)," *DIKTUM: Jurnal Syariah Dan Hukum* 12, no. 1 (2014): 54–76, <https://doi.org/10.35905/diktum.v12i1.196>.



## Research Methods

This type of research is field research.<sup>18</sup> The nature of this research is descriptive analytic.<sup>19</sup> This research uses a normative approach, namely Islamic law that views problems from a legal-formal angle or from normative aspects. The primary data of this research are the results of observations at the research location, the results of interviews with informants, and the results of documentation. Secondary data are books and documents related to this research. The data collection methods in this study used observation, interviews, and documentation. The data obtained was analyzed using a qualitative descriptive method so that conclusions were obtained.<sup>20</sup>

## Customary Sanctions and Islamic Law

### a) Customary Sanctions

The use of the term sanction appears to be a broad term with different meanings, in different contexts. Sanctions can be restrictive, depending on the context, as the word is an antonym of automatic. In a customary context, a sanction can be a punishment imposed by customary administrators. So, a sanction is a punitive measure imposed by the state or a particular group, due to an offense committed by a person or group.

Sanctions are one of the things that are very often heard and witnessed in the community. The existence of sanctions is expected to make a person or group deterred and will not repeat their mistakes, either the same mistakes or different mistakes. The more serious the mistake made, the greater the sanction he will receive. The term *adat* comes from the Arabic *'adah*, which originally meant habit.<sup>21</sup> Custom is defined as a habit that the community assumes has been formed, both before and after the existence of the community. Custom is a habit that must generally prevail in the society in question.<sup>22</sup> The definition of *adat* put forward by Moh. Koesnoe, according to him *adat* is the overall teachings and practices that regulate the way of life of Indonesians in society, teachings and practices which are directly born from people's responses about humans and the world.<sup>23</sup> As such, *adat* is the custom of the community and what the community does repeatedly. Living and evolving customs are a wonderful source for customary law, as the original law of the Indonesian people and nation, wherever and whenever. The relationship with customary law is that custom or habit can be made into law, provided that it does not conflict with the public interest. *Adat* appears as a habit of behavior that is found from generation to generation, a habit that has been demanded from ancestors since ancient times..<sup>24</sup>

In terms of good and bad, *adat* is divided into two parts:

#### 1) Shahih customs

Shahih customs are customs that are repeatedly practiced, accepted by many people, do not conflict with religion, manners, and noble culture.

#### 2) Faulty (*Fasid*) customs

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<sup>18</sup> Dolet Unaradjan, *Pengantar Metode Penelitian Ilmu Sosial*, h. 198 (Jakarta: PT Grapindo, 2000).

<sup>19</sup> Dani Vardiansyah, *Filsafat Ilmu Komunikasi: Suatu Pengantar* (Jakarta: Indeks Kelompok Gramedia, 2005).

<sup>20</sup> Wiranto Surachmad, *Dasar Dan Teknik Penelitian Research* (Bandung: Alumni, 1982).

<sup>21</sup> Efrinaldi Efrinaldi et al., "Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 287–310, <https://doi.org/10.29240/jhi.v7i1.4140>.

<sup>22</sup> Sri Warjiyati, *Ilmu Hukum Adat* (Yogyakarta: CV Budi Utama, 2020), p. 6.

<sup>23</sup> Mohammad Koesnoe, *Dasar Dan Metode Ilmu Hukum Positif* (Airlangga University Press, 2010).

<sup>24</sup> Soerjono Soekanto, *Hukum Adat Di Indonesia* (Jakarta: Rajawali Pers, 2012).

Faulty customs are customs that apply in a place, even though they are evenly practiced, but are contrary to religion, state laws, and manners.<sup>25</sup>

These customs were received from previous generations and were believed and practiced by the people on the assumption that they were good for them. Islam came with a set of shara` norms that governed the life of the people. Some of the old customs were in harmony with and some were in conflict with the sharia laws that came later. The clash, absorption and renewal between custom and sharia occurred.

This prioritizes the process of selecting customs, which can be seen as still necessary to be implemented. The guideline used in selecting the old customs is the benefit according to revelation. Based on this selection,<sup>26</sup> Customs can be divided into four groups, namely:

- 1) Customs that are old in substance and in terms of implementation contain elements of benefit, meaning that there is an element of benefit and no element of harm in this action, or the element of benefit is greater than the element of harm. This form of custom is fully accepted in Islamic law.
- 2) Old customs which, in principle, substantially contain elements of maslahat and do not contain elements of mafsadah or harm, but in practice are not considered good by Islam. Customs in this form are acceptable in Islam, but in further implementation undergo changes and adjustments.
- 3) Old customs which, in principle and practice, contain elements of mafsadat (destruction), meaning that they contain only destructive elements and do not have elements of benefit, or there are elements of benefit but the destructive elements are greater.
- 4) 4) Long-standing customs that have been accepted by the people, because they do not contain mafsadat (harm) and do not contradict the arguments of sharia` that came later, but have not been clearly absorbed into sharia, either directly or indirectly.

Thus, adat is a man-made rule that has been practiced since time immemorial in the form of actions, behavior, and speech to regulate the order of community members.<sup>27</sup> If this custom is not implemented there will be confusion, which leads to unwritten sanctions by the local community against perpetrators who are considered deviant.

So, customary sanctions are all forms of actions or efforts made to restore balance due to disturbances that are violations of custom.<sup>28</sup> The source of customary law is unwritten legal regulations that grow and develop and are maintained by the legal awareness of the community.<sup>29</sup> Because adat rules are unwritten, grow and develop, adat sanctions are adaptable and elastic. Any violation of adat will result in an imbalance in society. Therefore, every violator must be given customary sanctions that serve as a means of deterrent effect and restore the damaged balance (customary medicine).

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<sup>25</sup> Amir Syarifuddin, *Ushul Fiqih Jilid II* (Jakarta: Logos Wacana Ilmu, 1999), p. 368.

<sup>26</sup> Husnul Haq, "Kaidah 'Al-'Adah Muhakkamah' Dalam Tradisi Pernikahan Masyarakat Jawa," *Abkam: Jurnal Hukum Islam* 5, no. 2 (2017): 295–320, <https://doi.org/10.21274/ahkam.2017.5.2.295-320>.

<sup>27</sup> Teuku Muttaqin Mansur, *Hukum Adat: Perkembangan Dan Pembaruannya* (Banda Aceh: Syiah Kuala University Press, 2018), p. 9-10.

<sup>28</sup> Erikson Sihotang, "Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem," *Mimbar Keadilan* 12, no. 2 (2019): 211–22, [http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal\\_Sanksi\\_Adat\\_Dan\\_Pidana\\_Yang\\_Berbarengan\\_Dalam\\_Tindak\\_Pidana\\_Pencabulan\\_Anak\\_Kaitannya\\_Dengan\\_Asas\\_Nebis\\_In\\_Idem.pdf](http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal_Sanksi_Adat_Dan_Pidana_Yang_Berbarengan_Dalam_Tindak_Pidana_Pencabulan_Anak_Kaitannya_Dengan_Asas_Nebis_In_Idem.pdf).

<sup>29</sup> Dian Ekawaty Ismail, Avelia Rahmah Y Mantali, and Mohamad Rivaldi Moha, "The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice," *Jambura Law Review* 5, no. 2 (2023): 220–34, <https://doi.org/10.24843/UJLC.2018.v02.i02.p02>.

The mention of customary sanctions is a technically scientific term only. The technical scientific term (for example, as stated by Hilman Hadikusuma, 1977) merely refers to customary rules that apply among the community, which do not take the form of formal legislation by the state. Unfortunately, there is no pertinent explanation of what the technical scientific term means.

One example of customary sanctions in Bengkulu, which has different rules from other regions or villages, is the customary sanction in the form of *mbasuh dusun* for pregnant women outside of marriage. According to the results of the author's interviews, the sanctions given to violators of this customary rule are in the form of paying fines such as money and cutting 1 goat at the time of the marriage contract and *jambar ayam*, which is given to the customary administrator. The punishment suffered by violators of customary law is moral pressure in the community, which causes the person who violates it to become ashamed or makes him feel bad to the customary community. In fact, legal sanctions based on customary law are felt to be more severe and more concerned with a person's morality. The legal aspect is more affecting to the people, so that the purpose of the punishment, which is to deter people, can be achieved.

As with custom, law is essentially a statement of the thoughts and feelings about fairness and unfairness that grow in society. The concrete form of law is in the form of rules, so in or with the rules determined what is fair and unfair.<sup>30</sup> Law also comes from the Arabic term *hukm* (plural: *ahkam*) which means command. The term law influences members of the public, especially those who are Muslim. The term customary law is rarely found among the general public. People tend to use the term *adat* only. This term refers to a custom, which is a series of actions that must generally apply to the structure of the community concerned. *Adat* is a reflection of the personality of a nation, which is one of the manifestations of the soul of the nation from century to century. Therefore, every nation in the world has its own customs and habits that are not the same with one another.

Among the people, the terms law and *adat* are actually separate in their use and understanding. This is because the law comes from outside the community, from the ruler, government, or based on religion, while *adat* are provisions that arise and grow from within the community itself and are obeyed as law.<sup>31</sup> So, it can be concluded that the definition of customary law from the description, customary law means the law that arises and grows from within the community and is obeyed as law.

A research report by Snouck Hurgronje in Aceh (1891-1892) states that there is a term *Adatrecht* to distinguish between customs or *adat* stances that have no legal sanction on the one hand and *adat* that have legal sanction on the other. The structure of society in various parts of Indonesia does not provide a clear delineation of what *adat* and *adat* law are. In general, it is only stated that when talking about *adat* and customary law, they all refer to the concept of the prevailing and standardized customary order in society. Custom in the sense of *adat* is a normative habit and has taken the form of rules of behavior, applicable and maintained in the community.<sup>32</sup>

Judging from the development of human life, the occurrence of law starts from the human person who is given God's mind and behavior. Behavior that is continuously carried out by individuals creates (personal habits). If the personal habit is imitated by other people, then it will also become the habit of that person sooner or later between one person and another person in the unity of society to

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<sup>30</sup> Warjiyati, *Ilmu Hukum Adat*, p.5.

<sup>31</sup> Ilyas Ilyas, "Eksistensi Dan Kekuatan Penyelesaian Sengketa Secara Adat Pada Tingkat Gampong," *Kanun Jurnal Ilmu Hukum* 12, no. 1 (2010): 137–75.

<sup>32</sup> I Gede A B Wiranata and M H Sh, *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa* (Bandung: Citra Aditya Bakti, 2005), p. 3-5.

also carry out the habit. Then when all members of the community perform the habitual behavior, sooner or later the habit becomes (*adat*) of that community. So, *adat* is the custom of the community and groups of people sooner or later make it a custom that should apply to all members of the community with sanctions, so that it becomes customary law.

So customary law is the whole custom (which is not written) and lives in society in the form of morals, habits, and conventions that have legal consequences.<sup>33</sup> To maintain the implementation of customary law so that no deviations or violations occur, there are members of the community who are entrusted with the task of overseeing it. The law reflects the personality and soul of the nation. Savigny also stated that customary law in the past was somewhat different in content which showed a development.<sup>34</sup>

The explanation above can be concluded that customary law is a law that describes the development of the nation with regard to personality, so that customary law is still widely applied by the community, such as one of the customary laws that is still applied by the people in Bengkulu, as the focus of this research, namely customary sanctions in the form of *mbasuh* *dusun* against pregnant women outside of marriage. While the definition of customary law according to Soejono Soekanto, customary law is essentially customary law, meaning habits that have legal consequences (*seinsollen*). In contrast to mere habits, customary law is actions that are repeated in the same form which lead to (*rechtsvordigeordening der samenleving*).<sup>35</sup>

The statement above can be concluded, customary law is a law that has been believed since the time of the ancestors and has become a habit that has been passed down from generation to generation, of course customary law provides good development, where each party or each region has its own rules and sanctions for people who break the law. Including in Bengkulu, which until now applies customary law, one of which is the customary sanction in the form of *mbasuh* *dusun* for women who are pregnant outside of marriage. This shows that in this area, has a personality that still clings to customary law, even though development has advanced and many things may affect it. One of them is the birth of technology, and laws and regulations from the government and also many young people who of course have thought more logically, so that there are many pros and cons.

Customary law is popularly known as unstatutory law, which is different from continental law as statutory law.<sup>36</sup> This unwritten customary law is a custom that must be obeyed by the people who apply it, because some of it is Islamic law, meaning that customary law is also related to Islamic law.

## **b) Enforcement of Customary Sanctions**

The application of customary sanctions is in accordance with the regulations that have been made, based on the agreement of the customary leader and the indigenous community itself for generations. The application of customary sanctions is carried out based on the policies of the parties concerned such as customary administrators, tribal leaders and local residents. One of the customary

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<sup>33</sup> A Suriyaman Mustari Pide and M Sh, *Hukum Adat Dabulu, Kini, Dan Akan Datang* (Jakarta: Prenada Media, 2017), p.5.

<sup>34</sup> Lastuti Abubakar, "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319–31, <https://doi.org/10.20884/1.jdh.2013.13.2.213>.

<sup>35</sup> Wiranata and Sh, *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa*, p. 24 .

<sup>36</sup> Hilman Syahrial Haq, *Pengantar Hukum Adat Indonesia*, (Jawa Tengah: Lakeisha, 2019), p.9-10.

laws applied to the Bengkulu community, namely customary sanctions in the form of *mbasuh dusun* against pregnant women outside of marriage.

The sanctions given to the custom violator include fines and being ostracized by the local community. For violators of customary sanctions, the customary institution that resolves the case is the customary institution. If a case is resolved at the customary institution, then the case is considered resolved, if it is not resolved, then it will be taken to the judicial institution. The application of customary sanctions lies with the administrators who are very concerned, sometimes many of these administrators just sit back and relax without knowing about the responsibilities that are being assigned to them, many of them sit in customary institutions without knowing the customary law itself.

### c) Relationship Between Customary Sanctions and Islamic Law

Customary sanctions are only imposed on someone who violates customary law. The relationship between customary sanctions and Islamic law is that customary sanctions have violated the law that occurs in society, while Islamic law is the law ordered by Allah Subhanahu Wa Ta'ala for his people brought by a Prophet. So, customary sanctions given to violators of customary law must not pass Islamic law.

Customary law and Islamic law are part of the legal system in Indonesia in addition to statutory law.<sup>37</sup> The concept of Islamic law is different from the concept of statutory law, because Islamic teachings convince its laws as rules sourced from divine revelation.<sup>38</sup>

Islamic law is a combination of two words, law and Islam. Law can be understood as a set of rules or norms that regulate human behavior in a society, either set by the authorities or grow and develop in society. The form can be written such as laws and regulations or unwritten such as customary law and laws that live in society. Islam literally means submission, safety, or prosperity. This means that people who follow Islam will get safety and prosperity in the world and the hereafter. According to Mahmud Syaltut, Islam is the religion of Allah SWT whose basics and sharia were revealed to the Prophet Muhammad SAW (Peace be Upon Him) and charged him to convey and invite all mankind.<sup>39</sup> Etymologically and terminologically reviewed about Islamic law, etymologically law comes from Arabic, namely *al-hukm* which means hindrance. While terminologically, it is a view of certain issues related to human actions or deeds. So, Islamic law is a norm whose provisions from Allah SWT, as well as the Prophet Muhammad SAW are contained in the Qur'an and Hadith to be guided by humans (Muslims) in carrying out life in the world in order to be organized.<sup>40</sup> Islamic law is seen as part of the teachings of Islam whose legal norms (Islam) originate from Islam. Syamsul Anwar argued that Muslims believe that Islamic law is based on divine revelation. Therefore, it is called *shari'at*, which means the path that God has drawn for humans.

Meanwhile, customary law (*Adatrecht*) is a legal system that grows and develops from customs in society. R. Soepomo, formulates customary law as non-statutory law, most of which is customary law and a small part is Islamic law. The customary law also covers the law based on the decisions of

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<sup>37</sup> Slamet Sumarto Martitah and Arif Hidayat, "The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia," in *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia* (European Alliance for Innovation, 2021), 305.

<sup>38</sup> Khairuddin Tahmid and Idzan Fautanu, "Institutionalization of Islamic Law in Indonesia," *Al-Adalah* 18, no. 1 (2021): 1–16, <https://doi.org/10.24042/adalah.v18i1.8362>.

<sup>39</sup> Achmad Irwan Hamzani, *Hukum Islam Dalam Sistem Hukum Di Indonesia*, (Jakarta: Kencana, 2020), p.15-16.

<sup>40</sup> Hamzani, h.15-16.

judges containing legal principles in the environment, where he decided the case.<sup>41</sup> Based on this formulation, customary law is unwritten (non-statutory) law that is mostly customary law and a small part is Islamic law, and is applied in adat courts (adat rechtspraak). Von Savigny (1799-1861) is famous for his thesis *Volkgeist*, that all law was originally formed in the way people say, customary law, in ordinary language. The law was first formed by custom and common belief, then by jurisprudence. So, what is meant by customary law is an unwritten, uncodified customary rule, decided by legal functionaries, has sanctions, has existed for a long time, which is still alive and developing and obeyed by the community.<sup>42</sup>

Initially in the history of the nation and the State of Indonesia, customary law got it, who consistently fought for the position of customary law in the national legal system, among others, was Moh. Koesnoe. He highlighted the misunderstanding of the position of customary law in the national legal system among many parties (pros and cons), that from the cons, customary law is of the opinion that customary law turns backwards, to what is past. Soetandyo argues that the political arena in realizing the national legal system, by fighting for customary law, the supporters of the idea are actually heirs to an old idea, an idea that was originally put forward by the previous generation of nationalists, and was even stated in the text of the Youth Pledge in 1928. Similarly, colonial legal politics that placed Islamic law in the same position as customary law, such as the Receptie Theory by Christian Snouck Hurgronje, that for indigenous people basically applies customary law, Islamic law applies if the norms of Islamic law have been accepted by the community as customary law.<sup>43</sup>

In the dynamics of society in Indonesia, it appears that in many regions customary sanctions have a relationship with Islamic law.<sup>44</sup> In application, it appears that Islamic law is a set of rules from Shari'a and also regulations that apply to Muslims to be applied, which prioritizes trust to be stronger to carry out Islamic law. The customary sanction is a punishment given to people who deviate from the area they live in, which is made by mutual agreement of the local community. One of the customary sanctions applied, among others, in the Bengkulu community, as the focus of this paper, is the customary sanction in the form of the *mbasuh dusun* tradition against pregnant women outside of marriage, which can be reviewed in the perspective of Islamic law.

### Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage

Kitab Simbur Cahaya is used as a customary rule for the community and is a general rule that applies throughout the Palembang archipelago - including Bengkulu. The contents cover all community relations, starting from the rules of *bujang*, *gadis* and marriage rules, clan rules, farming hamlet rules, *kaum* rules, and customary punishments.<sup>45</sup>

Sanctions that require paying fines and washing the hamlet are categorized into:

1. *Bunting Gelap* (dark pregnancy) is when a girl or widow becomes pregnant and it is not known who impregnated her. She pays a fine of 12 ringgit and *mbasuh dusun* by giving a goat to the head of the *dusun*. If she gives birth at someone else's house, then the person who owns the

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<sup>41</sup> Rosdalina Bukido, *Hukum Adat* (Yogyakarta: CV Budi Utama, 2017), p. 42.

<sup>42</sup> Mansur, *Hukum Adat: Perkembangan Dan Pembaruannya*, p.13.

<sup>43</sup> Muhammad Jazil Rifqi, "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory," *Millah: Jurnal Studi Agama*, 2021, 217–52, <https://doi.org/10.20885/millah.vol21.iss1.art8>.

<sup>44</sup> Rachmi Sulistyarini et al., "The Contact Point of Customary Law and Islamic Law (Legal History Perspective)," *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59, <https://doi.org/10.3126/ijssm.v5i2.19672>.

<sup>45</sup> Linda Wahyuni, "Sanksi Mbasuh Dusun Bagi Pelaku Zina Dalam Kitab Simbur Cahaya Perspektif Hukum Islam (Studi Pada Masyarakat Kota Bengkulu)" (Yogyakarta: Universitas Islam Indonesia, 2019).

house must also be penalized with a goat.<sup>46</sup> If the wife becomes pregnant in the dark and the husband complains to the dusun head, the wife is fined 12 ringgit and the tradition of mbasuh dusun is enforced with a buffalo, 100 gantang of rice, 100 coconut seeds, 1 jar of enau sugar, and 1 jar of bekasam.<sup>47</sup>

2. *Sumbang Kecil*, which is adultery committed by a man and a woman who are related by marriage. Such as between a man's father-in-law and his daughter-in-law or son-in-law and his father-in-law. Then the sanction is mbasuh dusun with a goat plus a fine of 40 ringgit and faced with a large trial and king's punishment (sultan's decree).<sup>48</sup>
3. *Sumbang Besar* is adultery committed between a man and a woman who are still related to each other. Such as a father with his daughter or a brother with his biological sister. The sanction is the implementation of the tradition of mbasuh dusun with a buffalo plus a fine of 80 ringgit and will be faced with a large court and the king's punishment.<sup>49</sup>

Over time, the traditions that apply to pregnant women outside of marriage in Bengkulu City, which are carried out by the chairman or kutei/ adat and the village government, are as follows:

1. Slaughtering one goat at the time of the marriage contract and jambar chicken
2. Not wearing traditional clothes
3. It is not permissible to hold walimah/parties.<sup>50</sup> The marriage of a pregnant woman out of wedlock is not allowed to invite a large crowd. The perpetrator is only allowed to get married at the Religious Affairs Office (KUA).

The process of resolving pregnant women out of wedlock is through complaints from the community first to the Head of the Neighborhood Association (Ketua RT) or Imam, who then proceeds to the Chief of Adat. The complaint cannot be accepted immediately, but must be accompanied by evidence by finding data or information about them. Once proven, both parties are summoned and a hearing is held at the village head's office, attended by the village head and the head of the Customary Consultative Body. At the hearing, sanctions for their actions are determined.<sup>51</sup>

### Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City

The elements of a traditional leader or *Rajo Penghulu* are: *penghulu adat* (traditional leader), *penghulu syara'* (sharia cleric) and *cerdik cendikio* (ingenious scholars). *Penghulu adat* consists of the customary leader and customary officials in various urban villages in Bengkulu City. *Penghulu syara'* are the imams and shara' officials, such as the *khatib*, *bilal*, *gharim* in the urban villages of Bengkulu City. Meanwhile, *cerdik cendikio* are community leaders from among the clever people who are able to understand and master the problems that arise in society (teachers, lecturers, and so on).<sup>52</sup>

Pregnant women outside of marriage with the sanction of the mbasuh dusun tradition in Bengkulu City<sup>53</sup> is called *dapek salah* (can go wrong).<sup>54</sup> This tradition is actually very urgent, if one

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<sup>46</sup> M Si Farida and H Y Hasan, "Undang-Undang Simbur Cahaya Sebagai Sumber Hukum Di Kesultanan Palembang," *Universitas Srinwijaya* (Universitas Sriwijaya, 2012), h. 3, Bab 1 Pasal 10.

<sup>47</sup> Farida and Hasan, Bab II Pasal 23 (tambahan).

<sup>48</sup> Farida and Hasan, Bab II Pasal 28 (tambahan).

<sup>49</sup> Farida and Hasan.

<sup>50</sup> "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021," (n.d.).

<sup>51</sup> "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021."

<sup>52</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019," (n.d.).

<sup>53</sup> J F Holleman, "The Maintenance and Development of Indonesian Adat Law," in *Van Vollenhoven on Indonesian Adat Law* (Netherlands: Springer, 1981), 213–59.

<sup>54</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019."

knows and understands its philosophy.<sup>55</sup> In ancient times, the perpetrators had to be paraded around the hamlet or village naked. But now it is no longer enforced.<sup>56</sup>

According to Imam Maksum, a religious figure in Bengkulu City: the *mbasuh dusun* tradition is actually very far from the punishment for adultery contained in the Qur'an and hadith. However, if a person lives and resides in one area, then the customary traditions applied in that area must be followed. This *mbasuh dusun* tradition, its goals and objectives, can reduce and even make the perpetrator deterred.<sup>57</sup>

Among the cases of pregnant women out of wedlock who are subject to the sanction of *mbasuh dusun* are: a pregnant girl out of wedlock who was impregnated by her biological father. Her pregnancy was discovered after five months. They could not be married off because of *syar'i* restrictions. A traditional discussion with the family by way of *mbasuh dusun* cut a goat with *setawar* flour. After that, the husband and wife were divorced. The husband went his separate way with the family. The out-of-wedlock pregnant girl stays with her mother until she gives birth, and no one marries her.<sup>58</sup> This incident occurred in 2017.

There was a pregnant woman who was impregnated by someone else's husband. The customary sanction was to wash the village with a goat, then marry her off. After the marriage contract, the man immediately divorced her, because this was an agreement with his first wife. After the marriage, the woman was abandoned and the man returned to his first wife. Shortly afterwards, the family moved from Bengkulu City.<sup>59</sup> This event occurred in early 2020.

A pregnant woman out of wedlock (Yn) was married to a man who did not impregnate her (Ad). At the time of the marriage, the man did not know that the woman he married was pregnant. She was 6 months pregnant at the time of marriage. After one week of marriage, the man who married the pregnant woman took the wife to her parents. This happened in 2017. The customary sanction for the woman who was pregnant outside of marriage was to cut the goat and wash the village with *setawar* flour and apologize to the community. And the man declared divorce with his wife.<sup>60</sup>

A pregnant woman out of wedlock (Gd) who was married to a man who did not impregnate her. She was four months pregnant. At the time of the marriage, the man who married the extramarital pregnant woman knew that his wife-to-be was pregnant. He accepted this situation, arguing that the man who impregnated her was a close friend and was like his own family. This happened in early 2018. The customary sanctions imposed are: on the third day of childbirth, they cut a goat to wash the village; the wife apologizes to her husband. The husband's family accepted this situation.<sup>61</sup>

A woman pregnant out of wedlock was impregnated by her boyfriend, but he did not want to take responsibility, because he said it was not his seed. This happened in early 2020. Previously, at the end of 2019, the woman had been *grebeg* with a man. After customary deliberations and the sanction of *mbasuh dusun*, she did not want to marry the man who was *grebeg*. The reason was that she did not want to disappoint her parents, because she was still studying, and felt that she was not pregnant. But 3 months after being raided, it turned out that she was pregnant. Meanwhile, she was no longer dating the man, and already had a new boyfriend. When she found out she was pregnant, she asked

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<sup>55</sup> Fatimah, "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia."

<sup>56</sup> "Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019," (n.d.).

<sup>57</sup> "Interview with Imam Maksum, Imam Masjid Ar-Rahman Kelurahan Pagar Dewa, Tanggal 2 Agustus 2019," (n.d.).

<sup>58</sup> "Interview with Nurhidayat Tokoh Agama, 12 April 2020," (n.d.).

<sup>59</sup> "Interview with Iim Fahimah Tokoh Agama, 12 April 2020," (n.d.).

<sup>60</sup> "Interview with Sari (Kakak Laki-Laki Yang Menikahkan Perempuan Hamil Luar Nikah), 15 April 2020," (n.d.).

<sup>61</sup> "Interview with Wawan (Laki-Laki Yang Menghamili Perempuan Hamil Luar Nikah), 15 April 2020," (n.d.).



her boyfriend to marry her and was honest that she was pregnant. Her new boyfriend did not want to get married, saying that he was not the one who impregnated her. But, finally after 6 months of pregnancy, her new boyfriend wanted to marry her.<sup>62</sup>

In solving the problem, it is not necessarily immediately tried, but there are stages of resolution first, namely:

1. In the event of an arrest or raid. Notification reports or complaints from individuals on customary violations, reporting to village government officials or the Head of the Neighborhood Association (Ketua RT) or one of the *Rajo Penghulu* apparatus (*penghulu adat*, *penghulu syara'* and *cerdik cendikio*).
2. Village government officials, Head of the Community Association (RW Heads), Head of the Neighborhood Association (RT Heads), or one of the *Rajo Penghulu's* officials convey an order to the local customary leader for a *dapek salah* settlement to be held.
3. *Penghulu adat* (traditional leader) as *Rajo Penghulu* (the king of Penghulu) informs all *Rajo Penghulu* members to attend the *Rajo Penghulu* consensus that will be held. Informing the head of the sub-district police to appoint their members to attend the *Rajo Penghulu* consensus, the customary head asks the head of the Neighborhood Association (RT Heads) to prepare a place where the *Rajo Penghulu* consensus can be held.<sup>63</sup>
4. The Head of the Neighborhood Association (RT Heads) prepares the seats for the *Rajo Penghulu* assembly, the families, the general public and so on.
5. The traditional leader asks the head of the neighborhood association (RT) to notify other members of the *Rajo Penghulu*, village government officials, and the complainant, parties, witnesses and family to be present at the place and time prepared by the head of the neighborhood association (RT), or village government officials. The Head of the Neighborhood Association (RT) together with village government officials prepare and arrange the arrangement of the *Rajo Penghulu* consensus venue.
6. The *Rajo Penghulu* mufakat is opened by the customary leader who checks the completeness and attendance list of the *Rajo Penghulu* mufakat participants.
7. After everyone is present, the customary *Penghulu* asks the head of the Neighborhood Association (RT) to appear to resolve the *dapek salah* case to *Rajo Penghulu* by granting *Rajo Penghulu's* permission, the head of the Neighborhood Association (RT) presents the parties who *dapek salah* by custom.
8. The customary leader then asks the person who has been *dapek salah* whether they are willing to be resolved by the consensus of the *Rajo Penghulu*. If the *dapek salah* is willing, the next question is asked about his/her health condition, willingness and sincerity. If the *dapek salah* states that he is healthy, willing and sincere, then the customary deliberation can be opened by the *Penghulu adat*. If the *dapek salah* does not want to be resolved by custom, then this dispute will be carried out legally.<sup>64</sup>

In the implementation procedure after the *Rajo Penghulu* trial, then the *mbasuh dusun* tradition is carried out, as follows: According to the head of the Neighborhood Association (RT Heads) of Selebar Sub-district, the *mbasuh dusun* tradition is carried out in the afternoon. The requirements: 1 goat. No buffaloes, no cows, chickens, etc. The money fine actually depends on the agreement. For monetary fines, it actually depends on the agreement, and if you cannot hand over the goat directly,

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<sup>62</sup> "Interview with MY (Bibik Perempuan Hamil Luar Nikah), April 2020," (n.d.).

<sup>63</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019," (n.d.).

<sup>64</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019."

you can also hand over money worth a goat, then it will be carried out by the residents. The perpetrator is actually obliged to come. It is not obligatory to get married.<sup>65</sup>

If there is a raid, it must be reported to the parents, or their representatives, so that they can take follow-up or further steps. If the perpetrator does not want to carry out *mbasuh dusun*, then there is no difference between unmarried or married perpetrators.

The same thing happened in Kampung Melayu Sub-district, where the goat was still slaughtered. However, most of the time on the day of the ceremony, the adulterer does not come. If they do not want to be present in carrying out *mbasuh dusun*, they still pay or hand over money for the price of a goat. From the implementation of *mbasuh dusun* there is a deterrent effect, if seen in the Sub-district of Kampung Melayu it can be said that it rarely happens.<sup>66</sup>

The *mbasuh dusun* tradition is carried out by slaughtering a goat, the blood is collected, the meat is cooked outside the house, the perpetrator must be present to be aware and must apologize. Then do a small alms (ask for prayer) at the place where the goat was slaughtered or outside the house. This prayer aims to prevent the community from disaster, as well as a closing in resolving the problem. This process is also attended by *Rajo Penghulu*, government officials and the community.<sup>67</sup>

As for the slaughter of the animal, the blood was taken and then sprinkled on 40 (to the right 20 and to the left 20) houses by the two perpetrators while apologizing. This sprinkling uses cold leaves. The goat should be a male and not a small one. *Mbasuh dusun* is so that the perpetrator is ashamed and does not repeat the act again. If the family does not want to settle the matter in accordance with this custom or tradition, then they are expelled or handed over to the police, because this customary sanction is in cooperation with the police.

If the violation of the custom is repeated by the same person and the violator does not have good intentions to change it, then the *Rajo Penghulu* with his authority, can sanction ostracizing him, even expelled from the place of residence.<sup>68</sup>

Based on the description of the *mbasuh dusun* tradition, the rules applied in Bengkulu City have undergone shifts and various changes along with the times from year to year. However, the rules are still sourced from *Simbur Cahaya*. Many rules are no longer used and have been replaced with other rules.

## Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City in the Context of the Development of Marriage Law in Indonesia

Legal reform in Islam is carried out in order to be able to realize the objectives of sharia as much as possible which includes the benefit of human life in this world and the hereafter.<sup>69</sup> Indeed, since the beginning, Islamic law essentially aims to realize the benefits of human life in this world and the hereafter.<sup>70</sup>

Furthermore, it is known that the instrument of Islamic law reform is *ijtihad*. *Ijtihad* when associated with the formulation of law; determine the law on new problems for which there is no legal provision. Or determining, finding new legal provisions for a problem that already has legal

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<sup>65</sup> “Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019.”

<sup>66</sup> “Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019.”

<sup>67</sup> “Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019.”

<sup>68</sup> “Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019.”

<sup>69</sup> Jayusman Jayusman et al., “Masalah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia,” *Muqaranah* 6, no. 1 (2022): 69–84, <https://doi.org/10.19109/muqaranah.v6i1.11164>.

<sup>70</sup> A Malthuf Siroj, *Pembaruan Hukum Islam di Indonesia: Telaah Kompilasi Hukum Islam* (Yogyakarta: Pustaka Ilmu, 2017), p. 44.

provisions, but is no longer in accordance with the current conditions and human interests.<sup>71</sup>

The Compilation of Islamic Law (KHI) accommodates one of these opinions which states that the marriage of a pregnant woman outside of marriage is valid only with the man who impregnates her, without having to be repeated after giving birth. The case of pregnant women outside of marriage does not only concern the adultery of the perpetrators and the hudud punishment for their actions, but also concerns the status and fate of the life of the baby in the womb.

According to researchers, the prohibition of adultery even to the point of causing pregnancy outside of marriage as the focus of this research, namely the marriage of pregnant women outside of marriage in Bengkulu city, is more about the translation of verses that explain the role and position of humans as caliphs/leaders. Humans are the noblest creatures, social creatures, perfect creatures; so that the goal is to achieve *mashlahah*, either in the form of benefits achieved or *mudharat* avoided.<sup>72</sup>

So this prohibition of adultery, when associated with the position of man as a leader is the implementation of *hifz an-nasl* (nurturing the offspring), protecting offspring. Meanwhile, the marriage of pregnant women outside of marriage in Bengkulu city, which has actually been carried out, anticipates a deterrent effect with the *mbasuh* *dusun* tradition, which is a customary sanction imposed on the perpetrator.

Islam becomes a strongly held belief and assimilates with the traditions and culture that have developed in the area where it develops. So that between the teachings of Islam and the culture and traditions of the community there is mutual adjustment, as long as it does not conflict with the basic values in Islam such as the people of Indonesia, especially Bengkulu.<sup>73</sup>

When there are social changes, it is almost certain that there will be changes in the law, therefore social changes such as the relationship between Muslims and local traditions; which occur in Bengkulu society can affect Islamic law. In order to create legal adaptability, Muslims in Indonesia must always make *ijtihad*.<sup>74</sup> There are several rules related to changes in the law.

1. فى تغير الفتوى واختلافها بحسب تغير الأزمنة والأمكنة والاحوال والنية والعوائد<sup>75</sup>  
“Changes in the law occur due to changes in time, place, circumstances and customs.”
2. الحكم يدور مع علته وجودا وعدما<sup>76</sup>  
“The ruling depends on the illat, its presence or absence.”
3. لا ينكر تغير الاحكام بتغير الازمنة والامكنة والاحوال<sup>77</sup>  
“It is undeniable that legal changes occur due to changes in time, place and circumstances.”
4. للأكثر حكم الكل  
“The majority is judged to be all.”
5. الحكم يدور مع مصالح العباد فحيثما وجدت المصلحة فثما حكم الله<sup>78</sup>  
“The law revolves around human benefit, so wherever benefit is found there is the law of Allah.”
6. المحافظة على القديم الصالح والأخذ بالجديد الاصلح<sup>79</sup>  
“Keeping the old is good and taking on the new is better.”

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<sup>71</sup> Asni, *Pembabaran Hukum Islam Di Indonesia: Telaah Epistemologis Kedudukan Perempuan Dalam Hukum Keluarga* (Jakarta: Kementerian Agama Republik Indonesia, 2012), p. 48.

<sup>72</sup> Oni Syahroni, *Maqashid Bisnis Dan Keuangan Islam* (Jakarta: PT Raja Grafindo, 2016), cet, 2, p. 4.

<sup>73</sup> Supardi Mursalin, “Acculturation of Islamic Family Values and Bengkulu Local Traditions in Forming a Sakinah Family,” *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023): 123–36.

<sup>74</sup> Abu Hamid Muhammad al-Ghazali, *Al-Mustasyfa Min Ilmi Al-Usul* (Beirut: Dār al-Fikr, n.d.), p.176.

<sup>75</sup> Ibn al-Qayim al-Jauziah, *I’lām Al Muwaqī’in ‘an Rabbi Al’Ālamīn* (Beirut: Dār al-Jai, n.d.), juz III, p. 3.

<sup>76</sup> Ali Ahmad Gulam Muhammad An-Nadawi, *Al-Qawā’id Fiqhiyah* (Damaskus: Dār al- Qalam, 1994), Cet 3, p.

<sup>77</sup> Ibn al-Qayim al-Jauziah, *I’lām Al Muwaqī’in ‘an Rabbi Al’Ālamīn*, p. 414.

<sup>78</sup> Jalaluddin As-Suyuti, *Al-Aybah Wa an-Naḥāir* (Beirut: Dār al-Fikr, n.d.), p. 176.

<sup>79</sup> Syafii Ma’arif, *Islam Dan Masalah-Masalah Kenegaraan* (Jakarta: LP3S, 1985). p. 47

The aforementioned rules indicate that the ruling on an event may only apply to a certain community and at a certain time.<sup>80</sup> Therefore, the ruling must be reconsidered when the law will be applied at a different time and place, especially if the ruling no longer reflects the benefit as the purpose of Islamic law, then the ruling is no longer valid and there must be a new *ijtihad* that brings more *mashlahab* (benefits) to the community.<sup>81</sup> This kind of thing has been done by Imam Shafi'i in taking his law with the terms *qaul qadim* and *qaul jadid*, which *qaul qadim* was done by Imam Shafi'i when he was in Iraq and *qaul jadid* when he was in Egypt.<sup>82</sup>

Furthermore, in Bengkulu City, the application of sanctions for women who become pregnant outside of marriage is based on the Kitab Simbur Cahaya, although it has undergone shifts and various changes, along with the development of the times from year to year.

Furthermore, in order to take *mashlahab* to avoid *mafsadah*, from pregnant marriages in the Compilation of Islamic Law (KHI), the author tries to see with a review of achieving benefits and avoiding harms. Indeed, the case of pregnant women outside of marriage does not only concern the adultery of the perpetrators and the hudud punishment for their actions, but also concerns the status and fate of the life of the baby in the womb.<sup>83</sup> Pregnant marriages in this case are to preserve offspring so that the children who are born are not neglected and still have a bright future, because no matter what the parents are like, children are still born in a state of fitrah (pure).<sup>84</sup> *Hijrah an-nasl* is what must be maintained in order to get justice and good treatment from all parties. You can imagine the burden of a child who is born as a result of the actions of his parents, especially if he does not have a father as the concept of *fiqh mazhab*.<sup>85</sup>

Implementation of the provisions for pregnant marriage in Article 53 in the Compilation of Islamic Law (KHI) can provide facilities.. This facility is utilized by the perpetrators of extra-marital pregnancy, so that the children of their adultery have the same legal implications and status as the children of legal marriage according to the Compilation of Islamic Law (KHI). Therefore, the perpetrators of extramarital pregnancy feel that there is no legal problem with their actions, as well as the children who are born later will have the same legal status as children born as a result of legal marriage. From this arises a *mafsadah* legitimizing adultery, because one of the goals of marriage is to obtain legitimate offspring. Through the provisions of pregnant marriage in the Compilation of Islamic Law (KHI), adulterers get the same legal position or status. *Mashlahab* from the provisions of the Compilation of Islamic Law (KHI) is to save the future of children resulting from pregnant marriages, so that they have the legal status of legal children and their rights as legal children.<sup>86</sup>

Thus, it is time for the Compilation of Islamic Law (KHI) to seek reconception of the provisions

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<sup>80</sup> Jayusman Jayusman, Rahmat Hidayat, and Rizki Zulu Febriyansyah, "Qawaid Fiqhiyah's Review of Buying Shoes with A Paid Lots System At Toidiholic Store Bandar Lampung," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 2 (2022): 131, <https://doi.org/10.29300/mzn.v9i1.6952>.

<sup>81</sup> Abdul Aziz, "Konsep Mashadir Al-Ahkam (Studi Komparasi Antara Pemikiran Asy-Syāfi'i Dan Muhammad Syahrūr)" (Surakarta: LP2M IAIN Surakarta, 2016), [http://eprints.iain-surakarta.ac.id/5600/1/Abdul\\_Aziz\\_Konsep\\_Masadir\\_al-Ahkam.pdf](http://eprints.iain-surakarta.ac.id/5600/1/Abdul_Aziz_Konsep_Masadir_al-Ahkam.pdf).

<sup>82</sup> Roibin, *Sosiologi Hukum Islam, Telaah Sosio Historis Pemikiran Imam Syafi'i* (Malang: UIN Malang Press, 2008).

<sup>83</sup> Mursyid Djawas et al., "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)," *Samarab* 6, no. 1 (2022): 139–55, <https://doi.org/10.22373/sjhk.v6i1.11904>.

<sup>84</sup> Euis Nurlaelawati and Stijn Cornelis Van Huis, "The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms," *Journal of Law and Religion* 34, no. 3 (2019): 356–82, <https://doi.org/10.1017/jlr.2019.41>.

<sup>85</sup> Wan Abdul Fattah Wan Ismail et al., "A Comparative Study Of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective," *Humanities & Social Sciences Reviews*, 2020, <https://doi.org/10.18510/hssr.2020.8412>.

<sup>86</sup> Ahmad Rizza Habibi, "The Dynamics Of Illegitimate Child Status In Sharia And National Law Of Indonesia: Is There A Harmonization?," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 70–80, <https://doi.org/10.19105/al-manhaj.v3i1.4787>.

of pregnant marriage, so as not to be too easy and underestimate the prohibitions and provisions of Allah. Violation of *sharia* is not something that is considered shameful. In the past, when there were people who were pregnant outside of marriage, they were considered unclean, even their children did not want to greet and hold them. After being tolerated by the rules of pregnant marriage, it seems too easy and does not consider it a 'disgrace'. Therefore, according to the author, in order to accommodate the interests of fighting for *hifz al-nasl* (nurturing the offspring), it seems very urgent to impose customary sanctions in Bengkulu City in accordance with the concept in Kitab Simbur Cahaya, namely *mbasub dusun*, for perpetrators of pregnancy outside of marriage in Bengkulu City. The application of this customary sanction in the form of the *mbasub dusun* tradition has had a significant impact on women who are pregnant outside of marriage for a deterrent effect and brings benefits to the community.

## Conclusion

The conclusion of this research is that: the implementation of the *mbasub dusun* tradition is a customary sanction for pregnant women outside of marriage in Bengkulu City, Indonesia. The case of extramarital pregnant women does not only concern the adultery of the perpetrators and the *hudud* punishment for their actions, but also concerns the status and fate of the life of the baby in the womb. The application of customary sanctions in Bengkulu City refers to the concept in Kitab Simbur Cahaya, namely *mbasub dusun*, for pregnant women outside of marriage in Bengkulu City. The application of this customary sanction turns out to have a significant impact on women who are pregnant outside of marriage for a deterrent effect and has implications for maintaining *hifz al-nasl*, protecting offspring. In the implementation of this *mbasub dusun* tradition, if the family does not want to settle by the provisions of this custom or tradition, then they are expelled or handed over to the police, because this customary sanction has collaborated with the police, so that customary sanctions can be applied effectively.

The application of customary sanctions in the form of the *mbasuh dusun* tradition, in the context of developing marriage law in Indonesia, appears necessary by reviewing the legalization of marriages of pregnant women outside of marriage. This is because the imposition of sanctions for pregnant women outside of marriage has significant implications for creating a deterrent effect and can realize security, order, and benefit for the community evenly.

## References

Abu Hamid Muhammad al-Ghazali. *Al-Mustasyfā Min Ilmi Al-Uṣūl*. Beirut: Dār al-Fikr, n.d.

Abubakar, Lastuti. "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia." *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319–31. <https://doi.org/10.20884/1.jdh.2013.13.2.213>.

Ahmad Rizza Habibi. "The Dynamics Of Illegitimate Child Status In Sharia And National Law Of Indonesia: Is There A Harmonization?" *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 70–80. <https://doi.org/10.19105/al-manhaj.v3i1.4787>.

Amir Syarifuddin. *Ushul Fiqih Jilid II*. Jakarta: Logos Wacana Ilmu, 1999.

An-Nadawi, Ali Ahmad Gulam Muhammad. *Al-Qawā'id Fiqhiyah*. Damaskus: Dār al-Qalam, 1994.

- As-Suyuti, Jalaluddin. *Al-Aṣyāb Wa an-Naẓhāir*. Beirut: Dār al-Fikr, n.d.
- Asni. *Pembaharuan Hukum Islam Di Indonesia: Telaah Epistemologis Kedudukan Perempuan Dalam Hukum Keluarga*. Jakarta: Kementrian Agama Republik Indonesia, 2012.
- Aziz, Abdul. “Konsep Mashadir Al-Ahkam (Studi Komparasi Antara Pemikiran Asy-Syāfi’i Dan Muhammad Syahrūr).” Surakarta: LP2M IAIN Surakarta, 2016. [http://eprints.iain-surakarta.ac.id/5600/1/Abdul Aziz\\_Konsep Masadir al-Ahkam.pdf](http://eprints.iain-surakarta.ac.id/5600/1/Abdul_Aziz_Konsep_Masadir_al-Ahkam.pdf).
- Bukido, Rosdalina. *Hukum Adat*. Yogyakarta: CV Budi Utama, 2017.
- Djawas, Mursyid, Gamal Achyar, Nursyirwan Bustanul Arifin, Masri Reza, and Baharuddin Umar Yakub. “The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law).” *Samarah* 6, no. 1 (2022): 139–55. <https://doi.org/10.22373/sjhc.v6i1.11904>.
- Efrinaldi, Efrinaldi, Jayusman Jayusman Jayusman, Shafra Shafra, and Nurfatati Nurfatati. “Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung.” *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 287–310. <https://doi.org/10.29240/jhi.v7i1.4140>.
- Efrinaldi, Efrinaldi, Jayusman Jayusman, and M Yenis. “Revealing The Dilemma Of Marriage Dispensation Regulations In Indonesia.” *ADHKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46. <https://doi.org/10.37876/adhki.v5i1.113>.
- Farida, M Si, and H Y Hasan. “Undang-Undang Simbur Cahaya Sebagai Sumber Hukum Di Kesultanan Palembang.” *Universitas Sriwijaya*. 2012.
- Fatimah. “Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia.” Lampung: UIN Raden Intan Lampung, 2021.
- Fikri, Fikri, Budiman Sulaeman, and Andi Bahri. “Perlindungan Anak Di Luar Nikah Dalam Hukum Negara Dan Hukum Islam (Perspektif Hakim Pengadilan Agama Parepare).” *DIKTUM: Jurnal Syariah Dan Hukum* 12, no. 1 (2014): 54–76. <https://doi.org/10.35905/diktum.v12i1.196>.
- Hamzani, Achmad Irwan. *Hukum Islam Dalam Sistem Hukum Di Indonesia*. Vol. 15–16. Jakarta: Kencana, 2020.
- Haq, Hilman Syahrial. *Pengantar Hukum Adat Indonesia*. . Jawa Tengah: Lakeisha, 2019.
- Haq, Husnul. “Kaidah ‘Al-’Adah Muhakkamah’ Dalam Tradisi Pernikahan Masyarakat Jawa.” *Ahkam: Jurnal Hukum Islam* 5, no. 2 (2017): 295–320. <https://doi.org/10.21274/ahkam.2017.5.2.295-320>.
- Hasballah, Zamakhsyari. “Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih.” Cita Pustaka Media, 2013.
- Holleman, J F. “The Maintenance and Development of Indonesian Adat Law.” In *Van Vollenhoven on Indonesian Adat Law*, 213–59. Netherlands: Springer, 1981.
- Ibn al-Qayim al-Jauziah. *I’lām Al Muwaqī’in ‘an Rabbi Al’Ālamīn*. Beirut: Dār al-Jai, n.d.

- Ilyas, Ilyas. “Eksistensi Dan Kekuatan Penyelesaian Sengketa Secara Adat Pada Tingkat Gampong.” *Kanun Jurnal Ilmu Hukum* 12, no. 1 (2010): 137–75.
- “Interview with Bambang, Tokoh Masyarakat Kota Bengkulu, 15 Januari 2021.” 2021.
- “Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019.” n.d.
- “Interview with Iim Fahimah Tokoh Agama, 12 April 2020.” n.d.
- “Interview with Imam Maksum, Imam Masjid Ar-Rahman Kelurahan Pagar Dewa, Tanggal 2 Agustus 2019.” n.d.
- “Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021.” n.d.
- “Interview with MY (Bibik Perempuan Hamil Luar Nikah), April 2020.” n.d.
- “Interview with Nurhidayat Tokoh Agama, 12 April 2020.” n.d.
- “Interview with Ris, Bibik Wt 10 Januari 2021 Di Bengkulu.” n.d.
- “Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019.” n.d.
- “Interview with Sari (Kakak Laki-Laki Yang Menikahkan Perempuan Hamil Luar Nikah), 15 April 2020.” n.d.
- “Interview with Wawan (Laki-Laki Yang Menghamili Perempuan Hamil Luar Nikah), 15 April 2020.” n.d.
- “Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019.” n.d.
- Ismail, Dian Ekawaty, Avelia Rahmah Y Mantali, and Mohamad Rivaldi Moha. “The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice.” *Jambura Law Review* 5, no. 2 (2023): 220–34. <https://doi.org/https://doi.org/10.24843/UJLC.2018.v02.i02.p02>.
- Ismail, Wan Abdul Fattah Wan, Ahmad Syukran Baharuddin, Lukman Abdul Mutalib, Zulfaqar Mamat, and Syahirah Abdul Shukor. “A Comparative Study Of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective.” *Humanities & Social Sciences Reviews*, 2020. <https://doi.org/10.18510/hssr.2020.8412>.
- Jayusman, Jayusman, Rahmat Hidayat, and Rizki Zulu Febriyansyah. “Qawaid Fiqhiyah’s Review of Buying Shoes with A Paid Lots System At Toidiholic Store Bandar Lampung.” *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 2 (2022): 131. <https://doi.org/10.29300/mzn.v9i1.6952>.
- Jayusman, Jayusman, Shafra Shafra, Rahmat Hidayat, Efrinaldi Efrinaldi, and Badarudin Badarudin. “Masalah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia.” *Muqaranah* 6, no. 1 (2022): 69–84. <https://doi.org/10.19109/muqaranah.v6i1.11164>.
- Koesnoe, Mohammad. *Dasar Dan Metode Ilmu Hukum Positif*. Airlangga University Press, 2010.

- Ma'arif, Syafii. *Islam Dan Masalah-Masalah Kenegaraan*. Jakarta: LP3S, 1985.
- Mansur, Teuku Muttaqin. *Hukum Adat: Perkembangan Dan Pembaruannya*. Banda Aceh: Syiah Kuala University Press, 2018.
- Martitah, Slamet Sumarto, and Arif Hidayat. "The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia." In *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia*, 305. European Alliance for Innovation, 2021.
- Munajat, Makhrus. "مبادئ الجنائيات الإسلامية وتطبيقها في السياق الإندونيسي." *Journal of Indonesian Islam* 7, no. 2 (2013): 404–26. <https://doi.org/10.15642/JIIS.2013.7.2.404-426>.
- Mursalin, Supardi. "Acculturation of Islamic Family Values and Bengkulu Local Traditions in Forming a Sakinah Family." *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023): 123–36.
- Nurlaelawati, Euis, and Stijn Cornelis Van Huis. "The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms." *Journal of Law and Religion* 34, no. 3 (2019): 356–82. <https://doi.org/10.1017/jlr.2019.41>.
- Nurul Hak. *Kedudukan Dan Hak Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, Tentang Status Anak Luar Nikah (Studi Persepsi Hakim Pengadilan Agama Se Wilayah PA Tinggi Agama Bengkulu*. Lampung: (Disertasi Universitas Islam Negeri Raden Intan Lampung, 2018).
- Pide, A Suriyaman Mustari, and M Sh. *Hukum Adat Dabulu, Kini, Dan Akan Datang*. Jakarta: Prenada Media, 2017.
- Rachmawati, Jelia Karlina. "Penerimaan Diri Remaja Hamil Pra Nikah: Studi Kasus Pada 2 Remaja Hamil Pra Nikah Di Kota Bandung." Universitas Pendidikan Indonesia, 2014.
- Rifqi, Muhammad Jazil. "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory." *Millab: Jurnal Studi Agama*, 2021, 217–52. <https://doi.org/10.20885/millah.vol21.iss1.art8>.
- Roibin. *Sosiologi Hukum Islam, Telaah Sosio Historis Pemikiran Imam Syafi'i*. Malang: UIN Malang Press, 2008.
- S., Nasruddin, and Sulaemang L. "Pregnancy Married in the Perspective of Islamic Law and Five Mazhab." *Al-'Adl* 14, no. 1 (2021): 14. <https://doi.org/10.31332/aladl.v14i1.2234>.
- Saiin, A. "Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach." *Advances in Humanities and Contemporary Studies* 2, no. 1 (2021): 33–40. <https://doi.org/10.30880/ahcs.2021.02.01.005>.
- Salam, Asep Lukman Daris. "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010." *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 35–60. <https://doi.org/10.51729/sakinah11132>.
- Sihotang, Erikson. "Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem." *Mimbar Keadilan* 12, no. 2 (2019): 211–22.



[http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal\\_Sanksi\\_Adat\\_Dan\\_Pidana\\_Yang\\_Berbarengan\\_Dalam\\_Tindak\\_Pidana\\_Pencabulan\\_Anak\\_Kaitannya\\_Dengan\\_Asas\\_Nebis\\_In\\_Idem.pdf](http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal_Sanksi_Adat_Dan_Pidana_Yang_Berbarengan_Dalam_Tindak_Pidana_Pencabulan_Anak_Kaitannya_Dengan_Asas_Nebis_In_Idem.pdf).

- Siroj, A Malthuf. *Pembaruan Hukum Islam Di Indonesia: Telaah Kompilasi Hukum Islam*. Yogyakarta: Pustaka Ilmu, 2017.
- Soekanto, Soerjono. *Hukum Adat Di Indonesia*. Jakarta: Rajawali Pers, 2012.
- Sujana, I Nyoman. *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*. Yogyakarta: Aswaja Pressindo, 2015.
- Sulistyarini, Rachmi, A Rachmad Budiono, Bambang Winarno, and Imam Koeswahyono. "The Contact Point of Customary Law and Islamic Law (Legal History Perspective)." *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59. <https://doi.org/10.3126/ijssm.v5i2.19672>.
- Summa, Muhammad Amin. *Hukum Keluarga Islam Di Dunia Islam*. II. Jakarta: PT. Raja Grafindo Persada, 2005.
- Surachmad, Wiranto. *Dasar Dan Teknik Penelitian Research*. Bandung: Alumni, 1982.
- Syahroni, Oni. *Maqashid Bisnis Dan Keuangan Islam*. Jakarta: PT Raja Grafindo, 2016.
- Tahmid, Khairuddin, and Idzan Fautanu. "Institutionalization of Islamic Law in Indonesia." *Al-Adalah* 18, no. 1 (2021): 1–16. <https://doi.org/10.24042/adalah.v18i1.8362>.
- Tilayanti, Susi. "Praktek Tajdid Nikah Pada Pasangan Hamil Diluar Nikah Desa Umong Seribee Kecamatan Lhoeng Kabupaten Aceh Besar." UIN Ar-Raniry Banda Aceh, 2019.
- Unaradjan, Dolet. *Pengantar Metode Penelitian Ilmu Sosial*. H. 198. Jakarta: PT Grapindo, 2000.
- Vardiansyah, Dani. *Filsafat Ilmu Komunikasi: Suatu Pengantar*. Jakarta: Indeks Kelompok Gramedia, 2005.
- Wahyuni, Linda. "Sanksi Mbasuh Dusun Bagi Pelaku Zina Dalam Kitab Simbur Cahaya Perspektif Hukum Islam (Studi Pada Masyarakat Kota Bengkulu)." Yogyakarta: Universitas Islam Indonesia, 2019.
- Warjiyati, Sri. *Ilmu Hukum Adat*. Yogyakarta: CV Budi Utama, 2020.
- Wibisana, Wahyu. "Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya: Perspektif Fiqh Dan Hukum Positif." *At-Ta'lim: Jurnal Pendidikan Agama Islam* 15, no. 1 (2017): 29–35. [http://jurnal.upi.edu/file/03\\_Perkawinan\\_Wanita\\_Hamil\\_Diluar\\_Nikah\\_-\\_Wahyu2.pdf](http://jurnal.upi.edu/file/03_Perkawinan_Wanita_Hamil_Diluar_Nikah_-_Wahyu2.pdf).
- Wiranata, I Gede A B, and M H Sh. *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa*. Bandung: Citra Aditya Bakti, 2005.
- Witanto, Darmoko Yuti. *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin: Pasca Keluarnya Putusan MK Tentang Uji Materiil UU Perkawinan*. Jakarta: Prestasi Pustaka Publisher, 2012.

## 2. Bukti Konfirmasi Review dan Hasil Review Pertama

Editor

2023-07-28 09:30 AM

Subject: [JHI] Editor Decision

Pesan berikut ini disampaikan atas nama Dewan Redaksi Al-Istinbath: Jurnal Hukum Islam.

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Efrinaldi Efrinaldi:

We have reached a decision regarding your submission to Al-Istinbath: Jurnal Hukum Islam, "Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City, Indonesia".

Our decision is: Revisions Required

Musda Asmara

(Sopus ID: 58077706700) Institut Agama Islam Negeri Curup

musdaasmara@iaincurup.ac.id

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Al-Istinbath: Jurnal Hukum Islam

<http://journal.iaincurup.ac.id/index.php/alistinbath>

## **Reviewer A:**

1. Apakah judul tulisan naskah menarik?:

Ya

2. Apakah judul bersifat spesifik?:

Ya

3. Saran/catatan untuk judul:

it is quite good

4. Orisinalitas/keaslian ide tulisan naskah?:

Tinggi

5. Keterbaruan isu tulisan naskah?:

Sedang (biasa)

6. Jenis tulisan naskah?:

Artikel Hasil Penelitian

7. Akurasi data dan fakta bahan tulisan naskah?:

Tinggi

8. Apakah abstrak sudah mencakup tujuan, metode, dan hasil kajian/penelitian?:

Ya

9. Saran/catatan untuk abstrak:

In the abstract, there is an explanation of the research objectives and research focus.

Remove research focus and use the term research objective which is truly the focus of the research objective!

10. Apakah kata kunci (keywords) sudah mencerminkan isi/substansi naskah?:

Ya

11. Apakah pada bagian pendahuluan naskah sudah mencerminkan urgensi kajian dan pokok permasalahan yang dikaji/diteliti?:

Ya

12. Saran/catatan untuk pendahuluan:

Notes:

- 1) Sharpen the research problem (the gap between das sollen and das sein) which is the background for writing this article! Clarify the problem to be researched!
- 2) Review of previous literature (state of the art) as a basis for stating the scientific novelty of the article to justify the novelty of the article is not yet in the introduction.
- 3) Because there have been no previous research studies, there is no explanation of the novelty of this research compared to previous studies.
- 4) Emphasize and clarify the purpose of writing the article! The purpose of writing the article/research objectives must be consistent between those in the introduction and abstract.
- 5) There is no argument yet. Add an argument (the point of this article/the author wants to convey what is the point of this article) at the end of the introduction!

Organize your introduction as follows:

- 1) The research problem (gap between das sollen and das sein) is the background for writing this article. When explaining a research problem, the research object and problem must be clear.
- 2) Review of previous literature (state of the art) as a basis for stating the novelty of the article
- 3) Novelty
- 4) The purpose of writing the article
- 5) Method
- 6) Argumentation

13. Metode analisis yang digunakan dalam kajian/penelitian?:

Rendah

14. Apakah hasil dan pembahasan kajian/penelitian sudah sesuai dengan metode analisis yang digunakan?:

Tidak

15. Saran/catatan untuk metode:

Explain who is the research subject. How many pregnant women were studied?

Explain:

- 1) How researchers make observations in the field
- 2) Who is being interviewed
- 3) What documents were obtained in the field that were used in this research? If you use documents, make sure that the data in the form of documents is in the discussion!
- 4) Add the theory used to analyze the data!

16. Apakah hasil dan pembahasan kajian/penelitian sudah menjawab rumusan permasalahan?:

Tidak

17. Saran/catatan untuk hasil dan pembahasan:

Results and discussion must be directed at answering the purpose of writing articles based on data and theoretical analysis and discussed with the results of previous research.

Therefore, there must be synchronization between the purpose of writing the article, data and theoretical analysis.

Analysis is still very shallow. If the purpose of writing this article is to explain the mbasuh dusun tradition for pregnant women out of wedlock, then what is being analyzed is the mbasuh dusun tradition for pregnant women out of wedlock, not the prohibition of adultery, etc. Therefore, emphasize the purpose of writing the article and direct the data and analysis to answer the purpose of writing the article. Use relevant theories to analyze. It is best to explain the theory used in the introduction and method

18. Apakah kesimpulan sudah mencerminkan hasil kajian/penelitian?:

Tidak

19. Apakah hasil kajian/penelitian memberikan dampak bagi pengembangan/kemajuan iptek?:

Ya

20. Saran, rekomendasi, dan catatan hasil review naskah:

Results and discussion must be directed at answering the purpose of writing articles based on data and theoretical analysis and discussed with the results of previous research.

Therefore, there must be synchronization between the purpose of writing the article, data and theoretical analysis.

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Al-Istinbath: Jurnal Hukum Islam

<http://journal.iaincurup.ac.id/index.php/alistinbath>

### 3. Bukti Konfirmasi Submit Revisi Pertama, Respon Reviewer, dan Artikel yang Diresubmit

The screenshot shows a web browser window with the URL [journal.laincurup.ac.id/index.php/alistinbath/author/submission/8437](http://journal.laincurup.ac.id/index.php/alistinbath/author/submission/8437). The page header features the journal title "al istinbath" in red and white, "Jurnal Hukum Islam" below it, and the ISSN numbers: p-ISSN 2548-3374 and e-ISSN 2548-3382. The publisher is identified as "Institut Agama Islam Negeri (IAIN) Curup, Bengkulu, Indonesia". A navigation menu includes links for HOME, ABOUT, USER HOME, SEARCH, CURRENT, ARCHIVES, and ANNOUNCEMENTS.

The main content area is titled "#8437 Summary" and includes buttons for "SUMMARY", "REVIEW", and "EDITING". Below this, a "Submission" table provides the following details:

Authors	Efinaidi, Efinaidi, Jayusman Jayusman, Fatimah Fatimah, Rismanto Rismanto, MI Yamunida
Title	Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Indonesia
Original file	8437-25483-3374-2023-09-28
Supp. files	None
Submitter	Efinaidi Efinaidi
Date submitted	September 26, 2023 - 06:38 AM
Section	Articles
Editor	Laras Shosa

On the right side, a sidebar displays "Al-Istinbath: Jurnal Hukum Islam" with a "Q1" badge for "Religious Studies" and an "SJIR 2023" score of 0.35, noted as "best quartile" and "powered by scimagojr.com". A "MAIN MENU" section lists "Editorial Team", "Reviewers", and "Peer Review Process".

The bottom of the page shows a Windows taskbar with the date 9/15/2024 and time 7:42 AM.

## Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City, Indonesia

### Abstract

This research aims to reveal the enforcement of the mbasuh dusun tradition in cases of pregnancy outside marriage in Bengkulu City, Indonesia. The causes of out-of-wedlock pregnancies include: widespread promiscuity between men and women, lack of supervision from parents because children migrate for school/college, and parents are busy working. The focus of this research is: how is the perspective of Islamic law on the implementation of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City in the context of the development of marriage law in Indonesia? This type of research is field research. The nature of this research is descriptive analytic. Data collection techniques in this study used observation, interviews, and documentation. The data obtained was analyzed using descriptive qualitative methods to obtain conclusions and research findings. The result of this research is that: the implementation of the mbasuh dusun tradition is a customary sanction for pregnant women outside of marriage in Bengkulu City and has an effective impact. This mbasuh dusun tradition is carried out by slaughtering a goat, and the perpetrator must be present to be aware and must apologize. Then give charity (and ask for prayers) at the place where the goat was slaughtered or outside the house. Unlike customary sanctions in other regions, the implementation of the mbasuh dusun tradition has a goal and purpose, so that the perpetrator is ashamed and does not repeat the act again, so that it can effectively reduce and even deter the perpetrator. The application of this customary sanction in the context of developing marriage law in Indonesia, it is necessary to review the legalization of marriage of pregnant women outside of marriage in the Compilation of Islamic Law (KHI), and it turns out that the provision of sanctions for pregnant women outside of marriage has a significant impact on creating a deterrent effect and bringing benefits to the community.

Keywords: Tradition, Mbasuh Dusun, Pregnant Women Outside of Marriage, Customary Sanctions, Islamic Law

### Introduction

In the context of developing marriage law in Indonesia, it appears that the enforcement of customary sanctions in the form of the mbasuh dusun tradition is very much needed by reviewing the legalization of marriage of pregnant women outside of marriage in the Compilation of Islamic Law (KHI). Because the imposition of sanctions for pregnant women outside of marriage, it turns out to have an effect to cause a deterrent effect and can realize security, goodness, order, and benefit for the community evenly.

In contrast to customary sanctions in other regions, the implementation of the mbasuh dusun tradition as a customary sanction for women who become pregnant outside of marriage in Bengkulu City, Indonesia, appears to be more effective in its application and creates a deterrent effect for others

#### Commented [H1]: Notes:

The point of this article is to explain how mbasuh dusun tradition for pregnant women is carried out. Because of this, the writing of this article must be consistent and clear in terms of:

1. The data sought and written in the article is the implementation of the mbasuh dusun tradition for pregnant women.

2. The data analyzed is the implementation of the mbasuh dusun tradition for pregnant women. To analyze data regarding the implementation of the mbasuh dusun tradition, relevant theory is needed.

Regarding theory, do you need an explanation of what theory is used to analyze the mbasuh dusun tradition for pregnant women? Is the theory urf as written in the discussion subtitle? If this is the theory used, then the discussion (results and discussions) do not yet appear explicitly and in depth about what the mbasuh dusun tradition is according to urf, is it considered good urf, fasid urf or what? If you look at the discussion at the end, the author uses masalah, but masalah is used very superficially and is not used to analyze the tradition of mbasuh dusun which is the core of this article but rather the aspect of the prohibition of adultery as hifdzun nasl. The discussion is not in depth.

Commented [H2]: This sentence is not relevant to the purpose of writing the article.

Commented [H3]: What is the difference between research focus and research objectives in the first sentence in this abstract? Just use one of them which is the purpose of writing this article.

Commented [H4]: The beginning of the introduction should contain an explanation of the research problem which is the background to the research, not just contain the findings. This sentence explains the findings or even conclusions.

to commit the same act. [The case of pregnant women outside of marriage is not only about the adultery of the perpetrators and the hudud punishment for their actions,<sup>1</sup> but also about the status and fate of the baby in the womb.]

In Indonesia, many facts have revealed the practice of freedom of association that results in pregnancy outside of marriage.<sup>2</sup> This deviant phenomenon has reduced the sacredness of marriage, which should be something holy and go through various stages that need attention and seriousness, not just legalizing the marriage of pregnant women outside of marriage.<sup>3</sup> Marriage is not just for biological purposes,<sup>4</sup> but also obtaining offspring in order to form a family is the main purpose of a marriage.<sup>5</sup>

In preserving offspring, Islamic teachings prohibit adultery and all forms of actions that can lead to adultery. Adultery, which is prohibited in Islam, includes not only the criminal act of rape, but also sexual intercourse outside of marriage, even if it is based on mutual consent.<sup>6</sup> The desire to have sex with the opposite sex is human nature, but Islam forbids it without marriage.<sup>7</sup> As mentioned in the Qur'an Surah al-Isrā' verse 32 which reads:

وَلَا تَقْرُبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا - ٣٢

*And do not approach adultery, for it is an abominable deed and an evil way.*

The perpetrator of adultery, in Islamic law there are sanctions, namely: 100 volumes for the unmarried and stoning for the married. This punishment aims to create individual and community peace and prevent adultery.<sup>8</sup>

The prohibition of adultery is part of preserving human offspring and their honor.<sup>9</sup> Pregnancy of a woman out of wedlock is a pregnancy that no one wants. When faced with this situation, women are often the ones who feel the strongest psychological pressure.<sup>10</sup> If the situation is allowed to drag on and a marriage is not immediately arranged with the man who impregnated her, it is feared that a worse situation will occur. Cases of suicide and abortion are examples that are usually dominated by psychological distress, due to pregnancy outside marriage. Women feel that their lives are uncomfortable, always haunted by shame, low self-esteem, feelings of sin, depression, and pessimism.<sup>11</sup>

To prevent and deter this behavior, Bengkulu City imposes customary sanctions in the form of the mbasuh dusun tradition. For example, in 2018 it was seen in the case of Yd and Dy, both of

**Commented [H5]:** Is this a reference from previous research? Or the findings of this study? or data? Or conclusions?

The initial paragraph immediately gives a statement of findings or even a conclusion.

The beginning of the introduction should contain an explanation of the research problem which is the background to the research.

**Commented [H6]:** What exactly is the object you want to research? The tradition of washing the village? The punishment for a pregnant woman for adultery? Or the status of the baby?

Clarify the subject of this research! and all data and analysis must be consistent with the focus of the research subject!

<sup>1</sup> Makhruh Munajat, "Mبادئ الجنائيات الإسلامية وتطبيقها في السياق الإندونيسي," *Journal of Indonesian Islam* 7, no. 2 (2013): 404–26, <https://doi.org/10.15642/JIIS.2013.7.2.404-426>.

<sup>2</sup> Jelia Karlina Rachmawati, "Penerimaan Diri Remaja Hamil Pra Nikah: Studi Kasus Pada 2 Remaja Hamil Pra Nikah Di Kota Bandung" (Universitas Pendidikan Indonesia, 2014).

<sup>3</sup> Susi Tilayanti, "Praktek Tajdid Nikah Pada Pasangan Hamil Diluar Nikah Desa Umong Scribee Kecamatan Lhoeng Kabupaten Aceh Besar." (UIN Ar-Raniry Banda Aceh, 2019).

<sup>4</sup> Efrinaldi Efrinaldi, Jayusman Jayusman, and M Yenis, "Revealing The Dilemma Of Marriage Dispensation Regulations In Indonesia," *ADHKKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46, <https://doi.org/10.37876/adhki.v5i1.113>.

<sup>5</sup> Muhammad Amin Summa, *Hukum Keluarga Islam Di Dunia Islam*, II (Jakarta: PT. Raja Grafindo Persada, 2005).

<sup>6</sup> Zamakhsyari Hasballah, "Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih" (Cita Pustaka Media, 2013).

<sup>7</sup> Ibnu Elmi A S Pelu et al., "Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives Marriage Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 39–54, <https://doi.org/10.29240/jhi.v7i1.4204>.

<sup>8</sup> Munajat, "مبادئ الجنائيات الإسلامية وتطبيقها في السياق الإندونيسي."

<sup>9</sup> Nasruddin S. and Sulaemang L, "Pregnancy Married in the Perspective of Islamic Law and Five Mazhab," *Al-Adl* 14, no. 1 (2021): 14, <https://doi.org/10.31332/aladl.v14i1.2234>.

<sup>10</sup> A Saain, "Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach," *Advances in Humanities and Contemporary Studies* 2, no. 1 (2021): 33–40, <https://doi.org/10.30880/ahcs.2021.02.01.005>.

<sup>11</sup> Fatimah, "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia" (Lampung: UIN Raden Intan Lampung, 2021).



whom were active in youth organizations. Dy became pregnant out of wedlock. When Dy was six months pregnant, her family found out about it, and Dy's father reported to the Imam and the Head of the Neighborhood Association (Ketua RT), asking for an opinion about the problem of his daughter who was six months pregnant. The Imam and RT suggested a customary settlement. Rajo penghulu adat was appointed and the family handed over the matter to adat. The adat meeting decided on the customary sanction of slaughtering a goat for the mbasuh dusun. Then Yd and Dy were married at night, without wearing Bengkulu traditional clothing and without a reception.<sup>12</sup> The administration of marriage by the Head of the Religious Affairs Office (KUA) is carried out as in general, in accordance with Marriage Law Number 1 of 1974.<sup>13</sup>

Previous research related to this research is: DY Witanto's research entitled, "Hak dan Kedudukan Anak Luar Nikah, Pasca Lahirnya Putusan Mahkamah Konstitusi Tentang Uji Materil Undang-undang Perkawinan" (The Rights and Position of Extra-Marital Children, After the Constitutional Court Decision on the Materil Test of the Marriage Law). This paper examines children based on their status and position before the law; legitimate children, adulterous children, discordant children, extra-marital children, adopted children, and stepchildren.<sup>14</sup> Nyoman Sujana's article entitled "Kedudukan Hukum Anak Luar Nikah dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010" (The Legal Position of Extra-Marital Children in the Perspective of the Constitutional Court Decision Number 46/PUU-VIII/2010). This paper discusses the position of extramarital children from siri marriages.<sup>15</sup> Asep Lukman Daris Salam's article entitled "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010" (Legal Analysis of Nasab Rights of Extra-marital Children According to the Constitutional Court Decision Number 46/PUU/VIII/2010).<sup>16</sup> This article explains that the Constitutional Court's decision is final. Likewise, Nurul Hak's article entitled, "Kedudukan dan Hak Anak Luar Nikah Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Status Anak Luar Nikah, Studi Persepsi Hakim Pengadilan Agama se-Wilayah Pengadilan Tinggi Agama Bengkulu" (The Position and Rights of Extra-Marital Children After the Constitutional Court Decision Number 46/PUU-VIII/2010 on the Status of Extra-Marital Children (Study of Perceptions of Religious Court Judges in the Bengkulu Religious High Court Region)." This research also emphasizes that the Constitutional Court's decision is final and binding. The decision is the result of the ijtihad of constitutional judges.<sup>17</sup> Wahyu Wibisana's article entitled, "Perkawinan Perempuan Hamil di luar Nikah Serta Akibat Hukumnya Perspektif Fiqh dan Hukum Positif" (Marriage of Pregnant Women outside of Marriage and its Legal Effects from the Perspective of Fiqh and Positive Law). The research found that women who are pregnant outside of marriage, the imams of the mazhab differ in opinion about the permissibility of marrying them. Meanwhile, in Positive Law, marrying a

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<sup>12</sup> "Interview with Ris, Bibik Wt 10 Januari 2021 Di Bengkulu" (n.d.).

<sup>13</sup> "Interview with Bambang, Tokoh Masyarakat Kota Bengkulu, 15 Januari 2021," (2021).

<sup>14</sup> Darmoko Yuti Witanto, *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin: Pasca Keluarnya Putusan MK Tentang Uji Materil UU Perkawinan* (Jakarta: Prestasi Pustaka Publisher, 2012).

<sup>15</sup> I Nyoman Sujana, *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010* (Yogyakarta: Aswaja Pressindo, 2015).

<sup>16</sup> Asep Lukman Daris Salam, "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010," *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 35–60, <https://doi.org/10.51729/sakinah11132>.

<sup>17</sup> Nurul Hak, *Kedudukan Dan Hak Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, Tentang Status Anak Luar Nikah (Studi Persepsi Hakim Pengadilan Agama Se Wilayah PA Tinggi Agama Bengkulu* (Lampung: (Disertasi Universitas Islam Negeri Raden Intan Lampung, 2018).

pregnant woman outside of marriage is legal.<sup>18</sup> Fikri et.al's article entitled, "Perlindungan Anak di Luar Nikah dalam Hukum Negara dan Hukum Islam, Perspektif Hakim Pengadilan Agama Parepare".(Protection of Children Outside of Marriage in State Law and Islamic Law (Perspective of Parepare Religious Court Judges). This paper emphasizes that there is no room or gap to provide protection without marriage registration. Child protection in Islamic law can be done by determining the origin of nasab for children in a legal marriage and protection is given to children through recognition. The protection of children outside of marriage can be done through itsbat nikah and the application of Article 43 paragraph 1 of Law No.1 of 1974 after the judicial review of the Constitutional Court. The rights that can be given to children out of wedlock without a valid marriage are limited to civil rights regarding the right to live, the right to education and health, and the right to obtain public services, so that civil rights related to inheritance rights and guardianship rights cannot be given to children out of wedlock without a valid marriage.<sup>19</sup> The similarity between this research and the research of Witanto, Sujana, and Fikri is the impact of the marriage of pregnant women outside of marriage, namely on the status of children. Meanwhile, this research and Wibisana's research both focus on the marriage of pregnant women outside of marriage. The difference with the research that will be conducted is the enforcement of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City. The focus of this research is how the implementation of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City in the context of the development of marriage law in Indonesia?<sup>20</sup>

[This type of research is field research.<sup>20</sup> The nature of this research is descriptive analytic.<sup>21</sup> This research uses a normative approach, namely Islamic law that views problems from a legal-formal angle or from normative aspects. The primary data of this research are the results of observations at the research location, the results of interviews with informants, and the results of documentation. Secondary data are books and documents related to this research. The data collection methods in this study used observation, interviews, and documentation. The data obtained was analyzed using a qualitative descriptive method so that conclusions were obtained.<sup>22</sup>

## Discussion

### Customary Sanctions and Islamic Law

The use of the term sanction appears to be a broad term with different meanings, in different contexts. Sanctions can be restrictive, depending on the context, as the word is an antonym of automatic. In a customary context, a sanction can be a punishment imposed by customary administrators. So, a sanction is a punitive measure imposed by the state or a particular group, due to an offense committed by a person or group.

Sanctions are one of the things that are very often heard and witnessed in the community. The existence of sanctions is expected to make a person or group deterred and will not repeat their mistakes, either the same mistakes or different mistakes. The more serious the mistake made, the

<sup>18</sup> Wahyu Wibisana, "Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya: Perspektif Fiqh Dan Hukum Positif," *At-Ta'lim: Jurnal Pendidikan Agama Islam* 15, no. 1 (2017): 29–35, [http://jurnal.upi.edu/file/03\\_Perkawinan\\_Wanita\\_Hamil\\_Diluar\\_Nikah\\_-\\_Wahyu2.pdf](http://jurnal.upi.edu/file/03_Perkawinan_Wanita_Hamil_Diluar_Nikah_-_Wahyu2.pdf).

<sup>19</sup> Fikri Fikri, Budiman Sulaeman, and Andi Bahri, "Perlindungan Anak Di Luar Nikah Dalam Hukum Negara Dan Hukum Islam (Perspektif Hakim Pengadilan Agama Parepare)," *DIKTUM: Jurnal Syariah Dan Hukum* 12, no. 1 (2014): 54–76, <https://doi.org/10.35905/diktum.v12i1.196>.

<sup>20</sup> Dolet Unaradjan, *Pengantar Metode Penelitian Ilmu Sosial*, h. 198 (Jakarta: PT Grapindo, 2000).

<sup>21</sup> Dani Vardiansyah, *Filsafat Ilmu Komunikasi: Suatu Pengantar* (Jakarta: Indeks Kelompok Gramedia, 2005).

<sup>22</sup> Wiranto Surachmad, *Dasar Dan Teknik Penelitian Research* (Bandung: Alumni, 1982).

**Commented [H7]:** There has been no previous research on regional traditions associated with the customary sanction of pregnant women out of wedlock, or adulterers

**Commented [H8]:** Explain:

1. how researchers do observations in the field
2. who is being interviewed
3. What documents were obtained in the field that were used in this research?

**Commented [H9]:** In the method explanation, it is necessary to explain who is the research subject. How many pregnant women were studied

**Commented [H10]:** What is the purpose of writing this subtitle? Do these customary sanctions and Islamic law serve as the theoretical basis that will be used to analyze the mbasuh dusun tradition for pregnant women? If so, then it must be used to analyze the mbasuh dusun tradition for pregnant women out of wedlock. If this subtitle is positioned as a theoretical basis for analyzing it, why does the analysis at the end of the discussion actually use masalah even though it is not in-depth, just a patch.

greater the sanction he will receive. The term adat comes from the Arabic 'adah, which originally meant habit.<sup>23</sup> Custom is defined as a habit that the community assumes has been formed, both before and after the existence of the community. Custom is a habit that must generally prevail in the society in question.<sup>24</sup> The definition of adat put forward by Moh. Koesnoe, according to him adat is the overall teachings and practices that regulate the way of life of Indonesians in society, teachings and practices which are directly born from people's responses about humans and the world.<sup>25</sup> As such, adat is the custom of the community and what the community does repeatedly. Living and evolving customs are a wonderful source for customary law, as the original law of the Indonesian people and nation, wherever and whenever. The relationship with customary law is that custom or habit can be made into law, provided that it does not conflict with the public interest. Adat appears as a habit of behavior that is found from generation to generation, a habit that has been demanded from ancestors since ancient times.<sup>26</sup>

In terms of good and bad, adat is divided into two parts:

- 1) Shahih customs  
Shahih customs are customs that are repeatedly practiced, accepted by many people, do not conflict with religion, manners, and noble culture.
- 2) Faulty (Fasid) customs  
Faulty customs are customs that apply in a place, even though they are evenly practiced, but are contrary to religion, state laws, and manners.<sup>27</sup>

These customs were received from previous generations and were believed and practiced by the people on the assumption that they were good for them. Islam came with a set of shara` norms that governed the life of the people. Some of the old customs were in harmony with and some were in conflict with the sharia laws that came later. The clash, absorption and renewal between custom and sharia occurred.

This prioritizes the process of selecting customs, which can be seen as still necessary to be implemented. The guideline used in selecting the old customs is the benefit according to revelation. Based on this selection,<sup>28</sup> Customs can be divided into four groups, namely:

- 1) Customs that are old in substance and in terms of implementation contain elements of benefit, meaning that there is an element of benefit and no element of harm in this action, or the element of benefit is greater than the element of harm. This form of custom is fully accepted in Islamic law.
- 2) Old customs which, in principle, substantially contain elements of maslahat and do not contain elements of mafsadah or harm, but in practice are not considered good by Islam. Customs in this form are acceptable in Islam, but in further implementation undergo changes and adjustments.

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<sup>23</sup> Efrinaldi Efrinaldi et al., "Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 287–310, <https://doi.org/10.29240/jhi.v7i1.4140>.

<sup>24</sup> Sri Warjiyati, *Ilmu Hukum Adat* (Yogyakarta: CV Budi Utama, 2020), p. 6.

<sup>25</sup> Mohammad Koesnoe, *Dasar Dan Metode Ilmu Hukum Positif* (Airlangga University Press, 2010).

<sup>26</sup> Soerjono Soekanto, *Hukum Adat Di Indonesia* (Jakarta: Rajawali Pers, 2012).

<sup>27</sup> Amir Syarifuddin, *Ushul Fiqih Jilid II* (Jakarta: Logos Wacana Ilmu, 1999), p. 368.

<sup>28</sup> Husnul Haq, "Kaidah 'Al-'Adah Muhakkamah' Dalam Tradisi Pernikahan Masyarakat Jawa," *Abkam: Jurnal Hukum Islam* 5, no. 2 (2017): 295–320, <https://doi.org/10.21274/ahkam.2017.5.2.295-320>.

- 3) Old customs which, in principle and practice, contain elements of mafsadat (destruction), meaning that they contain only destructive elements and do not have elements of benefit, or there are elements of benefit but the destructive elements are greater.
- 4) Long-standing customs that have been accepted by the people, because they do not contain mafsadat (harm) and do not contradict the arguments of sharia` that came later, but have not been clearly absorbed into sharia, either directly or indirectly.

Thus, adat is a man-made rule that has been practiced since time immemorial in the form of actions, behavior, and speech to regulate the order of community members.<sup>29</sup> If this custom is not implemented there will be confusion, which leads to unwritten sanctions by the local community against perpetrators who are considered deviant.

So, customary sanctions are all forms of actions or efforts made to restore balance due to disturbances that are violations of custom.<sup>30</sup> The source of customary law is unwritten legal regulations that grow and develop and are maintained by the legal awareness of the community.<sup>31</sup> Because adat rules are unwritten, grow and develop, adat sanctions are adaptable and elastic. Any violation of adat will result in an imbalance in society. Therefore, every violator must be given customary sanctions that serve as a means of deterrent effect and restore the damaged balance (customary medicine).

The mention of customary sanctions is a technically scientific term only. The technical scientific term (for example, as stated by Hilman Hadikusuma, 1977) merely refers to customary rules that apply among the community, which do not take the form of formal legislation by the state. Unfortunately, there is no pertinent explanation of what the technical scientific term means.

One example of customary sanctions in Bengkulu, which has different rules from other regions or villages, is the customary sanction in the form of mbasuh dusun for pregnant women outside of marriage. According to the results of the author's interviews, the sanctions given to violators of this customary rule are in the form of paying fines such as money and cutting 1 goat at the time of the marriage contract and jambar ayam, which is given to the customary administrator. The punishment suffered by violators of customary law is moral pressure in the community, which causes the person who violates it to become ashamed or makes him feel bad to the customary community. In fact, legal sanctions based on customary law are felt to be more severe and more concerned with a person's morality. The legal aspect is more affecting to the people, so that the purpose of the punishment, which is to deter people, can be achieved.

As with custom, law is essentially a statement of the thoughts and feelings about fairness and unfairness that grow in society. The concrete form of law is in the form of rules, so in or with the rules determined what is fair and unfair.<sup>32</sup> Law also comes from the Arabic term hukm (plural: ahkam) which means command. The term law influences members of the public, especially those who are Muslim. The term customary law is rarely found among the general public. People tend to use the

<sup>29</sup> Teuku Muttaqin Mansur, *Hukum Adat: Perkembangan Dan Pembaruannya* (Banda Aceh: Syiah Kuala University Press, 2018), p. 9-10.

<sup>30</sup> Erikson Sihotang, "Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem," *Mimbar Keadilan* 12, no. 2 (2019): 211-22, [http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal\\_Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem.pdf](http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal_Sanksi%20Adat%20Dan%20Pidana%20Yang%20Berbarengan%20Dalam%20Tindak%20Pidana%20Pencabulan%20Anak%20Kaitannya%20Dengan%20Asas%20Nebis%20In%20Idem.pdf).

<sup>31</sup> Dian Ekawaty Ismail, Avelia Rahmah Y Mantali, and Mohamad Rivaldi Moha, "The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice," *Jambura Law Review* 5, no. 2 (2023): 220-34, <https://doi.org/10.24843/UJLC.2018.v02.i02.p02>.

<sup>32</sup> Warjiyati, *Ilmu Hukum Adat*, p.5.

term adat only. This term refers to a custom, which is a series of actions that must generally apply to the structure of the community concerned. Adat is a reflection of the personality of a nation, which is one of the manifestations of the soul of the nation from century to century. Therefore, every nation in the world has its own customs and habits that are not the same with one another.

Among the people, the terms law and adat are actually separate in their use and understanding. This is because the law comes from outside the community, from the ruler, government, or based on religion, while adat are provisions that arise and grow from within the community itself and are obeyed as law.<sup>33</sup> So, it can be concluded that the definition of customary law from the description, customary law means the law that arises and grows from within the community and is obeyed as law.

A research report by Snouck Hurgronje in Aceh (1891-1892) states that there is a term Adatrecht to distinguish between customs or adat stances that have no legal sanction on the one hand and adat that have legal sanction on the other. The structure of society in various parts of Indonesia does not provide a clear delineation of what adat and adat law are. In general, it is only stated that when talking about adat and customary law, they all refer to the concept of the prevailing and standardized customary order in society. Custom in the sense of adat is a normative habit and has taken the form of rules of behavior, applicable and maintained in the community.<sup>34</sup>

Judging from the development of human life, the occurrence of law starts from the human person who is given God's mind and behavior. Behavior that is continuously carried out by individuals creates (personal habits). If the personal habit is imitated by other people, then it will also become the habit of that person sooner or later between one person and another person in the unity of society to also carry out the habit. Then when all members of the community perform the habitual behavior, sooner or later the habit becomes (adat) of that community. So, adat is the custom of the community and groups of people sooner or later make it a custom that should apply to all members of the community with sanctions, so that it becomes customary law.

So customary law is the whole custom (which is not written) and lives in society in the form of morals, habits, and conventions that have legal consequences.<sup>35</sup> To maintain the implementation of customary law so that no deviations or violations occur, there are members of the community who are entrusted with the task of overseeing it. The law reflects the personality and soul of the nation. Savigny also stated that customary law in the past was somewhat different in content which showed a development.<sup>36</sup>

The explanation above can be concluded that customary law is a law that describes the development of the nation with regard to personality, so that customary law is still widely applied by the community, such as one of the customary laws that is still applied by the people in Bengkulu, as the focus of this research, namely customary sanctions in the form of mbasuh dusun against pregnant women outside of marriage. While the definition of customary law according to Soejono Soekanto, customary law is essentially customary law, meaning habits that have legal consequences (*seinsollen*). In

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<sup>33</sup> Ilyas Ilyas, "Eksistensi Dan Kekuatan Penyelesaian Sengketa Secara Adat Pada Tingkat Gampong," *Kanun Jurnal Ilmu Hukum* 12, no. 1 (2010): 137-75.

<sup>34</sup> I Gede A B Wiranata and M H Sh, *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa* (Bandung: Citra Aditya Bakti, 2005), p. 3-5.

<sup>35</sup> A Suriyaman Mustari Pide and M Sh, *Hukum Adat Dahulu, Kini, Dan Akan Datang* (Jakarta: Prenada Media, 2017), p.5.

<sup>36</sup> Lastuti Abubakar, "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319-31, <https://doi.org/10.20884/1.jdh.2013.13.2.213>.

contrast to mere habits, customary law is actions that are repeated in the same form which lead to (*rechtsvaardigeordening der samenleving*).<sup>37</sup>

The statement above can be concluded, customary law is a law that has been believed since the time of the ancestors and has become a habit that has been passed down from generation to generation, of course customary law provides good development, where each party or each region has its own rules and sanctions for people who break the law. Including in Bengkulu, which until now applies customary law, one of which is the customary sanction in the form of *mbasuh dusun* for women who are pregnant outside of marriage. This shows that in this area, has a personality that still clings to customary law, even though development has advanced and many things may affect it. One of them is the birth of technology, and laws and regulations from the government and also many young people who of course have thought more logically, so that there are many pros and cons.

Customary law is popularly known as unstatutory law, which is different from continental law as statutory law.<sup>38</sup> This unwritten customary law is a custom that must be obeyed by the people who apply it, because some of it is Islamic law, meaning that customary law is also related to Islamic law.

The application of customary sanctions is in accordance with the regulations that have been made, based on the agreement of the customary leader and the indigenous community itself for generations. The application of customary sanctions is carried out based on the policies of the parties concerned such as customary administrators, tribal leaders and local residents. One of the customary laws applied to the Bengkulu community, namely customary sanctions in the form of *mbasuh dusun* against pregnant women outside of marriage.

The sanctions given to the custom violator include fines and being ostracized by the local community. For violators of customary sanctions, the customary institution that resolves the case is the customary institution. If a case is resolved at the customary institution, then the case is considered resolved, if it is not resolved, then it will be taken to the judicial institution. The application of customary sanctions lies with the administrators who are very concerned, sometimes many of these administrators just sit back and relax without knowing about the responsibilities that are being assigned to them, many of them sit in customary institutions without knowing the customary law itself.

### Relationship Between Customary Sanctions and Islamic Law

Customary sanctions are only imposed on someone who violates customary law. The relationship between customary sanctions and Islamic law is that customary sanctions have violated the law that occurs in society, while Islamic law is the law ordered by Allah Subhanahu Wa Ta'ala for his people brought by a Prophet. So, customary sanctions given to violators of customary law must not pass Islamic law.

**Commented [H11]:** What is the purpose of writing this subtitle? Do these customary sanctions and Islamic law serve as the theoretical basis that will be used to analyze the *mbasuh dusun* tradition for pregnant women? If so, then it must be used to analyze the *mbasuh dusun* tradition for pregnant women out of wedlock. If this subtitle is positioned as a theoretical basis for analyzing it, why does the analysis at the end of the discussion actually use *masalah* even though it is not in-depth, just a patch.

<sup>37</sup> Wiranata and Sh, *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa*, p. 24 .

<sup>38</sup> Hilman Syahril Haq, *Pengantar Hukum Adat Indonesia*, (Jawa Tengah: Lakeisha, 2019), p.9-10.

Customary law and Islamic law are part of the legal system in Indonesia in addition to statutory law.<sup>39</sup> The concept of Islamic law is different from the concept of statutory law, because Islamic teachings convince its laws as rules sourced from divine revelation.<sup>40</sup>

Islamic law is a combination of two words, law and Islam. Law can be understood as a set of rules or norms that regulate human behavior in a society, either set by the authorities or grow and develop in society. The form can be written such as laws and regulations or unwritten such as customary law and laws that live in society. Islam literally means submission, safety, or prosperity. This means that people who follow Islam will get safety and prosperity in the world and the hereafter. According to Mahmud Syaltut, Islam is the religion of Allah SWT whose basics and sharia were revealed to the Prophet Muhammad SAW (Peace be Upon Him) and charged him to convey and invite all mankind.<sup>41</sup> Etymologically and terminologically reviewed about Islamic law, etymologically law comes from Arabic, namely al-hukm' which means hindrance. While terminologically, it is a view of certain issues related to human actions or deeds. So, Islamic law is a norm whose provisions from Allah SWT, as well as the Prophet Muhammad SAW are contained in the Qur'an and Hadith to be guided by humans (Muslims) in carrying out life in the world in order to be organized.<sup>42</sup> Islamic law is seen as part of the teachings of Islam whose legal norms (Islam) originate from Islam. Syamsul Anwar argued that Muslims believe that Islamic law is based on divine revelation. Therefore, it is called shari'at, which means the path that God has drawn for humans.

Meanwhile, customary law (Adatrecht) is a legal system that grows and develops from customs in society. R. Soepomo, formulates customary law as non-statutory law, most of which is customary law and a small part is Islamic law. The customary law also covers the law based on the decisions of judges containing legal principles in the environment, where he decided the case.<sup>43</sup> Based on this formulation, customary law is unwritten (non-statutory) law that is mostly customary law and a small part is Islamic law, and is applied in adat courts (adat rechtspraak). Von Savigny (1799-1861) is famous for his thesis Volkgeist, that all law was originally formed in the way people say, customary law, in ordinary language. The law was first formed by custom and common belief, then by jurisprudence. So, what is meant by customary law is an unwritten, uncodified customary rule, decided by legal functionaries, has sanctions, has existed for a long time, which is still alive and developing and obeyed by the community.<sup>44</sup>

Initially in the history of the nation and the State of Indonesia, customary law got it, who consistently fought for the position of customary law in the national legal system, among others, was Moh. Koesnoe. He highlighted the misunderstanding of the position of customary law in the national legal system among many parties (pros and cons), that from the cons, customary law is of the opinion that customary law turns backwards, to what is past. Soetandyo argues that the political arena in realizing the national legal system, by fighting for customary law, the supporters of the idea are actually heirs to an old idea, an idea that was originally put forward by the previous generation of nationalists, and was even stated in the text of the Youth Pledge in 1928. Similarly, colonial legal politics that placed

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<sup>39</sup> Slamet Sumarto Martitah and Arif Hidayat, "The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia," in *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia* (European Alliance for Innovation, 2021), 305.

<sup>40</sup> Khairuddin Tahmid and Idzan Fautanu, "Institutionalization of Islamic Law in Indonesia," *Al-Adalah* 18, no. 1 (2021): 1–16, <https://doi.org/10.24042/adalah.v18i1.8362>.

<sup>41</sup> Achmad Irwan Hamzani, *Hukum Islam Dalam Sistem Hukum Di Indonesia*, (Jakarta: Kencana, 2020), p.15-16.

<sup>42</sup> Hamzani, h.15-16.

<sup>43</sup> Rosdalina Bukido, *Hukum Adat* (Yogyakarta: CV Budi Utama, 2017), p. 42.

<sup>44</sup> Mansur, *Hukum Adat: Perkembangan Dan Pembaruannya*, p.13.

Islamic law in the same position as customary law, such as the Receptie Theory by Christian Snouck Hurgronje, that for indigenous people basically applies customary law, Islamic law applies if the norms of Islamic law have been accepted by the community as customary law.<sup>45</sup>

In the dynamics of society in Indonesia, it appears that in many regions customary sanctions have a relationship with Islamic law.<sup>46</sup> In application, it appears that Islamic law is a set of rules from Shari'a and also regulations that apply to Muslims to be applied, which prioritizes trust to be stronger to carry out Islamic law. The customary sanction is a punishment given to people who deviate from the area they live in, which is made by mutual agreement of the local community. One of the customary sanctions applied, among others, in the Bengkulu community, as the focus of this paper, is the customary sanction in the form of the *mbasuh dusun* tradition against pregnant women outside of marriage, which can be reviewed in the perspective of Islamic law.

### **Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage**

Kitab Simbur Cahaya is used as a customary rule for the community and is a general rule that applies throughout the Palembang archipelago - including Bengkulu. The contents cover all community relations, starting from the rules of *bujang gadis* and marriage rules, clan rules, farming hamlet rules, *kaum* rules, and customary punishments.<sup>47</sup>

Sanctions that require paying fines and washing the hamlet are categorized into:

1. *Bunting Gelap* (dark pregnancy) is when a girl or widow becomes pregnant and it is not known who impregnated her. She pays a fine of 12 ringgit and *mbasuh dusun* by giving a goat to the head of the *dusun*. If she gives birth at someone else's house, then the person who owns the house must also be penalized with a goat.<sup>48</sup> If the wife becomes pregnant in the dark and the husband complains to the *dusun* head, the wife is fined 12 ringgit and the tradition of *mbasuh dusun* is enforced with a buffalo, 100 gantang of rice, 100 coconut seeds, 1 jar of enau sugar, and 1 jar of bekasam.<sup>49</sup>
2. *Sumbang Kecil*, which is adultery committed by a man and a woman who are related by marriage. Such as between a man's father-in-law and his daughter-in-law or son-in-law and his father-in-law. Then the sanction is *mbasuh dusun* with a goat plus a fine of 40 ringgit and faced with a large trial and king's punishment (sultan's decree).<sup>50</sup>
3. *Sumbang Besar* is adultery committed between a man and a woman who are still related to each other. Such as a father with his daughter or a brother with his biological sister. The sanction is the implementation of the tradition of *mbasuh dusun* with a buffalo plus a fine of 80 ringgit and will be faced with a large court and the king's punishment.<sup>51</sup>

Over time, the traditions that apply to pregnant women outside of marriage in Bengkulu City, which are carried out by the chairman or *kutei/ adat* and the village government, are as follows:

1. Slaughtering one goat at the time of the marriage contract and *jambar* chicken

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<sup>45</sup> Muhammad Jazil Rifqi, "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory," *Millah: Jurnal Studi Agama*, 2021, 217–52, <https://doi.org/10.20885/millah.vol21.iss1.art8>.

<sup>46</sup> Rachmi Sulistyarni et al., "The Contact Point of Customary Law and Islamic Law (Legal History Perspective)," *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59, <https://doi.org/10.3126/ijssm.v5i2.19672>.

<sup>47</sup> Linda Wahyuni, "Sanksi Mbasuh Dusun Bagi Pelaku Zina Dalam Kitab Simbur Cahaya Perspektif Hukum Islam (Studi Pada Masyarakat Kota Bengkulu)" (Yogyakarta: Universitas Islam Indonesia, 2019).

<sup>48</sup> M Si Farida and H Y Hasan, "Undang-Undang Simbur Cahaya Sebagai Sumber Hukum Di Kesultanan Palembang," *Universitas Sriwijaya* (Universitas Sriwijaya, 2012), h. 3, Bab 1 Pasal 10.

<sup>49</sup> Farida and Hasan, Bab II Pasal 23 (tambahan).

<sup>50</sup> Farida and Hasan, Bab II Pasal 28 (tambahan).

<sup>51</sup> Farida and Hasan.



2. Not wearing traditional clothes
3. It is not permissible to hold walimah/parties.<sup>52</sup> The marriage of a pregnant woman out of wedlock is not allowed to invite a large crowd. The perpetrator is only allowed to get married at the Religious Affairs Office (KUA).

The process of resolving pregnant women out of wedlock is through complaints from the community first to the Head of the Neighborhood Association (Ketua RT) or Imam, who then proceeds to the Chief of Adat. The complaint cannot be accepted immediately, but must be accompanied by evidence by finding data or information about them. Once proven, both parties are summoned and a hearing is held at the village head's office, attended by the village head and the head of the Customary Consultative Body. At the hearing, sanctions for their actions are determined.<sup>53</sup>

In Bengkulu the elements of a traditional leader or *Rajo Penghulu* are: *penghulu adat* (traditional leader), *penghulu syar'* (sharia cleric) and *cerdik cendikio* (ingenious scholars). *Penghulu adat* consists of the customary leader and customary officials in various urban villages in Bengkulu City. *Penghulu syar'* are the imams and shara' officials, such as the *khatib, bilal, gharim* in the urban villages of Bengkulu City. Meanwhile, *cerdik cendikio* are community leaders from among the clever people who are able to understand and master the problems that arise in society (teachers, lecturers, and so on).<sup>54</sup>

Pregnant women outside of marriage with the sanction of the mbasuh dusun tradition in Bengkulu City<sup>55</sup> is called *dapek salah* (can go wrong).<sup>56</sup> This tradition is actually very urgent, if one knows and understands its philosophy.<sup>57</sup> In ancient times, the perpetrators had to be paraded around the hamlet or village naked. But now it is no longer enforced.<sup>58</sup>

According to Imam Maksun, a religious figure in Bengkulu City: the mbasuh dusun tradition is actually very far from the punishment for adultery contained in the Qur'an and hadith. However, if a person lives and resides in one area, then the customary traditions applied in that area must be followed. This mbasuh dusun tradition, its goals and objectives, can reduce and even make the perpetrator deterred.<sup>59</sup>

Among the cases of pregnant women out of wedlock who are subject to the sanction of mbasuh dusun are: a pregnant girl out of wedlock who was impregnated by her biological father. Her pregnancy was discovered after five months. They could not be married off because of syar'i restrictions. A traditional discussion with the family by way of mbasuh dusun cut a goat with setawar flour. After that, the husband and wife were divorced. The husband went his separate way with the family. The out-of-wedlock pregnant girl stays with her mother until she gives birth, and no one marries her.<sup>60</sup> This incident occurred in 2017.

There was a pregnant woman who was impregnated by someone else's husband. The customary sanction was to wash the village with a goat, then marry her off. After the marriage contract, the man immediately divorced her, because this was an agreement with his first wife. After the marriage, the

<sup>52</sup> "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021," (n.d.).

<sup>53</sup> "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021."

<sup>54</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019," (n.d.).

<sup>55</sup> J F Holleman, "The Maintenance and Development of Indonesian Adat Law," in *Van Vollenhoven on Indonesian Adat Law* (Netherlands: Springer, 1981), 213–59.

<sup>56</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019."

<sup>57</sup> Fatimah, "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia."

<sup>58</sup> "Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019," (n.d.).

<sup>59</sup> "Interview with Imam Maksun, Imam Masjid Ar-Rahman Kelurahan Pagar Dewa, Tanggal 2 Agustus 2019," (n.d.).

<sup>60</sup> "Interview with Nurhidayat Tokoh Agama, 12 April 2020," (n.d.).

woman was abandoned and the man returned to his first wife. Shortly afterwards, the family moved from Bengkulu City.<sup>61</sup> This event occurred in early 2020.

A pregnant woman out of wedlock (Yn) was married to a man who did not impregnate her (Ad). At the time of the marriage, the man did not know that the woman he married was pregnant. She was 6 months pregnant at the time of marriage. After one week of marriage, the man who married the pregnant woman took the wife to her parents. This happened in 2017. The customary sanction for the woman who was pregnant outside of marriage was to cut the goat and wash the village with setawar flour and apologize to the community. And the man declared divorce with his wife.<sup>62</sup>

A pregnant woman out of wedlock (Gd) who was married to a man who did not impregnate her. She was four months pregnant. At the time of the marriage, the man who married the extramarital pregnant woman knew that his wife-to-be was pregnant. He accepted this situation, arguing that the man who impregnated her was a close friend and was like his own family. This happened in early 2018. The customary sanctions imposed are: on the third day of childbirth, they cut a goat to wash the village; the wife apologizes to her husband. The husband's family accepted this situation.<sup>63</sup>

A woman pregnant out of wedlock was impregnated by her boyfriend, but he did not want to take responsibility, because he said it was not his seed. This happened in early 2020. Previously, at the end of 2019, the woman had been grebeg with a man. After customary deliberations and the sanction of *mbasuh dusun*, she did not want to marry the man who was grebeg. The reason was that she did not want to disappoint her parents, because she was still studying, and felt that she was not pregnant. But 3 months after being raided, it turned out that she was pregnant. Meanwhile, she was no longer dating the man, and already had a new boyfriend. When she found out she was pregnant, she asked her boyfriend to marry her and was honest that she was pregnant. Her new boyfriend did not want to get married, saying that he was not the one who impregnated her. But, finally after 6 months of pregnancy, her new boyfriend wanted to marry her.<sup>64</sup>

In solving the problem, it is not necessarily immediately tried, but there are stages of resolution first, namely:

1. In the event of an arrest or raid. Notification reports or complaints from individuals on customary violations, reporting to village government officials or the Head of the Neighborhood Association (Ketua RT) or one of the *Rajo Penghulu* apparatus (*penghulu adat*, *penghulu syara'* and *cerdik cendekio*).
2. Village government officials, Head of the Community Association (RW Heads), Head of the Neighborhood Association (RT Heads), or one of the *Rajo Penghulu's* officials convey an order to the local customary leader for a *dapek salah* settlement to be held.
3. *Penghulu adat* (traditional leader) as *Rajo Penghulu* (the king of Penghulu) informs all *Rajo Penghulu* members to attend the *Rajo Penghulu* consensus that will be held. Informing the head of the sub-district police to appoint their members to attend the *Rajo Penghulu* consensus, the customary head asks the head of the Neighborhood Association (RT Heads) to prepare a place where the *Rajo Penghulu* consensus can be held.<sup>65</sup>
4. The Head of the Neighborhood Association (RT Heads) prepares the seats for the *Rajo Penghulu* assembly, the families, the general public and so on.
5. The traditional leader asks the head of the neighborhood association (RT) to notify other members of the *Rajo Penghulu*, village government officials, and the complainant, parties,

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<sup>61</sup> "Interview with Im Fahimah Tokoh Agama, 12 April 2020," (n.d.).

<sup>62</sup> "Interview with Sari (Kakak Laki-Laki Yang Menikahkan Perempuan Hamil Luar Nikah), 15 April 2020," (n.d.).

<sup>63</sup> "Interview with Wawan (Laki-Laki Yang Menghamili Perempuan Hamil Luar Nikah), 15 April 2020," (n.d.).

<sup>64</sup> "Interview with MY (Bibik Perempuan Hamil Luar Nikah), April 2020," (n.d.).

<sup>65</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019," (n.d.).

witnesses and family to be present at the place and time prepared by the head of the neighborhood association (RT), or village government officials. The Head of the Neighborhood Association (RT) together with village government officials prepare and arrange the arrangement of the *Rajo Penghulu* consensus venue.

6. The *Rajo Penghulu* mufakat is opened by the customary leader who checks the completeness and attendance list of the *Rajo Penghulu* mufakat participants.
7. After everyone is present, the customary *Penghulu* asks the head of the Neighborhood Association (RT) to appear to resolve the *dapek salah* case to *Rajo Penghulu* by granting *Rajo Penghulu's* permission, the head of the Neighborhood Association (RT) presents the parties who *dapek salah* by custom.
8. The customary leader then asks the person who has been *dapek salah* whether they are willing to be resolved by the consensus of the *Rajo Penghulu*. If the *dapek salah* is willing, the next question is asked about his/her health condition, willingness and sincerity. If the *dapek salah* states that he is healthy, willing and sincere, then the customary deliberation can be opened by the *Penghulu adat*. If the *dapek salah* does not want to be resolved by custom, then this dispute will be carried out legally.<sup>66</sup>

In the implementation procedure after the *Rajo Penghulu* trial, then the *mbasuh dusun* tradition is carried out, as follows: According to the head of the Neighborhood Association (RT Heads) of Selebar Sub-district, the *mbasuh dusun* tradition is carried out in the afternoon. The requirements: 1 goat. No buffaloes, no cows, chickens, etc. The money fine actually depends on the agreement. For monetary fines, it actually depends on the agreement, and if you cannot hand over the goat directly, you can also hand over money worth a goat, then it will be carried out by the residents. The perpetrator is actually obliged to come. It is not obligatory to get married.<sup>67</sup>

If there is a raid, it must be reported to the parents, or their representatives, so that they can take follow-up or further steps. If the perpetrator does not want to carry out *mbasuh dusun*, then there is no difference between unmarried or married perpetrators.

The same thing happened in Kampung Melayu Sub-district, where the goat was still slaughtered. However, most of the time on the day of the ceremony, the adulterer does not come. If they do not want to be present in carrying out *mbasuh dusun*, they still pay or hand over money for the price of a goat. From the implementation of *mbasuh dusun* there is a deterrent effect, if seen in the Sub-district of Kampung Melayu it can be said that it rarely happens.<sup>68</sup>

The *mbasuh dusun* tradition is carried out by slaughtering a goat, the blood is collected, the meat is cooked outside the house, the perpetrator must be present to be aware and must apologize. Then do a small alms (ask for prayer) at the place where the goat was slaughtered or outside the house. This prayer aims to prevent the community from disaster, as well as a closing in resolving the problem. This process is also attended by *Rajo Penghulu*, government officials and the community.<sup>69</sup>

As for the slaughter of the animal, the blood was taken and then sprinkled on 40 (to the right 20 and to the left 20) houses by the two perpetrators while apologizing. This sprinkling uses cold leaves. The goat should be a male and not a small one. *Mbasuh dusun* is so that the perpetrator is ashamed and does not repeat the act again. If the family does not want to settle the matter in accordance with this custom or tradition, then they are expelled or handed over to the police, because this customary sanction is in cooperation with the police.

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<sup>66</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019."

<sup>67</sup> "Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019."

<sup>68</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019."

<sup>69</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019."

If the violation of the custom is repeated by the same person and the violator does not have good intentions to change it, then the Rajo Penghulu with his authority, can sanction ostracizing him, even expelled from the place of residence.<sup>70</sup>

Based on the description of the mbasuh dusun tradition, the rules applied in Bengkulu City have undergone shifts and various changes along with the times from year to year. However, the rules are still sourced from Simbur Cahaya. Many rules are no longer used and have been replaced with other rules.

### **The Enforcement of the Mbasuh Dusun Tradition as a Customary Sanction in the Context of the Development of Marriage Law in Indonesia**

Legal reform in Islam is carried out in order to be able to realize the objectives of sharia as much as possible which includes the benefit of human life in this world and the hereafter.<sup>71</sup> Indeed, since the beginning, Islamic law essentially aims to realize the benefits of human life in this world and the hereafter.<sup>72</sup>

Furthermore, it is known that the instrument of Islamic law reform is *ijtihad*. *Ijtihad* when associated with the formulation of law; determine the law on new problems for which there is no legal provision. Or determining, finding new legal provisions for a problem that already has legal provisions, but is no longer in accordance with the current conditions and human interests.<sup>73</sup>

The Compilation of Islamic Law (KHI) accommodates one of these opinions which states that the marriage of a pregnant woman outside of marriage is valid only with the man who impregnates her, without having to be repeated after giving birth. The case of pregnant women outside of marriage does not only concern the adultery of the perpetrators and the hudud punishment for their actions, but also concerns the status and fate of the life of the baby in the womb.

According to researchers, the prohibition of adultery even to the point of causing pregnancy outside of marriage as the focus of this research, namely the marriage of pregnant women outside of marriage in Bengkulu city, is more about the translation of verses that explain the role and position of humans as caliphs/leaders. Humans are the noblest creatures, social creatures, perfect creatures; so that the goal is to achieve *mashlahah*, either in the form of benefits achieved or *mudharat* avoided.<sup>74</sup>

So this prohibition of adultery, when associated with the position of man as a leader is the implementation of *hifzih an-nasl* (nurturing the offspring), protecting offspring. Meanwhile, the marriage of pregnant women outside of marriage in Bengkulu city, which has actually been carried out, anticipates a deterrent effect with the mbasuh dusun tradition, which is a customary sanction imposed on the perpetrator.

Islam becomes a strongly held belief and assimilates with the traditions and culture that have developed in the area where it develops. So that between the teachings of Islam and the culture and traditions of the community there is mutual adjustment, as long as it does not conflict with the basic values in Islam such as the people of Indonesia, especially Bengkulu.<sup>75</sup>

When there are social changes, it is almost certain that there will be changes in the law, therefore social changes such as the relationship between Muslims and local traditions; which occur in Bengkulu

<sup>70</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019."

<sup>71</sup> Jayusman Jayusman et al., "Masalah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia," *Muqaranah* 6, no. 1 (2022): 69–84, <https://doi.org/10.19109/muqaranah.v6i1.11164>.

<sup>72</sup> A Malthuf Siroj, *Pembaruan Hukum Islam di Indonesia: Telaah Kompilasi Hukum Islam* (Yogyakarta: Pustaka Ilmu, 2017), p. 44.

<sup>73</sup> Asni, *Pembaharuan Hukum Islam Di Indonesia: Telaah Epistemologis Kedudukan Perempuan Dalam Hukum Keluarga* (Jakarta: Kementerian Agama Republik Indonesia, 2012), p. 48.

<sup>74</sup> Oni Syahroni, *Maqasid Bisnis Dan Keuangan Islam* (Jakarta: PT Raja Grafindo, 2016), cet, 2, p. 4.

<sup>75</sup> Supardi Mursalin, "Acculturation of Islamic Family Values and Bengkulu Local Traditions in Forming a Sakinah Family," *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023): 123–36.

society can affect Islamic law. In order to create legal adaptability, Muslims in Indonesia must always make *ijtihad*.<sup>76</sup> There are several rules related to changes in the law.

1. فى تغير الفتوى واختلافها بحسب تغير الأزمنة والامكنة والاحوال والنية والعوائد<sup>77</sup>  
“Changes in the law occur due to changes in time, place, circumstances and customs.”
2. الحكم يدور مع علته وجودا وعدما<sup>78</sup>  
“The ruling depends on the illat, its presence or absence.”
3. لا ينكر تغير الاحكام بتغير الازمنة والامكنة والاحوال<sup>79</sup>  
“It is undeniable that legal changes occur due to changes in time, place and circumstances.”
4. للأكثر حكم الكل  
“The majority is judged to be all.”
5. الحكم يدور مع مصالح العباد فحيثما وجدت المصلحة فثما حكم الله<sup>80</sup>  
“The law revolves around human benefit, so wherever benefit is found there is the law of Allah.”
6. المحافظة على القديم الصالح والأخذ بالجديد الاصلح<sup>81</sup>  
“Keeping the old is good and taking on the new is better.”

The aforementioned rules indicate that the ruling on an event may only apply to a certain community and at a certain time.<sup>82</sup> Therefore, the ruling must be reconsidered when the law will be applied at a different time and place, especially if the ruling no longer reflects the benefit as the purpose of Islamic law, then the ruling is no longer valid and there must be a new *ijtihad* that brings more *mashlahab* (benefits) to the community.<sup>83</sup> This kind of thing has been done by Imam Shafi'i in taking his law with the terms *qaul qadim* and *qaul jadid*, which *qaul qadim* was done by Imam Shafi'i when he was in Iraq and *qaul jadid* when he was in Egypt.<sup>84</sup>

Furthermore, in Bengkulu City, the application of sanctions for women who become pregnant outside of marriage is based on the Kitab Simbur Cahaya, although it has undergone shifts and various changes, along with the development of the times from year to year.

Furthermore, in order to take *mashlahab* to avoid *mafsadah*, from pregnant marriages in the Compilation of Islamic Law (KHI), the author tries to see with a review of achieving benefits and avoiding harms. Indeed, the case of pregnant women outside of marriage does not only concern the adultery of the perpetrators and the hudud punishment for their actions, but also concerns the status and fate of the life of the baby in the womb.<sup>85</sup> Pregnant marriages in this case are to preserve offspring so that the children who are born are not neglected and still have a bright future, because no matter

<sup>76</sup> Abu Hamid Muhammad al-Ghazali, *Al-Mustasyfā Min Ilmi Al-Uṣūl* (Beirut: Dār al-Fikr, n.d.), p.176.

<sup>77</sup> Ibn al-Qayim al-Jauziyah, *I'lam Al Muwaqī'in 'an Rabbi Al'Alamin* (Beirut: Dār al-Jai, n.d.), juz III, p. 3.

<sup>78</sup> Ali Ahmad Gulam Muhammad An-Nadawi, *Al-Qawā'id Fiqhiyah* (Damaskus: Dār al- Qalam, 1994), Cet 3, p. 125.

<sup>79</sup> Ibn al-Qayim al-Jauziyah, *I'lam Al Muwaqī'in 'an Rabbi Al'Alamin*, p. 414.

<sup>80</sup> Jalaluddin As-Suyuti, *Al-Asybah Wa an-Nazhāir* (Beirut: Dār al-Fikr, n.d.), p. 176.

<sup>81</sup> Syafii Ma'arif, *Islam Dan Masalah-Masalah Kenegaraan* (Jakarta: LP3S, 1985). p. 47

<sup>82</sup> Jayusman Jayusman, Rahmat Hidayat, and Rizki Zulu Febriyansyah, “Qawaid Fiqhiyah’s Review of Buying Shoes with A Paid Lots System At Toidiholic Store Bandar Lampung,” *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 2 (2022): 131, <https://doi.org/10.29300/mzn.v9i1.6952>.

<sup>83</sup> Abdul Aziz, “Konsep Mashadir Al-Ahkam (Studi Komparasi Antara Pemikiran Asy-Syāfi'i Dan Muhammad Syahrūr)” (Surakarta: LP2M IAIN Surakarta, 2016), [http://eprints.iain-surakarta.ac.id/5600/1/Abdul\\_Aziz\\_Konsep\\_Masadir\\_al-Ahkam.pdf](http://eprints.iain-surakarta.ac.id/5600/1/Abdul_Aziz_Konsep_Masadir_al-Ahkam.pdf).

<sup>84</sup> Roibin, *Sosiologi Hukum Islam, Telaah Sosio Historis Pemikiran Imam Syafi'i* (Malang: UIN Malang Press, 2008).

<sup>85</sup> Mursyid Djawas et al., “The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law),” *Samarah* 6, no. 1 (2022): 139–55, <https://doi.org/10.22373/sjhk.v6i1.11904>.

what the parents are like, children are still born in a state of fitrah (pure).<sup>86</sup> *Hifz al-nasl* is what must be maintained in order to get justice and good treatment from all parties. You can imagine the burden of a child who is born as a result of the actions of his parents, especially if he does not have a father as the concept of *fiqh mazhab*.<sup>87</sup>

Implementation of the provisions for pregnant marriage in Article 53 in the Compilation of Islamic Law (KHI) can provide facilities.. This facility is utilized by the perpetrators of extra-marital pregnancy, so that the children of their adultery have the same legal implications and status as the children of legal marriage according to the Compilation of Islamic Law (KHI). Therefore, the perpetrators of extramarital pregnancy feel that there is no legal problem with their actions, as well as the children who are born later will have the same legal status as children born as a result of legal marriage. From this arises a *mafsadab* legitimizing adultery, because one of the goals of marriage is to obtain legitimate offspring. Through the provisions of pregnant marriage in the Compilation of Islamic Law (KHI), adulterers get the same legal position or status. *Mashlahab* from the provisions of the Compilation of Islamic Law (KHI) is to save the future of children resulting from pregnant marriages, so that they have the legal status of legal children and their rights as legal children.<sup>88</sup>

Thus, it is time for the Compilation of Islamic Law (KHI) to seek reconception of the provisions of pregnant marriage, so as not to be too easy and underestimate the prohibitions and provisions of Allah. Violation of *sharia* is not something that is considered shameful. In the past, when there were people who were pregnant outside of marriage, they were considered unclean, even their children did not want to greet and hold them. After being tolerated by the rules of pregnant marriage, it seems too easy and does not consider it a 'disgrace'. Therefore, according to the author, in order to accommodate the interests of fighting for *hifz al-nasl* (nurturing the offspring), it seems very urgent to impose customary sanctions in Bengkulu City in accordance with the concept in Kitab Simbur Cahaya, namely *mbasuh dusun*, for perpetrators of pregnancy outside of marriage in Bengkulu City. [The application of this customary sanction in the form of the *mbasuh dusun* tradition has had a significant impact on women who are pregnant outside of marriage for a deterrent effect and brings benefits to the community.]

## Conclusion

The conclusion of this research is that: the implementation of the *mbasuh dusun* tradition is a customary sanction for pregnant women outside of marriage in Bengkulu City, Indonesia. The case of extramarital pregnant women does not only concern the adultery of the perpetrators and the *hudud* punishment for their actions, but also concerns the status and fate of the life of the baby in the womb. The application of customary sanctions in Bengkulu City refers to the concept in Kitab Simbur Cahaya, namely *mbasuh dusun*, for pregnant women outside of marriage in Bengkulu City. In contrast to customary sanctions in other regions, the implementation of the *mbasuh dusun* tradition has a significant impact on pregnant women outside of marriage for a deterrent effect and has implications for maintaining *hifz al-nasl*, protecting offspring. In the implementation of this *mbasuh dusun* tradition, if the family does not want to settle by the provisions of this custom or tradition, then they

<sup>86</sup> Euis Nurlaelawati and Stijn Cornelis Van Huis, "The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms," *Journal of Law and Religion* 34, no. 3 (2019): 356–82, <https://doi.org/10.1017/jlr.2019.41>.

<sup>87</sup> Wan Abdul Fattah Wan Ismail et al., "A Comparative Study Of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective," *Humanities & Social Sciences Reviews*, 2020, <https://doi.org/10.18510/hssr.2020.8412>.

<sup>88</sup> Ahmad Rizza Habibi, "The Dynamics Of Illegitimate Child Status In Sharia And National Law Of Indonesia: Is There A Harmonization?," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 70–80, <https://doi.org/10.19105/al-manhaj.v3i1.4787>.

**Commented [H12]:** What does this have to do with the *mbasuh dusun* tradition?

**Commented [H13]:** In this article there is no data that explains the effectiveness of the *mbasuh dusun* customary sanctions for pregnant women out of wedlock except for the author's claim without data as in this sentence.

**Commented [H14]:** Conclusions must answer the research objectives based on data and theory. Also add an explanation of the limitations of this research and suggestions for further research!

are expelled or handed over to the police, because this customary sanction has collaborated with the police, so that customary sanctions can be applied effectively.

The application of customary sanctions in the form of the *mbasuh dusun* tradition, in the context of developing marriage law in Indonesia, appears necessary by reviewing the legalization of marriages of pregnant women outside of marriage. This is because the imposition of sanctions for pregnant women outside of marriage has significant implications for creating a deterrent effect and can realize security, order, and benefit for the community evenly.

## References

- Abu Hamid Muhammad al-Ghazali. *Al-Mustasyfa Min Ilmi Al-Usul*. Beirut: Dār al-Fikr, n.d.
- Abubakar, Lastuti. "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia." *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319–31. <https://doi.org/10.20884/1.jdh.2013.13.2.213>.
- Ahmad Rizza Habibi. "The Dynamics Of Illegitimate Child Status In Sharia And National Law Of Indonesia: Is There A Harmonization?" *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 70–80. <https://doi.org/10.19105/al-manhaj.v3i1.4787>.
- Amir Syarifuddin. *Ushul Fiqih Jilid II*. Jakarta: Logos Wacana Ilmu, 1999.
- An-Nadawi, Ali Ahmad Gulam Muhammad. *Al-Qawā'id Fiqhiyah*. Damaskus: Dār al-Qalam, 1994.
- As-Suyuti, Jalaluddin. *Al-Ashbah Wa an-Nazhā'ir*. Beirut: Dār al-Fikr, n.d.
- Asni. *Pembabaran Hukum Islam Di Indonesia: Telaah Epistemologis Kedudukan Perempuan Dalam Hukum Keluarga*. Jakarta: Kementrian Agama Republik Indonesia, 2012.
- Aziz, Abdul. "Konsep Mashadir Al-Ahkam (Studi Komparasi Antara Pemikiran Asy-Syāfi'i Dan Muhammad Syahrūr)." Surakarta: LP2M IAIN Surakarta, 2016. [http://eprints.iain-surakarta.ac.id/5600/1/Abdul\\_Aziz\\_Konsep\\_Masadir\\_al-Ahkam.pdf](http://eprints.iain-surakarta.ac.id/5600/1/Abdul_Aziz_Konsep_Masadir_al-Ahkam.pdf).
- Bukido, Rosdalina. *Hukum Adat*. Yogyakarta: CV Budi Utama, 2017.
- Djawas, Mursyid, Gamal Achyar, Nursyirwan Bustanul Arifin, Masri Reza, and Baharuddin Umar Yakub. "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)." *Samarab* 6, no. 1 (2022): 139–55. <https://doi.org/10.22373/sjhk.v6i1.11904>.
- Efrinaldi, Efrinaldi, Jayusman Jayusman Jayusman, Shafra Shafra, and Nurfatati Nurfatati. "Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 287–310. <https://doi.org/10.29240/jhi.v7i1.4140>.
- Efrinaldi, Efrinaldi, Jayusman Jayusman, and M Yenris. "Revealing The Dilemma Of Marriage Dispensation Regulations In Indonesia." *ADHKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46. <https://doi.org/10.37876/adhki.v5i1.113>.

**Commented [H15]:** Increase the number of articles from journals of international reputation!

- Farida, M Si, and H Y Hasan. "Undang-Undang Simbur Cahaya Sebagai Sumber Hukum Di Kesultanan Palembang." *Universitas Srinwijaya*. 2012.
- Fatimah. "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia." Lampung: UIN Raden Intan Lampung, 2021.
- Fikri, Fikri, Budiman Sulaeman, and Andi Bahri. "Perlindungan Anak Di Luar Nikah Dalam Hukum Negara Dan Hukum Islam (Perspektif Hakim Pengadilan Agama Parepare)." *DIKTUM: Jurnal Syariah Dan Hukum* 12, no. 1 (2014): 54–76. <https://doi.org/10.35905/diktum.v12i1.196>.
- Hamzani, Achmad Irwan. *Hukum Islam Dalam Sistem Hukum Di Indonesia*. Vol. 15–16. Jakarta: Kencana, 2020.
- Haq, Hilman Syahrial. *Pengantar Hukum Adat Indonesia*. . Jawa Tengah: Lakeisha, 2019.
- Haq, Husnul. "Kaidah 'Al-'Adah Muhakkamah' Dalam Tradisi Pernikahan Masyarakat Jawa." *Ahkam: Jurnal Hukum Islam* 5, no. 2 (2017): 295–320. <https://doi.org/10.21274/ahkam.2017.5.2.295-320>.
- Hasballah, Zamakhsyari. "Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih." CITA PUSTAKA MEDIA, 2013.
- Holleman, J F. "The Maintenance and Development of Indonesian Adat Law." In *Van Vollenhoven on Indonesian Adat Law*, 213–59. Netherlands: Springer, 1981.
- Ibn al-Qayim al-Jauziah. *I'lam Al-Muwaqqi'in 'an Rabbi Al-'Alamin*. Beirut: Dār al-Jai, n.d.
- Ilyas, Ilyas. "Eksistensi Dan Kekuatan Penyelesaian Sengketa Secara Adat Pada Tingkat Gampong." *Kanun Jurnal Ilmu Hukum* 12, no. 1 (2010): 137–75.
- "Interview with Bambang, Tokoh Masyarakat Kota Bengkulu, 15 Januari 2021." 2021.
- "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019." n.d.
- "Interview with Iim Fahimah Tokoh Agama, 12 April 2020." n.d.
- "Interview with Imam Maksum, Imam Masjid Ar-Rahman Kelurahan Pagar Dewa, Tanggal 2 Agustus 2019." n.d.
- "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Wawancara Dengan M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021." n.d.
- "Interview with MY (Bibik Perempuan Hamil Luar Nikah), April 2020." n.d.
- "Interview with Nurhidayat Tokoh Agama, 12 April 2020." n.d.
- "Interview with Ris, Bibik Wt 10 Januari 2021 Di Bengkulu." n.d.
- "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019." n.d.
- "Interview with Sari (Kakak Laki-Laki Yang Menikahkan Perempuan Hamil Luar Nikah), 15 April



2020.” n.d.

“Interview with Wawan (Laki-Laki Yang Menghamili Perempuan Hamil Luar Nikah), 15 April 2020.” n.d.

“Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019.” n.d. Ismail, Dian Ekawaty, Avelia Rahmah Y Mantali, and Mohamad Rivaldi Moha. “The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice.” *Jambura Law Review* 5, no. 2 (2023): 220–34. <https://doi.org/https://doi.org/10.24843/UJLC.2018.v02.i02.p02>.

Ismail, Wan Abdul Fattah Wan, Ahmad Syukran Baharuddin, Lukman Abdul Mutalib, Zulfaqar Mamat, and Syahirah Abdul Shukor. “A Comparative Study Of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective.” *Humanities & Social Sciences Reviews*, 2020. <https://doi.org/10.18510/hssr.2020.8412>.

Jayusman, Jayusman, Rahmat Hidayat, and Rizki Zulu Febriyansyah. “Qawaid Fiqhiyah’s Review of Buying Shoes with A Paid Lots System At Toidiholic Store Bandar Lampung.” *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 2 (2022): 131. <https://doi.org/10.29300/mzn.v9i1.6952>.

Jayusman, Jayusman, Shafra Shafra, Rahmat Hidayat, Efrinaldi Efrinaldi, and Badarudin Badarudin. “Maslahah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia.” *Muqaranah* 6, no. 1 (2022): 69–84. <https://doi.org/10.19109/muqaranah.v6i1.11164>.

Koesnoe, Mohammad. *Dasar Dan Metode Ilmu Hukum Positif*. Airlangga University Press, 2010.

Ma’arif, Syafii. *Islam Dan Masalah-Masalah Kenegaraan*. Jakarta: LP3S, 1985.

Mansur, Teuku Muttaqin. *Hukum Adat: Perkembangan Dan Pembaruannya*. Banda Aceh: Syiah Kuala University Press, 2018.

Martitah, Slamet Sumarto, and Arif Hidayat. “The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia.” In *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia*, 305. European Alliance for Innovation, 2021.

Munajat, Makhros. “مبادئ الجنائيات الإسلامية وتطبيقها في السياق الإندونيسي.” *Journal of Indonesian Islam* 7, no. 2 (2013): 404–26. <https://doi.org/10.15642/JIIS.2013.7.2.404-426>.

Mursalin, Supardi. “Acculturation of Islamic Family Values and Bengkulu Local Traditions in Forming a Sakinah Family.” *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023): 123–36.

Nurlaelawati, Euis, and Stijn Cornelis Van Huis. “The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms.” *Journal of Law and Religion* 34, no. 3 (2019): 356–82. <https://doi.org/10.1017/jlr.2019.41>.

Nurul Hak. *Kedudukan Dan Hak Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, Tentang Status Anak Luar Nikah (Studi Persepsi Hakim Pengadilan Agama Se Wilayah PA Tinggi Agama Bengkulu*. Lampung: (Disertasi Universitas Islam Negeri Raden Intan Lampung, 2018.

- Pelu, Ibnu Elmi A S, Hilyatul Asfia, Jefry Tarantang, and Akhmad Supriadi. "Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives Marriage Law in Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 39–54. <https://doi.org/10.29240/jhi.v7i1.4204>.
- Pide, A Suriyaman Mustari, and M Sh. *Hukum Adat Dabulu, Kini, Dan Akan Datang*. Jakarta: Prenada Media, 2017.
- Rachmawati, Jelia Karlina. "Penerimaan Diri Remaja Hamil Pra Nikah: Studi Kasus Pada 2 Remaja Hamil Pra Nikah Di Kota Bandung." Universitas Pendidikan Indonesia, 2014.
- Rifqi, Muhammad Jazil. "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory." *Millah: Jurnal Studi Agama*, 2021, 217–52. <https://doi.org/10.20885/millah.vol21.iss1.art8>.
- Roibin. *Sosiologi Hukum Islam, Telaah Sosio Historis Pemikiran Imam Syaifi*. Malang: UIN Malang Press, 2008.
- S., Nasruddin, and Sulaemang L. "Pregnancy Married in the Perspective of Islamic Law and Five Mazhab." *Al-'Adl* 14, no. 1 (2021): 14. <https://doi.org/10.31332/aladl.v14i1.2234>.
- Saiin, A. "Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach." *Advances in Humanities and Contemporary Studies* 2, no. 1 (2021): 33–40. <https://doi.org/10.30880/ahcs.2021.02.01.005>.
- Salam, Asep Lukman Daris. "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010." *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 35–60. <https://doi.org/10.51729/sakinah11132>.
- Sihotang, Erikson. "Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem." *Mimbar Keadilan* 12, no. 2 (2019): 211–22. [http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal\\_Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem.pdf](http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal_Sanksi%20Adat%20Dan%20Pidana%20Yang%20Berbarengan%20Dalam%20Tindak%20Pidana%20Pencabulan%20Anak%20Kaitannya%20Dengan%20Asas%20Nebis%20In%20Idem.pdf).
- Siroj, A Malthuf. *Pembaruan Hukum Islam Di Indonesia: Telaah Kompilasi Hukum Islam*. Yogyakarta: Pustaka Ilmu, 2017.
- Soekanto, Soerjono. *Hukum Adat Di Indonesia*. Jakarta: Rajawali Pers, 2012.
- Sujana, I Nyoman. *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*. Yogyakarta: Aswaja Pressindo, 2015.
- Sulistiyarini, Rachmi, A Rachmad Budiono, Bambang Winarno, and Imam Koeswahyono. "The Contact Point of Customary Law and Islamic Law (Legal History Perspective)." *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59. <https://doi.org/10.3126/ijssm.v5i2.19672>.
- Summa, Muhammad Amin. *Hukum Keluarga Islam Di Dunia Islam*. II. Jakarta: PT. Raja Grafindo Persada, 2005.

- Surachmad, Wiranto. *Dasar Dan Teknik Penelitian Research*. Bandung: Alumni, 1982.
- Syahroni, Oni. *Maqashid Bisnis Dan Keuangan Islam*. Jakarta: PT Raja Grafindo, 2016.
- Tahmid, Khairuddin, and Idzan Fautanu. "Institutionalization of Islamic Law in Indonesia." *Al-Adalah* 18, no. 1 (2021): 1–16. <https://doi.org/10.24042/adalah.v18i1.8362>.
- Tilayanti, Susi. "Praktek Tajdid Nikah Pada Pasangan Hamil Diluar Nikah Desa Umong Seribee Kecamatan Lhoeng Kabupaten Aceh Besar." UIN Ar-Raniry Banda Aceh, 2019.
- Unaradjan, Dolet. *Pengantar Metode Penelitian Ilmu Sosial*. H. 198. Jakarta: PT Grapindo, 2000.
- Vardiansyah, Dani. *Filsafat Ilmu Komunikasi: Suatu Pengantar*. Jakarta: Indeks Kelompok Gramedia, 2005.
- Wahyuni, Linda. "Sanksi Mbasuh Dusun Bagi Pelaku Zina Dalam Kitab Simbur Cahaya Perspektif Hukum Islam (Studi Pada Masyarakat Kota Bengkulu)." Yogyakarta: Universitas Islam Indonesia, 2019.
- Warjiyati, Sri. *Ilmu Hukum Adat*. Yogyakarta: CV Budi Utama, 2020.
- Wibisana, Wahyu. "Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya: Perspektif Fiqh Dan Hukum Positif." *At-Ta'lim: Jurnal Pendidikan Agama Islam* 15, no. 1 (2017): 29–35. [http://jurnal.upi.edu/file/03\\_Perkawinan\\_Wanita\\_Hamil\\_Diluar\\_Nikah\\_-\\_Wahyu2.pdf](http://jurnal.upi.edu/file/03_Perkawinan_Wanita_Hamil_Diluar_Nikah_-_Wahyu2.pdf).
- Wiranata, I Gede A B, and M H Sh. *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa*. Bandung: Citra Aditya Bakti, 2005.
- Witanto, Darmoko Yuti. *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin: Pasca Keluarnya Putusan MK Tentang Uji Materiil UU Perkawinan*. Jakarta: Prestasi Pustaka Publisher, 2012.

## 4. Bukti Konfirmasi Review dan Hasil Review Kedua

The screenshot shows a web browser window displaying the submission review page for the journal "al istinbath: Jurnal Hukum Islam". The page is accessed via the URL [journal.iaincurup.ac.id/index.php/alistinbath/author/submissionReview/5437](http://journal.iaincurup.ac.id/index.php/alistinbath/author/submissionReview/5437). The journal's ISSN information is listed as p-ISSN 2548-3374 and e-ISSN 2548-3382, published by Institut Agama Islam Negeri (IAIN) Curup, Bengkulu, Indonesia.

The page is divided into several sections:

- USER:** Shows the user is logged in as "efrinaldi" with options for "My Journals", "My Profile", and "Log Out".
- Submission:** Displays the submission ID "#8437 Review" with buttons for "SUMMARY", "REVIEW", and "EDITING". The submission details include:
  - Authors: Efrinaldi Efrinaldi, Jaysman Jaysman, Fatmiah Fatmiah, Rihanto Rihanto, Miki Yamunida
  - Title: Reversing the Enforcement of Mbeseh Dusun Tradition for Pregnant Women Outside of Marriage in Indonesia
  - Section: Articles
  - Editor: Lenes Shesa
- Peer Review:** Shows "Round 1" with a "Review Version" of "8437-26183-2-24-RTF: 2022-10-31".
- Al-Istinbath: Jurnal Hukum Islam:** Features a "Q1" badge, "Religious Studies" category, and an SJR 2023 score of 0.35.
- MAIN MENU:** Includes links for "Editorial Team", "Reviewers", "Peer Review Process", and "Focus and Scope".

The browser's taskbar at the bottom shows the system time as 8:58 PM on 3/14/2024.

Editor  
2023-10-31 02:58 AM

Subject: [JHI] Editor Decision  
Pesan berikut ini disampaikan atas nama Dewan Redaksi Al-Istinbath: Jurnal Hukum Islam.

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Efrinaldi Efrinaldi:

We have reached a decision regarding your submission to Al-Istinbath: Jurnal Hukum Islam, "Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City, Indonesia".

Our decision is: Revisions Required

Musda Asmara  
(Sopus ID: 58077706700) Institut Agama Islam Negeri Curup  
musdaasmara@iaincurup.ac.id

## Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City, Indonesia

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### Abstract

This research aims to reveal the enforcement of the *mbasuh dusun* tradition in cases of pregnancy outside marriage in Bengkulu City, Indonesia. The causes of out-of-wedlock pregnancies include: widespread promiscuity between men and women, lack of supervision from parents because children migrate for school/college, and parents are busy working. The focus of this research is: how is the perspective of Islamic law on the implementation of the *mbasuh dusun* tradition for pregnant women outside of marriage in Bengkulu City in the context of the development of marriage law in Indonesia? This type of research is field research. The nature of this research is descriptive analytic. The result of this research is that: the implementation of the *mbasuh dusun* tradition is a customary sanction for pregnant women outside of marriage in Bengkulu City and has an effective impact. This *mbasuh dusun* tradition is carried out by slaughtering a goat, and the perpetrator must be present to be aware and must apologize. Then give charity (and ask for prayers) at the place where the goat was slaughtered or outside the house. This *mbasuh dusun* tradition is the target and goal, so that the perpetrator is ashamed and does not repeat the act again, so that it can effectively reduce and even deter the perpetrator. The application of this customary sanction in the context of developing marriage law in Indonesia, it is necessary to review the legalization of marriage of pregnant women outside of marriage in the Compilation of Islamic Law (KHI), and it turns out that the provision of sanctions for pregnant women outside of marriage has a significant impact on creating a deterrent effect and bringing benefits to the community.

Keywords: Tradition, Mbasuh Dusun, Pregnant Women Outside of Marriage, Customary Sanctions, Islamic Law

### Abstrak

Penelitian ini bertujuan untuk mengungkap pemberlakuan tradisi *mbasuh dusun* terhadap kasus hamil luar nikah di Kota Bengkulu, Indonesia. Penyebab maraknya kasus hamil luar nikah ini antara lain: meluasnya pergaulan bebas antara laki-laki dan perempuan, kurangnya pengawasan dari orang tua karena anak merantau untuk sekolah/ kuliah, dan orang tua sibuk bekerja. Fokus penelitian ini adalah: bagaimanakah perspektif hukum Islam terhadap pemberlakuan tradisi *mbasuh dusun* bagi perempuan hamil luar nikah di Kota Bengkulu dalam konteks pengembangan hukum perkawinan di Indonesia? Jenis penelitian ini adalah penelitian lapangan (*field research*). Sifat penelitian ini adalah *deskriptif analitik*. Hasil penelitian ini bahwa: pemberlakuan tradisi *mbasuh dusun* merupakan sanksi adat bagi perempuan hamil luar nikah di Kota Bengkulu dan berdampak efektif. Tradisi *mbasuh dusun* ini dilaksanakan dengan menyembelih kambing, dan pelaku harus hadir agar sadar dan harus minta maaf. Kemudian melakukan sedekah (dan minta do'a) di tempat menyembelih kambing tadi atau di luar rumah. Tradisi *mbasuh dusun* ini sasaran dan tujuannya, agar pelaku malu dan tidak mengulangi lagi perbuatan tersebut, sehingga dapat mengurangi bahkan membuat pelaku jera secara efektif. Pemberlakuan sanksi adat ini

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dalam konteks pengembangan hukum perkawinan di Indonesia, maka diperlukan untuk meninjau ulang pengesahan pernikahan perempuan hamil luar nikah dalam Kompilasi Hukum Islam (KHI), dan ternyata pemberian sanksi bagi perempuan hamil luar nikah berdampak signifikan untuk menimbulkan efek jera dan mendedahkan kemaslahatan bagi masyarakat.

Kata Kunci: Tradisi, Mbasuh Dusun, Perempuan Hamil Luar Nikah, Sanksi Adat, Hukum Islam

## A. Introduction

In Indonesia, many facts have revealed the practice of freedom of association that results in pregnancy outside of marriage.<sup>1</sup> This deviant phenomenon has reduced the sacredness of marriage, which should be something holy and go through various stages that need attention and seriousness, not just legalizing the marriage of pregnant women outside of marriage.<sup>2</sup> Marriage is not just for biological purposes,<sup>3</sup> but also obtaining offspring in order to form a family is the main purpose of a marriage.<sup>4</sup>

In preserving offspring, Islamic teachings prohibit adultery and all forms of actions that can lead to adultery. Adultery, which is prohibited in Islam, includes not only the criminal act of rape, but also sexual intercourse outside of marriage, even if it is based on mutual consent.<sup>5</sup> The desire to have sex with the opposite sex is human nature, but Islam forbids it without marriage. As mentioned in the Qur'an Surah al-Isrā' verse 32 which reads:

وَلَا تَقْرُبُوا الزَّوْجَىٰ أَنْهَ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا - ٣٢

*And do not approach adultery, for it is an abominable deed and an evil way.*

The perpetrator of adultery, in Islamic law there are sanctions, namely: 100 lashes for the unmarried and stoning for the married. This punishment aims to create individual and community peace and prevent adultery.<sup>6</sup>

The prohibition of adultery is part of preserving human offspring and their honor.<sup>7</sup> Pregnancy of a woman out of wedlock is a pregnancy that no one wants. When faced with this situation, women are often the ones who feel the strongest psychological pressure.<sup>8</sup> If the situation is allowed to drag on and a marriage is not immediately arranged with the man who impregnated her, it is feared that a worse situation will occur. Cases of suicide and abortion are examples that are usually dominated by

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<sup>1</sup> Jelia Karlina Rachmawati, "Penerimaan Diri Remaja Hamil Pra Nikah: Studi Kasus Pada 2 Remaja Hamil Pra Nikah Di Kota Bandung" (Universitas Pendidikan Indonesia, 2014).

<sup>2</sup> Susi Tilayanti, "Praktek Tajdid Nikah Pada Pasangan Hamil Diluar Nikah Desa Umong Seribee Kecamatan Lhoeng Kabupaten Aceh Besar." (UIN Ar-Raniry Banda Aceh, 2019).

<sup>3</sup> Efrinaldi Efrinaldi, Jayusman Jayusman, and M Yenis, "Revealing The Dilemma Of Marriage Dispensation Regulations In Indonesia," *ADHKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46, <https://doi.org/10.37876/adhki.v5i1.113>.

<sup>4</sup> Muhammad Amin Summa, *Hukum Keluarga Islam Di Dunia Islam*, II (Jakarta: PT. Raja Grafindo Persada, 2005).

<sup>5</sup> Zamakhsyari Hasballah, "Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih" (Cita Pustaka Media, 2013).

<sup>6</sup> Makhrus Munajat, "مبادئ الجنائيات الإسلامية وتطبيقها في السياق الإندونيسي," *Journal of Indonesian Islam* 7, no. 2 (2013): 404–26, <https://doi.org/10.15642/JIIS.2013.7.2.404-426>.

<sup>7</sup> Nasruddin S. and Sulaemang L, "Pregnancy Married in the Perspective of Islamic Law and Five Mazhab," *Al-Adl* 14, no. 1 (2021): 14, <https://doi.org/10.31332/aladl.v14i1.2234>.

<sup>8</sup> A Saïin, "Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach," *Advances in Humanities and Contemporary Studies* 2, no. 1 (2021): 33–40, <https://doi.org/10.30880/ahcs.2021.02.01.005>.

psychological distress, due to pregnancy outside marriage. Women feel that their lives are uncomfortable, always haunted by shame, low self-esteem, feelings of sin, depression, and pessimism.<sup>9</sup>

Furthermore, in Bengkulu City, women who become pregnant outside of marriage are subjected to the traditional sanction of *mbasuh dusun*. In 2018, it was seen in the case of Yd and Dy, both of whom were active in youth organizations. Dy became pregnant out of wedlock. When Dy was six months pregnant, her family found out about it, and Dy's father reported to the Imam and the Head of the Neighborhood Association (Ketua RT), asking for an opinion about the problem of his daughter who was six months pregnant. The Imam and RT suggested a customary settlement. Rajo penghulu adat was appointed and the family handed over the matter to adat. The adat meeting decided on the customary sanction of slaughtering a goat for the *mbasuh dusun*. Then Yd and Dy were married at night, without wearing Bengkulu traditional clothing and without a reception.<sup>10</sup> The administration of marriage by the Head of the Religious Affairs Office (KUA) is carried out as in general, in accordance with Marriage Law Number 1 of 1974.<sup>11</sup>

Previous research related to this research is: DY Witanto's research entitled, "Hak dan Kedudukan Anak Luar Nikah, Pasca Lahirnya Putusan Mahkamah Konstitusi Tentang Uji Materil Undang-undang Perkawinan" (The Rights and Position of Extra-Marital Children, After the Constitutional Court Decision on the Materil Test of the Marriage Law). This paper examines children based on their status and position before the law; legitimate children, adulterous children, discordant children, extra-marital children, adopted children, and stepchildren.<sup>12</sup> Nyoman Sujana's article entitled "Kedudukan Hukum Anak Luar Nikah dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010" (The Legal Position of Extra-Marital Children in the Perspective of the Constitutional Court Decision Number 46/PUU-VIII/2010). This paper discusses the position of extramarital children from *sirri* marriages.<sup>13</sup> Asep Lukman Daris Salam's article entitled "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010" (Legal Analysis of Nasab Rights of Extra-marital Children According to the Constitutional Court Decision Number 46/PUU/VIII/2010).<sup>14</sup> This article explains that the Constitutional Court's decision is final. Likewise, Nurul Hak's article entitled, "Kedudukan dan Hak Anak Luar Nikah Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Status Anak Luar Nikah, Studi Persepsi Hakim Pengadilan Agama se-Wilayah Pengadilan Tinggi Agama Bengkulu" (The Position and Rights of Extra-Marital Children After the Constitutional Court Decision Number 46/PUU-VIII/2010 on the Status of Extra-Marital Children (Study of Perceptions of Religious Court Judges in the Bengkulu Religious High Court Region)." This research also emphasizes that the Constitutional Court's decision is final and binding. The decision is the result of the *ijtihad* of constitutional judges.<sup>15</sup> Wahyu Wibisana's article entitled, "Perkawinan Perempuan Hamil di luar Nikah Serta Akibat Hukumnya Perspektif Fikih dan Hukum Positif" (Marriage of

<sup>9</sup> Fatimah, "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia" (Lampung: UIN Raden Intan Lampung, 2021).

<sup>10</sup> "Interview with Ris, Bibik Wt 10 Januari 2021 Di Bengkulu" (n.d.).

<sup>11</sup> "Interview with Bambang, Tokoh Masyarakat Kota Bengkulu, 15 Januari 2021," (2021).

<sup>12</sup> Darmoko Yuti Witanto, *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin: Pasca Keluarnya Putusan MK Tentang Uji Materil UU Perkawinan* (Jakarta: Prestasi Pustaka Publisher, 2012).

<sup>13</sup> I Nyoman Sujana, *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010* (Yogyakarta: Aswaja Pressindo, 2015).

<sup>14</sup> Asep Lukman Daris Salam, "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010," *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 35–60, <https://doi.org/10.51729/sakinah11132>.

<sup>15</sup> Nurul Hak, *Kedudukan Dan Hak Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, Tentang Status Anak Luar Nikah (Studi Persepsi Hakim Pengadilan Agama Se Wilayah PA Tinggi Agama Bengkulu* (Lampung: (Disertasi Universitas Islam Negeri Raden Intan Lampung, 2018).



Pregnant Women outside of Marriage and its Legal Effects from the Perspective of Fiqh and Positive Law). The research found that women who are pregnant outside of marriage, the imams of the mazhab differ in opinion about the permissibility of marrying them. Meanwhile, in Positive Law, marrying a pregnant woman outside of marriage is legal.<sup>16</sup> Fikri et.al's article entitled, "Perlindungan Anak di Luar Nikah dalam Hukum Negara dan Hukum Islam, Perspektif Hakim Pengadilan Agama Parepare".(Protection of Children Outside of Marriage in State Law and Islamic Law (Perspective of Parepare Religious Court Judges). This paper emphasizes that there is no room or gap to provide protection without marriage registration. Child protection in Islamic law can be done by determining the origin of nasab for children in a legal marriage and protection is given to children through recognition. The protection of children outside of marriage can be done through itsbat nikah and the application of Article 43 paragraph 1 of Law No.1 of 1974 after the judicial review of the Constitutional Court. The rights that can be given to children out of wedlock without a valid marriage are limited to civil rights regarding the right to live, the right to education and health, and the right to obtain public services, so that civil rights related to inheritance rights and guardianship rights cannot be given to children out of wedlock without a valid marriage.<sup>17</sup> The similarity between this research and the research of Witanto, Sujana, and Fikri is the impact of the marriage of pregnant women outside of marriage, namely on the status of children. Meanwhile, this research and Wibisana's research both focus on the marriage of pregnant women outside of marriage. The difference with the research that will be conducted is the enforcement of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City. The focus of this research is how the implementation of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City in the context of the development of marriage law in Indonesia?

## B. Research Methods

This type of research is field research.<sup>18</sup> The nature of this research is descriptive analytic.<sup>19</sup> This research uses a normative approach, namely Islamic law that views problems from a legal-formal angle or from normative aspects. The primary data of this research are the results of observations at the research location, the results of interviews with informants, and the results of documentation. Secondary data are books and documents related to this research. The data collection methods in this study used observation, interviews, and documentation. The data obtained was analyzed using a qualitative descriptive method so that conclusions were obtained.<sup>20</sup>

## C. Customary Sanctions and Islamic Law

### a) Customary Sanctions

The use of the term sanction appears to be a broad term with different meanings, in different contexts. Sanctions can be restrictive, depending on the context, as the word is an antonym of automatic. In a customary context, a sanction can be a punishment imposed by customary

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<sup>16</sup> Wahyu Wibisana, "Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya: Perspektif Fiqh Dan Hukum Positif," *Al-Ta'lim: Jurnal Pendidikan Agama Islam* 15, no. 1 (2017): 29–35, [http://jurnal.upi.edu/file/03\\_Perkawinan\\_Wanita\\_Hamil\\_Diluar\\_Nikah\\_-\\_Wahyu2.pdf](http://jurnal.upi.edu/file/03_Perkawinan_Wanita_Hamil_Diluar_Nikah_-_Wahyu2.pdf).

<sup>17</sup> Fikri Fikri, Budiman Sulaeman, and Andi Bahri, "Perlindungan Anak Di Luar Nikah Dalam Hukum Negara Dan Hukum Islam (Perspektif Hakim Pengadilan Agama Parepare)," *DIKTUM: Jurnal Syariah Dan Hukum* 12, no. 1 (2014): 54–76, <https://doi.org/10.35905/diktum.v12i1.196>.

<sup>18</sup> Dolet Unaradjan, *Pengantar Metode Penelitian Ilmu Sosial*, h. 198 (Jakarta: PT Grapindo, 2000).

<sup>19</sup> Dani Vardiansyah, *Filsafat Ilmu Komunikasi: Suatu Pengantar* (Jakarta: Indeks Kelompok Gramedia, 2005).

<sup>20</sup> Wiranto Surachmad, *Dasar Dan Teknik Penelitian Research* (Bandung: Alumni, 1982).

administrators. So, a sanction is a punitive measure imposed by the state or a particular group, due to an offense committed by a person or group.

Sanctions are one of the things that are very often heard and witnessed in the community. The existence of sanctions is expected to make a person or group deterred and will not repeat their mistakes, either the same mistakes or different mistakes. The more serious the mistake made, the greater the sanction he will receive. The term adat comes from the Arabic 'adah, which originally meant habit.<sup>21</sup> Custom is defined as a habit that the community assumes has been formed, both before and after the existence of the community. Custom is a habit that must generally prevail in the society in question.<sup>22</sup> The definition of adat put forward by Moh. Koesnoe, according to him adat is the overall teachings and practices that regulate the way of life of Indonesians in society, teachings and practices which are directly born from people's responses about humans and the world.<sup>23</sup> As such, adat is the custom of the community and what the community does repeatedly. Living and evolving customs are a wonderful source for customary law, as the original law of the Indonesian people and nation, wherever and whenever. The relationship with customary law is that custom or habit can be made into law, provided that it does not conflict with the public interest. Adat appears as a habit of behavior that is found from generation to generation, a habit that has been demanded from ancestors since ancient times..<sup>24</sup>

In terms of good and bad, adat is divided into two parts:

- 1) Shahih customs  
Shahih customs are customs that are repeatedly practiced, accepted by many people, do not conflict with religion, manners, and noble culture.
- 2) Faulty (Fasid) customs  
Faulty customs are customs that apply in a place, even though they are evenly practiced, but are contrary to religion, state laws, and manners.<sup>25</sup>

These customs were received from previous generations and were believed and practiced by the people on the assumption that they were good for them. Islam came with a set of shara` norms that governed the life of the people. Some of the old customs were in harmony with and some were in conflict with the sharia laws that came later. The clash, absorption and renewal between custom and sharia occurred.

This prioritizes the process of selecting customs, which can be seen as still necessary to be implemented. The guideline used in selecting the old customs is the benefit according to revelation. Based on this selection,<sup>26</sup> Customs can be divided into four groups, namely:

- 1) Customs that are old in substance and in terms of implementation contain elements of benefit, meaning that there is an element of benefit and no element of harm in this action, or the element of benefit is greater than the element of harm. This form of custom is fully accepted in Islamic law.

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<sup>21</sup> Efrinaldi Efrinaldi et al., "Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 287–310, <https://doi.org/10.29240/jhi.v7i1.4140>.

<sup>22</sup> Sri Warjiyati, *Ilmu Hukum Adat* (Yogyakarta: CV Budi Utama, 2020), p. 6.

<sup>23</sup> Mohammad Koesnoe, *Dasar Dan Metode Ilmu Hukum Positif* (Airlangga University Press, 2010).

<sup>24</sup> Soerjono Soekanto, *Hukum Adat Di Indonesia* (Jakarta: Rajawali Pers, 2012).

<sup>25</sup> Amir Syarifuddin, *Ushul Fiqih Jilid II* (Jakarta: Logos Wacana Ilmu, 1999), p. 368.

<sup>26</sup> Husnul Haq, "Kaidah 'Al-'Adah Muhakkamah' Dalam Tradisi Pernikahan Masyarakat Jawa," *Abkam: Jurnal Hukum Islam* 5, no. 2 (2017): 295–320, <https://doi.org/10.21274/ahkam.2017.5.2.295-320>.

- 2) Old customs which, in principle, substantially contain elements of *maslahat* and do not contain elements of *mafsadah* or harm, but in practice are not considered good by Islam. Customs in this form are acceptable in Islam, but in further implementation undergo changes and adjustments.
- 3) Old customs which, in principle and practice, contain elements of *mafsadat* (destruction), meaning that they contain only destructive elements and do not have elements of benefit, or there are elements of benefit but the destructive elements are greater.
- 4) Long-standing customs that have been accepted by the people, because they do not contain *mafsadat* (harm) and do not contradict the arguments of *sharia* that came later, but have not been clearly absorbed into *sharia*, either directly or indirectly.

Thus, *adat* is a man-made rule that has been practiced since time immemorial in the form of actions, behavior, and speech to regulate the order of community members.<sup>27</sup> If this custom is not implemented there will be confusion, which leads to unwritten sanctions by the local community against perpetrators who are considered deviant.

So, customary sanctions are all forms of actions or efforts made to restore balance due to disturbances that are violations of custom.<sup>28</sup> The source of customary law is unwritten legal regulations that grow and develop and are maintained by the legal awareness of the community.<sup>29</sup> Because *adat* rules are unwritten, grow and develop, *adat* sanctions are adaptable and elastic. Any violation of *adat* will result in an imbalance in society. Therefore, every violator must be given customary sanctions that serve as a means of deterrent effect and restore the damaged balance (customary medicine).

The mention of customary sanctions is a technically scientific term only. The technical scientific term (for example, as stated by Hilman Hadikusuma, 1977) merely refers to customary rules that apply among the community, which do not take the form of formal legislation by the state. Unfortunately, there is no pertinent explanation of what the technical scientific term means.

One example of customary sanctions in Bengkulu, which has different rules from other regions or villages, is the customary sanction in the form of *mbasuh* *dusun* for pregnant women outside of marriage. According to the results of the author's interviews, the sanctions given to violators of this customary rule are in the form of paying fines such as money and cutting 1 goat at the time of the marriage contract and *jambar* *ayam*, which is given to the customary administrator. The punishment suffered by violators of customary law is moral pressure in the community, which causes the person who violates it to become ashamed or makes him feel bad to the customary community. In fact, legal sanctions based on customary law are felt to be more severe and more concerned with a person's morality. The legal aspect is more affecting to the people, so that the purpose of the punishment, which is to deter people, can be achieved.

As with custom, law is essentially a statement of the thoughts and feelings about fairness and unfairness that grow in society. The concrete form of law is in the form of rules, so in or with the

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<sup>27</sup> Teuku Muttaqin Mansur, *Hukum Adat: Perkembangan Dan Pembaruannya* (Banda Aceh: Syiah Kuala University Press, 2018), p. 9-10.

<sup>28</sup> Erikson Sihotang, "Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem," *Mimbar Keadilan* 12, no. 2 (2019): 211-22, [http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal\\_Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem.pdf](http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal_Sanksi%20Adat%20Dan%20Pidana%20Yang%20Berbarengan%20Dalam%20Tindak%20Pidana%20Pencabulan%20Anak%20Kaitannya%20Dengan%20Asas%20Nebis%20In%20Idem.pdf).

<sup>29</sup> Dian Ekawaty Ismail, Avelia Rahmah Y Mantali, and Mohamad Rivaldi Moha, "The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice," *Jambura Law Review* 5, no. 2 (2023): 220-34, <https://doi.org/10.24843/UJLC.2018.v02.i02.p02>.

rules determined what is fair and unfair.<sup>30</sup> Law also comes from the Arabic term *hukm* (plural: *ahkam*) which means command. The term law influences members of the public, especially those who are Muslim. The term customary law is rarely found among the general public. People tend to use the term *adat* only. This term refers to a custom, which is a series of actions that must generally apply to the structure of the community concerned. *Adat* is a reflection of the personality of a nation, which is one of the manifestations of the soul of the nation from century to century. Therefore, every nation in the world has its own customs and habits that are not the same with one another.

Among the people, the terms law and *adat* are actually separate in their use and understanding. This is because the law comes from outside the community, from the ruler, government, or based on religion, while *adat* are provisions that arise and grow from within the community itself and are obeyed as law.<sup>31</sup> So, it can be concluded that the definition of customary law from the description, customary law means the law that arises and grows from within the community and is obeyed as law.

A research report by Snouck Hurgronje in Aceh (1891-1892) states that there is a term *Adatrecht* to distinguish between customs or *adat* stances that have no legal sanction on the one hand and *adat* that have legal sanction on the other. The structure of society in various parts of Indonesia does not provide a clear delineation of what *adat* and *adat* law are. In general, it is only stated that when talking about *adat* and customary law, they all refer to the concept of the prevailing and standardized customary order in society. Custom in the sense of *adat* is a normative habit and has taken the form of rules of behavior, applicable and maintained in the community.<sup>32</sup>

Judging from the development of human life, the occurrence of law starts from the human person who is given God's mind and behavior. Behavior that is continuously carried out by individuals creates (personal habits). If the personal habit is imitated by other people, then it will also become the habit of that person sooner or later between one person and another person in the unity of society to also carry out the habit. Then when all members of the community perform the habitual behavior, sooner or later the habit becomes (*adat*) of that community. So, *adat* is the custom of the community and groups of people sooner or later make it a custom that should apply to all members of the community with sanctions, so that it becomes customary law.

So customary law is the whole custom (which is not written) and lives in society in the form of morals, habits, and conventions that have legal consequences.<sup>33</sup> To maintain the implementation of customary law so that no deviations or violations occur, there are members of the community who are entrusted with the task of overseeing it. The law reflects the personality and soul of the nation. Savigny also stated that customary law in the past was somewhat different in content which showed a development.<sup>34</sup>

The explanation above can be concluded that customary law is a law that describes the development of the nation with regard to personality, so that customary law is still widely applied by

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<sup>30</sup> Warjiyati, *Ilmu Hukum Adat*, p.5.

<sup>31</sup> Ilyas Ilyas, "Eksistensi Dan Kekuatan Penyelesaian Sengketa Secara Adat Pada Tingkat Gampong," *Kanun Jurnal Ilmu Hukum* 12, no. 1 (2010): 137-75.

<sup>32</sup> I Gede A B Wiranata and M H Sh, *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa* (Bandung: Citra Aditya Bakti, 2005), p. 3-5.

<sup>33</sup> A Suriyaman Mustari Pide and M Sh, *Hukum Adat Dahulu, Kini, Dan Akan Datang* (Jakarta: Prenada Media, 2017), p.5.

<sup>34</sup> Lastuti Abubakar, "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319-31, <https://doi.org/10.20884/1.jdh.2013.13.2.213>.

the community, such as one of the customary laws that is still applied by the people in Bengkulu, as the focus of this research, namely customary sanctions in the form of *mbasuh dusun* against pregnant women outside of marriage. While the definition of customary law according to Soejono Soekanto, customary law is essentially customary law, meaning habits that have legal consequences (*seinsollen*). In contrast to mere habits, customary law is actions that are repeated in the same form which lead to (*rechtsvaardigeordering der samenleving*).<sup>35</sup>

The statement above can be concluded, customary law is a law that has been believed since the time of the ancestors and has become a habit that has been passed down from generation to generation, of course customary law provides good development, where each party or each region has its own rules and sanctions for people who break the law. Including in Bengkulu, which until now applies customary law, one of which is the customary sanction in the form of *mbasuh dusun* for women who are pregnant outside of marriage. This shows that in this area, has a personality that still clings to customary law, even though development has advanced and many things may affect it. One of them is the birth of technology, and laws and regulations from the government and also many young people who of course have thought more logically, so that there are many pros and cons.

Customary law is popularly known as unstatutory law, which is different from continental law as statutory law.<sup>36</sup> This unwritten customary law is a custom that must be obeyed by the people who apply it, because some of it is Islamic law, meaning that customary law is also related to Islamic law.

#### **b) Enforcement of Customary Sanctions**

The application of customary sanctions is in accordance with the regulations that have been made, based on the agreement of the customary leader and the indigenous community itself for generations. The application of customary sanctions is carried out based on the policies of the parties concerned such as customary administrators, tribal leaders and local residents. One of the customary laws applied to the Bengkulu community, namely customary sanctions in the form of *mbasuh dusun* against pregnant women outside of marriage.

The sanctions given to the custom violator include fines and being ostracized by the local community. For violators of customary sanctions, the customary institution that resolves the case is the customary institution. If a case is resolved at the customary institution, then the case is considered resolved, if it is not resolved, then it will be taken to the judicial institution. The application of customary sanctions lies with the administrators who are very concerned, sometimes many of these administrators just sit back and relax without knowing about the responsibilities that are being assigned to them, many of them sit in customary institutions without knowing the customary law itself.

#### **c) Relationship Between Customary Sanctions and Islamic Law**

Customary sanctions are only imposed on someone who violates customary law. The relationship between customary sanctions and Islamic law is that customary sanctions have violated the law that occurs in society, while Islamic law is the law ordered by Allah Subhanahu Wa Ta'ala for his people brought by a Prophet. So, customary sanctions given to violators of customary law must not pass Islamic law.

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<sup>35</sup> Wiranata and Sh, *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa*, p. 24 .

<sup>36</sup> Hilman Syahril Haq, *Pengantar Hukum Adat Indonesia*, (Jawa Tengah: Lakeisha, 2019), p.9-10.

Customary law and Islamic law are part of the legal system in Indonesia in addition to statutory law.<sup>37</sup> The concept of Islamic law is different from the concept of statutory law, because Islamic teachings convince its laws as rules sourced from divine revelation.<sup>38</sup>

Islamic law is a combination of two words, law and Islam. Law can be understood as a set of rules or norms that regulate human behavior in a society, either set by the authorities or grow and develop in society. The form can be written such as laws and regulations or unwritten such as customary law and laws that live in society. Islam literally means submission, safety, or prosperity. This means that people who follow Islam will get safety and prosperity in the world and the hereafter. According to Mahmud Syaltut, Islam is the religion of Allah SWT whose basics and sharia were revealed to the Prophet Muhammad SAW (Peace be Upon Him) and charged him to convey and invite all mankind.<sup>39</sup> Etymologically and terminologically reviewed about Islamic law, etymologically law comes from Arabic, namely al-hukm' which means hindrance. While terminologically, it is a view of certain issues related to human actions or deeds. So, Islamic law is a norm whose provisions from Allah SWT, as well as the Prophet Muhammad SAW are contained in the Qur'an and Hadith to be guided by humans (Muslims) in carrying out life in the world in order to be organized.<sup>40</sup> Islamic law is seen as part of the teachings of Islam whose legal norms (Islam) originate from Islam. Syamsul Anwar argued that Muslims believe that Islamic law is based on divine revelation. Therefore, it is called shari'at, which means the path that God has drawn for humans.

Meanwhile, customary law (Adatrecht) is a legal system that grows and develops from customs in society. R. Soepomo, formulates customary law as non-statutory law, most of which is customary law and a small part is Islamic law. The customary law also covers the law based on the decisions of judges containing legal principles in the environment, where he decided the case.<sup>41</sup> Based on this formulation, customary law is unwritten (non-statutory) law that is mostly customary law and a small part is Islamic law, and is applied in adat courts (adat rechtspraak). Von Savigny (1799-1861) is famous for his thesis Volkgeist, that all law was originally formed in the way people say, customary law, in ordinary language. The law was first formed by custom and common belief, then by jurisprudence. So, what is meant by customary law is an unwritten, uncodified customary rule, decided by legal functionaries, has sanctions, has existed for a long time, which is still alive and developing and obeyed by the community.<sup>42</sup>

Initially in the history of the nation and the State of Indonesia, customary law got it, who consistently fought for the position of customary law in the national legal system, among others, was Moh. Koesnoe. He highlighted the misunderstanding of the position of customary law in the national legal system among many parties (pros and cons), that from the cons, customary law is of the opinion that customary law turns backwards, to what is past. Soetandyo argues that the political arena in realizing the national legal system, by fighting for customary law, the supporters of the idea are actually heirs to an old idea, an idea that was originally put forward by the previous generation of nationalists, and was even stated in the text of the Youth Pledge in 1928. Similarly, colonial legal politics that placed

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<sup>37</sup> Slamet Sumarto Martitah and Arif Hidayat, "The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia," in *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia* (European Alliance for Innovation, 2021), 305.

<sup>38</sup> Khairuddin Tahmid and Idzan Fautanu, "Institutionalization of Islamic Law in Indonesia," *Al-Adalah* 18, no. 1 (2021): 1–16, <https://doi.org/10.24042/adalah.v18i1.8362>.

<sup>39</sup> Achmad Irwan Hamzani, *Hukum Islam Dalam Sistem Hukum Di Indonesia*, (Jakarta: Kencana, 2020), p.15-16.

<sup>40</sup> Hamzani, h.15-16.

<sup>41</sup> Rosdalina Bukido, *Hukum Adat* (Yogyakarta: CV Budi Utama, 2017), p. 42.

<sup>42</sup> Mansur, *Hukum Adat: Perkembangan Dan Pembaruannya*, p.13.

Islamic law in the same position as customary law, such as the Receptie Theory by Christian Snouck Hurgronje, that for indigenous people basically applies customary law, Islamic law applies if the norms of Islamic law have been accepted by the community as customary law.<sup>43</sup>

In the dynamics of society in Indonesia, it appears that in many regions customary sanctions have a relationship with Islamic law.<sup>44</sup> In application, it appears that Islamic law is a set of rules from Shari'a and also regulations that apply to Muslims to be applied, which prioritizes trust to be stronger to carry out Islamic law. The customary sanction is a punishment given to people who deviate from the area they live in, which is made by mutual agreement of the local community. One of the customary sanctions applied, among others, in the Bengkulu community, as the focus of this paper, is the customary sanction in the form of the *mbasuh dusun* tradition against pregnant women outside of marriage, which can be reviewed in the perspective of Islamic law.

#### D. *Mbasuh Dusun* Tradition for Pregnant Women Outside of Marriage

Kitab Simbur Cahaya is used as a customary rule for the community and is a general rule that applies throughout the Palembang archipelago - including Bengkulu. The contents cover all community relations, starting from the rules of *bujang, gadis* and marriage rules, clan rules, farming hamlet rules, *kaum* rules, and customary punishments.<sup>45</sup>

Sanctions that require paying fines and washing the hamlet are categorized into:

1. *Bunting Gelap* (dark pregnancy) is when a girl or widow becomes pregnant and it is not known who impregnated her. She pays a fine of 12 ringgit and *mbasuh dusun* by giving a goat to the head of the *dusun*. If she gives birth at someone else's house, then the person who owns the house must also be penalized with a goat.<sup>46</sup> If the wife becomes pregnant in the dark and the husband complains to the *dusun* head, the wife is fined 12 ringgit and the tradition of *mbasuh dusun* is enforced with a buffalo, 100 gantang of rice, 100 coconut seeds, 1 jar of enau sugar, and 1 jar of bekasam.<sup>47</sup>
2. *Sumbang Kecil*, which is adultery committed by a man and a woman who are related by marriage. Such as between a man's father-in-law and his daughter-in-law or son-in-law and his father-in-law. Then the sanction is *mbasuh dusun* with a goat plus a fine of 40 ringgit and faced with a large trial and king's punishment (sultan's decree).<sup>48</sup>
3. *Sumbang Besar* is adultery committed between a man and a woman who are still related to each other. Such as a father with his daughter or a brother with his biological sister. The sanction is the implementation of the tradition of *mbasuh dusun* with a buffalo plus a fine of 80 ringgit and will be faced with a large court and the king's punishment.<sup>49</sup>

Over time, the traditions that apply to pregnant women outside of marriage in Bengkulu City, which are carried out by the chairman or *kutei/ adat* and the village government, are as follows:

1. Slaughtering one goat at the time of the marriage contract and *jambar* chicken

<sup>43</sup> Muhammad Jazil Rifqi, "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory," *Millah: Jurnal Studi Agama*, 2021, 217–52, <https://doi.org/10.20885/millah.vol21.iss1.art8>.

<sup>44</sup> Rachmi Sulistyarni et al., "The Contact Point of Customary Law and Islamic Law (Legal History Perspective)," *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59, <https://doi.org/10.3126/ijssm.v5i2.19672>.

<sup>45</sup> Linda Wahyuni, "Sanksi *Mbasuh Dusun* Bagi Pelaku Zina Dalam Kitab Simbur Cahaya Perspektif Hukum Islam (Studi Pada Masyarakat Kota Bengkulu)" (Yogyakarta: Universitas Islam Indonesia, 2019).

<sup>46</sup> M Si Farida and H Y Hasan, "Undang-Undang Simbur Cahaya Sebagai Sumber Hukum Di Kesultanan Palembang," *Universitas Sriwijaya* (Universitas Sriwijaya, 2012), h. 3, Bab 1 Pasal 10.

<sup>47</sup> Farida and Hasan, Bab II Pasal 23 (tambahan).

<sup>48</sup> Farida and Hasan, Bab II Pasal 28 (tambahan).

<sup>49</sup> Farida and Hasan.

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2. Not wearing traditional clothes
3. It is not permissible to hold walimah/parties.<sup>50</sup> The marriage of a pregnant woman out of wedlock is not allowed to invite a large crowd. The perpetrator is only allowed to get married at the Religious Affairs Office (KUA).

The process of resolving pregnant women out of wedlock is through complaints from the community first to the Head of the Neighborhood Association (Ketua RT) or Imam, who then proceeds to the Chief of Adat. The complaint cannot be accepted immediately, but must be accompanied by evidence by finding data or information about them. Once proven, both parties are summoned and a hearing is held at the village head's office, attended by the village head and the head of the Customary Consultative Body. At the hearing, sanctions for their actions are determined.<sup>51</sup>

#### E. Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City

The elements of a traditional leader or *Rajo Penghulu* are: *penghulu adat* (traditional leader), *penghulu syara'* (sharia cleric) and *cerdik cendikio* (ingenious scholars). *Penghulu adat* consists of the customary leader and customary officials in various urban villages in Bengkulu City. *Penghulu syara'* are the imams and shara' officials, such as the *kebatib*, *bilal*, *gharim* in the urban villages of Bengkulu City. Meanwhile, *cerdik cendikio* are community leaders from among the clever people who are able to understand and master the problems that arise in society (teachers, lecturers, and so on).<sup>52</sup>

Pregnant women outside of marriage with the sanction of the mbasuh dusun tradition in Bengkulu City<sup>53</sup> is called *dapek salah* (can go wrong).<sup>54</sup> This tradition is actually very urgent, if one knows and understands its philosophy.<sup>55</sup> In ancient times, the perpetrators had to be paraded around the hamlet or village naked. But now it is no longer enforced.<sup>56</sup>

According to Imam Maksum, a religious figure in Bengkulu City: the mbasuh dusun tradition is actually very far from the punishment for adultery contained in the Qur'an and hadith. However, if a person lives and resides in one area, then the customary traditions applied in that area must be followed. This mbasuh dusun tradition, its goals and objectives, can reduce and even make the perpetrator deterred.<sup>57</sup>

Among the cases of pregnant women out of wedlock who are subject to the sanction of mbasuh dusun are: a pregnant girl out of wedlock who was impregnated by her biological father. Her pregnancy was discovered after five months. They could not be married off because of syar'i restrictions. A traditional discussion with the family by way of mbasuh dusun cut a goat with setawar flour. After that, the husband and wife were divorced. The husband went his separate way with the family. The out-of-wedlock pregnant girl stays with her mother until she gives birth, and no one marries her.<sup>58</sup> This incident occurred in 2017.

<sup>50</sup> "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021," (n.d.).

<sup>51</sup> "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021."

<sup>52</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019," (n.d.).

<sup>53</sup> J F Holleman, "The Maintenance and Development of Indonesian Adat Law," in *Van Vollenhoven on Indonesian Adat Law* (Netherlands: Springer, 1981), 213–59.

<sup>54</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019."

<sup>55</sup> Fatimah, "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia."

<sup>56</sup> "Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019," (n.d.).

<sup>57</sup> "Interview with Imam Maksum, Imam Masjid Ar-Rahman Kelurahan Pagar Dewa, Tanggal 2 Agustus 2019," (n.d.).

<sup>58</sup> "Interview with Nurhidayat Tokoh Agama, 12 April 2020," (n.d.).

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There was a pregnant woman who was impregnated by someone else's husband. The customary sanction was to wash the village with a goat, then marry her off. After the marriage contract, the man immediately divorced her, because this was an agreement with his first wife. After the marriage, the woman was abandoned and the man returned to his first wife. Shortly afterwards, the family moved from Bengkulu City.<sup>59</sup> This event occurred in early 2020.

A pregnant woman out of wedlock (Yn) was married to a man who did not impregnate her (Ad). At the time of the marriage, the man did not know that the woman he married was pregnant. She was 6 months pregnant at the time of marriage. After one week of marriage, the man who married the pregnant woman took the wife to her parents. This happened in 2017. The customary sanction for the woman who was pregnant outside of marriage was to cut the goat and wash the village with setawar flour and apologize to the community. And the man declared divorce with his wife.<sup>60</sup>

A pregnant woman out of wedlock (Gd) who was married to a man who did not impregnate her. She was four months pregnant. At the time of the marriage, the man who married the extramarital pregnant woman knew that his wife-to-be was pregnant. He accepted this situation, arguing that the man who impregnated her was a close friend and was like his own family. This happened in early 2018. The customary sanctions imposed are: on the third day of childbirth, they cut a goat to wash the village; the wife apologizes to her husband. The husband's family accepted this situation.<sup>61</sup>

A woman pregnant out of wedlock was impregnated by her boyfriend, but he did not want to take responsibility, because he said it was not his seed. This happened in early 2020. Previously, at the end of 2019, the woman had been grebeg with a man. After customary deliberations and the sanction of *mbasuh dusun*, she did not want to marry the man who was grebeg. The reason was that she did not want to disappoint her parents, because she was still studying, and felt that she was not pregnant. But 3 months after being raided, it turned out that she was pregnant. Meanwhile, she was no longer dating the man, and already had a new boyfriend. When she found out she was pregnant, she asked her boyfriend to marry her and was honest that she was pregnant. Her new boyfriend did not want to get married, saying that he was not the one who impregnated her. But, finally after 6 months of pregnancy, her new boyfriend wanted to marry her.<sup>62</sup>

In solving the problem, it is not necessarily immediately tried, but there are stages of resolution first, namely:

1. In the event of an arrest or raid. Notification reports or complaints from individuals on customary violations, reporting to village government officials or the Head of the Neighborhood Association (Ketua RT) or one of the *Rajo Penghulu* apparatus (*penghulu adat*, *penghulu syara'* and *cerdik cendikio*).
2. Village government officials, Head of the Community Association (RW Heads), Head of the Neighborhood Association (RT Heads), or one of the *Rajo Penghulu's* officials convey an order to the local customary leader for a *dapek salab* settlement to be held.
3. *Penghulu adat* (traditional leader) as *Rajo Penghulu* (the king of Penghulu) informs all *Rajo Penghulu* members to attend the *Rajo Penghulu* consensus that will be held. Informing the head of the sub-district police to appoint their members to attend the *Rajo Penghulu* consensus, the customary head asks the head of the Neighborhood Association (RT Heads) to prepare a place where the *Rajo Penghulu* consensus can be held.<sup>63</sup>

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<sup>59</sup> "Interview with Iim Fahimah Tokoh Agama, 12 April 2020," (n.d.).

<sup>60</sup> "Interview with Sari (Kakak Laki-Laki Yang Menikahkan Perempuan Hamil Luar Nikah), 15 April 2020," (n.d.).

<sup>61</sup> "Interview with Wawan (Laki-Laki Yang Menghamili Perempuan Hamil Luar Nikah), 15 April 2020," (n.d.).

<sup>62</sup> "Interview with MY (Bibik Perempuan Hamil Luar Nikah), April 2020," (n.d.).

<sup>63</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019," (n.d.).

4. The Head of the Neighborhood Association (RT Heads) prepares the seats for the *Rajo Penghulu* assembly, the families, the general public and so on.
5. The traditional leader asks the head of the neighborhood association (RT) to notify other members of the *Rajo Penghulu*, village government officials, and the complainant, parties, witnesses and family to be present at the place and time prepared by the head of the neighborhood association (RT), or village government officials. The Head of the Neighborhood Association (RT) together with village government officials prepare and arrange the arrangement of the *Rajo Penghulu* consensus venue.
6. The *Rajo Penghulu* mufakat is opened by the customary leader who checks the completeness and attendance list of the *Rajo Penghulu* mufakat participants.
7. After everyone is present, the customary *Penghulu* asks the head of the Neighborhood Association (RT) to appear to resolve the *dapek salah* case to *Rajo Penghulu* by granting *Rajo Penghulu's* permission, the head of the Neighborhood Association (RT) presents the parties who *dapek salah* by custom.
8. The customary leader then asks the person who has been *dapek salah* whether they are willing to be resolved by the consensus of the *Rajo Penghulu*. If the *dapek salah* is willing, the next question is asked about his/her health condition, willingness and sincerity. If the *dapek salah* states that he is healthy, willing and sincere, then the customary deliberation can be opened by the *Penghulu adat*. If the *dapek salah* does not want to be resolved by custom, then this dispute will be carried out legally.<sup>64</sup>

In the implementation procedure after the *Rajo Penghulu* trial, then the *mbasuh dusun* tradition is carried out, as follows: According to the head of the Neighborhood Association (RT Heads) of Selebar Sub-district, the *mbasuh dusun* tradition is carried out in the afternoon. The requirements: 1 goat. No buffaloes, no cows, chickens, etc. The money fine actually depends on the agreement. For monetary fines, it actually depends on the agreement, and if you cannot hand over the goat directly, you can also hand over money worth a goat, then it will be carried out by the residents. The perpetrator is actually obliged to come. It is not obligatory to get married.<sup>65</sup>

If there is a raid, it must be reported to the parents, or their representatives, so that they can take follow-up or further steps. If the perpetrator does not want to carry out *mbasuh dusun*, then there is no difference between unmarried or married perpetrators.

The same thing happened in Kampung Melayu Sub-district, where the goat was still slaughtered. However, most of the time on the day of the ceremony, the adulterer does not come. If they do not want to be present in carrying out *mbasuh dusun*, they still pay or hand over money for the price of a goat. From the implementation of *mbasuh dusun* there is a deterrent effect, if seen in the Sub-district of Kampung Melayu it can be said that it rarely happens.<sup>66</sup>

The *mbasuh dusun* tradition is carried out by slaughtering a goat, the blood is collected, the meat is cooked outside the house, the perpetrator must be present to be aware and must apologize. Then do a small alms (ask for prayer) at the place where the goat was slaughtered or outside the house. This prayer aims to prevent the community from disaster, as well as a closing in resolving the problem. This process is also attended by *Rajo Penghulu*, government officials and the community.<sup>67</sup>

As for the slaughter of the animal, the blood was taken and then sprinkled on 40 (to the right 20 and to the left 20) houses by the two perpetrators while apologizing. This sprinkling uses cold leaves. The goat should be a male and not a small one. *Mbasuh dusun* is so that the perpetrator is

<sup>64</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019."

<sup>65</sup> "Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019."

<sup>66</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019."

<sup>67</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019."

ashamed and does not repeat the act again. If the family does not want to settle the matter in accordance with this custom or tradition, then they are expelled or handed over to the police, because this customary sanction is in cooperation with the police.

If the violation of the custom is repeated by the same person and the violator does not have good intentions to change it, then the Rajo Penghulu with his authority, can sanction ostracizing him, even expelled from the place of residence.<sup>68</sup>

Based on the description of the mbasuh dusun tradition, the rules applied in Bengkulu City have undergone shifts and various changes along with the times from year to year. However, the rules are still sourced from Simbur Cahaya. Many rules are no longer used and have been replaced with other rules.

#### F. Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City in the Context of the Development of Marriage Law in Indonesia

Legal reform in Islam is carried out in order to be able to realize the objectives of sharia as much as possible which includes the benefit of human life in this world and the hereafter.<sup>69</sup> Indeed, since the beginning, Islamic law essentially aims to realize the benefits of human life in this world and the hereafter.<sup>70</sup>

Furthermore, it is known that the instrument of Islamic law reform is *ijtihad*. *Ijtihad* when associated with the formulation of law; determine the law on new problems for which there is no legal provision. Or determining, finding new legal provisions for a problem that already has legal provisions, but is no longer in accordance with the current conditions and human interests.<sup>71</sup>

The Compilation of Islamic Law (KHI) accommodates one of these opinions which states that the marriage of a pregnant woman outside of marriage is valid only with the man who impregnates her, without having to be repeated after giving birth. The case of pregnant women outside of marriage does not only concern the adultery of the perpetrators and the hudud punishment for their actions, but also concerns the status and fate of the life of the baby in the womb.

According to researchers, the prohibition of adultery even to the point of causing pregnancy outside of marriage as the focus of this research, namely the marriage of pregnant women outside of marriage in Bengkulu city, is more about the translation of verses that explain the role and position of humans as caliphs/leaders. Humans are the noblest creatures, social creatures, perfect creatures; so that the goal is to achieve *mashlahah*, either in the form of benefits achieved or *mudharat* avoided.<sup>72</sup>

So this prohibition of adultery, when associated with the position of man as a leader is the implementation of *hifz al-nasl* (nurturing the offspring), protecting offspring. Meanwhile, the marriage of pregnant women outside of marriage in Bengkulu city, which has actually been carried out, anticipates a deterrent effect with the mbasuh dusun tradition, which is a customary sanction imposed on the perpetrator.

Islam becomes a strongly held belief and assimilates with the traditions and culture that have developed in the area where it develops. So that between the teachings of Islam and the culture and

<sup>68</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019."

<sup>69</sup> Jayusman Jayusman et al., "Masalah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia," *Muqaranah* 6, no. 1 (2022): 69–84, <https://doi.org/10.19109/muqaranah.v6i1.11164>.

<sup>70</sup> A Malthuf Siroj, *Pembaruan Hukum Islam di Indonesia: Telaah Kompilasi Hukum Islam* (Yogyakarta: Pustaka Ilmu, 2017), p. 44.

<sup>71</sup> Asni, *Pembaruan Hukum Islam Di Indonesia: Telaah Epistemologis Kedudukan Perempuan Dalam Hukum Keluarga* (Jakarta: Kementerian Agama Republik Indonesia, 2012), p. 48.

<sup>72</sup> Oni Syahrone, *Maqashid Bisnis Dan Keuangan Islam* (Jakarta: PT Raja Grafindo, 2016), cet, 2, p. 4.

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traditions of the community there is mutual adjustment, as long as it does not conflict with the basic values in Islam such as the people of Indonesia, especially Bengkulu.<sup>73</sup>

When there are social changes, it is almost certain that there will be changes in the law, therefore social changes such as the relationship between Muslims and local traditions; which occur in Bengkulu society can affect Islamic law. In order to create legal adaptability, Muslims in Indonesia must always make *ijtihad*.<sup>74</sup> There are several rules related to changes in the law.

1. فى تغير الفتوى واختلافها بحسب تغير الأزمنة والامكنة والاحوال والنية والعوائد<sup>75</sup>  
“Changes in the law occur due to changes in time, place, circumstances and customs.”
2. الحكم يدور مع علته وجودا وعدما<sup>76</sup>  
“The ruling depends on the illat, its presence or absence.”
3. لا ينكر تغير الاحكام بتغير الازمنة والامكنة والاحوال<sup>77</sup>  
“It is undeniable that legal changes occur due to changes in time, place and circumstances.”
4. للأكثر حكم الكل  
“The majority is judged to be all.”
5. الحكم يدور مع مصالح العباد فحيثما وجدت المصلحة فثما حكم الله<sup>78</sup>  
“The law revolves around human benefit, so wherever benefit is found there is the law of Allah.”
6. المحافظة على القديم الصالح والأخذ بالجديد الاصلح<sup>79</sup>  
“Keeping the old is good and taking on the new is better.”

The aforementioned rules indicate that the ruling on an event may only apply to a certain community and at a certain time.<sup>80</sup> Therefore, the ruling must be reconsidered when the law will be applied at a different time and place, especially if the ruling no longer reflects the benefit as the purpose of Islamic law, then the ruling is no longer valid and there must be a new *ijtihad* that brings more *mashlahab* (benefits) to the community.<sup>81</sup> This kind of thing has been done by Imam Shafi'i in taking his law with the terms *qaul qadim* and *qaul jadid*, which *qaul qadim* was done by Imam Shafi'i when he was in Iraq and *qaul jadid* when he was in Egypt.<sup>82</sup>

Furthermore, in Bengkulu City, the application of sanctions for women who become pregnant outside of marriage is based on the Kitab Simbur Cahaya, although it has undergone shifts and various changes, along with the development of the times from year to year.

Furthermore, in order to take *mashlahab* to avoid *mafsadah*, from pregnant marriages in the Compilation of Islamic Law (KHI), the author tries to see with a review of achieving benefits and avoiding harms. Indeed, the case of pregnant women outside of marriage does not only concern the adultery of the perpetrators and the hudud punishment for their actions, but also concerns the status

<sup>73</sup> Supardi Mursalin, “Acculturation of Islamic Family Values and Bengkulu Local Traditions in Forming a Sakinah Family,” *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023): 123–36.

<sup>74</sup> Abu Hamid Muhammad al-Ghazali, *Al-Mustasyfā Min Ilmī Al-Uṣūl* (Beirut: Dār al-Fikr, n.d.), p.176.

<sup>75</sup> Ibn al-Qayim al-Jauziyah, *I'lam Al Muwaq'īn 'an Rabbi Al'Alamin* (Beirut: Dār al-Jai, n.d.), juz III, p. 3.

<sup>76</sup> Ali Ahmad Gulam Muhammad An-Nadawi, *Al-Qawā'id Fiqhiyah* (Damaskus: Dār al- Qalam, 1994), Cet 3, p. 125.

<sup>77</sup> Ibn al-Qayim al-Jauziyah, *I'lam Al Muwaq'īn 'an Rabbi Al'Alamin*, p. 414.

<sup>78</sup> Jalaluddin As-Suyuti, *Al-Ashbah Wa an-Nazhāir* (Beirut: Dār al-Fikr, n.d.), p. 176.

<sup>79</sup> Syafii Ma'arif, *Islam Dan Masalah-Masalah Kenegaraan* (Jakarta: LP3S, 1985). p. 47

<sup>80</sup> Jayusman Jayusman, Rahmat Hidayat, and Rizki Zulu Febriyansyah, “Qawaid Fiqhiyah’s Review of Buying Shoes with A Paid Lots System At Toidiholic Store Bandar Lampung,” *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 2 (2022): 131, <https://doi.org/10.29300/mzn.v9i1.6952>.

<sup>81</sup> Abdul Aziz, “Konsep Mashadir Al-Ahkam (Studi Komparasi Antara Pemikiran Asy-Syāfi’i Dan Muhammad Syahrūr)” (Surakarta: LP2M IAIN Surakarta, 2016), [http://eprints.iain-surakarta.ac.id/5600/1/Abdul\\_Aziz\\_Konsep\\_Masadir\\_al-Ahkam.pdf](http://eprints.iain-surakarta.ac.id/5600/1/Abdul_Aziz_Konsep_Masadir_al-Ahkam.pdf).

<sup>82</sup> Roibin, *Sosiologi Hukum Islam, Telaah Sosio Historis Pemikiran Imam Syafi’i* (Malang: UIN Malang Press, 2008).

and fate of the life of the baby in the womb.<sup>83</sup> Pregnant marriages in this case are to preserve offspring so that the children who are born are not neglected and still have a bright future, because no matter what the parents are like, children are still born in a state of fitrah (pure).<sup>84</sup> *Hijrah an-nasl* is what must be maintained in order to get justice and good treatment from all parties. You can imagine the burden of a child who is born as a result of the actions of his parents, especially if he does not have a father as the concept of *fiqh mazhab*.<sup>85</sup>

Implementation of the provisions for pregnant marriage in Article 53 in the Compilation of Islamic Law (KHI) can provide facilities.. This facility is utilized by the perpetrators of extra-marital pregnancy, so that the children of their adultery have the same legal implications and status as the children of legal marriage according to the Compilation of Islamic Law (KHI). Therefore, the perpetrators of extramarital pregnancy feel that there is no legal problem with their actions, as well as the children who are born later will have the same legal status as children born as a result of legal marriage. From this arises a *mafsadah* legitimizing adultery, because one of the goals of marriage is to obtain legitimate offspring. Through the provisions of pregnant marriage in the Compilation of Islamic Law (KHI), adulterers get the same legal position or status. *Mashlahab* from the provisions of the Compilation of Islamic Law (KHI) is to save the future of children resulting from pregnant marriages, so that they have the legal status of legal children and their rights as legal children.<sup>86</sup>

Thus, it is time for the Compilation of Islamic Law (KHI) to seek reconception of the provisions of pregnant marriage, so as not to be too easy and underestimate the prohibitions and provisions of Allah. Violation of *sharia* is not something that is considered shameful. In the past, when there were people who were pregnant outside of marriage, they were considered unclean, even their children did not want to greet and hold them. After being tolerated by the rules of pregnant marriage, it seems too easy and does not consider it a 'disgrace'. Therefore, according to the author, in order to accommodate the interests of fighting for *hijrah al-nasl* (nurturing the offspring), it seems very urgent to impose customary sanctions in Bengkulu City in accordance with the concept in Kitab Simbur Cahaya, namely *mbasub dusun*, for perpetrators of pregnancy outside of marriage in Bengkulu City. The application of this customary sanction in the form of the *mbasub dusun* tradition has had a significant impact on women who are pregnant outside of marriage for a deterrent effect and brings benefits to the community.

## G. Conclusion

The conclusion of this research is that: the implementation of the *mbasub dusun* tradition is a customary sanction for pregnant women outside of marriage in Bengkulu City, Indonesia. The case of extramarital pregnant women does not only concern the adultery of the perpetrators and the *budud* punishment for their actions, but also concerns the status and fate of the life of the baby in the womb. The application of customary sanctions in Bengkulu City refers to the concept in Kitab Simbur Cahaya, namely *mbasub dusun*, for pregnant women outside of marriage in Bengkulu City. The application of this customary sanction turns out to have a significant impact on women who are

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<sup>83</sup> Mursyid Djawas et al., "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)," *Samarah* 6, no. 1 (2022): 139–55, <https://doi.org/10.22373/sjhk.v6i1.11904>.

<sup>84</sup> Euis Nurlaelawati and Stijn Cornelis Van Huis, "The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms," *Journal of Law and Religion* 34, no. 3 (2019): 356–82, <https://doi.org/10.1017/jlr.2019.41>.

<sup>85</sup> Wan Abdul Fattah Wan Ismail et al., "A Comparative Study Of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective," *Humanities & Social Sciences Reviews*, 2020, <https://doi.org/10.18510/hssr.2020.8412>.

<sup>86</sup> Ahmad Rizza Habibi, "The Dynamics Of Illegitimate Child Status In Sharia And National Law Of Indonesia: Is There A Harmonization?," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 70–80, <https://doi.org/10.19105/al-manhaj.v3i1.4787>.

pregnant outside of marriage for a deterrent effect and has implications for maintaining *hifz al-nasl*, protecting offspring. In the implementation of this *mbasuh dusun* tradition, if the family does not want to settle by the provisions of this custom or tradition, then they are expelled or handed over to the police, because this customary sanction has collaborated with the police, so that customary sanctions can be applied effectively.

The application of customary sanctions in the form of the *mbasuh dusun* tradition, in the context of developing marriage law in Indonesia, appears necessary by reviewing the legalization of marriages of pregnant women outside of marriage. This is because the imposition of sanctions for pregnant women outside of marriage has significant implications for creating a deterrent effect and can realize security, order, and benefit for the community evenly.

## References

- Abu Hamid Muhammad al-Ghazali. *Al-Mustasyfā Min Ilmi Al-Uṣūl*. Beirut: Dār al-Fikr, n.d.
- Abubakar, Lastuti. "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia." *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319–31. <https://doi.org/10.20884/1.jdh.2013.13.2.213>.
- Ahmad Rizza Habibi. "The Dynamics Of Illegitimate Child Status In Sharia And National Law Of Indonesia: Is There A Harmonization?" *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 70–80. <https://doi.org/10.19105/al-manhaj.v3i1.4787>.
- Amir Syarifuddin. *Uṣūl Fiqih Jilid II*. Jakarta: Logos Wacana Ilmu, 1999.
- An-Nadawi, Ali Ahmad Gulam Muhammad. *Al-Qawā'id Fiqhiyah*. Damaskus: Dār al-Qalam, 1994.
- As-Suyuti, Jalaluddin. *Al-Asybah Wa an-Nazhāir*. Beirut: Dār al-Fikr, n.d.
- Asni. *Pembabaran Hukum Islam Di Indonesia: Telaah Epistemologis Kedudukan Perempuan Dalam Hukum Keluarga*. Jakarta: Kementrian Agama Republik Indonesia, 2012.
- Aziz, Abdul. "Konsep Mashadir Al-Ahkam (Studi Komparasi Antara Pemikiran Asy-Syāfi'i Dan Muhammad Syahrūr)." Surakarta: LP2M IAIN Surakarta, 2016. [http://eprints.iain-surakarta.ac.id/5600/1/Abdul\\_Aziz\\_Konsep\\_Masadir\\_al-Ahkam.pdf](http://eprints.iain-surakarta.ac.id/5600/1/Abdul_Aziz_Konsep_Masadir_al-Ahkam.pdf).
- Bukido, Rosdalina. *Hukum Adat*. Yogyakarta: CV Budi Utama, 2017.
- Djawas, Mursyid, Gamal Achyar, Nursyirwan Bustanul Arifin, Masri Reza, and Baharuddin Umar Yakub. "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)." *Samarah* 6, no. 1 (2022): 139–55. <https://doi.org/10.22373/sjhk.v6i1.11904>.
- Efrinaldi, Efrinaldi, Jayusman Jayusman Jayusman, Shafra Shafra, and Nurfatati Nurfatati. "Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 287–310. <https://doi.org/10.29240/jhi.v7i1.4140>.

- Efrinaldi, Efrinaldi, Jayusman Jayusman, and M Yenris. "Revealing The Dilemma Of Marriage Dispensation Regulations In Indonesia." *ADHKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46. <https://doi.org/10.37876/adhki.v5i1.113>.
- Farida, M Si, and H Y Hasan. "Undang-Undang Simbur Cahaya Sebagai Sumber Hukum Di Kesultanan Palembang." *Universitas Srinwijaya*. 2012.
- Fatimah. "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia." Lampung: UIN Raden Intan Lampung, 2021.
- Fikri, Fikri, Budiman Sulaeman, and Andi Bahri. "Perlindungan Anak Di Luar Nikah Dalam Hukum Negara Dan Hukum Islam (Perspektif Hakim Pengadilan Agama Parepare)." *DIKTUM: Jurnal Syariah Dan Hukum* 12, no. 1 (2014): 54–76. <https://doi.org/10.35905/diktum.v12i1.196>.
- Hamzani, Achmad Irwan. *Hukum Islam Dalam Sistem Hukum Di Indonesia*. Vol. 15–16. Jakarta: Kencana, 2020.
- Haq, Hilman Syahrial. *Pengantar Hukum Adat Indonesia*. . Jawa Tengah: Lakeisha, 2019.
- Haq, Husnul. "Kaidah 'Al-'Adah Muhakkamah' Dalam Tradisi Pernikahan Masyarakat Jawa." *Abkam: Jurnal Hukum Islam* 5, no. 2 (2017): 295–320. <https://doi.org/10.21274/ahkam.2017.5.2.295-320>.
- Hasballah, Zamakhsyari. "Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih." Cita Pustaka Media, 2013.
- Holleman, J F. "The Maintenance and Development of Indonesian Adat Law." In *Van Vollenhoven on Indonesian Adat Law*, 213–59. Netherlands: Springer, 1981.
- Ibn al-Qayim al-Jauziah. *I'lam Al-Muwaq' in 'an Rabbi Al'Alamin*. Beirut: Dār al-Jai, n.d.
- Ilyas, Ilyas. "Eksistensi Dan Kekuatan Penyelesaian Sengketa Secara Adat Pada Tingkat Gampong." *Kanun Jurnal Ilmu Hukum* 12, no. 1 (2010): 137–75.
- "Interview with Bambang, Tokoh Masyarakat Kota Bengkulu, 15 Januari 2021." 2021.
- "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019." n.d.
- "Interview with Iim Fahimah Tokoh Agama, 12 April 2020." n.d.
- "Interview with Imam Maksum, Imam Masjid Ar-Rahman Kelurahan Pagar Dewa, Tanggal 2 Agustus 2019." n.d.
- "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021." n.d.
- "Interview with MY (Bibik Perempuan Hamil Luar Nikah), April 2020." n.d.
- "Interview with Nurhidayat Tokoh Agama, 12 April 2020." n.d.
- "Interview with Ris, Bibik Wt 10 Januari 2021 Di Bengkulu." n.d.

- “Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019.” n.d.
- “Interview with Sari (Kakak Laki-Laki Yang Menikahkan Perempuan Hamil Luar Nikah), 15 April 2020.” n.d.
- “Interview with Wawan (Laki-Laki Yang Menghamili Perempuan Hamil Luar Nikah), 15 April 2020.” n.d.
- “Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019.” n.d.
- Ismail, Dian Ekawaty, Avelia Rahmah Y Mantali, and Mohamad Rivaldi Moha. “The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice.” *Jambura Law Review* 5, no. 2 (2023): 220–34. <https://doi.org/https://doi.org/10.24843/UJLC.2018.v02.i02.p02>.
- Ismail, Wan Abdul Fattah Wan, Ahmad Syukran Baharuddin, Lukman Abdul Mutalib, Zulfaqar Mamat, and Syahirah Abdul Shukor. “A Comparative Study Of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective.” *Humanities & Social Sciences Reviews*, 2020. <https://doi.org/10.18510/hssr.2020.8412>.
- Jayusman, Jayusman, Rahmat Hidayat, and Rizki Zulu Febriyansyah. “Qawaid Fiqhiyah’s Review of Buying Shoes with A Paid Lots System At Toidiholic Store Bandar Lampung.” *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 2 (2022): 131. <https://doi.org/10.29300/mzn.v9i1.6952>.
- Jayusman, Jayusman, Shafra Shafra, Rahmat Hidayat, Efrinaldi Efrinaldi, and Badarudin Badarudin. “Maslahah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia.” *Muqaranah* 6, no. 1 (2022): 69–84. <https://doi.org/10.19109/muqaranah.v6i1.11164>.
- Koesnoe, Mohammad. *Dasar Dan Metode Ilmu Hukum Positif*. Airlangga University Press, 2010.
- Ma’arif, Syafii. *Islam Dan Masalah-Masalah Kenegaraan*. Jakarta: LP3S, 1985.
- Mansur, Teuku Muttaqin. *Hukum Adat: Perkembangan Dan Pembaruannya*. Banda Aceh: Syiah Kuala University Press, 2018.
- Martitah, Slamet Sumarto, and Arif Hidayat. “The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia.” In *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia*, 305. European Alliance for Innovation, 2021.
- Munajat, Makhrus. “مبادئ الجنائيات الإسلامية وتطبيقها في السياق الإندونيسي.” *Journal of Indonesian Islam* 7, no. 2 (2013): 404–26. <https://doi.org/10.15642/JIIS.2013.7.2.404-426>.
- Mursalin, Supardi. “Acculturation of Islamic Family Values and Bengkulu Local Traditions in Forming a Sakinah Family.” *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023): 123–36.
- Nurlaelawati, Euis, and Stijn Cornelis Van Huis. “The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms.”



*Journal of Law and Religion* 34, no. 3 (2019): 356–82. <https://doi.org/10.1017/jlr.2019.41>.

Nurul Hak. *Kedudukan Dan Hak Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, Tentang Status Anak Luar Nikah (Studi Persepsi Hakim Pengadilan Agama Se Wilayah PA Tinggi Agama Bengkulu*. Lampung: (Disertasi Universitas Islam Negeri Raden Intan Lampung, 2018.

Pide, A Suriyaman Mustari, and M Sh. *Hukum Adat Dabulu, Kini, Dan Akan Datang*. Jakarta: Prenada Media, 2017.

Rachmawati, Jelia Karlina. “Penerimaan Diri Remaja Hamil Pra Nikah: Studi Kasus Pada 2 Remaja Hamil Pra Nikah Di Kota Bandung.” Universitas Pendidikan Indonesia, 2014.

Rifqi, Muhammad Jazil. “The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje’s Reception Theory.” *Millah: Jurnal Studi Agama*, 2021, 217–52. <https://doi.org/10.20885/millah.vol21.iss1.art8>.

Roibin. *Sosiologi Hukum Islam, Telaah Sosio Historis Pemikiran Imam Syafi’i*. Malang: UIN Malang Press, 2008.

S., Nasruddin, and Sulaemang L. “Pregnancy Married in the Perspective of Islamic Law and Five Mazhab.” *Al-’Adl* 14, no. 1 (2021): 14. <https://doi.org/10.31332/aladl.v14i1.2234>.

Saiin, A. “Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach.” *Advances in Humanities and Contemporary Studies* 2, no. 1 (2021): 33–40. <https://doi.org/10.30880/ahcs.2021.02.01.005>.

Salam, Asep Lukman Daris. “Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010.” *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 35–60. <https://doi.org/10.51729/sakinah11132>.

Sihotang, Erikson. “Sanksi Adat Dan Pidana Yang Berbarengan Dalam Tindak Pidana Pencabulan Anak Kaitannya Dengan Asas Nebis In Idem.” *Mimbar Keadilan* 12, no. 2 (2019): 211–22. [http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal\\_Sanksi\\_Adat\\_Dan\\_Pidana\\_Yang\\_Berbarengan\\_Dalam\\_Tindak\\_Pidana\\_Pencabulan\\_Anak\\_Kaitannya\\_Dengan\\_Asas\\_Nebis\\_In\\_Idem.pdf](http://repository.universitasmahendradatta.ac.id/id/eprint/185/1/Jurnal_Sanksi_Adat_Dan_Pidana_Yang_Berbarengan_Dalam_Tindak_Pidana_Pencabulan_Anak_Kaitannya_Dengan_Asas_Nebis_In_Idem.pdf).

Siroj, A Malthuf. *Pembaruan Hukum Islam Di Indonesia: Telaah Kompilasi Hukum Islam*. Yogyakarta: Pustaka Ilmu, 2017.

Soekanto, Soerjono. *Hukum Adat Di Indonesia*. Jakarta: Rajawali Pers, 2012.

Sujana, I Nyoman. *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*. Yogyakarta: Aswaja Pressindo, 2015.

Sulistyarini, Rachmi, A Rachmad Budiono, Bambang Winarno, and Imam Koeswahyono. “The Contact Point of Customary Law and Islamic Law (Legal History Perspective).” *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59. <https://doi.org/10.3126/ijssm.v5i2.19672>.

Summa, Muhammad Amin. *Hukum Keluarga Islam Di Dunia Islam*. II. Jakarta: PT. Raja Grafindo Persada, 2005.

- Surachmad, Wiranto. *Dasar Dan Teknik Penelitian Research*. Bandung: Alumni, 1982.
- Syahroni, Oni. *Maqashid Bisnis Dan Keuangan Islam*. Jakarta: PT Raja Grafindo, 2016.
- Tahmid, Khairuddin, and Idzan Fautanu. "Institutionalization of Islamic Law in Indonesia." *Al-Adalah* 18, no. 1 (2021): 1–16. <https://doi.org/10.24042/adalah.v18i1.8362>.
- Tilayanti, Susi. "Praktek Tajdid Nikah Pada Pasangan Hamil Diluar Nikah Desa Umong Seribee Kecamatan Lhoeng Kabupaten Aceh Besar." UIN Ar-Raniry Banda Aceh, 2019.
- Unaradjan, Dolet. *Pengantar Metode Penelitian Ilmu Sosial*. H. 198. Jakarta: PT Grapindo, 2000.
- Vardiansyah, Dani. *Filsafat Ilmu Komunikasi: Suatu Pengantar*. Jakarta: Indeks Kelompok Gramedia, 2005.
- Wahyuni, Linda. "Sanksi Mbasuh Dusun Bagi Pelaku Zina Dalam Kitab Simbur Cahaya Perspektif Hukum Islam (Studi Pada Masyarakat Kota Bengkulu)." Yogyakarta: Universitas Islam Indonesia, 2019.
- Warjiyati, Sri. *Ilmu Hukum Adat*. Yogyakarta: CV Budi Utama, 2020.
- Wibisana, Wahyu. "Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya: Perspektif Fiqh Dan Hukum Positif." *At-Ta'lim: Jurnal Pendidikan Agama Islam* 15, no. 1 (2017): 29–35. [http://jurnal.upi.edu/file/03\\_Perkawinan\\_Wanita\\_Hamil\\_Diluar\\_Nikah\\_-\\_Wahyu2.pdf](http://jurnal.upi.edu/file/03_Perkawinan_Wanita_Hamil_Diluar_Nikah_-_Wahyu2.pdf).
- Wiranata, I Gede A B, and M H Sh. *Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa*. Bandung: Citra Aditya Bakti, 2005.
- Witanto, Darmoko Yuti. *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin: Pasca Keluarnya Putusan MK Tentang Uji Materiil UU Perkawinan*. Jakarta: Prestasi Pustaka Publisher, 2012.

# 5. Bukti Konfirmasi Submit Revisi Kedua, Respon Kepada Reviewer, dan Artikel yang Diresubmit

The screenshot shows a web browser window displaying the submission review page for article #8437 on the journal website. The browser tabs include WhatsApp, a YouTube video, a document, and the current page. The URL is [journal.iaincurup.ac.id/index.php/allistinbath/author/submissionReview/8437](http://journal.iaincurup.ac.id/index.php/allistinbath/author/submissionReview/8437). The website header identifies the institution as Institut Agama Islam Negeri (IAIN) Curup, Bengkulu, Indonesia, with navigation links for Home, About, User Home, Search, Current, Archives, and Announcements. The user is logged in as 'efrinaldi'. The page title is '#8437 Review' with buttons for Summary, Review, and Editing. The submission details include authors (Efrinaldi Efrinaldi, Jayusman Jayusman, Fatimah Fatimah, Rimanto Rimanto, Miti Yarmunida), title 'Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Indonesia', section 'Articles', and editor 'Laras Shesa'. The peer review section shows 'Round 1' with a review version of 8437-29183-2-RV.RTF from 2023-10-31, initiated on 2023-10-31, last modified on 2023-11-08, and an uploaded file 'Reviewer A 8437-30010-1-RV.DOCX' from 2023-11-08. On the right, a sidebar shows the journal's SJR 2023 score of 0.35 in the Q1 quartile for Religious Studies, powered by Scimagojr.com. A main menu on the right lists Editorial Team, Reviewers, Peer Review Process, Focus and Scope, Publication Ethics, Author Guidelines, and Open Access Policy. The bottom of the image shows a Windows taskbar with a search bar, system tray, and date/time (5:05 PM, 9/15/2024).

## Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Bengkulu City, Indonesia

### Abstract

This research aims to reveal the enforcement of the mbasuh dusun tradition in cases of pregnancy outside marriage in Bengkulu City, Indonesia. The problem of this research is: how is the perspective of Islamic law on the implementation of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City in the context of the development of marriage law in Indonesia? This type of research is field research. The nature of this research is descriptive analytic. Data collection techniques in this study used observation, interviews, and documentation. The data obtained was analyzed using descriptive qualitative methods to obtain conclusions and research findings. The result of this study is that: the implementation of the mbasuh dusun tradition is a customary sanction for pregnant women outside of marriage in Bengkulu City, as *al-'urf al-shabih* and has an effective impact. This mbasuh dusun tradition is carried out by slaughtering a goat, and the perpetrator must be present to be aware and must apologize. Then give charity (and ask for prayers) at the place where the goat was slaughtered or outside the house. Unlike customary sanctions in other regions, the implementation of the mbasuh dusun tradition has a goal and purpose, so that the perpetrator is ashamed and does not repeat the act again, so that it can effectively reduce and even deter the perpetrator. The application of this customary sanction in the context of developing marriage law in Indonesia, it is necessary to review the legalization of marriage of pregnant women outside of marriage in the Compilation of Islamic Law (KHI), and it turns out that the provision of sanctions for pregnant women outside of marriage has a significant impact on creating a deterrent effect and bringing benefits to the community.

Keywords: Tradition, Mbasuh Dusun, Pregnant Women Outside of Marriage, Customary Sanctions, Islamic Law

### Introduction

In the context of developing marriage law in Indonesia, it appears that the enforcement of customary sanctions in the form of the mbasuh dusun tradition is very much needed by reviewing the legalization of marriage of pregnant women outside of marriage in the Compilation of Islamic Law (KHI). In contrast to customary sanctions in other regions, the implementation of the mbasuh dusun tradition as a customary sanction for women who become pregnant outside of marriage in Bengkulu City, Indonesia, appears to be more effective in its application and creates a deterrent effect for others to commit the same act.

In Indonesia, many facts have revealed the practice of freedom of association that results in pregnancy outside of marriage.<sup>1</sup> This deviant phenomenon has reduced the sacredness of marriage, which should be something holy and go through various stages that need attention and seriousness, not just legalizing the marriage of pregnant women outside of marriage.<sup>2</sup> Marriage is not just for

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<sup>1</sup> Jelia Karlina Rachmawati, "Penerimaan Diri Remaja Hamil Pra Nikah: Studi Kasus Pada 2 Remaja Hamil Pra Nikah Di Kota Bandung" (Universitas Pendidikan Indonesia, 2014).

<sup>2</sup> Susi Tilayanti, "Praktek Tajdid Nikah Pada Pasangan Hamil Diluar Nikah Desa Umong Seribee Kecamatan Lhoeng Kabupaten Aceh Besar." (UIN Ar-Raniry Banda Aceh, 2019).

biological purposes,<sup>3</sup> but also obtaining offspring in order to form a family is the main purpose of a marriage.<sup>4</sup>

In preserving offspring, Islamic teachings prohibit adultery and all forms of actions that can lead to adultery. Adultery, which is prohibited in Islam, includes not only the criminal act of rape, but also sexual intercourse outside of marriage, even if it is based on mutual consent.<sup>5</sup> The desire to have sex with the opposite sex is human nature, but Islam forbids it without marriage.<sup>6</sup> As mentioned in the Qur'an Surah al-Isrā' verse 32 which reads: *And do not approach adultery, for it is an abominable deed and an evil way.*

The perpetrator of adultery, in Islamic law there are sanctions, namely: 100 volumes for the unmarried and stoning for the married. This punishment aims to create individual and community peace and prevent adultery.<sup>7</sup>

The prohibition of adultery is part of preserving human offspring and their honor.<sup>8</sup> Pregnancy of a woman out of wedlock is a pregnancy that no one wants. When faced with this situation, women are often the ones who feel the strongest psychological pressure.<sup>9</sup> If the situation is allowed to drag on and a marriage is not immediately arranged with the man who impregnated her, it is feared that a worse situation will occur. Cases of suicide and abortion are examples that are usually dominated by psychological distress, due to pregnancy outside marriage. Women feel that their lives are uncomfortable, always haunted by shame, low self-esteem, feelings of sin, depression, and pessimism.<sup>10</sup>

To prevent and deter this behavior, Bengkulu City imposes customary sanctions in the form of the *mbasuh dusun* tradition. For example, in 2018 it was seen in the case of Yd and Dy, both of whom were active in youth organizations. Dy became pregnant out of wedlock. When Dy was six months pregnant, her family found out about it, and Dy's father reported to the Imam and the Head of the Neighborhood Association (Ketua RT), asking for an opinion about the problem of his daughter who was six months pregnant. The Imam and RT suggested a customary settlement. Rajo penghulu adat was appointed and the family handed over the matter to adat. The adat meeting decided on the customary sanction of slaughtering a goat for the *mbasuh dusun*. Then Yd and Dy were married at night, without wearing Bengkulu traditional clothing and without a reception.<sup>11</sup> The administration of marriage by the Head of the Religious Affairs Office (KUA) is carried out as in general, in accordance with Marriage Law Number 1 of 1974.<sup>12</sup>

Previous research related to this research is: research by Rara Alfitri Ramadhanti, "Sanksi Adat bagi Pelaku Hamil di Luar Nikah di Desa Gunung Meraksa Kecamatan Tanjung Sakti Pumu

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<sup>3</sup> Efrinaldi Efrinaldi, Jayusman Jayusman, and M Yenis, "Revealing The Dilemma Of Marriage Dispensation Regulations In Indonesia," *ADHKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46, <https://doi.org/10.37876/adhki.v5i1.113>.

<sup>4</sup> Muhammad Amin Summa, *Hukum Keluarga Islam Di Dunia Islam*, II (Jakarta: PT. Raja Grafindo Persada, 2005).

<sup>5</sup> Zamakhsyari Hasballah, "Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih" (Cita Pustaka Media, 2013).

<sup>6</sup> Ibnu Elmi A S Pelu et al., "Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives Marriage Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 39–54, <https://doi.org/10.29240/jhi.v7i1.4204>.

<sup>7</sup> Makhrus Munajat, "Mabaadi' Al-Jinayat Al-Islamiyyah Wa Tathbiqaha Fi Al-Siyaq Al-Indunisiy," *Journal of Indonesian Islam* 7, no. 2 (2013): 404–26, <https://doi.org/10.15642/JIIS.2013.7.2.404-426>.

<sup>8</sup> Nasruddin S. and Sulaemang L., "Pregnancy Married in the Perspective of Islamic Law and Five Mazhab," *Al-'Adl* 14, no. 1 (2021): 14, <https://doi.org/10.31332/aladl.v14i1.2234>.

<sup>9</sup> A Saiin, "Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach," *Advances in Humanities and Contemporary Studies* 2, no. 1 (2021): 33–40, <https://doi.org/10.30880/ahcs.2021.02.01.005>.

<sup>10</sup> Fatimah, "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia" (Lampung: UIN Raden Intan Lampung, 2021).

<sup>11</sup> "Interview with Ris, Bibik Wt 10 Januari 2021 Di Bengkulu" (n.d.).

<sup>12</sup> "Interview with Bambang, Tokoh Masyarakat Kota Bengkulu, 15 Januari 2021," (2021).

Kabupaten Lahat” (Customary sanctions for perpetrators of pregnancy outside of marriage in Gunung Meraksa Village, Tanjung Sakti Pumu District, Lahat Regency).” In this study, it is explained that in the Gunung Meraksa Village Community, customary sanctions are applied to perpetrators of pregnancy outside of marriage. With the implementation of these customary sanctions, it is a process of purifying the village and the implementation of these sanctions can have a deterrent effect and can minimize the occurrence of adultery (pregnancy outside of marriage), especially among young people.<sup>13</sup>

DY Witanto's research entitled, “Hak dan Kedudukan Anak Luar Nikah, Pasca Lahirnya Putusan Mahkamah Konstitusi Tentang Uji Materil Undang-undang Perkawinan” (The Rights and Position of Extra-Marital Children, After the Constitutional Court Decision on the Materil Test of the Marriage Law). This paper examines children based on their status and position before the law; legitimate children, adulterous children, discordant children, extra-marital children, adopted children, and stepchildren.<sup>14</sup> Nyoman Sujana's article entitled “Kedudukan Hukum Anak Luar Nikah dalam Perspektif Putusan Mahkamah Konsitusi Nomor 46/PUU-VIII/2010” (The Legal Position of Extra-Marital Children in the Perspective of the Constitutional Court Decision Number 46/PUU-VIII/2010). This paper discusses the position of extramarital children from sirri marriages.<sup>15</sup> Asep Lukman Daris Salam's article entitled “Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010” (Legal Analysis of Nasab Rights of Extra-marital Children According to the Constitutional Court Decision Number 46/PUU/VIII/2010).<sup>16</sup> This article explains that the Constitutional Court's decision is final. Likewise, Nurul Hak's article entitled, “Kedudukan dan Hak Anak Luar Nikah Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Status Anak Luar Nikah, Studi Persepsi Hakim Pengadilan Agama se-Wilayah Pengadilan Tinggi Agama Bengkulu” (The Position and Rights of Extra-Marital Children After the Constitutional Court Decision Number 46/PUU-VIII/2010 on the Status of Extra-Marital Children (Study of Perceptions of Religious Court Judges in the Bengkulu Religious High Court Region).” This research also emphasizes that the Constitutional Court's decision is final and binding. The decision is the result of the *ijtihad* of constitutional judges.<sup>17</sup> Wahyu Wibisana's article entitled, “Perkawinan Perempuan Hamil di luar Nikah Serta Akibat Hukumnya Perspektif Fiqh dan Hukum Positif” (Marriage of Pregnant Women outside of Marriage and its Legal Effects from the Perspective of Fiqh and Positive Law). The research found that women who are pregnant outside of marriage, the imams of the *mazhab* differ in opinion about the permissibility of marrying them. Meanwhile, in Positive Law, marrying a pregnant woman outside of marriage is legal.<sup>18</sup> Fikri et.al's article entitled, “Perlindungan Anak di Luar Nikah dalam Hukum Negara dan Hukum Islam, Perspektif Hakim Pengadilan Agama Parepare”. (Protection of Children Outside of Marriage in State Law and Islamic Law (Perspective of Parepare Religious Court Judges). This paper emphasizes

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<sup>13</sup> Rara Alfitri Ramadhanti, “Sanksi Adat Bagi Pelaku Hamil Di Luar Nikah Di Desa Gunung Meraksa Kecamatan Tanjung Sakti Pumu Kabupaten Lahat.” (Palembang: UIN Raden Fatah, 2022).

<sup>14</sup> Darmoko Yuti Witanto, *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin: Pasca Keluarnya Putusan MK Tentang Uji Materil UU Perkawinan* (Jakarta: Prestasi Pustaka Publisher, 2012).

<sup>15</sup> I Nyoman Sujana, *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010* (Yogyakarta: Aswaja Pressindo, 2015).

<sup>16</sup> Asep Lukman Daris Salam, “Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010,” *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 35–60, <https://doi.org/10.51729/sakinah11132>.

<sup>17</sup> Nurul Hak, *Kedudukan Dan Hak Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, Tentang Status Anak Luar Nikah (Studi Persepsi Hakim Pengadilan Agama Se Wilayah PA Tinggi Agama Bengkulu* (Lampung: (Disertasi Universitas Islam Negeri Raden Intan Lampung, 2018).

<sup>18</sup> Wahyu Wibisana, “Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya: Perspektif Fiqh Dan Hukum Positif,” *At-Ta'lim: Jurnal Pendidikan Agama Islam* 15, no. 1 (2017): 29–35, [http://jurnal.upi.edu/file/03\\_Perkawinan\\_Wanita\\_Hamil\\_Diluar\\_Nikah\\_-\\_Wahyu2.pdf](http://jurnal.upi.edu/file/03_Perkawinan_Wanita_Hamil_Diluar_Nikah_-_Wahyu2.pdf).

that there is no room or gap to provide protection without marriage registration. Child protection in Islamic law can be done by determining the origin of nasab for children in a legal marriage and protection is given to children through recognition. The protection of children outside of marriage can be done through itsbat nikah and the application of Article 43 paragraph 1 of Law No.1 of 1974 after the judicial review of the Constitutional Court. The rights that can be given to children out of wedlock without a valid marriage are limited to civil rights regarding the right to live, the right to education and health, and the right to obtain public services, so that civil rights related to inheritance rights and guardianship rights cannot be given to children out of wedlock without a valid marriage.<sup>19</sup> The similarity between this research and the research of Witanto, Sujana, and Fikri is the impact of the marriage of pregnant women outside of marriage, namely on the status of children. Meanwhile, this research and Wibisana's research both focus on the marriage of pregnant women outside of marriage. The difference with the research that will be conducted is the enforcement of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City. The focus of this research is how the implementation of the mbasuh dusun tradition for pregnant women outside of marriage in Bengkulu City in the context of the development of marriage law in Indonesia?

This type of research is field research.<sup>20</sup> The nature of this research is descriptive analytic.<sup>21</sup> This research uses a normative approach, namely Islamic law that views problems from a legal-formal angle or from normative aspects. The primary data of this research are the results of observations at the research location, the results of interviews with informants, and the results of documentation. Secondary data are books and documents related to this research. The data collection methods in this study used observation, interviews, and documentation. The data obtained was analyzed using a qualitative descriptive method so that conclusions were obtained.<sup>22</sup>

## Discussion

### 'Urf and the Application of Customary Sanctions

The word 'urf comes from the word 'arafa, ya'rifu (عرف يعرف) which is often interpreted with "al-ma'ruf" (المعروف) with the meaning of "something known or something good".<sup>23</sup> 'Urf according to the language means knowing, then used in the sense of something that is known, known, considered good, accepted by a healthy mind. The definition of 'urf according to the jurists is: "Something that has been mutually recognized by humans and they make it a tradition, whether in the form of words, actions, or attitudes of leaving something. It is also called custom".<sup>24</sup>

'Urf as meant in the science of ushul fiqh is: "Something that has been accustomed (among) people or in some of them in terms of muamalat and has seen in themselves in some things

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<sup>19</sup> Fikri Fikri, Budiman Sulaeman, and Andi Bahri, "Perlindungan Anak Di Luar Nikah Dalam Hukum Negara Dan Hukum Islam (Perspektif Hakim Pengadilan Agama Parepare)," *DIKTUM: Jurnal Syariah Dan Hukum* 12, no. 1 (2014): 54–76, <https://doi.org/10.35905/diktum.v12i1.196>.

<sup>20</sup> Dolet Unaradjan, *Pengantar Metode Penelitian Ilmu Sosial*, h. 198 (Jakarta: PT Grapindo, 2000).

<sup>21</sup> Dani Vardiansyah, *Filsafat Ilmu Komunikasi: Suatu Pengantar* (Jakarta: Indeks Kelompok Gramedia, 2005).

<sup>22</sup> Wiranto Surachmad, *Dasar Dan Teknik Penelitian Research* (Bandung: Alumni, 1982).

<sup>23</sup> Amir Syarifuddin, *Ushul Fiqh* (Jakarta: Kencana, 2009).

<sup>24</sup> Efrinaldi Efrinaldi et al., "Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 287–310, <https://doi.org/10.29240/jhi.v7i1.4140>.

continuously that are accepted by common sense."<sup>25</sup> 'Urf is something that has been recognized by the community and is a habit among them both in the form of words and actions. By some scholars of ushul fiqh, 'urf is called adat (custom).<sup>26</sup>

Some ushuliyin, such as al-Nasafi, Ibn Abidin, Al-Rahawi in his Sharh Kitab *Al-Manar* and Ibn Nujaim in *Al-Aybab Wa Al-Nazhair* are of the opinion that 'urf is the same as custom, and there is no difference between the two, but some ushuliyin, such as Ibn Humam and Al-Bazdawi, distinguish between custom and 'urf in its position as an argument for establishing shara' law. Custom is defined as something that is done repeatedly without any rational connection. Whereas 'urf is the custom of the majority of people, whether in word or deed. In this sense, adat is broader than 'urf. Custom includes all types of 'urf, but not vice versa. The habits of certain individuals or groups in eating, dressing, sleeping, and so on are called customs, but not 'urf. But on the other hand, 'urf is more general than adat, because adat only covers actions, while 'urf covers actions and speech as well.<sup>27</sup>

The scholars view 'urf as one of the arguments for inferring Islamic law, this can be seen from several sayings of scholars. There are also some scholars who strengthen the validity of 'urf with the arguments of the Qur'an and Hadith. They cite verse 199 of Surah Al-A'raf as evidence: "*Be you forgiving and enjoin people to do what is right, and turn away from those who are foolish.*"<sup>28</sup> Among the hadeeths that are used as evidence for 'urf is the hadeeth narrated by a group other than Tirmidhi, which tells the story of Hindun's complaint about her husband Abu Sufyan's stinginess in providing for her, and he said: "*take from your husband's wealth what is sufficient for you and your children.*" The fair rate of maintenance in this hadeeth is the rate of maintenance that was common in Arab society at that time. And also the mauquf hadeeth of Ibn Abbas: "*What is considered good by the Muslims is also considered good in the sight of Allah.*"<sup>29</sup>

In addition to having an important position in determining the law 'urf also has an important position in determining a law, as it is known that Islamic law has two sides, namely, the side of determination (*istinbath*) and the side of application (*tatbiq*). Both can run parallel or not. This means that a legal product can sometimes be applied directly without considering the interests of the locus where the law is applied, and there are times when it cannot be applied,<sup>30</sup> because it is not in accordance with the interests of the community in the place where the Islamic law will be applied. In this regard 'urf

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<sup>25</sup> H A Basiq Djalil and M A SH, *Ilmu Ushul Fiqih: 1 & 2* (Kencana, 2014).

<sup>26</sup> Agus Moh Najib, "Reestablishing Indonesian Madhhab, 'Urf and the Contribution of Intellectualism," *Al-Jami'ab: Journal of Islamic Studies* 58, no. 1 (2020): 171–208, <https://doi.org/10.14421/ajis.2020.581.171-208>.

<sup>27</sup> Suwarjin, "Ushul Fiqh" (Yogyakarta: Penerbit Teras, 2012), 148–52.

<sup>28</sup> Suwarjin.

<sup>29</sup> Yahdi Dinul Haq, Hafizah Muchtia, and Zia Alkausar Mukhlis, "Bid'ah in Concept of Maslahah Mursalah and Istihsan According to Imam Asy-Syathibi," *JURIS (Jurnal Ilmiah Syariah)*. <https://doi.org/10.31958/Juris.V20i2.3352> (2021).

<sup>30</sup> Nofiardi Nofiardi, "The 'Urf Perspective of Maanta Bareh Pasaran: Reinforcing the Kinship System through a Local Wisdom in Nagari Balingka," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 75–92, <https://doi.org/10.29240/jhi.v7i1.4132>.



becomes the basis for the application of a law. In fact, 'urf was even seen as the effect of fiqh application.<sup>31</sup>

The scholars of fiqh divide 'urf into three types:

1) In terms of its object, 'urf is divided into: *Al-'Urf Al-Lafẓi* (habits involving expressions) and *Al-'Urf Al-'Amali* (habits in the form of actions);<sup>32</sup>

a) *Al-'Urf Al-Lafẓi* is the habit of the community in using certain memorization / expressions in expressing something so that the meaning of the expression is understood and comes to mind the community. For example, the expression meat means beef; whereas the words meat include all existing meat. If someone goes to a butcher and the butcher has a variety of meats, and the buyer says "I buy one kilogram of meat" the butcher immediately buys beef, because the local custom has specialized the use of the word meat to beef.<sup>33</sup>

If other indicators are needed to understand the expression, then it is not called 'urf. For example, a person comes in a state of anger and has a small stick in his hand, saying "If I see him I will kill him with this stick". From his words it is understood that what he meant by killing him was hitting him with the stick. This kind of expression, according to Abdul Aziz Al-Khayyath (a professor of fiqh from Aman University, Jordan), is not called 'urf, but is included in *Majāz* (metaphor).

b) *Al-'Urf Al-'Amali* is a community custom relating to ordinary actions or civil mu'amalah. What is meant by "ordinary actions" is the actions of the community in matters of their lives that are not related to the interests of others such as the habit of taking off work on certain days of the week, the habit of certain people eating certain foods or drinking certain drinks and the habit of the community in wearing certain clothes on special occasions.

As for what relates to civil mu'amalah, it is the custom of the community to do contracts/transactions in a certain way. For example, it is the custom of the community in buying and selling that the goods purchased are delivered to the buyer by the seller, if the goods purchased are heavy and large, such as refrigerators and other household appliances, without being charged additional fees. Another example is the custom of people buying and selling by taking goods and paying money without a clear contract, as is the case in self-service markets. This sale and purchase in Islamic fiqh is called *bay'u al-mu'athab*.

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<sup>31</sup> Mohammad Hipni, "The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (2019): 50–71, <https://doi.org/10.19105/al-ihkam.v14i1.2159>.

<sup>32</sup> Hikwan Wahyudi, Ubay Harun, and Muhammad Taufik, "Islamic Law Perspective on the Use of Incense in Thanksgiving Events at the Balabe Customs in Kailinese Ethnic," *International Journal Of Contemporary Islamic Law And Society* 3, no. 2 (2021): 74–86, <https://doi.org/10.24239/ijcils.Vol3.Iss2.36>.

<sup>33</sup> Nurmala Nurmala et al., "The Customary Phenomenon Of Sumbangsih In Musirawas Urban Muslims Based On Islamic Law," *Akademika: Jurnal Pemikiran Islam* 28, no. 1 (2023): 15–26, <https://doi.org/10.32332/akademika.v28i1.6715>.

- 2) In terms of its scope, 'urf is divided into two, namely *Al-'Urf Al-'Am* (general custom) and *Al-'Urf Al-Khash* (specific custom);
- a) *Al-'urf Al-'Am* is a certain custom that applies widely throughout society and in all regions. For example, in the sale and purchase of a car, all tools used to repair the car such as keys, pliers, jacks and spare tires are included in the selling price, without a separate contract and additional fees.
  - b) *Al-'urf Al-Khash* is a custom that applies in certain regions and communities. For example, among traders, if there are certain defects in the goods purchased, they can be returned and for other defects in the goods, consumers cannot return the goods. Or the custom of determining the warranty period for certain goods. Another example is the custom that applies among lawyers that the legal defense services that he will do must be paid in advance in part by his client, 'urf typical like this according to Mustafa Al-Zarqa countless and constantly evolving in accordance with changes in the situation and conditions of society.
- 3) In terms of its validity from the view of Shara', 'urf is divided into two, namely *Al-'Urf Al-Shahih* (habits that are considered valid) and *Al-'Urf Al-Fasid* (habits that are considered damaged).<sup>34</sup>
- a) *Al-'Urf Al-Shahih* is a custom that applies in the midst of society that does not contradict the text (verse or hadith), does not eliminate their benefits, and does not cause harm to them.<sup>35</sup> For example, during the engagement period the man gives a gift to the woman and this gift is not considered a dowry.<sup>36</sup>
  - b) *Al-'Urf Al-Fasid* is a custom that contradicts the arguments of Shara' and the basic rules that exist in Shara'. For example, the custom among merchants in legalizing usury, such as lending money among merchants. However, such a practice is not one that is helpful in the eyes of sharee'ah, because the exchange of similar goods, according to sharee'ah, should not exceed each other, and such a practice is a lending practice that prevailed in the jahiliyyah era known as *Riba' Al-Nasi'ah* (usury arising from debt and credit). Therefore, this kind of custom, according to the scholars of ushul fiqh is included in the category of *Al-'Urf Al-Fasid*.<sup>37</sup>

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<sup>34</sup> Mochamad Su'eb, "Epistemology of Urf in the Usulul Fiqh," *EDUTEc: Journal of Education And Technology* 2, no. 1 (2018): 23–29.

<sup>35</sup> Nailur Rahmi and Rinta Okta Henny, "Sanksi Adat Tentang Larangan Perkawinan Terhadap Orang Sesuku Dengan Pelaku Zina," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 November (2020): 329–42, <https://doi.org/10.29240/jhi.v5i2.1525>.

<sup>36</sup> Suhaimi Suhaimi, Agustri Purwandi, and Akhmad Farid Mawardi Sufyan, "Binsabin Dan Tonggebban as Madurese Local Wisdom: An Anthropology of Islamic Law Analyses," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (2021): 161–79, <https://doi.org/10.19105/al-lhkam.v16i1.3861>.

<sup>37</sup> Nasrun Haroen, "Ushul Fiqh 1" (Jakarta: Logos Wacana Ilmu, 1997), 139–41.

In Islamic legal theory, acceptable customs are only good customs, while bad or fasid customs must be rejected and even eliminated.<sup>38</sup> Abdul Wahab Khallaf said "Customs that do not contradict the arguments of shara' are good customs, while bad customs are the opposite".

The rules that exist in Islamic law are very flexible, namely basically Islamic law provides opportunities for people to carry out everything according to what they want. Anything can be done, the most important thing is to keep the actions taken so that they do not invite or cause things that are prohibited by Islamic law so that what was originally allowed does not turn into something that is prohibited.<sup>39</sup>

In terms of application, customary sanctions are only imposed on someone who violates customary law.<sup>40</sup> The relationship between customary sanctions and Islamic law is that customary sanctions have violated the law that occurs in society, while Islamic law is the law ordered by Allah Subhanahu Wa Ta'ala for his people brought by a Prophet. So, customary sanctions given to violators of customary law must not pass Islamic law.

Customary law and Islamic law are part of the legal system in Indonesia in addition to statutory law.<sup>41</sup> The concept of Islamic law is different from the concept of statutory law, because Islamic teachings convince its laws as rules sourced from divine revelation.<sup>42</sup>

Islamic law is a combination of two words, law and Islam. Law can be understood as a set of rules or norms that regulate human behavior in a society, either set by the authorities or grow and develop in society. The form can be written such as laws and regulations or unwritten such as customary law and laws that live in society. Islam literally means submission, safety, or prosperity. This means that people who follow Islam will get safety and prosperity in the world and the hereafter. According to Mahmud Syaltut, Islam is the religion of Allah SWT whose basics and sharia were revealed to the Prophet Muhammad SAW (Peace be Upon Him) and charged him to convey and invite all mankind.<sup>43</sup> Etymologically and terminologically reviewed about Islamic law, etymologically law comes from Arabic, namely al-hukm' which means hindrance. While terminologically, it is a view of certain issues related to human actions or deeds. So, Islamic law is a norm whose provisions from Allah SWT, as well as the Prophet Muhammad SAW are contained in the Qur'an and Hadith to be guided by humans (Muslims) in carrying out life in the world in order to be organized.<sup>44</sup> Islamic law is seen as part of the teachings of Islam whose legal norms (Islam) originate from Islam. Syamsul

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<sup>38</sup> Januddin Muhammad Yusuf and Nawir Yuslem, "Acehnese Dayah Ulama's Response to the Use of Urf in Istibath of Fiqh Law from Islam Nusantara," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 291–306, <https://doi.org/10.29240/jhi.v8i1.5732>.

<sup>39</sup> Ayik Muhammad Zaki, "Tradisi Tonjokan Pada Walimatul 'Ursy Di Di Desa Tapung Lestari Kecamatan Tapung Hilir Kabupaten Kampar Riau" (Yogyakarta: Universitas Islam Indonesia, 2018), 9–10.

<sup>40</sup> Rosdalina Bukido et al., "Harmonization of Customary and Islamic Law in the Gama Tradition of the Muslim Mongondow Community of North Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 239–54, <https://doi.org/10.18326/ijtihad.v22i2.239-254>.

<sup>41</sup> Slamet Sumarto Martitah and Arif Hidayat, "The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia," in *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia* (European Alliance for Innovation, 2021), 305.

<sup>42</sup> Khairuddin Tahmid and Idzan Fautanu, "Institutionalization of Islamic Law in Indonesia," *Al-Adalah* 18, no. 1 (2021): 1–16, <https://doi.org/10.24042/adalah.v18i1.8362>.

<sup>43</sup> Achmad Irwan Hamzani, *Hukum Islam Dalam Sistem Hukum Di Indonesia*, (Jakarta: Kencana, 2020), p.15-16.

<sup>44</sup> Hamzani, h.15-16.

Anwar argued that Muslims believe that Islamic law is based on divine revelation. Therefore, it is called shari'at, which means the path that God has drawn for humans.

Meanwhile, customary law (*Adatrecht*) is a legal system that grows and develops from customs in society. R. Soepomo, formulates customary law as non-statutory law, most of which is customary law and a small part is Islamic law. The customary law also covers the law based on the decisions of judges containing legal principles in the environment, where he decided the case.<sup>45</sup> Based on this formulation, customary law is unwritten (non-statutory) law that is mostly customary law and a small part is Islamic law, and is applied in adat courts (*adat rechtspraak*). Von Savigny (1799-1861) is famous for his thesis *Volkgeist*, that all law was originally formed in the way people say, customary law, in ordinary language. The law was first formed by custom and common belief, then by jurisprudence. So, what is meant by customary law is an unwritten, uncodified customary rule, decided by legal functionaries, has sanctions, has existed for a long time, which is still alive and developing and obeyed by the community.<sup>46</sup>

Initially in the history of the nation and the State of Indonesia, customary law got it, who consistently fought for the position of customary law in the national legal system, among others, was Moh. Koesnoe. He highlighted the misunderstanding of the position of customary law in the national legal system among many parties (pros and cons), that from the cons, customary law is of the opinion that customary law turns backwards, to what is past. Soetandyo argues that the political arena in realizing the national legal system, by fighting for customary law, the supporters of the idea are actually heirs to an old idea, an idea that was originally put forward by the previous generation of nationalists, and was even stated in the text of the Youth Pledge in 1928. Similarly, colonial legal politics that placed Islamic law in the same position as customary law, such as the Receptie Theory by Christian Snouck Hurgronje, that for indigenous people basically applies customary law, Islamic law applies if the norms of Islamic law have been accepted by the community as customary law.<sup>47</sup>

In the dynamics of society in Indonesia, it appears that in many regions customary sanctions have a relationship with Islamic law.<sup>48</sup> In application, it appears that Islamic law is a set of rules from Shari'a and also regulations that apply to Muslims to be applied, which prioritizes trust to be stronger to carry out Islamic law. The customary sanction is a punishment given to people who deviate from the area they live in, which is made by mutual agreement of the local community. One of the customary sanctions applied, among others, in the Bengkulu community, as the focus of this paper, is the customary sanction in the form of the *mbasuh dusun* tradition against pregnant women outside of marriage, which can be reviewed in the perspective of Islamic law.

### **Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage**

*Kitab Simbur Cahaya* is used as a customary rule for the community and is a general rule that applies throughout the Palembang archipelago - including Bengkulu. The contents cover all

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<sup>45</sup> Rosdalina Bukido, *Hukum Adat* (Yogyakarta: CV Budi Utama, 2017), p. 42.

<sup>46</sup> Mansur, *Hukum Adat: Perkembangan Dan Pembaruannya*, p.13.

<sup>47</sup> Muhammad Jazil Rifqi, "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory," *Millah: Jurnal Studi Agama*, 2021, 217–52, <https://doi.org/10.20885/millah.vol21.iss1.art8>.

<sup>48</sup> Rachmi Sulistyarini et al., "The Contact Point of Customary Law and Islamic Law (Legal History Perspective)," *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59, <https://doi.org/10.3126/ijssm.v5i2.19672>.

community relations, starting from the rules of *bujang*, *gadis* and marriage rules, clan rules, farming hamlet rules, *kaum* rules, and customary punishments.<sup>49</sup>

Sanctions that require paying fines and washing the hamlet are categorized into:

1. *Bunting Gelap* (dark pregnancy) is when a girl or widow becomes pregnant and it is not known who impregnated her. She pays a fine of 12 ringgit and *mbasuh dusun* by giving a goat to the head of the *dusun*. If she gives birth at someone else's house, then the person who owns the house must also be penalized with a goat.<sup>50</sup> If the wife becomes pregnant in the dark and the husband complains to the *dusun* head, the wife is fined 12 ringgit and the tradition of *mbasuh dusun* is enforced with a buffalo, 100 gantang of rice, 100 coconut seeds, 1 jar of enau sugar, and 1 jar of *bekasam*.<sup>51</sup>
2. *Sumbang Kecil*, which is adultery committed by a man and a woman who are related by marriage. Such as between a man's father-in-law and his daughter-in-law or son-in-law and his father-in-law. Then the sanction is *mbasuh dusun* with a goat plus a fine of 40 ringgit and faced with a large trial and king's punishment (sultan's decree).<sup>52</sup>
3. *Sumbang Besar* is adultery committed between a man and a woman who are still related to each other. Such as a father with his daughter or a brother with his biological sister. The sanction is the implementation of the tradition of *mbasuh dusun* with a buffalo plus a fine of 80 ringgit and will be faced with a large court and the king's punishment.<sup>53</sup>

Over time, the traditions that apply to pregnant women outside of marriage in Bengkulu City, which are carried out by the chairman or *kutei/ adat* and the village government, are as follows:

1. Slaughtering one goat at the time of the marriage contract and *jambar* chicken
2. Not wearing traditional clothes
3. It is not permissible to hold *walimah/parties*.<sup>54</sup> The marriage of a pregnant woman out of wedlock is not allowed to invite a large crowd. The perpetrator is only allowed to get married at the Religious Affairs Office (KUA).

The process of resolving pregnant women out of wedlock is through complaints from the community first to the Head of the Neighborhood Association (Ketua RT) or Imam, who then proceeds to the Chief of Adat. The complaint cannot be accepted immediately, but must be accompanied by evidence by finding data or information about them. Once proven, both parties are summoned and a hearing is held at the village head's office, attended by the village head and the head of the Customary Consultative Body. At the hearing, sanctions for their actions are determined.<sup>55</sup>

In Bengkulu the elements of a traditional leader or *Rajo Penghulu* are: *penghulu adat* (traditional leader), *penghulu syara'* (sharia cleric) and *cerdik cendikio* (ingenious scholars). *Penghulu adat* consists of the customary leader and customary officials in various urban villages in Bengkulu City. *Penghulu syara'* are the imams and shara' officials, such as the *khatib*, *bilal*, *gharim* in the urban villages of Bengkulu City. Meanwhile, *cerdik cendikio* are community leaders from among the clever people who are able to understand and master the problems that arise in society (teachers, lecturers, and so on).<sup>56</sup>

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<sup>49</sup> Linda Wahyuni, "Sanksi Mbasuh Dusun Bagi Pelaku Zina Dalam Kitab Simbur Cahaya Perspektif Hukum Islam (Studi Pada Masyarakat Kota Bengkulu)" (Yogyakarta: Universitas Islam Indonesia, 2019).

<sup>50</sup> M Si Farida and H Y Hasan, "Undang-Undang Simbur Cahaya Sebagai Sumber Hukum Di Kesultanan Palembang," *Universitas Sriwijaya* (Universitas Sriwijaya, 2012), h. 3, Bab 1 Pasal 10.

<sup>51</sup> Farida and Hasan, Bab II Pasal 23 (tambahan).

<sup>52</sup> Farida and Hasan, Bab II Pasal 28 (tambahan).

<sup>53</sup> Farida and Hasan.

<sup>54</sup> "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021," (n.d.).

<sup>55</sup> "Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021."

<sup>56</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019," (n.d.).

Pregnant women outside of marriage with the sanction of the *mbasuh dusun* tradition in Bengkulu City<sup>57</sup> is called *dapek salah* (can go wrong).<sup>58</sup> This tradition is actually very urgent, if one knows and understands its philosophy.<sup>59</sup> In ancient times, the perpetrators had to be paraded around the hamlet or village naked. But now it is no longer enforced.<sup>60</sup>

According to Imam Maksun, a religious figure in Bengkulu City: the *mbasuh dusun* tradition is actually very far from the punishment for adultery contained in the Qur'an and hadith. However, if a person lives and resides in one area, then the customary traditions applied in that area must be followed. This *mbasuh dusun* tradition, its goals and objectives, can reduce and even make the perpetrator deterred.<sup>61</sup>

Among the cases of pregnant women out of wedlock who are subject to the sanction of *mbasuh dusun* are: a pregnant girl out of wedlock who was impregnated by her biological father. Her pregnancy was discovered after five months. They could not be married off because of *syar'i* restrictions. A traditional discussion with the family by way of *mbasuh dusun* cut a goat with *setawar* flour. After that, the husband and wife were divorced. The husband went his separate way with the family. The out-of-wedlock pregnant girl stays with her mother until she gives birth, and no one marries her.<sup>62</sup> This incident occurred in 2017.

There was a pregnant woman who was impregnated by someone else's husband. The customary sanction was to wash the village with a goat, then marry her off. After the marriage contract, the man immediately divorced her, because this was an agreement with his first wife. After the marriage, the woman was abandoned and the man returned to his first wife. Shortly afterwards, the family moved from Bengkulu City.<sup>63</sup> This event occurred in early 2020.

A pregnant woman out of wedlock (Yn) was married to a man who did not impregnate her (Ad). At the time of the marriage, the man did not know that the woman he married was pregnant. She was 6 months pregnant at the time of marriage. After one week of marriage, the man who married the pregnant woman took the wife to her parents. This happened in 2017. The customary sanction for the woman who was pregnant outside of marriage was to cut the goat and wash the village with *setawar* flour and apologize to the community. And the man declared divorce with his wife.<sup>64</sup>

A pregnant woman out of wedlock (Gd) who was married to a man who did not impregnate her. She was four months pregnant. At the time of the marriage, the man who married the extramarital pregnant woman knew that his wife-to-be was pregnant. He accepted this situation, arguing that the man who impregnated her was a close friend and was like his own family. This happened in early 2018. The customary sanctions imposed are: on the third day of childbirth, they cut a goat to wash the village; the wife apologizes to her husband. The husband's family accepted this situation.<sup>65</sup>

A woman pregnant out of wedlock was impregnated by her boyfriend, but he did not want to take responsibility, because he said it was not his seed. This happened in early 2020. Previously, at the end of 2019, the woman had been *grebeg* with a man. After customary deliberations and the sanction

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<sup>57</sup> J F Holleman, "The Maintenance and Development of Indonesian Adat Law," in *Van Vollenhoven on Indonesian Adat Law* (Netherlands: Springer, 1981), 213–59.

<sup>58</sup> "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019."

<sup>59</sup> Fatimah, "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia."

<sup>60</sup> "Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019," (n.d.).

<sup>61</sup> "Interview with Imam Maksun, Imam Masjid Ar-Rahman Kelurahan Pagar Dewa, Tanggal 2 Agustus 2019," (n.d.).

<sup>62</sup> "Interview with Nurhidayat Tokoh Agama, 12 April 2020," (n.d.).

<sup>63</sup> "Interview with Iim Fahimah Tokoh Agama, 12 April 2020," (n.d.).

<sup>64</sup> "Interview with Sari (Kakak Laki-Laki Yang Menikahkan Perempuan Hamil Luar Nikah), 15 April 2020," (n.d.).

<sup>65</sup> "Interview with Wawan (Laki-Laki Yang Menghamili Perempuan Hamil Luar Nikah), 15 April 2020," (n.d.).

of *mbasuh dusun*, she did not want to marry the man who was *grebeg*. The reason was that she did not want to disappoint her parents, because she was still studying, and felt that she was not pregnant. But 3 months after being raided, it turned out that she was pregnant. Meanwhile, she was no longer dating the man, and already had a new boyfriend. When she found out she was pregnant, she asked her boyfriend to marry her and was honest that she was pregnant. Her new boyfriend did not want to get married, saying that he was not the one who impregnated her. But, finally after 6 months of pregnancy, her new boyfriend wanted to marry her.<sup>66</sup>

In solving the problem, it is not necessarily immediately tried, but there are stages of resolution first, namely:

1. In the event of an arrest or raid. Notification reports or complaints from individuals on customary violations, reporting to village government officials or the Head of the Neighborhood Association (Ketua RT) or one of the *Rajo Penghulu* apparatus (*penghulu adat*, *penghulu syara'* and *cerdik cendikio*).
2. Village government officials, Head of the Community Association (RW Heads), Head of the Neighborhood Association (RT Heads), or one of the *Rajo Penghulu's* officials convey an order to the local customary leader for a *dapek salah* settlement to be held.
3. *Penghulu adat* (traditional leader) as *Rajo Penghulu* (the king of *Penghulu*) informs all *Rajo Penghulu* members to attend the *Rajo Penghulu* consensus that will be held. Informing the head of the sub-district police to appoint their members to attend the *Rajo Penghulu* consensus, the customary head asks the head of the Neighborhood Association (RT Heads) to prepare a place where the *Rajo Penghulu* consensus can be held.<sup>67</sup>
4. The Head of the Neighborhood Association (RT Heads) prepares the seats for the *Rajo Penghulu* assembly, the families, the general public and so on.
5. The traditional leader asks the head of the neighborhood association (RT) to notify other members of the *Rajo Penghulu*, village government officials, and the complainant, parties, witnesses and family to be present at the place and time prepared by the head of the neighborhood association (RT), or village government officials. The Head of the Neighborhood Association (RT) together with village government officials prepare and arrange the arrangement of the *Rajo Penghulu* consensus venue.
6. The *Rajo Penghulu* mufakat is opened by the customary leader who checks the completeness and attendance list of the *Rajo Penghulu* mufakat participants.
7. After everyone is present, the customary *Penghulu* asks the head of the Neighborhood Association (RT) to appear to resolve the *dapek salah* case to *Rajo Penghulu* by granting *Rajo Penghulu's* permission, the head of the Neighborhood Association (RT) presents the parties who *dapek salah* by custom.
8. The customary leader then asks the person who has been *dapek salah* whether they are willing to be resolved by the consensus of the *Rajo Penghulu*. If the *dapek salah* is willing, the next question is asked about his/her health condition, willingness and sincerity. If the *dapek salah* states that he is healthy, willing and sincere, then the customary deliberation can be opened by the *Penghulu adat*. If the *dapek salah* does not want to be resolved by custom, then this dispute will be carried out legally.<sup>68</sup>

In the implementation procedure after the *Rajo Penghulu* trial, then the *mbasuh dusun* tradition is carried out, as follows: According to the head of the Neighborhood Association (RT Heads) of Selebar Sub-district, the *mbasuh dusun* tradition is carried out in the afternoon. The requirements: 1

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<sup>66</sup> "Interview with MY (Bibik Perempuan Hamil Luar Nikah), April 2020," (n.d.).

<sup>67</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019," (n.d.).

<sup>68</sup> "Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019."

goat. No buffaloes, no cows, chickens, etc. The money fine actually depends on the agreement. For monetary fines, it actually depends on the agreement, and if you cannot hand over the goat directly, you can also hand over money worth a goat, then it will be carried out by the residents. The perpetrator is actually obliged to come. It is not obligatory to get married.<sup>69</sup>

If there is a raid, it must be reported to the parents, or their representatives, so that they can take follow-up or further steps. If the perpetrator does not want to carry out *mbasuh dusun*, then there is no difference between unmarried or married perpetrators.

The same thing happened in Kampung Melayu Sub-district, where the goat was still slaughtered. However, most of the time on the day of the ceremony, the adulterer does not come. If they do not want to be present in carrying out *mbasuh dusun*, they still pay or hand over money for the price of a goat. From the implementation of *mbasuh dusun* there is a deterrent effect, if seen in the Sub-district of Kampung Melayu it can be said that it rarely happens.<sup>70</sup>

The *mbasuh dusun* tradition is carried out by slaughtering a goat, the blood is collected, the meat is cooked outside the house, the perpetrator must be present to be aware and must apologize. Then do a small alms (ask for prayer) at the place where the goat was slaughtered or outside the house. This prayer aims to prevent the community from disaster, as well as a closing in resolving the problem. This process is also attended by *Rajo Penghulu*, government officials and the community.<sup>71</sup>

As for the slaughter of the animal, the blood was taken and then sprinkled on 40 (to the right 20 and to the left 20) houses by the two perpetrators while apologizing. This sprinkling uses cold leaves. The goat should be a male and not a small one. *Mbasuh dusun* is so that the perpetrator is ashamed and does not repeat the act again. If the family does not want to settle the matter in accordance with this custom or tradition, then they are expelled or handed over to the police, because this customary sanction is in cooperation with the police.

If the violation of the custom is repeated by the same person and the violator does not have good intentions to change it, then the *Rajo Penghulu* with his authority, can sanction ostracizing him, even expelled from the place of residence.<sup>72</sup>

Based on the description of the *mbasuh dusun* tradition, the rules applied in Bengkulu City have undergone shifts and various changes along with the times from year to year. However, the rules are still sourced from *Simbur Cahaya*. Many rules are no longer used and have been replaced with other rules.

### **The Enforcement of the *Mbasuh Dusun* Tradition as a Customary Sanction in the Context of the Development of Marriage Law in Indonesia**

Legal reform in Islam is carried out in order to be able to realize the objectives of sharia as much as possible which includes the benefit of human life in this world and the hereafter.<sup>73</sup> Indeed, since the beginning, Islamic law essentially aims to realize the benefits of human life in this world and the hereafter.<sup>74</sup>

Furthermore, it is known that the instrument of Islamic law reform is *ijtihad*. *Ijtihad* when associated with the formulation of law; determine the law on new problems for which there is no legal provision. Or determining, finding new legal provisions for a problem that already has legal

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<sup>69</sup> “Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019.”

<sup>70</sup> “Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019.”

<sup>71</sup> “Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019.”

<sup>72</sup> “Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019.”

<sup>73</sup> Jayusman Jayusman et al., “Maslahah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia,” *Muqaranah* 6, no. 1 (2022): 69–84, <https://doi.org/10.19109/muqaranah.v6i1.11164>.

<sup>74</sup> A Malthuf Siroj, *Pembaruan Hukum Islam di Indonesia: Telaah Kompilasi Hukum Islam* (Yogyakarta: Pustaka Ilmu, 2017), p. 44.



provisions, but is no longer in accordance with the current conditions and human interests.<sup>75</sup>

The Compilation of Islamic Law (KHI) accommodates one of these opinions which states that the marriage of a pregnant woman outside of marriage is valid only with the man who impregnates her, without having to be repeated after giving birth. The case of pregnant women outside of marriage does not only concern the adultery of the perpetrators and the hudud punishment for their actions, but also concerns the status and fate of the life of the baby in the womb.<sup>76</sup>

According to researchers, the prohibition of adultery even to the point of causing pregnancy outside of marriage as the focus of this research, namely the marriage of pregnant women outside of marriage in Bengkulu city, is more about the translation of verses that explain the role and position of humans as caliphs/leaders. Humans are the noblest creatures, social creatures, perfect creatures; so that the goal is to achieve mashlahah, either in the form of benefits achieved or mudharat avoided.<sup>77</sup>

So this prohibition of adultery, when associated with the position of man as a leader is the implementation of *hifzih an-nasl* (nurturing the offspring), protecting offspring.<sup>78</sup> Meanwhile, the marriage of pregnant women outside of marriage in Bengkulu city, which has actually been carried out, anticipates a deterrent effect with the *mbasuh* *dusun* tradition, which is a customary sanction imposed on the perpetrator.

Islam becomes a strongly held belief and assimilates with the traditions and culture that have developed in the area where it develops. So that between the teachings of Islam and the culture and traditions of the community there is mutual adjustment, as long as it does not conflict with the basic values in Islam such as the people of Indonesia, especially Bengkulu.<sup>79</sup>

When there are social changes, it is almost certain that there will be changes in the law, therefore social changes such as the relationship between Muslims and local traditions; which occur in Bengkulu society can affect Islamic law. In order to create legal adaptability, Muslims in Indonesia must always make *ijtihad*.<sup>80</sup> There are several rules related to changes in the law.

1. فى تغيير الفتوى واختلافها بحسب تغير الأزمنة والأمكنة والاحوال والنية والعوائد<sup>81</sup>  
“Changes in the law occur due to changes in time, place, circumstances and customs.”
2. الحكم يدور مع علته وجودا وعدما<sup>82</sup>  
“The ruling depends on the illat, its presence or absence.”
3. لا ينكر تغير الاحكام بتغير الازمنة والامكنة والاحوال<sup>83</sup>  
“It is undeniable that legal changes occur due to changes in time, place and circumstances.”
4. لأكثر حكم الكل  
“The majority is judged to be all.”
5. الحكم يدور مع مصالح العباد فحيثما وجدت المصلحة فثما حكم الله<sup>84</sup>

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<sup>75</sup> Asni, *Pembabaran Hukum Islam Di Indonesia: Telaah Epistemologis Kedudukan Perempuan Dalam Hukum Keluarga* (Jakarta: Kementerian Agama Republik Indonesia, 2012), p. 48.

<sup>76</sup> Ahmad Rizza Habibi, “The Dynamics of Illegitimate Child Status in Sharia and National Law of Indonesia: Is There a Harmonization?,” *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 70–80, <https://doi.org/10.19105/al-manhaj.v3i1.4787>.

<sup>77</sup> Oni Syahrani, *Maqashid Bisnis Dan Keuangan Islam* (Jakarta: PT Raja Grafindo, 2016), cet, 2, p. 4.

<sup>78</sup> Wan Abdul Fattah Wan Ismail et al., “A Comparative Study Of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective,” *Humanities & Social Sciences Reviews*, 2020, <https://doi.org/10.18510/hssr.2020.8412>.

<sup>79</sup> Supardi Mursalin, “Acculturation of Islamic Family Values and Bengkulu Local Traditions in Forming a Sakinah Family,” *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023): 123–36.

<sup>80</sup> Abu Hamid Muhammad al-Ghazali, *Al-Mustasyfa Min Ilmi Al-Usul* (Beirut: Dār al-Fikr, n.d.), p.176.

<sup>81</sup> Ibn al-Qayim al-Jauziah, *Ilām Al Muwaqī’in ‘an Rabbi Al’Ālamīn* (Beirut: Dār al-Jai, n.d.), juz III, p. 3.

<sup>82</sup> Ali Ahmad Gulam Muhammad An-Nadawi, *Al-Qawa’id Fiqhiyah* (Damaskus: Dār al- Qalam, 1994), Cet 3, p.

<sup>83</sup> Ibn al-Qayim al-Jauziah, *Ilām Al Muwaqī’in ‘an Rabbi Al’Ālamīn*, p. 414.

<sup>84</sup> Jalaluddin As-Suyuti, *Al-Ashbah Wa an-Nashā’ir* (Beirut: Dār al-Fikr, n.d.), p. 176.

“The law revolves around human benefit, so wherever benefit is found there is the law of Allah.”

6. المحافظة على القديم الصالح والأخذ بالجديد الاصلاح

“Keeping the old is good and taking on the new is better.”<sup>85</sup>

The aforementioned rules indicate that the ruling on an event may only apply to a certain community and at a certain time.<sup>86</sup> Therefore, the ruling must be reconsidered when the law will be applied at a different time and place, especially if the ruling no longer reflects the benefit as the purpose of Islamic law, then the ruling is no longer valid and there must be a new *ijtihad* that brings more *mashlahab* (benefits) to the community.<sup>87</sup> This kind of thing has been done by Imam Shafi'i in taking his law with the terms *qaul qadim* and *qaul jadid*, which *qaul qadim* was done by Imam Shafi'i when he was in Iraq and *qaul jadid* when he was in Egypt.<sup>88</sup>

Furthermore, in Bengkulu City, the application of sanctions for women who become pregnant outside of marriage is based on the Kitab Simbur Cahaya, although it has undergone shifts and various changes, along with the development of the times from year to year. The *mbasuh dusun* tradition practiced in Bengkulu can be declared as *Al-'Urf Al-Shabih*, as a custom that applies in the midst of the community that does not contradict the *nash* (verse or hadith), does not eliminate their benefits, and does not give them *mudharat*.

Furthermore, in order to take *mashlahab* to avoid *mafsadah*, from pregnant marriages in the Compilation of Islamic Law (KHI), the author tries to see with a review of achieving benefits and avoiding harms. Indeed, the case of pregnant women outside of marriage does not only concern the adultery of the perpetrators and the *hudud* punishment for their actions, but also concerns the status and fate of the life of the baby in the womb.<sup>89</sup> Pregnant marriages in this case are to preserve offspring so that the children who are born are not neglected and still have a bright future, because no matter what the parents are like, children are still born in a state of *fitrah* (pure).<sup>90</sup>

Thus, it is time for the Compilation of Islamic Law (KHI) to seek reconception of the provisions of pregnant marriage, so as not to be too easy and underestimate the prohibitions and provisions of Allah. Violation of *sharia* is not something that is considered shameful. In the past, when there were people who were pregnant outside of marriage, they were considered unclean, even their children did not want to greet and hold them. After being tolerated by the rules of pregnant marriage, it seems too easy and does not consider it a 'disgrace. In this research, it seems very urgent to apply the customary sanctions in Bengkulu City, as *Al-'Urf Al-Shabih*, in accordance with the concept in Kitab Simbur Cahaya, namely *mbasuh dusun*, for pregnant women outside of marriage in Bengkulu City. The application of this customary sanction in the form of the *mbasuh dusun* tradition has significant implications in minimizing cases of women becoming pregnant out of wedlock.

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<sup>85</sup> Syafii Ma'arif, *Islam Dan Masalah-Masalah Kenegaraan* (Jakarta: LP3S, 1985). p. 47

<sup>86</sup> Jayusman Jayusman, Rahmat Hidayat, and Rizki Zulu Febriyansyah, “Qawaid Fiqhiyah’s Review of Buying Shoes with A Paid Lots System At Toidiholic Store Bandar Lampung,” *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 2 (2022): 131, <https://doi.org/10.29300/mzn.v9i1.6952>.

<sup>87</sup> Abdul Aziz, “Konsep Mashadir Al-Ahkam (Studi Komparasi Antara Pemikiran Asy-Syāfi’i Dan Muhammad Syahrūr)” (Surakarta: LP2M IAIN Surakarta, 2016), [http://eprints.iain-surakarta.ac.id/5600/1/Abdul\\_Aziz\\_Konsep\\_Masadir\\_al-Ahkam.pdf](http://eprints.iain-surakarta.ac.id/5600/1/Abdul_Aziz_Konsep_Masadir_al-Ahkam.pdf).

<sup>88</sup> Roibin, *Sosiologi Hukum Islam, Telaah Sosio Historis Pemikiran Imam Syafi’i* (Malang: UIN Malang Press, 2008).

<sup>89</sup> Mursyid Djawas et al., “The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law),” *Samarah* 6, no. 1 (2022): 139–55, <https://doi.org/10.22373/sjkh.v6i1.11904>.

<sup>90</sup> Euis Nurlaelawati and Stijn Cornelis Van Huis, “The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms,” *Journal of Law and Religion* 34, no. 3 (2019): 356–82, <https://doi.org/10.1017/jlr.2019.41>.

## Conclusion

The conclusion of this research is that: the implementation of the *mbasuh dusun* tradition is a customary sanction for pregnant women outside of marriage in Bengkulu City, Indonesia. The case of extramarital pregnant women does not only concern the adultery of the perpetrators and the hudud punishment for their actions, but also concerns the status and fate of the life of the baby in the womb. The application of customary sanctions in Bengkulu City refers to the concept in Kitab Simbur Cahaya, namely *mbasuh dusun*, for the perpetrators of pregnancy outside of marriage in Bengkulu City, appearing as *Al-'Urf Al-Shabih*. In contrast to customary sanctions in other regions, the implementation of the *mbasuh dusun* tradition has a significant impact on women who are pregnant outside of marriage for a deterrent effect. In the implementation of this *mbasuh dusun* tradition, if the family does not want to resolve the provisions of this custom or tradition, then they are expelled or handed over to the police, because this customary sanction has collaborated with the police, so that customary sanctions can be applied effectively.

The application of customary sanctions in the form of the *mbasuh dusun* tradition, in the context of developing marriage law in Indonesia, appears necessary by reviewing the legalization of marriages of pregnant women outside of marriage. This is because the imposition of sanctions for pregnant women outside of marriage has significant implications for creating a deterrent effect and can realize security, order, and benefit for the community evenly.

## References

Abu Hamid Muhammad al-Ghazali. *Al-Mustasyfā Min Ilmi Al-Uṣūl*. Beirut: Dār al-Fikr, n.d.

Ahmad Rizza Habibi. "The Dynamics of Illegitimate Child Status in Sharia and National Law of Indonesia: Is There a Harmonization?" *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 70–80. <https://doi.org/10.19105/al-manhaj.v3i1.4787>.

Amir Syarifuddin. *Ushul Fiqh*. Jakarta: Kencana, 2009.

An-Nadawi, Ali Ahmad Gulam Muhammad. *Al-Qawā'id Fiqhiyah*. Damaskus: Dār al-Qalam, 1994.

As-Suyuti, Jalaluddin. *Al-Aṣyāb Wa an-Naẓā'ir*. Beirut: Dār al-Fikr, n.d.

Asni. *Pembaharuan Hukum Islam Di Indonesia: Telaah Epistemologis Kedudukan Perempuan Dalam Hukum Keluarga*. Jakarta: Kementrian Agama Republik Indonesia, 2012.

Aziz, Abdul. "Konsep Mashadir Al-Ahkam (Studi Komparasi Antara Pemikiran Asy-Syāfi'i Dan Muhammad Syahrūr)." Surakarta: LP2M IAIN Surakarta, 2016. [http://eprints.iain-surakarta.ac.id/5600/1/Abdul\\_Aziz\\_Konsep\\_Masadir\\_al-Ahkam.pdf](http://eprints.iain-surakarta.ac.id/5600/1/Abdul_Aziz_Konsep_Masadir_al-Ahkam.pdf).

Bukido, Rosdalina. *Hukum Adat*. Yogyakarta: CV Budi Utama, 2017.

Bukido, Rosdalina, Nurlaila Harun, Edi Gunawan, and Rahman Mantu. "Harmonization of Customary and Islamic Law in the Gama Tradition of the Muslim Mongondow Community of North Sulawesi." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 239–54. <https://doi.org/10.18326/ijtihad.v22i2.239-254>.

Djalil, H A Basiq, and M A SH. *Ilmu Ushul Fiqih: 1 & 2*. Kencana, 2014.

- Djawas, Mursyid, Gamal Achyar, Nursyirwan Bustanul Arifin, Masri Reza, and Baharuddin Umar Yakub. "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)." *Samarah* 6, no. 1 (2022): 139–55. <https://doi.org/10.22373/sjkh.v6i1.11904>.
- Efrinaldi, Efrinaldi, Jayusman Jayusman Jayusman, Shafra Shafra, and Nurfatati Nurfatati. "Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 287–310. <https://doi.org/10.29240/jhi.v7i1.4140>.
- Efrinaldi, Efrinaldi, Jayusman Jayusman, and M Yenis. "Revealing The Dilemma Of Marriage Dispensation Regulations In Indonesia." *ADHKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46. <https://doi.org/10.37876/adhki.v5i1.113>.
- Farida, M Si, and H Y Hasan. "Undang-Undang Simbur Cahaya Sebagai Sumber Hukum Di Kesultanan Palembang." *Universitas Srivijaya*. 2012.
- Fatimah. "Penyelesaian Hukum Perempuan Hamil Luar Nikah Di Kota Bengkulu Dalam Rangka Pengembangan Hukum Perkawinan Di Indonesia." Lampung: UIN Raden Intan Lampung, 2021.
- Fikri, Fikri, Budiman Sulaeman, and Andi Bahri. "Perlindungan Anak Di Luar Nikah Dalam Hukum Negara Dan Hukum Islam (Perspektif Hakim Pengadilan Agama Parepare)." *DIKTUM: Jurnal Syariah Dan Hukum* 12, no. 1 (2014): 54–76. <https://doi.org/10.35905/diktum.v12i1.196>.
- Hamzani, Achmad Irwan. *Hukum Islam Dalam Sistem Hukum Di Indonesia*. Vol. 15–16. Jakarta: Kencana, 2020.
- Haq, Yahdi Dinul, Hafizah Muchtia, and Zia Alkausar Mukhlis. "Bid'ah in Concept of Masalah Mursalah and Istihsan According to Imam Asy-Syathibi." *JURIS (Jurnal Ilmiah Syariah)*. <https://doi.org/10.31958/Juris.V20i2.3352> (2021).
- Haroen, Nasrun. "Ushul Fiqh 1," 139–41. Jakarta: Logos Wacana Ilmu, 1997.
- Hasballah, Zamakhsyari. "Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih." Cita Pustaka Media, 2013.
- Hipni, Mohammad. "The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach." *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 14, no. 1 (2019): 50–71. <https://doi.org/10.19105/al-ihkam.v14i1.2159>.
- Holleman, J F. "The Maintenance and Development of Indonesian Adat Law." In *Van Vollenhoven on Indonesian Adat Law*, 213–59. Netherlands: Springer, 1981.
- Ibn al-Qayim al-Jauziah. *I'lām Al Muwaqī'in 'an Rabbi Al'Ālamīn*. Beirut: Dār al-Jai, n.d.
- "Interview with Bambang, Tokoh Masyarakat Kota Bengkulu, 15 Januari 2021." 2021.
- "Interview with Harmen Zet, Ketua Badan Musyawarah Adat (BMA), Tanggal 28 Juli 2019." n.d.
- "Interview with Iim Fahimah Tokoh Agama, 12 April 2020." n.d.

- “Interview with Imam Maksum, Imam Masjid Ar-Rahman Kelurahan Pagar Dewa, Tanggal 2 Agustus 2019.” n.d.
- “Interview with M. Safri, Tokoh Adat Kota Bengkulu, Senin 4 April 2021 Dan Interview with M. Zainul, Tokoh Adat Di Kecamatan Kampung Melakyu Kota Bengkulu, Senin 4 April 2021.” n.d.
- “Interview with MY (Bibik Perempuan Hamil Luar Nikah), April 2020.” n.d.
- “Interview with Nurhidayat Tokoh Agama, 12 April 2020.” n.d.
- “Interview with Ris, Bibik Wt 10 Januari 2021 Di Bengkulu.” n.d.
- “Interview with Sabirin, Ketua Adat Kecamatan Gading Cempaka, Tanggal 30 Juli 2019.” n.d.
- “Interview with Sari (Kakak Laki-Laki Yang Menikahkan Perempuan Hamil Luar Nikah), 15 April 2020.” n.d.
- “Interview with Wawan (Laki-Laki Yang Menghamili Perempuan Hamil Luar Nikah), 15 April 2020.” n.d.
- “Interview with Zailan, Ketua RT Kelurahan Pagar Dewa Kecamatan Selebar, Tanggal 23 Juli 2019.” n.d.
- Ismail, Wan Abdul Fattah Wan, Ahmad Syukran Baharuddin, Lukman Abdul Motalib, Zulfaqar Mamat, and Syahirah Abdul Shukor. “A Comparative Study Of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective.” *Humanities & Social Sciences Reviews*, 2020. <https://doi.org/10.18510/hssr.2020.8412>.
- Jayusman, Jayusman, Rahmat Hidayat, and Rizki Zulu Febriyansyah. “Qawaid Fiqhiyah’s Review of Buying Shoes with A Paid Lots System At Toidiholic Store Bandar Lampung.” *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 2 (2022): 131. <https://doi.org/10.29300/mzn.v9i1.6952>.
- Jayusman, Jayusman, Shafra Shafra, Rahmat Hidayat, Efrinaldi Efrinaldi, and Badarudin Badarudin. “Maslahah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia.” *Muqaranah* 6, no. 1 (2022): 69–84. <https://doi.org/10.19109/muqaranah.v6i1.11164>.
- Ma’arif, Syafii. *Islam Dan Masalah-Masalah Kenegaraan*. Jakarta: LP3S, 1985.
- Mansur, Teuku Muttaqin. *Hukum Adat: Perkembangan Dan Pembaruannya*. Banda Aceh: Syiah Kuala University Press, 2018.
- Martitah, Slamet Sumarto, and Arif Hidayat. “The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia.” In *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia*, 305. European Alliance for Innovation, 2021.
- Munajat, Makhrus. “Mabaadi’ Al-Jinayat Al-Islamiyyah Wa Tathbiquha Fi Al-Siyah Al-Indunisiy.” *Journal of Indonesian Islam* 7, no. 2 (2013): 404–26. <https://doi.org/10.15642/JIIS.2013.7.2.404-426>.
- Mursalin, Supardi. “Acculturation of Islamic Family Values and Bengkulu Local Traditions in Forming

- a Sakinah Family.” *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023): 123–36.
- Najib, Agus Moh. “Reestablishing Indonesian Madhhab, ‘Urf and the Contribution of Intellectualism.” *Al-Jāmi ‘ab: Journal of Islamic Studies* 58, no. 1 (2020): 171–208. <https://doi.org/10.14421/ajis.2020.581.171-208>.
- Nofiardi, Nofiardi. “The ‘Urf Perspective of Maanta Bareh Pasaran: Reinforcing the Kinship System through a Local Wisdom in Nagari Balingka.” *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (2022): 75–92. <https://doi.org/10.29240/jhi.v7i1.4132>.
- Nurlaelawati, Euis, and Stijn Cornelis Van Huis. “The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms.” *Journal of Law and Religion* 34, no. 3 (2019): 356–82. <https://doi.org/10.1017/jlr.2019.41>.
- Nurmala, Nurmala, Resti Aningsih, Musda Asmara, and Hina Al Kindiya. “The Customary Phenomenon Of Sumbangsih In Musirawas Urban Muslims Based On Islamic Law.” *Akademika: Jurnal Pemikiran Islam* 28, no. 1 (2023): 15–26. <https://doi.org/10.32332/akademika.v28i1.6715>.
- Nurul Hak. *Kedudukan Dan Hak Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, Tentang Status Anak Luar Nikah (Studi Persepsi Hakim Pengadilan Agama Se Wilayah PA Tinggi Agama Bengkulu*. Lampung: (Disertasi Universitas Islam Negeri Raden Intan Lampung, 2018).
- Pelu, Ibnu Elmi A S, Hilyatul Asfia, Jefry Tarantang, and Akhmad Supriadi. “Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives Marriage Law in Indonesia.” *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 39–54. <https://doi.org/10.29240/jhi.v7i1.4204>.
- Rachmawati, Jelia Karlina. “Penerimaan Diri Remaja Hamil Pra Nikah: Studi Kasus Pada 2 Remaja Hamil Pra Nikah Di Kota Bandung.” Universitas Pendidikan Indonesia, 2014.
- Rahmi, Nailur, and Rinta Okta Henny. “Sanksi Adat Tentang Larangan Perkawinan Terhadap Orang Sesuku Dengan Pelaku Zina.” *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 November (2020): 329–42. <https://doi.org/10.29240/jhi.v5i2.1525>.
- Ramadhanti, Rara Alfitri. “Sanksi Adat Bagi Pelaku Hamil Di Luar Nikah Di Desa Gunung Meraksa Kecamatan Tanjung Sakti Pumu Kabupaten Lahat.” Palembang: UIN Raden Fatah, 2022.
- Rifqi, Muhammad Jazil. “The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje’s Reception Theory.” *Millah: Jurnal Studi Agama*, 2021, 217–52. <https://doi.org/10.20885/millah.vol21.iss1.art8>.
- Roibin. *Sosiologi Hukum Islam, Telaah Sosio Historis Pemikiran Imam Syafi’i*. Malang: UIN Malang Press, 2008.
- S., Nasruddin, and Sulaemang L. “Pregnancy Married in the Perspective of Islamic Law and Five Mazhab.” *Al-’Adl* 14, no. 1 (2021): 14. <https://doi.org/10.31332/aladl.v14i1.2234>.
- Saiin, A. “Prohibition of Marriage Due to Maqashid Sharia Perspective, An Approach.” *Advances in Humanities and Contemporary Studies* 2, no. 1 (2021): 33–40. <https://doi.org/10.30880/ahcs.2021.02.01.005>.

- Salam, Asep Lukman Daris. "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010." *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 35–60. <https://doi.org/10.51729/sakinah11132>.
- Siroj, A Malthuf. *Pembaruan Hukum Islam Di Indonesia: Telaah Kompilasi Hukum Islam*. Yogyakarta: Pustaka Ilmu, 2017.
- Su'eb, Mochamad. "Epistemology of Urf in the Usulul Fiqh." *EDUTECH: Journal of Education And Technology* 2, no. 1 (2018): 23–29.
- Suhaimi, Suhaimi, Agustri Purwandi, and Akhmad Farid Mawardi Sufyan. "Binsabin Dan Tonggebban as Madurese Local Wisdom: An Anthropology of Islamic Law Analyses." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (2021): 161–79. <https://doi.org/10.19105/al-lhkam.v16i1.3861>.
- Sujana, I Nyoman. *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*. Yogyakarta: Aswaja Pressindo, 2015.
- Sulistyarini, Rachmi, A Rachmad Budiono, Bambang Winarno, and Imam Koeswahyono. "The Contact Point of Customary Law and Islamic Law (Legal History Perspective)." *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59. <https://doi.org/10.3126/ijssm.v5i2.19672>.
- Summa, Muhammad Amin. *Hukum Keluarga Islam Di Dunia Islam*. II. Jakarta: PT. Raja Grafindo Persada, 2005.
- Surachmad, Wiranto. *Dasar Dan Teknik Penelitian Research*. Bandung: Alumni, 1982.
- Suwarjin. "Ushul Fiqh," 148–52. Yogyakarta: Penerbit Teras, 2012.
- Syahroni, Oni. *Maqashid Bisnis Dan Keuangan Islam*. Jakarta: PT Raja Grafindo, 2016.
- Tahmid, Khairuddin, and Idzan Fautanu. "Institutionalization of Islamic Law in Indonesia." *Al-Adalah* 18, no. 1 (2021): 1–16. <https://doi.org/10.24042/adalah.v18i1.8362>.
- Tilayanti, Susi. "Praktek Tajdid Nikah Pada Pasangan Hamil Diluar Nikah Desa Umong Seribee Kecamatan Lhoeng Kabupaten Aceh Besar." UIN Ar-Raniry Banda Aceh, 2019.
- Unaradjan, Dolet. *Pengantar Metode Penelitian Ilmu Sosial*. H. 198. Jakarta: PT Grapindo, 2000.
- Vardiansyah, Dani. *Filsafat Ilmu Komunikasi: Suatu Pengantar*. Jakarta: Indeks Kelompok Gramedia, 2005.
- Wahyudi, Hikwan, Ubay Harun, and Muhammad Taufik. "Islamic Law Perspective on the Use of Incense in Thanksgiving Events at the Balabe Customs in Kailinese Ethnic." *International Journal Of Contemporary Islamic Law And Society* 3, no. 2 (2021): 74–86. <https://doi.org/10.24239/ijcils.Vol3.Iss2.36>.
- Wahyuni, Linda. "Sanksi Mbasuh Dusun Bagi Pelaku Zina Dalam Kitab Simbur Cahaya Perspektif Hukum Islam (Studi Pada Masyarakat Kota Bengkulu)." Yogyakarta: Universitas Islam Indonesia, 2019.

Wibisana, Wahyu. “Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya: Perspektif Fiqh Dan Hukum Positif.” *At-Ta’lim: Jurnal Pendidikan Agama Islam* 15, no. 1 (2017): 29–35. [http://jurnal.upi.edu/file/03\\_Perkawinan\\_Wanita\\_Hamil\\_Diluar\\_Nikah\\_-\\_Wahyu2.pdf](http://jurnal.upi.edu/file/03_Perkawinan_Wanita_Hamil_Diluar_Nikah_-_Wahyu2.pdf).

Witanto, Darmoko Yuti. *Hukum Keluarga: Hak Dan Kedudukan Anak Luar Kawin: Pasca Keluarnya Putusan MK Tentang Uji Materiil UU Perkawinan*. Jakarta: Prestasi Pustaka Publisher, 2012.

Yusuf, Januddin Muhammad, and Nawir Yuslem. “Acehnese Dayah Ulama’s Response to the Use of Urf in Istibath of Fiqh Law from Islam Nusantara.” *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 291–306. <https://doi.org/10.29240/jhi.v8i1.5732>.

Zaki, Ayik Muhammad. “Tradisi Tonjokan pada Walimatul ‘Ursy di Desa Tapung Lestari Kecamatan Tapung Hilir Kabupaten Kampar Riau,” 9–10. Yogyakarta: Universitas Islam Indonesia, 2018.



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Musda Asmara

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- Keywords:** Covid-19 Custom Fatwa Inheritance, Islamic Law, Islamic law, Method National Law Polygamy, Sharia, cryptocurrency, divorce, household, maqashid sharia, maqasid sharia, marriage, masalah, positive law, prison, tradition, women.

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