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## Dinamics of Mombolasuako in Southeast Sulawesi: Islamic Law Perspective

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### Abstract

*This article examines the dynamics of the mombolasuako that emerge in Coastal Tolaki society of Southeast Sulawesi in the perspective of Islamic law. This dynamics was triggered by actions that come out of the traditions of Coastal Tolaki community. Where this society has a strict marriage tradition by holds fast to the principle of "married close to a close family" (endogamy). Even the costs incurred are very large. Therefore, this article was used a normative and sociological approach to explain the dynamics and paradigmatics of mombolasuako marriages. This article found that the mombolasuako action arises because it is formed from the paradigmatic side of the Tolaki community which was relatively incompatible with marital customs. In fact, from the perspective of Islamic law, mombolasuako is an action that falls into the category of sadd az-zariah actions, in which are: actions that originally had benefits, but instead led to obstructions.*

## Dinamika Mombolasuako di Sulawesi Tenggara: Perspektif Hukum Islam

### Abstrak

*Artikel ini menelaah dinamika mombolasuako yang muncul di masyarakat Tolaki Pesisir Sulawesi Tenggara dalam tinjauan hukum Islam. Dinamika ini pada dasarnya dipicu oleh tindakan yang hendak keluar dari adat tradisi masyarakat Tolaki Pesisir. Di mana masyarakat ini mempunyai tradisi perkawinan yang ketat dengan berpegang teguh pada prinsip "menikah dengan keluarga dekat" (endogami). Bahkan pelaksanaannya memerlukan biaya yang sangat besar pula. Oleh karenanya, artikel ini menggunakan pendekatan normatif dan sosiologi untuk menjelaskan dinamika dan paradigmatik dari perkawinan mombolasuako tersebut. Artikel ini menemukan, tindakan mombolasuako muncul karena terbentuk dari sisi paradigmatik masyarakat Tolaki yang relatif kurang sesuai dengan adat perkawinan. Bahkan, ketika dilihat dari perspektif hukum Islam, mombolasuako merupakan tindakan yang masuk dalam kategori tindakan sadd az-zari'ah, yaitu: tindakan yang awalnya mempunyai kemashlahatan, tetapi justru menuju pada kemafsadatan.*

**Kata Kunci:** Mombolasuako; hukum Islam; sosiologi

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## A. Introduction

This article examines the phenomenon of marriage in Coastal Tolaki society of Southeast Sulawesi—then written CTSSS—as a formal institution that must be taken between men and women who want to live together. This means that marriages need to be formally conducted even though the age of the grooms or brides are still children, as happened in South Sulawesi.<sup>1</sup> This rule is God's law and is codified in religious sacred texts which exegetical and juristic construction between roles and rights is often a source of tension at the ethic-religious level.<sup>2</sup> Included in this context are interfaith marriages;<sup>3</sup> or even bureaucratization of marriage by the state —until appears the term, *Sirri* (secret) marriage.<sup>4</sup> Therefore, the phenomenon of marriage often brings up a current of contradictions in society especially when positioned between customs and Islamic law. Such as the legality of marriage according to Islamic law still does not meet the legality of state law because it is considered contrary to women's rights, cultural norms, and law.<sup>5</sup> Marriage in Islam is very special with its sacramental and contractual nature,<sup>6</sup> because it is capable of being a venue for normative reproduction, socialization-educative, and nurturing affection between humans.

Interestingly in the CTSSS marriage can be taken through relatively strict customary law by adhering to the principle of "married to a close family" (endogamy). Marriage in that community is called *mowindahako*; which means the delivery of customary materials (*papolo*) according to the social position of a woman's family and also the applicable customary provisions. However, there are also some (people) from the CTSSS who explicitly reject the marriage system; Zainal & Suud's research identified this attitude as due to the heavy marriage

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<sup>1</sup> Kasjim, *Abuse of Islamic Law and Child Marriage in South-Sulawesi Indonesia*, in al-Jami'ah: Journal of Islamic Studies Vol. 54 No. 1, 2016, 95-122.

<sup>2</sup> Mulki al-Sharmani, *Marriage in Islamic Interpretive Tradition: Revisiting the Legal and the Ethical*, in Journal of Islamic Ethics Vol 2 No. 1-2, 2018, 76-96.

<sup>3</sup> Ermi Suhasti, *et.al.*, *Polemics on Interfaith Marriage in Indonesia between Rules and Practices*, in al-Jami'ah: Journal of Islamic Studies Vol. 56 No. 2, 2018, 367-394; Usep Saepullah, *The Inter-Religious Marriage in Islamic and Indonesia Law Perspective*, in Jurnal Ilmiah Peuradeun: The International Journal of Social Sciences Vol. 7 No. 1, 2019, 43-58.

<sup>4</sup> Eva F. Nisa', *The Bureaucratization of Muslim Marriage in Indonesia*, in Journal of Law and Religion Vol. 33 No. 2, 2018, 291-309.

<sup>5</sup> Rajnaara C. Akhtar, *Modern Traditions in Muslim Marriage Practices, Exploiring English Narratives*, in Oxford Journal of Law and Religion Vol. 7 No. 3, 2018, 427-454.

<sup>6</sup> Meraj Ahmad Meraj, *The Importance of Marriage in Islam*, in International Journal of Research Granthaalayah Vol. 6 No. 11, 2018, 1-6.

## Dinamics of Mombolasuako in Southeast Sulawesi: Islamic Law Perspective

procedures and requirements.<sup>7</sup> This form of resistance is a runaway marriage (eloping) that is not in accordance with customs and is called *mombolasuako*. Moreover, Saputri's research also states that the dowry requirements (*papolo*) which are burdensome to the grooms sometimes encourage the action of *mombolasuako*.<sup>8</sup> This form of resistance is a runaway marriage (eloping) that is not in accordance with customs and is called *mombolasuako*. Moreover, Saputri's research also states that the dowry requirements (*papolo*) which are burdensome to the grooms sometimes encourage the action of *mombolasuako*.<sup>9</sup>

The elopement pattern (*mombolasuako*) in the CTSSS is considered as one of the ways to marry a partner that has been going on for a long time. But interestingly, a man who takes the woman he wants to marry will keep a certain sign (symbol) on the stairs (or, in front) of the house in the form of a sarong. This symbol has the meaning that the woman's parents need not to look for their daughter. In this context, there are abnormal legal implications in the marriage process according to the CTSSS custom, which is the direct marriage process at the final stage (*mowindahako*); through a pattern of conflict resolution with the *rembinggare* and *mesokei* process, as described in Ino's research.<sup>10</sup>

However, the family of the woman will also make demands in the form of revenge that can lead to murder.<sup>11</sup> This tension will end when *kolasara* is presented in front of the woman's side. *Kolasara* has symbolic meaning which includes elements of government, religion, and customs for the welfare of the society/community;<sup>12</sup> and it also functions to maintain social integration.<sup>13</sup> In fact, this dispute was also mediated by third parties such as *puutobu* as the informal

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<sup>7</sup> Asliah Zainal & Sudarmi Suud, *Kekerasan Simbolik dalam Tradisi Perkawinan Masyarakat Tolaki Sulawesi Tenggara*, in al-Izzah: Jurnal Hasil-Hasil Penelitian Vol. 13 No. 2, 2018, 192-209.

<sup>8</sup> Irdawati Saputri, *Mahar: Perspektif al-Qur'an dan Implementasinya pada Masyarakat Kabupaten Konawe*, in Jurnal Ushuluddin Adab dan Dakwah Vol. 1 No. 1, 2018, 15-50; Compare with Tim Adat Istiadat Daerah, *Adat dan Upacara Perkawinan Daerah Sulawesi Tenggara*, (Jakarta: Proyek Penelitian dan Pencatatan Kebudayaan Daerah Sulawesi Tenggara, 1978/1979), 36.

<sup>9</sup> Sista, et.al., *Tradisi Mombolasuako (Kawin Lari) dalam Perkawinan Adat Tolaki di Desa Tiraosu Kecamatan Kolono Kabupaten Konawe Selatan*, in Lisani: Jurnal Kelisanan Sasta dan Budaya Vol. 2 No. 2, 2019, 68-75.

<sup>10</sup> La Ino, *Makna Tutaran dalam Penyelesaian Pelanggaran Adat Mombolasuako Masyarakat Tolaki*, in Lingua: Jurnal Ilmu Bahasa dan Sastra Vol. 6 No. 1, 2011, 10-11.

<sup>11</sup> Karmila, *Kawin Lari (Mombolasuako) dalam Perspektif Hukum Adat Tolaki di Sulawesi Tenggara*, Tesis tidak Dipublikasikan, (Surabaya: Universitas Airlangga, 2014), Abstraks.

<sup>12</sup> Munir, et.al., *Makna Simbolik Kalosara dalam Kehidupan Suku Tolaki di Kabupaten Konawe*, in Jurnal Penelitian Budaya Vol. 4 No. 1, 2019, 12-24.

<sup>13</sup> Muh Zubair, *Internalizing Kalosara's Value in a Traditional Dance "Lulo" in the City of Kendari, Southeast Sulawesi*, in Analisa: Journal of Social Science and Religion Vol. 2 No. 2, 2017, 198-305.

leader of the region in resolving customary disputes in the Tolaki society.<sup>14</sup> Usually there is also a negotiation process to resolve the dispute, so that in this context there are verbal and non verbal expressions in the *mombolasuako* tradition that are influenced by the Islamic teachings— as the majority religion, as stated in Pehala's research conclusions.<sup>15</sup> Even Maruf's research, which can be said as a preventive measure, states that *mombolasuako* marriage solution is to provide an understanding for the community about marriages that are in accordance with the Islamic teachings.<sup>16</sup>

### **B. Focus and Research Approach**

Based on these descriptions, this research focused on the dynamics of *mombolasuako* marriage among the CTSSS. This research used normative and sociological approaches. The normative approach is an approach to explain the dynamics of *mombolasuako* marriage based on aspects of Islamic law. In this case, the texts of the Quran and al-Hadith that are functioned are the result of interpretation through the creativity of people's thought formulated in fiqh. While the sociological approach is an approach to facilitate this research in gathering data on the paradigmatic dimensions of the CTSSS related to *mombolasuako* marriage.

### **C. Paradigmatic of *Mombolasuako* Marriage**

For the CTSSS themselves, marriage is considered as a relationship between men and women that is sacred, great and noble for their happiness and peace in realizing love in their lives. Therefore, they realize that marriage is not just merely fulfilling biological needs. They stressed that true marriage is to achieve ultimate happiness and is intended to perfect a part of their religion. The CTSSS's awareness of marriage pushed them to place it in the highest position in the customs order of

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<sup>14</sup> Suarni, *et.al.*, *Peran Kepemimpinan Informal Pu'utobu dalam Penyelesaian Sengketa Sosial Budaya Masyarakat Suku Tolaki*, in *Jurnal Penelitian Budaya* Vol. 4 No. 1, 2019, 36-48.

<sup>15</sup> Ilfan Askul Pehala, *Ekspresi Verbal dan Non Verbal dalam Adat Mombolasuako sebagai Refleksi Kearifan Lokal Etnik Tolaki di Konawe Sulawesi Tenggara*, in *National Conference Proceeding "Annual Conference on Language and Tourism"* Theme: Bahasa dan Sastra d Bidang Pariwisata Tahun 2017, 115-136.

<sup>16</sup> Laode Mazal Amri Maruf, *Membedah Pelaksanaan Perkawinan Adat Tolaki Kabupaten Konawe Selatan Sulawesi Tenggara*, Unpublished Thesis, (Makasar: UIN Alaudin, 2013), Abstraks.

## **Dinamics of Mombolasuako in Southeast Sulawesi: Islamic Law Perspective**

the CTSSS. In one research, it is stated that in the *Oheo* myth with the *onggoso* tradition in the Tolaki Tribal marriages to date has been preserved.<sup>17</sup>

If viewed from the perspective of Law No. 1 of 1974 concerning Marriage, then the presumption of the CTSSS actually is harmonized/synchronized with the general public order especially the regulations. Meaning, the CTSSS holds the principle that marriage is an inner and spiritual bond between a man and woman as husband and wife to form a happy and eternal family based on the Godhead. The CTSSS themselves realizes that in their community many ethnicities and customs acculturate through marriage. Nevertheless, the CTSSS holds very strong the principle that marriage is a symbol to continue the descent, linking family tree and social position. Therefore, they tend to match their children with their immediate family (endogamy). In addition to these, sometimes a marriage by the CTSSS is oriented as a means of repairing a broken kinship; or also related to inheritance, position (social status) and marital property itself.

The marriage process itself is carried out royally, especially if the bride is from among the nobility (*anakia*). In fact there are still lists of traditional/customary actions that need to be taken in the procession of marriage. The CTSSS has the principle that a marriage is legal if it is carried out according to tradition (customs), the written law of each religion and belief held by the community. This condition causes the cost of marriage according to the CTSSS custom is very expensive and tends to spend a lot of time, so there is a bargaining process and compromise between customs and religion in marriage, as found in Zainal's research.<sup>18</sup>

However, this condition is not always acceptable to the CTSSS. On the other hand, there are (also) actions of the CTSSS that are not in accordance with the customs they profess. One of them, there is a marriage system known as "eloping", in the Tolaki language called, *mombolasuako*. They chose this system because of the wishes of some groups who could not meet the CTSSS customary requirements. Moreover in Wulandari's research, et al., it is said that various factors such as

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<sup>17</sup> Heksa Biopsi Puji Hastuti, *Menelusuri Tradisi Onggoso Suku Tolaki yang Terepresentasi dalam Mitos Oheo*, in *Aksara* Vol. 31 No. 2, 2019, 223-238.

<sup>18</sup> Asliah Zainal, *Konflik dan Kompromitas Adat dan Agama: Kasus Perkawinan Suku Tolaki di Sulawesi Tenggara*, Unpublished Thesis, (Yogyakarta: Universitas Gajah Mada, 2018), Abstraks.

economic, time, work, and agreements between families were able to influence changes in marital traditions towards *morumbandole* marriages.<sup>19</sup> From the inability of some of the CTSSS members, *mombulasuako* is seen as a shortcut to marry the "beloved girl".

However, "eloping" according to Tolaki customs is only given a narrow space that could be taken/done, but it (potentially) arises social conflict. Wherein the family of the woman will make demands on the family of the man's side in the form of tension that may lead to a murder. This conflict is triggered by feelings of vengeance by the families of the woman who felt (that) they had been humiliated. Therefore, in the aftermath of the conflict, the relationship implications that are not harmonious between families arise. However, for the CTSSS themselves, the tension in the woman's family can be alleviated by bringing *kalosara* as a medium for conflict reconciliation or community unification. Therefore, Subair's research suggests that expanding *kalosara* access becomes a more effective function, one of which is by internalizing *kalosara* values in public activities.<sup>20</sup>

If the *kalosara* is presented before the woman's family and they continue to react/take actions then they (the woman's family) will be given customary sanctions and physical punishment by all local communities. (It is) as if the *mombolasuako* marriage can be resolved through the presence of *kalosara* from the man family or the third party. Through this *kalosara*, the woman family is given the opportunity to make demands as a customary solution in the form of: 1 piece of glass cloth and 1 buffalo as reward (fines) that need to be paid by the man family. So the door to peace of eloping—because it is against parents' approval, forced, pregnant out of wedlock, or too expensive dowry requirements — is in *Kalosara*. Although, it still leaves short-term or long-term conflict sparks, it does not reach large-scale social conflict.

The CTSSS themselves are essentially a society that likes peace, faces problems openly, and is consistent with self-agreement with others. The *mombolasuako* marriage for them is essentially a despicable action especially from

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<sup>19</sup> Kiki Reski Wulandari, et.al., *Morumbandole: Perubahan Tradisi Pernikahan pada Suku Tolaki di Kecamatan Abuki, di Kabupaten Konawe*, in *Jurnal Penelitian Budaya* Vol. 3 No. 1, 2018, 17-24.

<sup>20</sup> Moh. Subair, *Internalizing Kalosara's Value in a Traditional Dance "Lulo" in the City of Kendari, Southeast Sulawesi*, in *Analisa: Journal of Social Science and Religion* Vol. 2 No. 2, 2017, 198-305.

## **Dinamics of Mombolasuako in Southeast Sulawesi: Islamic Law Perspective**

the perspective of religion and tradition/customs. However, there are also (people) among the CTSSS who view *mombolasuako* marriage pattern as the final action based on rational efforts, both customary and socially. The traditional rational endeavors referred to are the efforts of the man's side to adjust the desires (according) to Tolaki's customs values and norms; whereas, socially it is an attempt to be accepted and approved by the woman's family. Therefore, *mombolasuako* marriage is seen as a rational alternative for the man to marry the woman he loves.

In this context, among the CTSSS there are two contradictory views. The views of these CTSSS figures represent the majority of the Tolaki society who held to their customs. These two views, are: first, *mombolasuako* is considered a form of action of customs' violation, so that the perpetrator, personally or (with) the groups involved, will be subjected to "the final fines"—This customary fines are relatively large (in terms of nominal value) and must be paid in total. If the perpetrator (the man) is found before being dealt with by custom, then he is likely to be killed by the woman's family. The majority of the CTSSS are aware that the risk of *mombolasuako* marriage is very large in which is not only material, but also soul. Second, *mombolasuako* marriage is considered as an "honorable" action pattern. It is natural, if there are CTSSS circles/members who consider that it is proper for the man's family to defend desperately so that their son is successful and safe in undergoing the customs process. Even, the man's family is very consistent in escorting the perpetrators of *mambolasuako*-especially the man's side - until they sit side by side at the aisle.

Therefore, both views are actually agreed by the CTSSS that this action of customs' violation emerges based on "like and like" principle. Finally, the CTSSS has the belief that the *mombolasuako* marriage is due to an agreement between the two man and woman on the basis of "love". Tragically, the marriage space is open, indeed, because there are opportunities created by the woman. One of them is the desire of the woman to follow the man, even though that man have not long known—in other words, they have not been dating for long, like (what's usually happening) nowadays— and know only by the third party of the man's family. Without prejudice to the women's authority in choosing their life partners, the

CTSSS themselves are relatively directed to choose man from their immediate family (have kinship).

The paradigmatic *mombolasuako* marriage of the CTSSS finally open the gap to see the efficiency of the marriage process financing in accordance with the customs. Or also in the endogamous marriage system which has ingrained in the CTSSS and often puts forward the marriage system on the basis of nobility. In this context, *mombolasuako* is considered as a medium—read, intermediary— toward marriage or the phase of household life. Even so, this "eloping" action in the CTSSS is indeed very controversial, so it can be likened to two faces in one coin. On the one hand it is considered to violate customs and on the other hand it is declared as an emergency exit (alternative) to get the life partner whom s/he loves.

The controversy of *mombolasuako* can also be seen in the phenomenon of fines given to the man. At certain times, these fines will be multiplied when the man run with the woman he loves— intentionally or unintentionally— without leaving a sarong under (or, in front of) the door. But if the man leaves the sarong under (or, in front of) the door, then the amount of the fines will automatically be in accordance with the customs of the *mombolasuako* marriage. The amount of the fines imposed on/subjected to the man will be known when his family carries *mesokei* (coming to apologize). Thus, the *mombolasuako* marriage pattern is essentially/basicly an alternative to enter household life.

Although the CTSSS women themselves feel a sense of inner contradiction within them, they tend to think that eloping only pushes them into a space of inner turmoil between love and shame. Furthermore, *mombolasuako* will cause a break in the social identity of the women as a girl, even though physically they are still virgins. Therefore, the CTSSS women are aware that the *mombolasuako* marriage will open a range of ambiguity and ambivalence positions. This position, if recognized, is actually able to strengthen the status of the CTSSS women themselves, above the Tolaki customs. In fact, a very interesting acknowledgment, the CTSSS women described *mombolasuako* as an attitude and action that positioned themselves in a situation that had already happened. Even though they don't realize it, *mombolasuako* practice turned out to be able to form the CTSSS women themselves as active subjects who can choose their life partners. But,



## **Dinamics of Mombolasuako in Southeast Sulawesi: Islamic Law Perspective**

*mombolasuako* is considered macro despicable—as it violates customs— though (indeed) is accepted; this assumption is similar to the responses in the surrounding area such as in Gowa.<sup>21</sup>

The *mombolasuako* customs in the CTSSS is certainly different from the traditions of other communities such as (in) the Bima community in West Nusa Tenggara. Eloping in their culture is something to be honored to do; even the action itself must be carried out by the family of the man (the groom). The parents of the woman's side will feel proud if their daughter is taken away by their partners. Because their daughter is considered to have a partner who is willing to sacrifice (for her). On the other hand, eloping (*silariang*) in the Bugis community of South Sulawesi is considered as a disgrace for the woman's family. This is because it raises shame (*siri*) in the woman's family; and this action is no longer in accordance with the customary norms prevailing in the community. The feeling of *siri* only arises when there is a news that their children are doing *silariang*, but when the perps/subjects of *silariang* come for *maeabbaji* (being accepted again in the woman's family), then the feeling of *siri* in the family will eventually decrease and even be forgotten.

### **D. Mombolasuako in the Islamic Law Perspective**

Based on these descriptions, *mombolasuako* can be positioned as the "opener" of the marriage; although in this framework there is no compatibility and harmony with traditional values and norms. Therefore, the term *mombolasuako* itself is more interpreted as eloping, so that its meaning is referred to one type of marriage without formal engagement or traditional engagement due to the escape of the prospective groom and bride. Therefore, this action is not considered to have led to a form of legal marriage according to Tolaki customary law. It is even stated that this action (will) only result in sanctions in the customary law. This is what needs to be explained in the context of the paradigmatic side of Islamic law; as said in Saladin's research that sometimes customs, is not explicitly explained in

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<sup>21</sup> Murni, et.al., *Penerimaan Masyarakat Terhadap Perilaku Kawin Lari Studi Kasus Kelurahan Malakaji Kecamatan Tombobulu Kabupaten Gowa*, in *Equilibrium Jurnal Pendidikan Sosiologi* Vol. 7 No. 2, 2019, 257-263.

the religion.<sup>22</sup> It is no exaggeration if the research conclusions from Warman et al., suggest that until now there is still a tug of war—or there is even an attempt to weaken each other— between customary and Islamic laws.<sup>23</sup>

*Mombolasuako* can not be said as a marriage that is legal religiously or legal in the perspective of positive law. It is not even known in the legal conception of marriage that is recognized by the public. Even in the conception of Law No. 1 of 1974 concerning marriage, no *mombolasuako* rules—read, the rules of elopement— is found. Conception of marriage that appears to have a strong foundation by referring to the conception of religious law as mentioned in the provisions of article 2 paragraph 1. That is, a legal marriage is a marriage that is carried out in accordance with religious law, so that the state can provide written legitimacy about the position of the marriage. From this perspective it is clear that marriages (processes) (should be) in accordance with religious law are carried out in accordance with the terms and conditions. For this reason, *mombolasuako* can be included in the category of legal marriages, although on the one hand it is, in Tolaki customary law, considered as a marriage that is not normal in the process. In this context too, *mombolasuako* when pushed on a legal marriage procession will be an action of saving the honor of each party's family's custom.

Interestingly, *mombolasuako* is said to be an abnormal marriage caused by legal consequences that arise. It will be carried out directly at the final stage of marriage according to the Tolaki tribal customs, the *mowindahako* stage. This stage is the stage of giving up the customary subject followed by a wedding ceremony preceded by a *rembinggare* (a barrier to the feet so as not to move, according to Tolaki customs). As such, *mombolasuako* can be positioned as "improper acts of marriage", but will (eventually) end in marriage. This, however, in the context of social values and norms, can be wrong, even on the perps/subjects— read, the actors of *mombolasuako* — the consequences/results of this action have been calculated as a mean of achieving their goals. In sociology, this action is categorized

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<sup>22</sup> Bustami Saladin, *Tradisi Merari' Suku Sasak di Lombok dalam Perspektif Hukum Islam*, in al-Ihkam: Jurnal Hukum dan Pranata Sosial Vol. 8 No. 1, 2013, 21-39.

<sup>23</sup> Kurnia Warman, et.al., *Enhancing Legal Pluralism: The Role of Adat and Islamic Laws Within the Indonesian Legal System*, in Journal of Legal, Ethical and Regulatory Issues Vol 21 No. 3, 2018, 1-9.

## Dinamics of Mombolasuako in Southeast Sulawesi: Islamic Law Perspective

as an act of instrumental rationality, which is an action aimed at a specific goal that the inherent aspects, has rationally taken into account.<sup>24</sup>

The *mombolasuako* marriage action in fact caused a negative impact between the families of the man and the woman, although the act of marriage is (supposed to be) a sacred act in which there are many benefits. Therefore, *mombolasuako* in the view of Islamic law is included in the category of *sadd az-zariah*, which means as an action that initially had a benefit aspect, but instead led to obstructions. In one of the rules of Usul Fiqh, it is written in the principle "rejecting obstructions/loss must take precedence over taking benefit" (*dar al-mafsid awla min jalbi al-mashalih*). Based on this rule, *mombolasuako* is the initial act of marriage that needs to be avoided, because it has more dimensions of obstructions/loss than benefits. Therefore, it is only natural, if the conclusions of Hermanto's research suggest that taking the benefits (prioritize the benefits) is the most powerful argument in Islamic law;<sup>25</sup> but on the other hand, it is feared that the law will turn **illegal** (*haram*) into **legal** (*halal*) under the pretext of the benefits, as stated in Amri's research conclusions.<sup>26</sup>

One normative value about it is listed in the QS. al-Baqarah verse 217 which allows Muslims to fight in the unlawful months with the infidels — and this action is a grave sin. However, the warfare has lighter loss/damages than the benefits of the infidels against Moslems, namely: the act of infidelity towards Allah, blocking/preventing the Moslems from Allah's guidance, or expelling them from Mecca. In Surah al-Kahf verses 71 to 74 or verses 79 to 81 also explain that, the prophet Khidir carried out destructive actions namely punching holes in the boat belonging to the poor and killing small children. It turns out that he did this action to avoid greater loss/damages. It is clear that the dimension of benefits is emphasized so that the reference to the order of life is realized in the purpose of

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<sup>24</sup> Bryan S. Turner, *Teori Sosial: dari Klasik Sampai Postmodern*, Translator: Maufur & Daryatno, (Yogyakarta: Pustaka Pelajar, 2012), 115.

<sup>25</sup> Agus Hermanto, *Peran 'Illat dalam Ijtihad Hukum Islam*, in *Ijtimaiyya: Jurnal Pengembangan Masyarakat Islam* Vol. 11 No. 1, 2018, 91-116.

<sup>26</sup> Miftaakhul Amri, *Konsep Maslahat dalam Penetapan Hukum Islam: Telaah Kritis Pemikiran Hukum Islam Najamuddin at-Thufi*, in *et-Tijarie: Jurnal Hukum dan Bisnis Syariah* Vol. 5 No. 2, 2018, 51-64.

law (Islam). This, as stated in Rusdi's research conclusions, will lead to a balance of problems in the primary, secondary or tertiary forms.<sup>27</sup>

Based on this mindset, *mombolasuako* cannot be said to be a solutive action on the customary marriage in the CTSSS which is expensive and more closed in nature. Or even can not be said as a preventive measure against the continuity of endogamous marriage. In fact, the *mombolasuako* marriage only raises obstructive/ damaging acts in the social relations between the families of the man and the woman. The strictness of customary legal construction in the CTSSS is very much needed so that self-action can avoid destructive attitudes such as obstructive/damaging acts. This substantive value can actually be in accordance with the goal of establishing the law on the *mukallaf*, which is to realize the self and society benefits/prosperities and to distance ourselves from obstructions/loss/damages.<sup>28</sup> In this context, as mentioned in Mutakin's research, there are two methods of exploring the benefits, namely: the *taliili* method (*qiyas* and *istihsan*) and the *istishlahi* method (*al-mashlahah al-mursala* and *al-dhariah* (the category of *sadd al-dzariah* or *fath al-dzariah*)).<sup>29</sup> All methods in Islamic law, eventually, will lead to the main goal of realizing human benefits—and this is the *maqasid al-shariah*—, concluded from Bahrudin's research.<sup>30</sup>

*Mombolasuako* indeed, is basically the beginning of the marriage phase; therefore, as Toni's research says, it is one of the fundamental foundations of a perfect society.<sup>31</sup> Then it—in this case is, the marriage— in the perspective of Islamic law, falls into the category of *mashlahah al-daduriyat*. Therefore, according to Khallaf, as also mentioned in the conclusions of Saiddurrahman's research, it will get a guarantee of being permitted "to violate" the forbidden things, to make it happen either caused by compulsion (emergency) factors or based on critical

<sup>27</sup> Muhammad Ali Rusdi, *Maslahat sebagai Metode Ijtihad dan Tujuan Utama Hukum Islam*, in Diktum: Jurnal Syari'ah dan Hukum Vol. 15 No. 2, 2017, 151-168.

<sup>28</sup> Kamal Muchtar, *Ushul Fiq'h*, (Yogyakarta: Dana Bhakti Wakaf, 1995), 156.

<sup>29</sup> Ali Mutakin, *Teori Maqashid al-Syari'ah dan Hubungannya dengan Metode Istinbath Hukum*, in Kanun: Jurnal Ilmu Hukum Vol. 19 No. 3, 2017, 547-570.

<sup>30</sup> A. Bahrudin, *Implementasi Maqasid al-Shari'ah sebagai solusi Problematika Sosial dan Kemasyarakatan Kontemporer*, in Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan Vol. 17 No. 1, 2017, 1-18.

<sup>31</sup> Agus Toni, *Revitalisasi Esensi Hukum Perkawinan Perspektif Pengadilan Agama di Indonesia: Rekonstruksi Pemahaman Tujuan Perkawinan sebagai Paradigma Kritis terhadap Fenomena Maraknya Gugat Cerai yang Dilakukan TKW di Pengadilan Agama*, in el-Wasathiya: Jurnal Studi Islam Vol. 7 No. 1, 2019, 125-142.

## Dinamics of Mombolasuako in Southeast Sulawesi: Islamic Law Perspective

analysis of the implications that arise from that attitude or action.<sup>32</sup> This normative argument cannot be positioned as the foothold and validity of *mombolasuako* action, so that the perpetrators/actors can marry according to their wishes. This means that the legality of the *mombolasuako* action cannot be found in the validity of an argument based on the CTSSS traditional marriages or their association with other elements. Although on the one hand, like in Maulidi's research conclusions, law is the construction of the existing system and correlates with other constructions in order to realize the objectives of the Shari'a.<sup>33</sup>

Based on the correlation of the system, the customary law of marriage will continue to support the realization of the benefit of the community. The emergence of destructive actions such as *mombolasuako* can not be separated from the construction of the dehumanist-unreligious customs. The concept of balance (*kufu*) which is based on morality and religion—not based on the wealth and the heredity—as implied in Islamic law needs to be integrated into the CTSSS marriage customs. Even the balance concept that was said in Yudowibowo's research conclusions, which was formed according to human standards itself, not based on heredity, wealth, or ethnicity;<sup>34</sup> can be incorporated into the CTSSS customary marriage framework. This is the concept that will lead to the growth of *sakinah* families on the foundation of love (*mawadah*) and affection (*rahmah*). These pattern and ideals are in accordance with the conclusions of one of the researches in which is, Taufik's research.<sup>35</sup> If this is achieved and realized, then actually the society has already focused on the realization of QS. al-Hujuraat verse 13—about human equality—and QS. ar-Ruum verse 21—about a *sakinah* family with nuances of love and affection.

There is an interesting phenomenon in the concept of *mombolasuako* in the CTSSS, this action seems to have become a norm that can be done by anyone. The term/condition is that the perp/the actor must provide—read, leaving a sarong in

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<sup>32</sup> Saidurrahman, *Hukum Islam: Hakikat dan Tujuan Pemberlakuan*, in *Jurnal asy-Syir'ah* Vol. 43 No. 1, 2009, 115-131.

<sup>33</sup> Maulidi, *Maqasid Syariah sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda*, in *al-Mazahib: Jurnal Pemikiran Hukum* Vol. 3 No. 1, 2015, 1-19.

<sup>34</sup> Syafrudin Yudowibowo, *Tinjauan Hukum Perkawinan di Indonesia Terhadap Konsep Kafa'ah dalam Hukum Perkawinan Islam*, in *Yustisia: Jurnal Hukum* Vol. 1 No. 2, 2012, 98-109.

<sup>35</sup> Otong Husni Taufik, *Kafaah dalam Pernikahan Menurut Hukum Islam*, in *Jurnal Ilmiah Galuh Justisi* Vol. 5 No. 2, 2017, 168-181.

front of the woman's family's house as a sign that their daughter has been taken away to marry. In addition, the sign from the sarong can also reduce the fines payment paid by the man family members to the woman's families. Conversely, if this sign is not carried out, the man family will be charged a very heavy fines. This pattern, in anthropology, is said to be customary law that lives in the community; in which it consists of several attributes, among others: an attribute of authority, an attribute that is universally maintained, an attribute that shows an obligation and is subject to sanctions.<sup>36</sup>

Based on this, *mombolasuako* can be positioned as customary law; so the legal origin is permissible. In the rules of fiqh (it) clearly shows that *al-ashlu fi adati al-ibahatu illa ma dalla daliluhu ala tahrimihi*; so the law of customary origin is permissible as long as there is no argument that prohibits the customs. Nevertheless, this permission still should not have a side of obstructions/loss; which in normative language, (it) needs to have the suitability and be in harmony with the religious principles or *sharia maqashid*. The conclusion in Hursh's research suggests that customs which is acceptable to Islamic law is customs that brings benefits when (it is) applied.<sup>37</sup> In this context, ijihad of Islamic law is very urgent to be put forward so that it can also adjust Islamic law to the dimensions of modernity, as concluded in Gebara's research.<sup>38</sup> Or, even the benefit of society, as revealed in Elmahjub's research.<sup>39</sup> It is only natural that in Ali's research is said that the struggle between Islam and customs in Sulawesi is a process of accommodation and conflict in the whole system.<sup>40</sup>

So it is clear that the position of the *mombolasuako* action in the CTSSS in this context is a form of action which has a degree of obstructions/loss/damages that is classified as strong, although it does not reach the definite classification of beliefs. Therefore, such action by some circles/groups is classified in the category

<sup>36</sup> Koentjaraningrat, *Pengantar Ilmu Antropologi*, (Jakarta: Renika Cipta, 2009), 161-162.

<sup>37</sup> John Hursh, *The Role of Culture in the Creation of Islamic Law*, in *Indiana Law Journal* Vol. 84 No. 4, 2009, 1401-1423; See in Ramdan Fawzi, *Aplikasi Kaidah Fikih al-'Adat Muhkamat dalam Bidang Muamalah*, in *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* Vol. 2 No. 1, 2018, 147-154.

<sup>38</sup> Rawaa El Ayoubi Gebara, *Islamic Law and Modernity*, in *Oxford Journal of Law and Religion* Vol. 6 No. 2, 2017, 323-346.

<sup>39</sup> Ezieddin Elmahjub, *Transformative Vision of Islamic Jurisprudence and the Pursuit of Common Ground for the Social Good in Pluralist Societies*, in *Asian Journal of Comparative Law* Vol. 14. No. 2, 2019, 305-335.

<sup>40</sup> Muhammad Ali, *Islam and Local Tradition: A Comparative Perspective of Java and Sulawesi*, in *Journal of Islamic Civilization in Southeast Asia* Vol. 5 No. 2, 2016, 175-212.

## **Dinamics of Mombolasuako in Southeast Sulawesi: Islamic Law Perspective**

of *sadd az-zari'ah*.<sup>41</sup> This position places the *mombolasuako* action as the marriage gate in the CTSSS, so that *halal haram* relations between men and women can be determined. That is, their relationship is still not at the level of legality of validity as husband and wife. Without the legality, *mombolasuako* still allows to open two opportunities, in which are: the opportunity to get to the marriage level or may as well not arrive at that level.

On the chance/possibility of marriage, the perps/the actors of *mombolasuako* should still meet the marriage terms and conditions. The most difficult thing in a *mombolasuako* marriage is meeting/fulfilling the guardian requirements from the woman's family. Moreover, in the context of Islamic law, the existence of a guardian in a marriage is one of legal requirements in order for the marriage to be valid—except for the Hanafi's school of thought. This agreement is based on QS. al-Baqarah verse 232 and also verse 221 which describe the authority of the guardian. Obviously, *mombolasuako* marriage in meeting the legal requirements needs to obtain "approval" or permission from the guardian of the woman. Because of "run away/eloping" action with the bride-to-be by leaving a sarong sign/symbol or not, is not a term and condition in marriage. However, it is an act that may lead to an act of obstructions/loss/damage on the perps/actors, both on the man and the woman's families.

### **E. Conclusion**

Thus, *mombolasuako* marriage as one of the customs in the CTSSS appears to have caused by the aspects of community disagreement with the existing marital traditions. Although it is part of the CTSSS order, it is considered as a form of action that deviates from traditional values and norms. Interestingly, the marking of the sarong in the *mombolasuako* action is considered as a symbol of notification to the woman's family. The meaning behind the sign is that the man has taken the woman away to be married. And, her parents do not need to look for their children. Even so, it turns out that there are still negative impacts—that is, the element of obstructions/loss/damages—from the pattern of *mombolasuako* marriage such as broken relations between families or even murder. Religious understanding of

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<sup>41</sup> Nasrun Haroen, *Ushul Fiqh*, (Jakarta: Logos, 1996), 162.

marriage through Islamic teachings is very much needed by the CTSSS. This is intended so that the CTSSS marriages are no longer closed—that is endogamy, and oriented only towards social and material prestige.

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