



The Role of Marriage Guardian of the Same Clan in the Traditional Marriage of Batak Toba Muslims in Samosir Regency in the Perspective of Islamic Law

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Abstract: A marriage guardian occupies a very important role in marrying the bride to the prospective groom. There is often a unique case found among the Batak Toba Muslims in Harian District, Samosir Regency in that the lineage of a marriage guardian is not clear (cannot be proven genetically). Thus, if a bride belongs to a Samosir clan, the leader of Samosir clan can be the marriage guardian for the bride as long as he is a Muslim. This study aims to see the implementation of traditional wedding ceremony in the Batak Toba Muslim community, to see some factors contributed to this phenomenon, and to see the role of a guardian in a traditional wedding ceremony of Batak Toba Muslim in the perspective of Islamic law. After analyzing the data, it was found that many cases of marriage involving guardian of the same clan but different lineage were triggered by little understanding of Islamic marriage. Therefore, the office of religious affairs is suggested to be more active in raising people's awareness of the important roles of a marriage guardian. In addition, for people whose marriage guardian is not from the same lineage should register their marriage with a hakim guardian as their marriage guardian.

Keywords: Marriage Guardian, Wedding Ceremony, Batak Toba, Islamic Law

Abstrak: Seorang wali nikah menempati peran yang sangat penting dalam menikahkan mempelai wanita dengan calon mempelai pria. Kasus unik yang sering dijumpai di kalangan umat Islam Batak Toba di Kecamatan Harian Kabupaten Samosir adalah tidak jelas silsilah wali nikah (tidak dapat dibuktikan secara genetik). Dengan demikian, jika mempelai wanita termasuk dalam marga Samosir, pemimpin marga Samosir dapat menjadi wali nikah bagi mempelai wanita selama dia beragama Islam. Penelitian ini bertujuan untuk melihat pelaksanaan upacara perkawinan adat pada masyarakat Batak Toba Muslim, melihat faktor-faktor yang menyebabkan fenomena tersebut, dan melihat peran wali dalam perkawinan adat Batak Toba Muslim dalam perspektif hukum Islam. Setelah dilakukan analisis data, ditemukan bahwa banyak kasus perkawinan yang melibatkan wali yang satu marga namun berbeda nasab yang dipicu oleh sedikitnya pemahaman tentang perkawinan Islam. Oleh karena itu, kantor urusan agama disarankan untuk lebih aktif dalam meningkatkan kesadaran masyarakat akan pentingnya peran wali nikah. Selain itu, bagi orang yang wali nikahnya tidak sedarah harus mendaftarkan perkawinannya kepada wali hakim sebagai wali nikahnya.

Kata Kunci: Wali Nikah, Akad Nikah, Batak Toba, Hukum Islam

Introduction

Marriage must be carried out by following rules written in the Qur'an and as-Sunnah. The presence of a guardian is a condition of a marriage to be valid. A marriage guardian holds an important role in a wedding ceremony. To be considered valid and legal by the laws and regulations in Indonesia, every marriage must be registered.¹ The marriage of Muslim citizens is recorded by the Kantor Urusan Agama (the Office of Religious Affairs) while citizens of other religions register their marriage to the Bureau of Vital Statistics. Without registering, a marriage is considered invalid since it does not follow the applicable laws and regulations. This has been regulated in Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 in that "every marriage is recorded according to the applicable laws and regulations".²

Islam has the conditions and pillars of marriage, for example, the presence of a marriage guardian is a pillar of marriage. Without a guardian, a marriage cannot be carried out because the guardian will marry off the bride to her future husband. This provision is in line with the hadith of the Prophet Muhammad PBUH, "Narrated by Abu Musa, The Prophet Saw. said: There is no marriage without the permission of a guardian" (Narrated by Imam Ahmad and the Four Imams).³ The Prophet's hadith regarding marriage guardians can be seen as follows: "From Abi Burdah Ibnu Abi Musa from his father, he said: The Prophet Saw. said: There is no marriage without the permission of a guardian" (Narrated by Ahmad, Abu Daud, Turmudzi, Ibn Hiban, and Al-Hakim).⁴

Classical and contemporary fiqh teachings share a common view in determining marriage guardians in that marriage guardians are classified as the natural guardians and the legal guardians. When marriage is carried out by a natural guardian, it rarely raises an issue. However, when marriage is carried out by a legal guardian, sometimes this becomes a problem. Therefore, experts in Fiqh and Islamic law have different views in determining the fatwa regarding the legal guardian in marriage.⁵

The position of a marriage guardian in Islam is included as a pillar of marriage. Therefore, Imam Syafi'i considered that marriage can be invalid or void if the guardian of the prospective bride is not present. This opinion is different from Imam Abu Hanifah who stated that the guardian of marriage is not one of the pillars of marriage. Thus, marriage is considered valid even without a guardian.⁶ Marriage must be carried out by the applicable legal provisions. Marriage is declared valid if the conditions and pillars of marriage are fulfilled. The issue of marriage guardian is still widely debated because of different views. Some people argue that one of the pillars that determine the validity of a marriage is the presence of a guardian. Meanwhile, other people argue that marriage is still valid even without a guardian provided the bride and groom have reached adulthood. Regarding the age limit, it is stated in Law No. 1 of 1974 and BW (Burgelijk Wetboek) that the adult age limit is 21 years old.⁷

¹ Khoiruddin Nasution, *Hukum Pernikahan I: Dilengkapi Perbandingan UU Negara Muslim Kontemporer*, Revisi (Yogyakarta: Academia dan Tazaffa, 2005), 25.

² Chapter 2 Article (2).

³ Ibnu Hajr Al-'Asqalaniy, *Bulugh Al-Maram Min Adillati Al-Ahkam* (Beirut: Dar al-Ihya' li at-Turats, 2007), 128.

⁴ Muhammad bin Ismail al-Kahlani Al-Shan'ani, *Subulussalam*, Juz 3 (Kairo: Syirkah Maktabah Mustafa al-Babi al-Halabi, 1950), 117.

⁵ Mahmud Yunus, *Hukum Pernikahan Dalam Islam Menurut Mazhab Syafi'i, Hanafi, Maliki, Hambali*, 10th ed. (Jakarta: Hidakarya Agung, 1983), 50.

⁶ Wahbah Al-Zuhaily, *Al-Fiqh Al-Islami Wa Adillatuhu Jilid VI* (Damaskus: Dar Al-Fikr, 1985), 168.

⁷ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perwakinan* (Jakarta: Kencana, 2011), 190.

The issue of guardianship in marriage according to Law Number 1 of 1974 is clear. However, it is not that clear because there is an issue about who has the right to become a marriage guardian. In practice, there are issues regarding the position of marriage guardian.⁸ The Office of Religious Affairs has a function in implementing laws regarding marriage, both in recording marriages and in developing a *sakinah* family (a calm and peaceful family physically and spiritually).⁹

The community of Batak Toba Muslim in Samosir Regency has three rules in carrying out marriage: 1) Marriage as stipulated in Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law No. 1 of 1974 in conjunction with Law Number 16 of 2019 concerning marriage; 2) Marriage specified in customary law; 3) Marriage specified in the religious provisions.¹⁰

The processes found in the implementation of marriages according to customary law are still carried out in addition to other ceremonies. This is stipulated in government regulations Number 9 of 1975 and the provisions set in religion.¹¹ Bataknese marriage involves 14 stages, namely: 1) *Mangaririt* is the stage of marriage preparation which includes choosing a girl to be his wife based on the criteria of the man or his family; 2) *Mangalehon Tanda* is the stage of marriage when both prospective groom and bride give a sign that they have found their marriage partner; 3) *Marhusip* (marriage proposal) is the stage when the man proposes to a woman who will become a part of his family; 4) *Marhata sinamot* is the stage of marriage when both families discuss the number of sinamot from the man's side, how many cows are needed, how many ulos are needed, how many invitations will be distributed, and where the wedding ceremony will be held; 5) *Pundun Saut* is the stage when the male relative will deliver the meat of the livestock to the *parboru* and after eating together it is continued with the distribution of *Jambar Juhut* (meat) to the relatives; 6) *Martumpol* is also known as the engagement ceremony, but literally *martumpol* is the event where the bride and groom are bound in front of the church and make a promise to get married; 7) *Martonggo Raja* is the stage when the two parties from the bride and groom will discuss the traditional D-day procession in more detail; 8) *Manjalo Pasu-Pasu Parbagason* (Wedding Blessing). The wedding blessing of the bride and groom is carried out in the church by the priest. After the wedding blessing is complete, the bride and groom are legally husband and wife according to the church; 9) *Ulaon Show* (Traditional Wedding Party) is the stage when the bride and groom will also receive blessings from the whole family, especially the parents; 10) *Dialapjual* means that if the wedding party is held at the bride's house, then the event takes the bride to the groom's place; 11) *Ditaruhon Jual* is the stage if the wedding ceremony is held at the man's house, then the bride is allowed to go home to her parents' place, then be escorted again by her *naboru* (siblings) to the husband's place; 12) *Paulak Une* is the stage when both parties are free to visit each other after a few days after the wedding ceremony which is usually held a week after the wedding ceremony; 13) *Manjae* is the stage after the bride and groom have lived together for a while (if the man is not the youngest child), then he will be treated "pajae", that is, separate houses and livelihoods; and 14) *Maningkir Tangga* is the stage after the bride and groom are spoiled or stay at their house, the parents and the bride's family come to visit their house and have a meal together.

⁸ Syarifuddin, 198.

⁹ Departemen Agama RI, *Tugas-Tugas Pejabat Pencatat Pernikahan, Bimbingan Masyarakat Islam Dan Penyelenggaraan Haji Departemen Agama RI* (Jakarta, 2004), 25.

¹⁰ Djaren Saragih, Djisman Samosir, and Djaja Sembiring, *Hukum Perkawinan Adat Batak: Khususnya Simalungun, Toba, Karo Dan UU Tentang Perkawinan (UU No. 1/1974): Suatu Tinjauan* (Bandung: Tarsito, 1980), 72.

¹¹ Saragih, Samosir, and Sembiring, 73.

In a traditional wedding ceremony of Batak Toba Muslims, a marriage guardian can be a man of the same clan with the bride but has different lineage with the bride (cannot be proven genetically) if the bride has no *aqrab* (direct) guardian. A woman from Samosir Regency belongs to the Samosir Clan, so the traditional leader of the Samosir Clan is considered eligible to become the bride's guardian as long as he is a Muslim.¹² Several informants mentioned that this had been going on for a long time, and its origin was difficult to track because there was no information found to assume that one clan is one lineage.

In the implementation of traditional marriage among Batak Toba Muslim communities, guardianship occurs based on the same clan in which the traditional leader determines the guardian for the bride. It is not uncommon for the people of Batak Toba to get married without registering their marriage at the Office of Religious Affairs because their marriage is only carried out as a wedlock ritual. This often happens, especially in Harian Sub-district in Samosir Regency. This is a location that upholds the implementation of traditional traditions that allow the bride and groom to have a marriage guardian from someone who has the same clan as the bride (even though the guardian has a different lineage from the bride).

Based on the results of interviews conducted with the traditional leader of Batak Toba who was given a role as a guardian of the same clan,¹³ it was found that he cannot name and explain the lineage. An interview conducted with a guardian of the Samosir clan who claimed to be related to the bride's father (Christian) indicates that the man was unable to explain the detailed genealogy that proves his relationship with the bride's father. He just explained that he belongs to the same clan as the bride, and this indicates that they are a family.¹⁴

In Islam, the presence of a guardian is one of the pillars and conditions for the validity of a marriage. In this case, it becomes an important aspect that the head of the Office of Religious Affairs should understand clearly the position of the guardian in a marriage.

Based on the explanation above, several things need to be discussed in this study. First, how is the implementation of traditional marriage in the Batak Toba Muslim community in the Harian District of Samosir Regency? Second, what are some leading factors to clan guardianship in a traditional marriage of Batak Toba Muslim in the Harian District of Samosir Regency? Third, how is the role of a guardian in a traditional marriage of Batak Toba Muslim in the perspective of Islamic law?

Traditional Marriage of Batak Toba

In Batak Toba, the man who finds himself in a marriage is called *Tunggane Doli* (husband) and the woman who finds herself in a marriage is called *Tunggane Boru* (wife).¹⁵

1. Marriage System

As in the Batak Simalungun community and other Bataknese communities including the community of Batak Toba Muslim, the marriage system is exogamy and asymmetric connubium.

¹² An interview carried out with Muslim Traditional Leaders: Hasyim Simbolon and Abdurrahman Samosir on 28 June 2019 in Harian District, Samosir Regency.

¹³ An interview carried out with Opung Baliga Parlomuan Sitanggang in Harian District, 28 June 2019.

¹⁴ An Interview carried out with Baki Samosir in Onan Runggu District on 27 June 2019

¹⁵ Saragih, Samosir, and Sembiring, *Hukum Perkawinan Adat Batak: Khususnya Simalungun, Toba, Karo Dan UU Tentang Perkawinan (UU No. 1/1974): Suatu Tinjauan*, 27.

Marriage must be carried out with the people outside of their own clan, and marriage is not allowed to be reciprocal. If a marriage occurs within the same clan, it is called *sumbang* (discordant) marriage. If this kind of marriage happens, usually the people involved in this kind of marriage will be given a punishment from the traditional leaders. However, within the community of Batak Toba, the system of marriage with the exogamy clan has been influenced by time and religion. If a discordant marriage occurs (although it is strongly opposed and rarely occurs), a party called the *Manompas Bong Bong* is held. At this party, all clan members and traditional leaders are gathered, and they will sacrifice seven buffalos. Both parties will apologize to the traditional leaders and society.

2. Forms and Rituals of Marriage

Every marriage always involves two parties, namely the groom's family and the bride's family. The form of marriage that we see in Batak Society is called "*Jujur Marriage*". *Jujur Marriage* refers to a marriage in which the family of the prospective groom gives something called "*Jujur*" to the family of the prospective bride. "*Jujur*" is often in the form of money given before the woman goes to the groom's family.

However, sometimes the money will be paid after the wedding ceremony. In the "*Jujur*" marriage, the woman is always brought to the groom's family after the wedding ceremony. Actually, the function of "*Jujur*" itself is to let go the bride from her clan, and let her stay in the clan of her husband. Thus, when a woman gives birth to a child, the child follows the clan of her husband. This is the basis of patrilineal society which is based on the relationship of the man's lineage.

In the language spoken by Batak Toba, "*Jujur*" is also known as "*Sinamot*" which means wealth obtained from the work of men. Therefore, in Batak Toba family, the man must hand over the "*Sinamot*" to the bride's family. The "*Sinamot*" is usually in the form of money, but sometimes in the form of goods. The amount of "*Sinamot*" is based on an agreement from both families. This proves that the issue related to marriage is not only related to the man and woman who will get married but also related to the families of each party (the groom's and bride's family). The "*Sinamot*" is often assumed by Bataknese people as "*Boli*" or "*Tuhor*" which means "as if the bride was bought by the groom's family". Since the bride has been bought, it means the relationship between the bride and her family has been cut, so the bride's parents have no more rights over their daughter.

If referring to the structure of "*Dalihan Natolu*", the bride's family (*Hula-hula*) is highly respected by the groom's family. Therefore, giving the "*Sinamot*" (in the form of gifts) is a tribute to the "*Hula-hula*" so that they can allow their daughter to be the groom's wife. Once the "*Sinamot*" is accepted, the bride leaves her father's clan. This does not mean breaking up with the bride's family, but leaving here means that if the bride gives birth to a child, the child will not follow the clan of the bride's father, but will follow the clan of the groom's family. Giving the "*Sinamot*" to the bride's family also results in a shift in wealth from the groom's family to the bride's family.

The position of guardian in the marriage ceremony within the community of Batak Toba Muslim from the perspective of Islamic law

There are two kinds of guardian of wedlock, namely a guardian from major nasab (the guardian who has the blood ties with the bride to be married), and a guardian from major-hakim (the head of a

Muslim state judge to act as a guardian of marriage if the guardian *nasab* not exist or does not fulfill his duty). The most popular view comes from the *Jumhur Ulama* who mentions that guardianship is a pillar in marriage in that marriage is not valid without the presence of a guardian.

In more detail, those who can become guardians can be seen as follows:

- a. First, the group of male relatives: father, grandfather, and continues to the relatives from the father's side, and so on
- b. Second, the group of relatives of biological brothers and their male descendants
- c. Third, the uncle's relatives group: the father's biological brother, brothers of the same father, and their male descendants
- d. Fourth, the group of grandfather's biological brothers, brothers of the same grandfathers and their descendants.¹⁶

From the information above, it is clear that the guardian in a marriage should be people with clear *nasab* (lineage) with the bride-to-be. This indicates that Islamic law is very selective in determining who has the right to be a guardian in a marriage. Regarding the marriage guardian who is not in the same "nasab" (lineage), which is the topic of the discussion in this study, it is necessary to pay attention to several things:

- a. From the same clan with a clear kinship relationship with the woman.
- b. From the same clan, but has no kinship with the bride-to-be

If the lineage is clear with the bride, there will be no issue in the marriage ceremony because the woman knows the lineage of her guardian, and of course, this is in line with the concept of guardianship in the existing law. However, this will be a problem if the guardian of the same clan has no clear kinship with the bride because someone can intentionally or unintentionally enter and let go from a certain clan. As a result, the grouping of clans based on blood relations (*nasab*) can no longer be maintained. This can be seen from the following views:

From a Customary Perspective

a. Respecting guardians/ parents

Every child in the Batak Toba community inherits his father's clan (patrilineal) genetically. If the father's surname is Gultom, his children will be given the Gultom surname as well. However, in practice, within the Batak Toba community in Harian District, Samosir Regency, it was found that people of the same clan may not be genetically related. For example, in the case of an adopted child, the adopted child will be given a surname according to the surname of his adoptive father although the child is not a biological child. Thus, in this case, people can be from the same clan, but they may have different *nasab* (lineage).

In Islamic studies, adoptive parents cannot act as guardians because they do not have a kinship relationship with the woman. In this situation, the hakim guardian has the right to marry a woman who does not have a guardian.¹⁷ This happened to several bridal couples who were interviewed for this study (Olongsyah Samosir and Junaida br Harianja (these are not their real names). In this case,

¹⁶ Cik Hasan Bisri, *Kompilasi Hukum Islam* (Bandung: Logos, 1999), 220.

¹⁷ Giulia calvi, *Widows, the state and the guardianship of children in early modern tuscany*, in Sandra Cavallo and Lyndan Warner (eds) *Widowhood in Medieval and early Modern Europe* (New York, 1999), p. 213.

Junaida br Harijanja converted to Muslim, and her biological father is adherence to a different religion, so her father automatically cannot become her marriage guardian. Thus, the solution taken was to appoint a guardian who has the same clan as the bride-to-be, and the guardian's surname is Harija as well. A similar case also happened to Ojak Gultom and Nur Siti Sinaga (these are not their real names), but before choosing their guardian they had consulted with the authorities and religious leaders who are entrusted by the community as the kadi. However, it was unfortunate that the religious leaders also suggested the existing customary rules.¹⁸ This should be the duty of government officials of the ministry of religion. They should be more selective in selecting the existing marriage officers.

b. **The approval / granting of clans**

According to Helman Billy Situmorang, the implementation of custom in approving clans can be seen as follows:

- 1) Can be carried out before or after the marriage ceremony
- 2) Request to elder relatives from the chosen clan, followed by determining the day, place, and form of the custom to be carried out.
- 3) The delivery of *Sinamot* (dowry) for the bride in the form of money or goods, then a party ceremony and eating together as well as the delivery of “ulos” (traditional clothes) and “penjambaran” (food).¹⁹

The process of granting clan to someone can be seen as follows:

- a. The groom's parents asked their uncle to be willing to accept his nephew's future wife of the same clan.
- b. After being approved and accepted, the customary ratification of the clan is held in front of the traditional leaders of the Batak indigenous people which is carried out transparently with cash. Cash means paying a certain amount of money to their uncle so that he will give the name of this clan and treat the person like his own biological child.

Thus, in carrying out the ratification or inauguration of the clan according to the Batak Toba Muslim custom, women who do not belong to Bataknese tribe can become members of the Batak Toba indigenous community and are a part of the clan group that they choose. Thus, the granting of a clan creates two legal consequences. Since the granting of the clan, the woman who did not belong to Bataknese tribe become the Bataknese people with the approved name of a clan, and they have positions, rights, and responsibilities that are similar to the other people in the community. According to Gultom Raja Marpondang, there is no need for the Batak tribe in inter-tribal marriages in Indonesia so that the son-in-law can become a part of Batak community. Therefore, giving the name of a clan should be followed by changes in attitudes and behavior so that the person concerned can truly accept it as a Batak Toba indigenous community.

c. **The impact of marriage with the same clan**

Marriage of the same clan is a tradition that is commonly found today. It is still rare for Batak people to violate this prohibition. The prohibition of the marriage of the same clan is a prohibition

¹⁸ Wawancara dengan Ojak Gultom dan Nur Siti br sinaga (bukan nama sebenarnya), pada tanggal 29 Juli 2019.

¹⁹ Herman Billy Situmorang, *Ruhut- Ruhut Ni Adat Batak* (Medan: BPK. Gunung Mulia, 1983), 176.

on marriage between a man and a woman of the same clan. For example, men of the Gultom clan cannot marry the women of the Gultom clan.²⁰

If this prohibition is violated, one of the sanctions imposed on them is that woman who marries the same clan as her husband is subject to receive punishment in Batak Toba custom and the local community does not accept the marriage partner by expelling him from the community. However, as time develops, the marriage of the same clan is recommended by changing the bride's clan. This is obtained by asking the clan's name of the mother of the husband through a customary process.²¹

From the Perspective of Law

a. The Marriage Procedures

The processes of marriage include things that should be carried out by registering marriages at the Office of Religious Affairs. During the registration, the officer will check the file of the prospective bride and groom. Marriage inspection aims to validate the truth behind the marriage data, including the fact related to the guardian in marriage. If it turns out that the guardian does not comply with the provisions, the officer will postpone the marriage until the pillars of the marriage requirements have been fulfilled by the bride and the groom.

In Islam, the presence of a guardian in a marriage is a condition for the validity of a marriage. In this case, the Office of Religious Affairs has an important role in carrying out the marriage process, knowing clearly about the position of the woman's guardian.

Based on the observation made in this study, many married couples did not follow the procedures in carrying out marriages at the Office of Religious Affairs in the sub-district. The community carried out marriages as a religious ritual in the tradition of Batak Toba. This is due to the condition of the people who do not understand the procedures of registering a marriage. Based on the analysis in this study, most of the marriage ceremonies with guardians of different lineage because of the lack of the role of the Office of Religious Affairs in disseminating the provisions for the implementation of marriage. As a result, many marriages occur without being registered with the Office of Religious Affairs, and sometimes the marriages are carried out only as religious rituals and customs.

b. Guidance for Bride and Groom

In addition to registration by carrying out a test ten days before the wedding, marriage education for the bride and groom should also be completed. This education aims to give the groom and bride education related to marriage life. However, some information was received from the officers at the Office of Religious Office in the sub-district. It was found that the guidance for prospective marriage couples also consisted of materials on the conditions and pillars for a valid marriage.

Theoretically, the provisions relating to the terms and pillars of marriage have been stated earlier. Thus, it can be concluded that the provisions regarding marriage, especially those relating to guardians can be understood by the bride and groom who are about to get married. Then, the marriage ceremony with a guardian of a clan who is not in the same line will not occur.

²⁰ H.M.D Harahap, *Adat Istiadat Tapanuli Selatan* (Jakarta: PT RajaGrafindo Persada, 1986), 46.

²¹ An interview with Bataknese traditional leader, Bapak Hasyim Simbolon on, 29 June 2019

c. The Office of Religious Affairs should be more active

The existence of a local office of religious affairs should be more active in handling the marriage process. This was confirmed by the Head of the office of religious affairs at that time. He revealed that there were only two employees, namely the Head of the office of religious affairs and a staff. To cope with such a large area, the office of religious affairs relies on the role of religious leaders in the sub-district. As a result, the office of religious affairs is not optimal in handling the marriage process, especially in the remote villages which are far from the religious affairs office.²²

The Legal Consequences of Marriage with a guardian of the same clan

In marriage, the guardian is part of the pillars and the marriage is considered valid if there is a guardian. As mentioned in the compilation of Islamic law chapter IV, the third section, article 29, marriage guardians in marriage are pillars that must be fulfilled for the prospective brides who act to marry the prospective brides. However, the explanation in the law does not stop here, further, the law regulates how a person can be entitled to become a guardian based on its order.

If someone acts as a guardian of a bride-to-be, but does not belong to the order stipulated in the marriage law, and there is no clear lineage between him and the bride-to-be, then the marriage will be invalid. On the other hand, if the guardian's lineage is clean and can be justified by law, the marriage will be valid. Based on the results of an interview conducted with a guardian of the same clan in the Harian District, it was found that he could not explain and explain the previous generations of the bride-to-be's family. For example, the guardian whose surname is "Sitanggang" claimed to be related to the bride-to-be. However, he could not explain the genealogy of his kinship with the bride-to-be. He just explained that he is considered as a family of the prospective bride because he has the same surname as the bride (Sitanggang), and their great-grandfathers were brothers.²³

Thus, what is the solution to a marriage with a guardian who is not from the same lineage as the bride-to-be? Based on the researchers' observation, generally, the married couples interviewed have been married for more than five years, and they live in harmony, and even have had several children. In this case, their marriage can be annulled or continued by renewing the marriage records.

In law number 1 of 1974 concerning marriage, it is stated in article 26 that: 1) A marriage taking place in the presence of an unauthorized marriage registrar, invalid marriage guardian, or held without the presence of two witnesses may be requested for cancellation by the family in a straight line of descent from the husband's or wife's lineage, the prosecutor and the husband or wife; 2) The right to annul the marriage by the husband or wife based on the reasons in paragraph (1) of this article is void if they are already living together as a husband and a wife, and can show a marriage certificate that is not authorized, and the marriage must be renewed so that it becomes valid.²⁴

Factors behind the cases of involving a guardian of the same clan in the traditional marriage of Batak Toba Muslim

Several factors contribute to the cases of involving a guardian of the same clan: Muallaf. Most of the cases involving a guardian from the same clan can occur because the prospective bride (muallaf)

²² Wawancara dengan Bapak Yunaidy Sitorus S.Kom kepala KUA kecamatan Harian pada tanggal 3 juli 2019.

²³ An interview was conducted with Mr. Sitanggang on 3 Juli 2019.

²⁴ Barbara Harris, *English Aristocratic Women, 1450-1550: Marriage and family, Property and Careers* (Oxford, 2002), p. 129.

just converted to Islam before getting married. The prospective bride from the Harian subdistrict and even from outside of the Samosir Regency gets married in the Harian subdistrict of the Samosir Regency. In this condition, automatically the guardian Aqrab (Nasab) cannot act as a guardian for the bride because he has different religion from the bride. If the bride who converts to Islam wants to get married, the prospective bride should appoint a guardian who belongs to the same clan as her clan so that the guardian can act in the wedding ceremony even though the guardian does not have a clear lineage relationship with the prospective bride. They mention that it was the family of the prospective bride who appoint a marriage guardian. If the handover of dowry has been held, the prospective bride is considered a family member is known as *Ito* or sibling, and sometimes she is called as the father's family. Then, in practice, if the relationship between a guardian and the prospective bride is asked, the one who will answer this question will be the father's family, and sometimes they are called the family of the bride.

Not getting parental consent. *Mangaklua* marriage is a form of "Jujur" marriage in which the groom and the bride get married without going through the proper procedure. This means the groom does not give the "Sinamot" (dowry). They think of the customary issue later and think of marriage as more important. Such marriage is often found in Batakese customs. Such marriage is carried out because they do not get the approval of the woman's family. *Mangaklua* couples usually look for a safer (far) place by looking at a family of the same clan to get married. To find a shortcut and avoid adultery, the bride is advised to find a guardian who shares the same clan.

The community of Batak Toba Muslim is mostly living in a rural area where access to many roads is difficult to access, and the community is growing rice fields for the necessities of life. Thus the Batak Toba Muslims in Harian District, who live within this condition often take alternative paths in marriage which is looking for a guardian of the clan. In the community of Batak Toba sometimes laws and customary rules take precedence over the laws applied by the government and Islamic law. The problem raised is that people are more inclined to use customary law than complex communities who prefer the regulations of the government's office of religious affairs. The settlement which is far from the city is quite far from the office of religious affairs (approximately 45 minutes to 1 hour), and it requires a sufficient amount of transport fare. Even though the marriage at the office of religious affairs is free the public is also not always able to meet office employees because activities in the office are not always active.

Conclusion

Avoiding the administrative procedures is the most reason received in this study. The procedures should be followed and discussed in regards to the pillars and conditions in marriage as well as those who become the marriage guardians at the Office of Religious Affairs. There are often misunderstandings and reluctance to directly ask the Office of Religious Affairs, especially when the residents' settlements are very far from the Office of Religious Affairs. This is in line with what was conveyed by Mr. Y Sitorus, the Head of the Religious Office Affairs in the Harian District. Lack of public understanding about Islam. The lack of understanding about Islam can be seen from the low level of education in schools in Samosir Regency. When the community was interviewed about Islamic teachings, they showed little understanding. The community understands non-Islamic religion taught to them at schools, and most of them converted to Islam (muallaf). This is also due to

the lack of Islamic education. Thus, the understanding of religion in the community of Batak Toba is lacking, especially regarding Islamic law in the terms and conditions of marriage.

REFERENCES

- Al-`Asqalaniy, Ibnu Hajr. *Bulugh Al-Maram Min Adillati Al-Ahkam*. Beirut: Dar al-Ihya' li at-Turats, 2007.
- Al-Qalyubi, Shihabuddin Ahmad bin Ahmad, and Ahmad Al-Burullusi. *Hasiyata Al-Qolyubi Wa Al-Umayrah, Juz III*. Beirut: Dar al Kutub al 'Ilmiyyah, n.d.
- Al-Shan'ani, Muhammad bin Ismail al-Kahlani. *Subulussalam, Juz 3*. Kairo: Syirkah Maktabah Mustafa al-Babi al-Halabi, 1950.
- al-Syarwani, Abdul Hamid. *Al-Hawasyi as-Syarwani, Juz 9*. Bairut: Dar al Kutub al 'Ilmiyyah, n.d.
- Al-Zuhaily, Wahbah. *Al-Fiqh Al-Islami Wa Adillatuhu Jilid V*. Damaskus: Dar Al-Fikr, 1985.
- an-Naisābūrī, Abi al-Husein Muslim bin al-Hajjāj al-Qusyairī. *Sahih Muslim*. Beirut: Dar al-Fikr, 2003.
- Barbara Harris, *English Aristocratic Woment, 1450-1550: Marriage and family, Property and Careers* (Oxford, 2002).
- Bertha T. Pardede, et al. *Bahasa T tutur Perhataan Dalam Upacara Adat Batak Toba*. Jakarta Timur: Departemen Pendidikan dan Kebudayaan, 1981.
- Bisri, Cik Hasan. *Kompilasi Hukum Islam*. Bandung: Logos, 1999.
- Departemen Agama RI. *Alquran Dan Terjemahannya*. Bandung: CV. Diponegoro, 2000.
- . *Tugas-Tugas Pejabat Pencatat Pernikahan, Bimbingan Masyarakat Islam Dan Penyelenggaraan Haji Departemen Agama RI*. Jakarta, 2004.
- Departemen Pendidikan dan Kebudayaan. *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka, 1989.
- Emzir. *Metodologi Penelitian Kualitatif: Analisis Data*. Jakarta: PT RajaGrafindo Persada, 2010.
- Giulia calvi, Widows, the state and the guardianship of children in early modern tuscany, in Sandra Cavallo and Lyndan Warner (eds) *Widowhood in Medieval and early Modern Europe* (New York, 1999).
- Harahap, H.M.D. *Adat Istiadat Tapanuli Selatan*. Jakarta: PT RajaGrafindo Persada, 1986.
- Ma'luf, Louis. *Al-Munjid Fi Al-Lugah Wa Al-A'lam*. Beirut: Dar al-Masyariq, 1987.
- Mahmood, Tahir. *Family Law Reform in The Muslim World*. New Delhi: The Indian Law Institut, 1972.
- Nasution, Khoiruddin. *Hukum Pernikahan I: Dilengkapi Perbandingan UU Negara Muslim Kontemporer*. Revisi. Yogyakarta: Academia dan Tazaffa, 2005.
- Nata, Abuddin. *Metodologi Studi Islam*. Jakarta: Rajawali Pers, 2000.
- Nur, Djaman. *Fiqh Munakahat*. Semarang: Dina Utama, 1993.
- Saragih, Djaren, Djisman Samosir, and Djaja Sembiring. *Hukum Perkawinan Adat Batak: Khususnya Simalungun, Toba, Karo Dan UU Tentang Perkawinan (UU No. 1/1974): Suatu Tinjauan*. Bandung: Tarsito, 1980.
- Sihombing, T.M. *Filsafat Batak: Tentang Kebiasaan-Kebiasaan Adat Istiadat*. Jakarta: Balai Pustaka, 2000.
- Situmorang, Herman Billy. *Ruhut- Ruhut Ni Adat Batak*. Medan: BPK. Gunung Mulia, 1983.

- Syarifuddin, Amir. *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang- Undang Perwakinan*. Jakarta: Kencana, 2011.
- Tampubolon, M. *Pedoman Umum Pelaksanaan Adat Batak Toba*. Medan: Bintang Inc, 1977.
- Vergouwen, J.C. *Masyarakat Dan Hukum Batak Toba*. Jakarta: LKiS, 1986.
- Yunus, Mahmud. *Hukum Pernikahan Dalam Islam Menurut Mazhab Syafi'i, Hanafi, Maliki, Hambali*. 10th ed. Jakarta: Hidakarya Agung, 1983.
- Zahrah, Muhammad Abu. *Muhadzara Fi Al-Akad Al-Zawaj Wa Al-Asaruh*. Beirut: Dar al-Fikr al-Arobi, n.d.