

GENDERED CUSTOMARY SANCTIONS IN THE SAME-CLAN MARRIAGE PROHIBITION: A *MASLAHAH MURSALAH* PERSPECTIVE FROM KUANTAN SINGINGI

Alzekrillah Syaf¹

¹Universitas Islam Negeri Sultan Syarif Kasim, Riau (alzekrillahsyaf@gmail.com)

Adi Harmanto²

²Universitas Islam Negeri Imam Bonjol Padang (adiharmanto94@gmail.com)



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Abstract

This study examines the gender dimension of the prohibition against marriage within the same clan in the matrilineal community of Kuantan Singingi, Riau, a norm upheld across generations based on the principle of *adat basandi syarak, syarak basandi Kitabullah*, even though it is not explicitly prohibited by Islamic law. Unlike previous studies, which tended to be normative-anthropological and rarely distinguished prohibitions from their sanctions, this study highlights the gendered burden of these customary sanctions. By integrating Berger's social construction theory and Schutz's phenomenology to trace the formation of the norm, Bourdieu's concept of symbolic violence to analyze its enforcement, and the principle of *maslahah mursalah* to evaluate its sanctions, this qualitative study of 30 informants (traditional leaders, religious scholars, KUA officials, and community members) across five subdistricts found that this norm is accepted as a preventive mechanism to maintain clarity of lineage and social harmony. However, its punitive sanctions fall under the category of *maslahah mulghah* because they cause disproportionate harm: permanent ostracism and stigma passed down to children, which structurally burdens women through their maternal roles within the clan, limited agency within male-dominated traditional institutions, and the stigma attached to their descendants, thereby creating layered injustice. This study recommends a shift toward restorative mechanisms based on *işlah*: customary mediation, social education, symbolic sanctions, and the elimination of stigma against children.

Keywords: Same-Clan Marriage; Gender and Customary Law; *Maslahah Mursalah*; Restorative Justice; Kuantan Singingi.

Background

Indonesia's legal system recognizes the coexistence of state law, Islamic law, and customary law (*adat*), a plurality constitutionally grounded in Article 18B paragraph (2) of the 1945 Constitution, which obliges the state to respect customary law communities and their traditional rights insofar as they remain alive and

consistent with the unitary state.¹ Here *adat* functions as living law: unwritten yet binding, drawing authority from inherited tradition rather

¹ Saldi Isra, Ferdi Ferdi, and Hilaire Tegnan, 'Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia', *Hasanuddin Law Review*, 3.2 (2025), 117–40 <<https://doi.org/https://doi.org/10.20956/halrev.v3i2.1081>>.

than statute.² This plurality is clearest in marriage, where, despite the national regime of Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), customary norms still shape a union's social legitimacy, since social recognition of a marriage often depends not only on state and religious law but on conformity with kinship-based rules,³ an adherence sustained less by legal compulsion than by social sanction. For *adat* treats marriage not as a mere civil bond but as an act that reorganizes kinship and lineage,⁴ and among the descent systems it recognizes, matrilineal, patrilineal, and bilateral,⁵ the matrilineal order is upheld most firmly in Kuantan Singingi Regency, Riau, whose people inherit a Minangkabau-rooted system that transmits the *suku* (clan) through the maternal line.⁶

In Kuantan Singingi, the prohibition of same-clan marriage (*larangan perkawinan sesuku*) is treated not merely as a social convention but as a binding customary norm, understood as continuous with religious obligation and expressed through the philosophy *adat basandi syarak, syarak basandi Kitabullah*, and the principle of *bapilin tigo*, which fuses custom, religion, and government into one inseparable whole.⁷ In practice, prospective couples are expected to

obtain confirmation from customary authorities (the *tangganai*, or clan head) that they do not belong to the same *suku* before proceeding to marriage registration. This is not a legal condition of the national marriage, since the Office of Religious Affairs (KUA) may not add requirements beyond those regulated by law; it is a local socio-administrative practice that shapes the social process leading up to the marriage contract.⁸ For those who violate the norm, customary sanctions are imposed in the form of heavy material fines accompanied by social exclusion.

The difficulty is normative. The same-clan prohibition has no explicit textual basis in Islamic law. Qur'an *An-Nisā'* (4): 22–23 enumerates the women permanently forbidden in marriage on grounds of lineage (*nasab*), affinity (*muṣāharah*), and milk kinship (*raḍā'ah*), and clan membership is not among them.⁹ Islamic law is therefore not silent on marriage prohibitions in general; it simply contains no prohibition based solely on shared clan affiliation. This produces a genuine normative tension between Kuantan Singingi *adat* and the marriage system outlined by the sharia, a tension made more complex by the fact that nearly the entire local population is Muslim.

This tension intensifies through a gender lens. Since clan membership passes matrilineally, women serve as the clan's genealogical axis; a same-clan violation by a woman is thus seen as more threatening to clan integrity than an identical act by a man, and the resulting burden malu (shame) and forfeiture of customary rights passed to her children fall disproportionately on women. This asymmetry is no accident: studies of Minangkabau matriliney reveal a recurring paradox in which women hold symbolic status as lineage-bearers while decision-making stays monopolized by men (*mamak*, *ninik mamak*), leaving women's

² RR Dewi Anggraeni, 'Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints', *AHKAM: Jurnal Ilmu Syariah*, 23.1 (2023), 25–48 <<https://doi.org/https://doi.org/10.15408/ajis.v23i1.32549>>.

³ John R. Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003).

⁴ Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*, III (Bandung: CV Mandar Maju, 2007).

⁵ Yaswirman, *Hukum Keluarga: Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrilineal* (Jakarta: PT Raja Grafindo Persada, 2017).

⁶ Afiq Budiawan, 'Tinjauan Al Urf Dalam Prosesi Perkawinan Adat Melayu Riau', *Jurnal An-Nabl*, 8.2 (2021), 115–125.

⁷ Alzekrillah Syaf, 'Konstruksi Perkawinan Adat Eksogami Di Kabupaten Kuantan Singingi Persoektif Teori Maslahah Mursalah' (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2026).

⁸ Syaf.

⁹ Sayyid Qutub, *Fi Dẖhilāl Qur'an* (Jakarta: Gema Insani Press, 2001), 310.

structural marginalization masked by their ceremonial centrality.¹⁰

Existing scholarship on same-clan prohibitions, though substantial, leaves this gendered dimension underdeveloped, and each strand carries a characteristic limitation. A normative-doctrinal body of work asks whether the prohibition conforms to Islamic law and generally affirms its compatibility with *maqāṣid al-shari'ah* and *'urf*, yet evaluates the norm in the abstract without examining how its sanctions actually operate.¹¹ A sociological-anthropological body documents the procedures and sanctions of the prohibition across Kampar, Rokan Hulu, and the wider Malay Riau world. Still, it remains descriptive, stopping short of any normative reconstruction.¹² A third strand, focused on *'urf*, centers the authority of the *datuk* and *ninik mamak* who impose the sanctions, thereby foregrounding the enforcers rather than those on whom the sanctions fall.¹³ A fourth, family-law

exegesis clarifies that clan restriction is not equivalent to the concept of *maḥram*, treating the matter as a matter of doctrinal classification rather than a lived consequence.¹⁴ Across these strands, two gaps recur: the prohibition is rarely distinguished from its sanctions, and the gendered distribution of those sanctions within the matrilineal structure is seldom foregrounded. A legal-anthropological study of the Mandailing Batak, for instance, documents the weakening of the prohibition and its sanctions without analyzing their gendered weight while enforced.¹⁵ Even the most direct study of Kuantan Singingi itself, which reads the same-clan prohibition through Berger, Schutz, and *maslahah mursalah* and rightly concludes that the prohibition accords with *maqāṣid* while its repressive sanctions constitute *maslahah mulghah*, evaluates the sanctions in general terms and does not pursue the question of their gendered incidence.¹⁶

This is the gap the study addresses, with both academic and social significance. Academically, conflating norm with sanction has led scholars to declare the prohibition "compatible with Islamic law" without separately testing whether its enforcement meets that standard. Socially, real harm occurs precisely at the sanction level, and it is not gender-neutral: it falls on women bearing an indelible stigma and on children disqualified through no fault of their own. The study thus asks: (1) How is the same-clan marriage norm socially constructed and reproduced in Kuantan Singingi? (2) Through what customary and kinship mechanisms do the norm and its sanctions produce gendered burdens for women? (3) How can the norm and its sanctions be evaluated through *maslahah*

¹⁰ Silvia Rosa and others, 'Voices of Matriliney and Hidden Power: Reimagining Female Agency through Minangkabau Narratives in Kaba and Tambo', 13.Social Sciences & Humanities Open (2026), 102531 <<https://doi.org/https://doi.org/10.1016/j.ssaho.2026.102531>>. Lukis Alam and Atha Mahdi Muhammad, 'Contradiction of Power Within Muslim Women in Minangkabau Matrilineal Society', *AL-ALBAB*, 13.2 (2024), 217–46 <<https://doi.org/https://doi.org/10.24260/alalbab.v13i2.3202>>. Rahmah Eka Saputri and others, 'Under The Shadow of Patriarchy: Women Position in Minangkabau Matrilineal System', *AJIS: Academic Journal of Islamic Studies*, 9.2 (2024), 393–411 <<https://doi.org/https://doi.org/10.29240/ajis.v9i2.10149>>.

¹¹ Abdurrahman and Elfia, 'Larangan Nikah Beda Suku Bagi Masyarakat Di Kenagarian Guguak Malalo Perspektif 'Urf Dan Maqashid Syariah', *IJTIHAD*, 36.2 (2020), 27–38.

¹² Aisyah Amini, Laila M. Rasyid, and Cut Asmaul Husna, 'Sanksi Adat terhadap Perkawinan Sesuku dalam Masyarakat Adat Melayu Cipang Kanan Kabupaten Rokan Hulu Riau', *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 8.2 (2025) <<https://doi.org/https://doi.org/10.29103/jimfh.v8i2.23081>>.

¹³ Irham Mahfudz Alfahmi, Alimuddin, and Muhammad Husnul, 'Peran Datuk Adat Dalam Penegakan Sanksi Adat Terhadap Larangan Perkawinan Sesuku Dalam Masyarakat Melayu Riau (Analisis Menurut Teori 'Urf)', *Jurnal Hukum Keluarga Islam El-Qist*, 8.2 (2025), 1–14.

¹⁴ Arisman, 'Mahram Dan Kawin Sesuku Dalam Konteks Hukum Islam (Kajian Tematik Ayat-Ayat Hukum Keluarga)', *Juris: Jurnal Ilmiah Syariah*, 17.1 (2007), 47–61.

¹⁵ Ahmad Mukri Aji and others, 'Weakening Tradition: The Shifting in Same-Clan Marriage Prohibition in Mandailing Batak', *AHKAM: Jurnal Ilmu Syariah*, 21.2 (2021), 379–94 <<https://doi.org/https://doi.org/10.15408/ajis.v21i2.23729>>.

¹⁶ Syaf.

mursalah to formulate a more equitable alternative? In answering these, the study advances a threefold contribution that mirrors its questions: an account of the norm's social construction, an analysis of its gendered sanctions, and an evaluation grounded in *uṣūl al-fiqh*.

Answering these questions requires reading the norm on two levels at once: empirically, as a constructed social fact, and normatively, as a rule whose enforcement must meet an ethical-juridical standard. The study therefore mobilizes three complementary sociological resources and one normative framework, each assigned a distinct task rather than invoked in parallel. Peter L. Berger's social construction theory is used as an interpretive instrument, not a classificatory grid, to explain how the same-clan prohibition emerged from communal practice through externalization, became objectified as a binding customary reality, and was internalized as moral consciousness across generations; it directs the analysis toward why objectification here is so unusually strong, namely how customary and religious legitimacy fuse through *adat basandi syarak* so that a customary breach is felt at once as a religious one.¹⁷ Berger illuminates structure but not agency: he explains how the norm becomes objective, not why individuals actively uphold it. Schutz's phenomenology fills that gap by reconstructing actors' reasoning through the in-order-to motive (the goals the norm secures) and the because motive (the internalized formation that makes it feel self-evident). Berger and Schutz thus form not parallel lenses but two levels of one explanation—construction and consciousness.¹⁸ Yet neither is equipped to see gender. Because this study claims to analyze the gendered construction of the norm, Pierre Bourdieu's concept of symbolic violence

becomes indispensable: it names the gentle, misrecognized domination through which the dominated come to perceive their subordination as natural, explaining why women may experience *malu* as an article of faith and accept their offspring's disqualification as legitimate, and why men monopolize customary authority without appearing, to the community, as domination at all.¹⁹ These three resources describe and explain but do not judge. The normative task falls to *maslahah mursalah*, the *uṣūl al-fiqh* principle admitting a benefit neither affirmed nor denied by the text insofar as it accords with the objectives of *maqāṣid al-shari'ah*, namely the preservation of religion, life, intellect, lineage, and property. The relationship among the four is sequential, not additive: the sociological triad establishes what the norm is and how it operates, and *maslahah mursalah* then assesses whether it and its sanctions ought to stand, which is what allows the prohibition, a possible accommodated *maslahah*, to be distinguished from its sanctions, which may be classified as *maslahah mulghah*.²⁰

Methodologically, the study employs qualitative field research across five sub-districts of Kuantan Singingi (Kuantan Tengah, Singingi, Hulu Kuantan, Singingi Hilir, and Pangean), selected because the same-clan prohibition remains actively enforced in each. Data were gathered through participant observation, in-depth semi-structured interviews, and document analysis. Thirty informants were purposively selected based on two criteria: authority over the norm and competence to explain it. They comprised customary leaders and datuk from the principal suku (Domo, Melayu, Piliang, Caniago, Patopang, and others) as the norm's main authorities; KUA officers in Singingi, Kuantan Tengah, and Singingi Hilir as administrative gatekeepers; ulama as interpreters of its relation to sharia; a local historian; and ordinary

¹⁷ Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (New York: Anchor Books, 1966).

¹⁸ Alfred Schutz, *The Phenomenology of the Social World* (Evanston, IL: Northwestern University Press, 1967).

¹⁹ Pierre Bourdieu, *Masculine Domination* (Stanford: Stanford University Press, 2001).

²⁰ Abu Ishaq Ibrahim Al Syathibi, *al-Muwafaqat fi Ushul al-Syariah* (Beirut: Dar al-Ma'rifah, 1996).

community members from each sub-district. Sampling continued until thematic saturation, at which point interviews stopped generating new themes across the study's three analytical axes. Notably, all thirty informants were men, a composition that is itself a finding, not merely a limitation: as the analysis shows, authority over the norm, including authority to speak about it, is monopolized by men, so women who bear its heaviest sanctions enter the record only through testimony about them, not from them. Transcripts were open-coded, grouped via axial coding into three axes (construction, gendered enforcement, normative evaluation), and refined through constant comparison until categories stabilized. Validity was secured through triangulation across informant categories and data sources, as well as member checking with customary authorities.

Result and Discussion

Same-Clan Marriage as a Social Construct: From Historical Necessity to Entrenched Norm

The same-clan marriage prohibition in Kuantan Singingi is not the product of religious texts but of a social history formed gradually through the dynamics of communal life. Read through Peter L. Berger's sociology of knowledge, every social norm is produced through three dialectical moments that presuppose one another: externalization, objectification, and internalization.²¹ The value of this framework here lies not in taxonomy. It is not enough to sort the field data into three labeled boxes; the theory earns its place only if it can explain why a pragmatic arrangement born of demographic necessity has hardened in Kuantan Singingi into a reality experienced as natural, absolute, and beyond question. That explanatory task organizes the analysis below.

Externalization is the moment at which human activity is projected outward and congeals

into shared rules.²² The prohibition's origins lie in the demographic conditions of small, interdependent clan communities. Dt. Tumenggung, a customary leader of the Melayu Tonga *suku*, traces it to an agrarian past in which farming families left their small children with neighbors who often nursed them, so that members of a settlement were bound at once by descent and by milk-kinship and came to regard one another as siblings within a single *suku*.²³ Under such conditions the norm was less a prohibition than an active social strategy: it widened alliances between clans, thickened communal cohesion, and forestalled the internal rupture that a small community could ill afford. A resident of the regency recalls the founding rationale plainly: that in earlier times the population was sparse and elders required their children to marry outside the *suku* so that "*if you only marry within the same clan, the descendants stay the same and do not grow.*"²⁴ This is precisely Berger's point that externalized norms are not handed down from the sky but sediment out of accumulated collective experience.

The decisive question is what happens at objectification, and why it proceeds here with such unusual force. Objectification is the process by which a norm, once externalized, turns to face its makers as an objective, independent, coercive fact.²⁵ Two mechanisms drive it past the ordinary threshold. The first is the fusion of the prohibition with religious and governmental authority through the principle of *bapilin tigo*, the braiding of three cords. A customary leader articulates the logic without remainder: religion, government, and *adat* are three strands that must be honored together, so that "*if someone violates adat, it is the same as violating religion and government,*"

²² Berger and Luckmann.

²³ Dt. Tumenggung, *Wawancara Pribadi*, Kuantan Singingi, 23 July 2024

²⁴ Dt. Najo, *Wawancara Pribadi*, Kuantan Singingi, 23 July 2024

²⁵ Berger and Luckmann.

²¹ Berger and Luckmann.

and the same holds for each strand in turn.²⁶ Berger observes that the most powerful legitimation a social order can receive is religious, since religion refers the humanly constructed order back to a sacred and cosmic frame, converting a contingent rule into an expression of divine will.²⁷ This is exactly what *bapilin tigo* accomplishes: once the prohibition is folded into it, a customary infraction is no longer a mere breach of local convention. Still, it is experienced simultaneously as a religious and political transgression. Customary and religious legitimacy cease to be two external sanctions reinforcing one another; they collapse into a single seamless obligation, and it is this collapse that lifts objectification to an intensity a purely secular custom could never attain. The community's own taxonomy confirms the mechanism. Dt. Panghulu Malin Malayu explains that *adat* comprises four kinds, the first and highest being *adat sebenar adat*, “the *adat* that comes directly from God, in force from of old, now, and forever, that cannot be contested.”²⁸ To locate the prohibition within a framework whose apex is divine is to place it, in the community's self-understanding, beyond the reach of revision.

The second mechanism is institutionalization. The prohibition operates through marriage administration: couples must obtain the *tangganai*'s confirmation of different-suku status before registration can proceed. A caution often missed in descriptive literature is warranted here: this confirmation is not, and cannot be, a legal requirement of national marriage law, since the Office of Religious Affairs cannot add conditions beyond statute—the mechanism institutionalizes a social gateway, not a legal one. Yet sociologically, its effect is what Berger calls acquiring objective facticity: an

informal norm, by passing through a quasi-bureaucratic checkpoint, takes on the hardened appearance of binding law.²⁹ The structural anxiety underwriting all of this is concrete, and Mardelis, Datuak Panghulu of the Caniago *suku*, states it precisely. In the Kuantan Singingi system, the *mamak* (the mother's brother) manages the administration of a niece's or nephew's marriage while the *bako* (the father's kin) hosts the celebration; in a same-clan union, he explains, *mamak* and *bako* become the same person, so that “there is no one to handle the marriage administration, and if later a household dispute arises, it is very hard to resolve, because the *mamak* is the same, with no other party to mediate.”³⁰ The community reads this collapse as a genuine threat to the stability of the kinship structure. This concern is not unfounded, since conflict resolution in such societies depends on a third party endowed with both authority and emotional distance.

Internalization seals the construction by lodging the objectified norm within consciousness as identity.³¹ This proceeds through socialization from earliest childhood: children learn that fellow members of the *suku* are *dunsanak* (siblings), so that marrying within the clan comes to feel like marrying a sibling. Dt. Bandaro Sutan makes the equation explicit: since kinship is reckoned through the maternal line, two people of the same *suku* share one blood and one descent. They are therefore regarded as full siblings, which is why parents constantly warn their children to be careful in choosing a spouse.³² The *Sotih* pledge, the oath ascribed to the founding chiefs, deepens this internalization by attaching a curse to violators, anchoring the norm in a spiritual register where it can no longer be rationally contested. At this point Berger's

²⁶ Dt. Bandaro Sutan, *Wawancara Pribadi*, Kuantan Singingi, 23 July 2024

²⁷ Peter L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Anchor Books, 1967).

²⁸ Dt. Kamiswan, Kuantan Singingi, 20 July 2024

²⁹ Eka Susylawati, “Eksistensi Hukum Adat Dalam Sistem Hukum Di Indonesia”, *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, IV.1 (2009).

³⁰ Dt. Mardelis, *Wawancara Pribadi*, Kuantan Singingi, 20 July 2024

³¹ Berger and Luckmann.

³² Dt. Bandaro Sutan, *Wawancara Pribadi*, Kuantan Singingi, 23 July 2024

concept of reification becomes apposite: the norm, though a human product, is now apprehended as an inevitable fate, a fact of nature or divine order for which the individual disclaims all authorship.³³ It no longer appears as something the community once made and could remake, but as something given, condensed in the customary maxim Dt. Najo of the Domo *suku* recites that “the sharia is the fence of *adat*, and *adat* is the fence of the children and nephews.”³⁴

The consequence is that a same-clan violation triggers not only formal sanction but indelible social stigma—described in customary idiom as a stain no fine can wash away. This aligns with comparative scholarship on same-clan prohibitions elsewhere in Indonesia: such norms endure less because of the severity of sanctions than because of their depth as an internalized collective identity. Studies of Mandailing Batak and Malay *adat* communities in Rokan Hulu document the same pattern—the prohibition persists as an expression of identity rather than a rule obeyed out of fear.³⁵ Yet identifying the depth of internalization only raises the further question that a constructivist reading cannot itself answer: namely, why individuals continue to choose and actively defend the norm, and at whose expense.

Why the Norm Persists: A Phenomenological Reading

Berger explains how the same-clan prohibition became an objective, reified reality, but not why men and women, generation after generation, continue to embrace it—a constructivist account illuminates structure while leaving the actor in shadow. This is why Schutz's phenomenology is required, not as a parallel lens but as the second level of a single explanation: where Berger reconstructs the objectified norm, Schutz reconstructs the motivated actor who

inhabits it.³⁶ Schutz's central distinction is between the *in-order-to* motive, oriented toward the future goal an action seeks, and the *because* motive, oriented toward the biographical and social conditions from which it springs.³⁷ Read through this distinction, the persistence of the prohibition resolves into two layers working at once.

At the level of the *in-order-to* motive, informant accounts converge on four future-oriented rationales, which are stated most fully by Saparudin (Dt. Bandaro Sutan), together with Uan Darasa (Dt. Joindo) and Dt. Najo, who frame the prohibition as a way of preserving kinship ties and morality.³⁸ The first rationale is the preservation of genealogical clarity and social position. In a matrilineal order that depends on unambiguous lineage, a same-clan union blurs the community's capacity to determine who may become *ninik mamak*, who inherits rights in the *rumah godang*, and whose voice carries in customary deliberation; as these informants put it, a child of such a union “cannot become *ninik mamak* and has no voice in the customary assembly, and so has no place in society.”³⁹ The second is the prevention of family rupture: because a same-clan marriage furnishes no neutral mediator when conflict erupts, the risk of a division ending in divorce that “shatters the family” rises sharply. The severing of *silaturahmi* (kinship bonds) is feared for the harm it brings.⁴⁰ The third is the widening of alliances between clans, the extension of relationships beyond the *suku* that a small society needs to grow. The fourth is a moral safeguard articulated by Dt. Najo: “because members of one *suku* regard each other as *dunsanak* (siblings), a marriage between them is felt to diminish conjugal affection, and, in the local reasoning, the higher a husband's love for his wife, the higher the quality of the

³³ Berger and Luckmann.

³⁴ Dt. Najo, *Wawancara Pribadi*, Kuantan Singingi, 23 July 2024

³⁵ Aji and others. Amini, Rasyid, and Husna.

³⁶ Schutz.

³⁷ Schutz.

³⁸ Saparudin, *Wawancara Pribadi*, 20 August 2024. Dt. Uan Darasa, *Wawancara Pribadi*, 20 August 2024. Najo, *Wawancara Pribadi*, Kuantan Singingi, 23 July 2024.

³⁹ Saparudin, *Wawancara Pribadi*, 20 August 2024.

⁴⁰ Uan Darasa, *Wawancara Pribadi*, 20 August 2024

generation they produce.”⁴¹ This last belief has no secure scientific basis when clan membership, rather than genetic proximity, is at stake, yet, phenomenologically, it is the meaning actors assign to the norm, not its biological accuracy, that moves them to act.

Beneath these calculated goals lies the deeper stratum of the *because* motive, and here the norm’s true tenacity resides. The prohibition is sustained not primarily because individuals reweigh its advantages but because it has been lodged in an internalized value system long before any individual could question it. Dt. Bandaro Sutan states the point with unusual clarity: within the *suku*, siblings must feel mutual respect and reserve; a same-clan marriage would dissolve that shame, and so the prohibition exists “to cultivate *malu*, because *malu* is part of faith.”⁴² Here the norm is defended not as a rule but as an element of piety itself, which is why it is felt as virtue rather than constraint. A further moral concern reinforces the pattern: customary authorities fear that permitting same-clan marriage would loosen the boundaries of close kin groups and, in time, open the door to genuine sibling incest, so that *adat*, as one leader puts it, forbids the lesser thing in advance “so as not to arrive at what religion prohibits.”⁴³ In Schutz’s terms, these convictions belong to the community’s *stock of knowledge*, the shared reservoir of taken-for-granted typifications that members draw on automatically without pausing to verify.⁴⁴ Because the prohibition resides there, it operates with the self-evidence of common sense: it is not consulted as a rule but presupposed as a condition of intelligible action. This is the phenomenological counterpart to the reification traced in the previous section. What Berger describes from the side of the objectified structure, Schutz describes from the side of the acting subject, and the two descriptions meet in

one fact: that the norm has ceased to appear as a human choice at all.

This convergence explains a pattern the comparative literature has repeatedly observed without fully theorizing. Studies of same-clan and clan-endogamy prohibitions in other Indonesian communities find that their durability stems from integration into a wider value system, so that they function as markers of identity rather than rules obeyed under threat of penalty.⁴⁵

The phenomenological reading specifies the mechanism: a norm lodged in the stock of knowledge is defended not by calculation but by pre-reflective certainty. Yet this very certainty performs a concealment neither Berger nor Schutz can expose. Describing the norm as self-evident and embraced for shared goals within a common reservoir of meaning implies that the community bears its costs as a single, undifferentiated subject. It does not: this self-evidence masks an unequal distribution of burden and authority between men and women—a distribution invisible to a purely constructivist or phenomenological gaze, and to which the analysis must now turn.

The Gendered Burden: Symbolic Domination and the Distribution of Sanctions

The constructivist and phenomenological readings show how the same-clan prohibition became objective and why it is embraced. Still, both speak of “the community” as though its members bore the norm’s weight equally. They do not. This study finds that the norm and its sanctions are distributed along a gendered axis through three structural mechanisms, and that this distribution has escaped previous studies precisely because it is, in Bourdieu’s sense, misrecognized. Pierre Bourdieu’s concept of symbolic violence names the gentle, invisible domination exercised upon the dominated with their own complicity, sustained because both the dominant and the dominated apprehend it not as an arbitrary imposition but as the natural order of

⁴¹ Dt. Najo, *Wawancara Pribadi*, Kuantan Singingi, 23 July 2024.

⁴² Dt. Bandaro Sutan, *Wawancara Pribadi*, Kuantan Singingi, 23 July 2024

⁴³ Uan Darasa, *Wawancara Pribadi*, 20 August 2024

⁴⁴ Schutz.

⁴⁵ Aji and others.

things.⁴⁶ In a matrilineal setting, this is doubly illuminating, because the very feature that appears to elevate women, their position as the axis of the lineage, is what fixes the burden of the norm upon them while concealing that burden as honor.

The first mechanism is an asymmetrical genealogical load. Because the *suku* descends through the maternal line, women are construed as the axis of clan purity, so that a violation by a woman is felt as a graver threat to clan integrity than the same act by a man, and the stigma of *malu* attaches more heavily and more durably to female violators and their families. The evidence is behavioral: couples who contract a same-clan marriage, even after paying the customary fine, commonly leave their home villages for good, because their condition continues to be read as a family disgrace that no fine can expunge.⁴⁷ The inability of a paid fine to restore full standing reveals that the social sanction is effectively permanent, a feature alien to the Islamic legal order, which keeps open the door of repentance. Here Bourdieu's account is sharper than a simple story of external oppression, as the previous section showed in Dt. Bandaro Sutan's own words, *malu* is understood as part of faith; women therefore do not merely suffer the stigma from outside but frequently experience it as an element of their own piety, so that the burden is borne with the complicity that symbolic violence requires and is felt not as injustice but as virtue. This is what makes the domination so durable and so difficult to name.

The second mechanism is the absence of women's formal agency in the institutions that decide the validity of their own marriages. Every customary authority bearing on marriage, the *mamak*, the *tangganai*, the *ninik mamak*, is held by

men, so that a woman seeking to marry depends wholly on male judgment.⁴⁸ This study's own field composition is unintended evidence of the pattern: of the thirty informants deemed, in the community's estimation, competent to speak authoritatively about the norm, not one was a woman. The same gender holds the authority to enforce the prohibition and the authority to narrate it, and the women who bear its heaviest consequences enter the record only as objects spoken about, never as subjects speaking. The pattern is starkest in cases of premarital pregnancy, where the customary requirement may be waived, but the exception discloses its own logic. As KUA officer Darmawan explains, when the bride is already pregnant, the *tangganai*'s letter becomes optional, and the marriage proceeds, with the priority being "to ensure the child has a clear status, so as not to bear shame for life."⁴⁹ The Muslim religious leader and the customary head, Nasrun (Dt. Sinaro Batuah), confirm the same reasoning: the rule is bent for the *child's maslahah*.⁵⁰ In every telling, the exception is granted not in the woman's interest but to secure the legal status of the child she carries; even in relaxation, the norm constructs the woman as a bearer of social risk rather than a subject whose rights are independently protected. This resonates with a wider finding in the study of matriliney, that women's ceremonial centrality as lineage-bearers coexists with, and masks, their exclusion from decision-making authority, which remains a male monopoly.⁵¹ Bourdieu names the mechanism behind that paradox: the symbolic capital conferred on women as the fount of lineage is precisely what legitimates their exclusion from its governance, since honoring women as the sacred channel of descent renders their silencing in its administration invisible, even natural.

⁴⁶ Bourdieu.

⁴⁷ Dt. Ali Darwin, *Wawancara Pribadi*, Kuantan Singingi, 12 July 2024. Arwis, *Wawancara Pribadi*, Kuantan Singingi, 15 July 2024. Dt. Langka, *Wawancara Pribadi*, Kuantan Singingi, 18 July 2024. Dt. Sarmidin, *Wawancara Pribadi*, Kuantan Singingi, 20 July 2024. Muslim, *Wawancara Pribadi*, Kuantan Singingi, 25 July 2024

⁴⁸ Darmawan, *Wawancara Pribadi*, 6 August 2024.

⁴⁹ Darmawan, *Wawancara Pribadi*, 6 August 2024

⁵⁰ Dt. Sinaro Batuah Patopang, *Wawancara Pribadi*, Kuantan Singingi, 12 July 2024

⁵¹ Alam and Muhammad. Rosa and others.

The third mechanism is the transmission of stigma to offspring through the maternal line. Children of a same-clan marriage permanently forfeit their customary rights: they cannot be installed as *ninik mamak* and hold no voice in customary deliberation.⁵² Because the *suku* is inherited maternally, this disqualification flows structurally through the female violator, whose children carry the consequence of their mother's transgression rather than their father's. The principle stands in direct contradiction to the Qur'anic teaching, *al-An'am* (6): 164; *al-Najm* (53): 38; *al-Isrā'* (17): 15: *lā tazīru wāziratun wizrā ukbrā*, that no soul shall bear the burden of another. Sociologically, this is a gendered transmission of social sanction, a mechanism in which the female body and its offspring become the medium through which communal norms are enforced across generations. Read through Bourdieu, it is symbolic violence in its most consequential form, inscribing domination not merely in the disposition of the living woman but in the inherited social fate of her children, reproducing the hierarchy in the very structure of descent.

Taken together, these three mechanisms establish that the injustice of the same-clan system is not a general injustice that happens to fall on everyone, but a specifically gendered one, structurally rooted through women. This finding extends and specifies the epistemic dimension that scholars of Islamic family law in Indonesia have begun to identify, whereby women appear in customary and legal processes as objects governed by a system rather than as subjects who help design it.⁵³ It also reframes the normative question the next section must address. If the earlier literature could pronounce the prohibition

“compatible with Islamic law,” it did so by evaluating the norm in the abstract, without registering that the harm of its enforcement is not evenly shared. Once the gendered distribution of that harm is made visible, the evaluation through *maslahah mursalah* can no longer treat “the sanctions” as a single undifferentiated object; it must ask whether sanctions whose burden falls, by design of the descent system, upon women and their children can be reconciled with the *maqāṣid al-shari'ah* and with the principle of justice that lies at their core.

Norm and Sanction in the Balance of *Maslahah Mursalah*

A normative-juridical evaluation of the Kuantan Singingi case must begin by refusing a conflation the existing literature has largely left intact: that of the prohibition itself with the sanctions imposed on those who breach it. These are two distinct objects, and each must be weighed separately in the balance of *maslahah mursalah*, the principle of *uṣūl al-fiqh* recognizing a benefit that the sacred texts neither expressly affirm nor deny, admissible as a ground of law only insofar as it accords with the *maqāṣid al-shari'ah*.⁵⁴ The classical tradition supplies the indicators for the test. Al-Ghazālī stipulated that an admissible *maslahah* must be genuine rather than illusory, general rather than particular, and congruent with the established objectives of the Law without contradicting a definitive text.⁵⁵ Al-Shāṭibī framed the *maqāṣid*, the preservation of religion, life, intellect, lineage, and property, as themselves the criteria against which any claimed benefit is measured, ranking the objectives a degree above the circumstantial interests they govern.⁵⁶ Applied in sequence, these indicators yield opposite verdicts for the norm and for its sanctions.

⁵² Sareman, *Wawancara Pribadi*, Kuantan Singingi, 28 July 2024. Marjunui, *Wawancara Pribadi*, Kuantan Singingi, 30 July 2024. Akhyar, *Wawancara Pribadi*, Kuantan Singingi, 2 August 2024.

⁵³ Euis Nurlaelawati and Arskal Salim, ‘Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia’, *Al-Jami'ah Journal of Islamic Studies*, 51.2 (2013), 248–78 <<https://doi.org/https://doi.org/10.14421/ajis.2013.512.247-278>>.

⁵⁴ Abdul Wahab Khallaf, *Ilmu Uṣūl Fiqh* (Jakarta: PT Raja Grafindo Persada, 2002).

⁵⁵ Abu Hamid Ibn Muhammad Al-Ghazali, *Al-Mustaṣfā Min 'Ilm Al-Uṣūl* (Beirut: Dar al-Kutub al-Ilmiyyah, 1997).

⁵⁶ Syathibi.

Consider first the prohibition. Measured against the *maqāṣid*, it can be accommodated as a valid *maslahah mursalah* on three grounds. In the register of *ḥifẓ al-nasl* (the preservation of lineage), it maintains genealogical clarity within the matrilineal system, forestalling the confusion of inheritance and customary leadership that ambiguous descent would produce. In the register of averting *mafsadah*, it prevents the structural paralysis analyzed above, in which the collapse of the *mamak* and *bako* roles into one person disables the community's mechanism for resolving domestic conflict, a harm that is concrete rather than speculative. And in the register of social welfare, it widens beneficial alliance among clans, consonant with the sharia's own encouragement of expanded fraternity. Understood through *ʿurf*, the prohibition is thus a local wisdom that fills a lacuna in the law without contravening its foundations, and this study's finding here converges with the settled conclusion of the normative-doctrinal literature, from Abdurrahman and Elfia on Guguak Malalo to Nurchaliza on the Minangkabau, that such custom-based prohibitions are admissible in principle where they meet the criteria of recognized benefit.⁵⁷ On the norm, then, the present study affirms what others have argued.

It is on the sanctions that the study parts company with that literature, and here the graduated test must be applied to each sanction in turn rather than to "the sanctions" as an undifferentiated whole. Two preliminary points fix the terms of the analysis. First, the community itself concedes, through the testimony of its own authorities, that Islam does not textually prohibit same-clan marriage. The religious leader Yaminur is explicit that "*there is no verse or hadith that directly forbids marrying within the suku*," the obligation resting instead on *adat*, which the community nonetheless treats as inseparable from religion through *bapilin tigo*.⁵⁸ Ordinary residents concur

that the prohibition and its penalties rest on customary authority alone.⁵⁹ Second, a sanction resting on custom alone can be classified, in *uṣūl* terms, only as *taʿzīr*, a discretionary penalty entrusted to local authority for the public benefit, never as *ḥadd*, whose penalties are textually fixed.⁶⁰ This classification is decisive, because *taʿzīr*, however discretionary, is bound by two limits it may not transgress: it must not generate a *mafsadah* greater than the benefit it protects, and it must not contradict a foundational principle of the sharia.⁶¹ Each sanction can now be tested against these limits.

The sanctions are best read from the account of Datuk Ali Darwin (Datuak Laksamano), who enumerates them in descending order of severity.⁶² The gravest, now abolished, was *dilabuh golek-golek*: the offender was placed inside a large *lukah* (a fish-trap) and cast into the river to drown, a penalty the community itself discontinued in the 1970s as inhumane.⁶³ This historical sanction fails the graduated test at the most fundamental level: *ḍarūriyyāt*. It violates *ḥifẓ al-nafs*, the preservation of life, among the highest of the *maqāṣid*, by imposing the gravest of all penalties for an act the sharia does not prohibit by text at all; a *taʿzīr* penalty that extinguishes a life to defend a merely customary interest inverts the entire hierarchy of objectives, and its *mafsadah* is incommensurably greater than any benefit it could claim. The contemporary sanctions fail at one remove. Permanent social exclusion, by which offenders and their descendants are barred

⁵⁹ Herdianto, *Wawancara Pribadi*, Kuantan Singingi, 10 August 2024. Marwandedi, *Wawancara Pribadi*, Kuantan Singingi, 10 August 2024. Amis Sapri, *Wawancara Pribadi*, Kuantan Singingi, 10 August 2024. Agus Prianto, *Wawancara Pribadi*, Kuantan Singingi, 10 August 2024.

⁶⁰ A. Djazuli, *Fiqh Jinayah: Upaya Penanggulangan Kejahatan Dalam Islam* (Jakarta: PT Raja Grafindo Persada, 2000).

⁶¹ Yusuf Al-Qardhawi, *Dirasab Fi Fiqh Maqasid Al Shari'ah* (Cairo: Dar al-Shuruq, 2006).

⁶² Dt. Ali Darwin, *Wawancara Pribadi*, Kuantan Singingi, 12 July 2024

⁶³ Dt. Ali Darwin, *Wawancara Pribadi*, Kuantan Singingi, 12 July 2024

⁵⁷ Abdurrahman and Elfia.

⁵⁸ Yaminur, *Wawancara Pribadi*, Kuantan Singingi, 4 August 2024

from customary activity, from voice in deliberation, and from ever becoming *ninik mamak*, contradicts a foundational principle directly, since Islam recognizes no social penalty that repentance and self-correction cannot lift; the animating principle of the sharia is to hold open the door of restoration, not to seal it. Banishment, formerly a day's journey from the village for three years and now effective expulsion since a same-clan couple can no longer marry locally, compounds the same defect. The heavy material fine, a cow to be slaughtered together with a *rangkiang* of rice, fails against the principle of 'adl (justice): a fixed and onerous levy falls far more crushingly on a low-income family than on a wealthy one, generating precisely the social injustice the sharia's insistence on proportion is meant to prevent. And the disqualification of offspring runs counter to individual accountability, as enshrined in *lā tazīru wāziratun wizrā ukbrā*, punishing children for an act that was never theirs.

Each sanction, then, collapses into *maslahah mulghab*, a benefit plausible at the local level but nullified because it collides with a foundational principle of the sharia. Yet the graduated analysis discloses something the older literature, evaluating the sanctions in the abstract, could not. The *masadaha* these sanctions generate is not distributed evenly; as the preceding section established, it is structurally routed through women, along the maternal axis of descent by which stigma and disqualification alike travel. Datuk Ali Darwin's own testimony makes the point without intending to: the severity of sanction tracks the closeness of blood, so that the heaviest penalties fall where the tie is nearest, and those expelled "generally never return, out of shame."⁶⁴ Since that tie and that shame are reckoned through the mother, the sanctions offend not only the discrete principles of *hifz al-nafs*, restoration, 'adl, and individual accountability, but also, cumulatively, the

principle of *rahmah* (mercy) that the sharia places at the heart of family and community life, and the demand of 'adl understood as gender justice. A *maslahah mulghab* is invalid wherever it contradicts a foundational principle; a *maslahah mulghab* whose harm is systematically gendered contradicts that foundation twice over. This is the precise point at which the sociological analysis and the *uṣūlī* evaluation meet, and it is the contribution that distinguishes this study: not the verdict that the sanctions are *mulghab*, which follows from the classical criteria, but the demonstration that their nullity is compounded by a gendered injustice invisible to any evaluation that treats the community as an undifferentiated whole.

Toward a Just Sanction Paradigm: Restorative Justice as a Middle Way

The evaluation above yields a single conclusion, and it is important to state precisely what it licenses. What requires reform is not the same-clan norm itself, which rests on a legitimate foundation of *maslahah mursalah*, but the paradigm of sanctions attached to it, and the criterion governing that reform cannot be social order alone; it must include gender justice, since the analysis has shown that women structurally bear the harm of the present sanctions. Reform that corrected the sanctions' severity while leaving their gendered incidence intact would treat the symptom and miss the disease. The task is therefore to identify an alternative that preserves the norm's legitimate benefit, removes the *mafsadah* that renders its sanctions *mulghab*, and does not reproduce the gendered distribution of harm.

Restorative justice supplies such an alternative, and it does so from within the tradition rather than from outside it. Where a retributive approach fixes on punishing the offender, a restorative one seeks to repair the damaged social relationship, to involve all affected parties, and to reach a mutually agreed resolution; in Tony Marshall's formulation, it is a process in which those with a stake in an offense

⁶⁴ Dt. Ali Darwin, *Wawancara Pribadi*, Kuantan Singingi, 12 July 2024

collectively resolve how to deal with its aftermath.⁶⁵ This orientation is not an import of foreign values into an Islamic-customary setting but a recovery of resources already native to both. Islamic law contains its own restorative principle in *iṣlah*, the settlement of conflict through reconciliation and mutual forgiveness, which recent scholarship has shown to align closely with restorative justice and with the cognate values of *ṣulh* (peacemaking) and *ʿafw* (pardon).⁶⁶ The same disposition is embedded in the deliberative, consensus-seeking tradition of *musyawarah* rooted in the Malay culture of Kuantan Singingi itself, the very *musyawarah adat* from which same-clan offenders are presently excluded. To adopt a restorative paradigm is thus to actualize values already present in local tradition and in the sharia, not to graft on an alien mechanism.

Within the framework of *maslahah mursalah*, four alternative sanctions follow, each designed to replace a specific failed sanction identified above and to satisfy the criterion of gender justice. The first is restorative customary mediation, convening customary leaders, religious scholars, and the families of both parties to fashion a resolution that restores the social relationship without exclusion. This replaces permanent ostracism and embodies the spirit of *iṣlah*; because it seeks reintegration rather than expulsion, it lifts the indefinite stigma that fell most heavily and most durably on women.⁶⁷

The second is education and social formation in place of punitive levy: a requirement to join guided sessions on customary and religious values that build awareness rather than inflict loss. Addressed to understanding rather

than to the body or the purse, it discriminates against no one on the basis of gender. The third is a symbolic fine coupled with meaningful communal contribution, such as support for village infrastructure or aid to poorer families, calibrated to express responsibility without the ruinous weight of the traditional levy that offended *ʿadl* by falling hardest on people experiencing poverty. The fourth, and the most consequential for the study's argument, is the elimination of inherited stigma: children of a same-clan marriage must be treated on equal footing with all others in respect of customary rights. This abolishes the disqualification of offspring that violated *lā taḥīru wāḥīratun waḥīra ukhbā*. Because that disqualification was the very channel through which sanction was transmitted down the maternal line, its removal severs the mechanism of gendered inheritance of punishment at its root.

Taken together, these four measures accomplish more than a softening of penalties; they shift the paradigm from retributive to restorative justice and, in doing so, carry significance that extends beyond Kuantan Singingi in two directions. Practically, they let the community preserve a norm it values while purging the enforcement mechanisms that made it unjust, so that *adat* and sharia may operate in genuine harmony rather than in the contradiction that unjust sanctions had introduced between them. Methodologically, and more importantly for the scholarship, they demonstrate an enlarged role for *maslahah mursalah* itself. In the doctrinal literature this study has engaged throughout, *maslahah mursalah* has functioned chiefly as a tool for filling gaps in the law, admitting a beneficial custom where the texts are silent.⁶⁸ The present analysis shows it can do more: it can serve as a method of normative critique, capable not only of admitting a norm but of auditing and reforming the sanction system that has settled around it, and of doing so with an explicit

⁶⁵ Tony F. Marshall, *Restorative Justice: An Overview* (London: Home Office Research Development and Statistics Directorate, 1999).

⁶⁶ Ariefulloh Ariefulloh and others, 'Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.1 (2023), 19–36 <<https://doi.org/10.18326/ijtihad.v23i1>>.

⁶⁷ Al-Qardhawi.

⁶⁸ Khallaf.

criterion of gender justice built into the audit. Here the study's sociological and *uṣūlī* strands finally converge. Berger and Schutz explained how the norm was built and why it endures; Bourdieu exposed whom its enforcement silently burdens; and *maslahah mursalah*, applied as critique rather than mere accommodation, converts that diagnosis into a program of reform in which the removal of gendered injustice is not a byproduct but the governing aim.

Conclusion

This study shows that the same-clan marriage prohibition in Kuantan Singingi is socially constructed, emerging through historical externalization, customary objectification, and intergenerational internalization, and that its endurance is reinforced by the religious-customary philosophy of *bapilin tigo*, by administrative practice, and by inherited moral narratives that lodge the norm in the community's taken-for-granted stock of knowledge. Its gendered dimension, however, has been insufficiently addressed: women bear the norm's burden disproportionately through three mechanisms, namely maternal-lineage responsibility as the axis of clan purity, limited agency within male-dominated customary institutions, and the transmission of stigma to children born of same-clan marriages. Evaluated through *maslahah mursalah*, the prohibition may be accommodated as a *maslahah* insofar as it operates as a customary preventive norm for preserving lineage clarity and social harmony; its sanctions, however, fall into *maslahah mulghah* insofar as they generate disproportionate harm, permanent exclusion, and inherited stigma, and their injustice is compounded because that harm is systematically routed through women. The study therefore recommends reforming the sanction paradigm from a retributive to a restorative one grounded in the Islamic principle of *iṣlāḥ*, through customary mediation, social education, symbolic fines, and the elimination of inherited stigma against children. Its contribution is

twofold: it makes visible the gendered incidence of harm that a norm-focused evaluation had missed, and it shows that *maslahah mursalah* can serve not merely to accommodate a custom but to audit and reform the sanctions attached to it, with gender justice as an explicit criterion.

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