

NINIK MAMAK PERMIT AS A CONDITION IN MARRIAGE: A REVIEW OF MASLAHAH MURSALAH IN THE MIDST OF THE EROSION OF MINANGKABAU CUSTOMS



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Abstract

In the Minangkabau traditional tradition, obtaining permission from the ninik mamak before holding a wedding is a must. However, this provision is different from those stipulated in fiqh law and laws and regulations. The uniqueness of this research lies in the discussion of the issue in the current context and the use of the maslahah mursalah approach as an analytical point of view. This research is a literature study with a qualitative approach that uses descriptive analysis. The results of the study show that from the perspective of maslahah mursalah, the licensing of ninik mamak can be justified. This sees the vital role played by ninik mamak in managing the affairs of his people. This role is similar to the role of guardians in Muslim society. However, given the setback in the implementation of customs, it is important to review these obligations, especially by considering the relevant benefits today. Currently, the active role of ninik mamak in guiding and protecting members of their tribe is no longer as strong as it used to be, so the benefits are less real. Therefore, it is important to review the applicability of this rule in more depth.

Abstrak

Dalam tradisi adat Minangkabau, mendapatkan izin dari ninik mamak sebelum melangsungkan pernikahan merupakan suatu keharusan. Namun, ketentuan ini berbeda dengan yang diatur dalam hukum fikih dan peraturan perundang-undangan. Keunikan penelitian ini terletak pada pembahasan isu tersebut dalam konteks kekinian dan penggunaan pendekatan maslahah mursalah sebagai sudut pandang analisis. Penelitian ini merupakan studi pustaka dengan pendekatan kualitatif yang menggunakan analisis deskriptif. Hasil penelitian menunjukkan bahwa dari perspektif maslahah mursalah, pemberian izin kepada ninik mamak dapat dibenarkan. Hal ini melihat peran vital yang dimainkan oleh ninik mamak dalam mengelola urusan kaumnya. Peran ini serupa dengan peran wali dalam masyarakat Muslim. Namun, mengingat adanya kemunduran dalam pelaksanaan adat, penting untuk meninjau kembali kewajiban-kewajiban tersebut, terutama dengan mempertimbangkan manfaat yang relevan saat ini. Saat ini, peran aktif ninik mamak dalam membimbing dan melindungi anggota sukunya tidak lagi sekuat dulu, sehingga manfaatnya kurang nyata. Oleh karena itu, penting untuk meninjau penerapan aturan ini secara lebih mendalam.

INTRODUCTION

In the perspective of classical fiqh, the permission or willingness of the parties directly involved in the marriage, namely the groom, the bride, and the guardian of the woman's side is a very important element and cannot be ignored. All three have a central position in the process of implementing the marriage contract. In this case, the conscious and voluntary consent of the groom is proof that he is responsibly willing to carry out his obligations as a husband. Likewise with the bride, her involvement and consent show that she accepts the contract without pressure or coercion, so that her status as a legal wife becomes strong in the eyes of the sharia.



In addition, the wali on the women's side also plays an important role, especially in certain schools of fiqh such as Shafi'iyah and Hanabilah, where the presence and permission of the wali are considered as absolute conditions for the validity of the marriage contract. The licensing of the three is not only a form of formality, but also a reflection of awareness, willingness, and agreement to build a marriage bond in the sharia corridor. Therefore, classical fiqh places the willingness or permission of each of these parties as one of the main conditions that must be met so that the marriage contract can be considered valid and have legal force in the Islamic view.

As part of the cultural wealth that grows and develops in Indonesian society, Minangkabau customs have a unique and distinctive social system, one of which can be seen from the important role given to the ninik mamak in traditional life, especially in marriage matters. In the traditional structure of Minangkabau which adheres to the matrilineal system, the ninik mamak becomes the central figure who has the authority to regulate and make important decisions related to members of his tribe, including in terms of choosing a life partner.

In the context of marriage, the existence and consent of ninik mamak is not only a form of respect for customs, but also a condition that cannot be ignored. A marriage cannot be held legally according to Minangkabau customs if it does not obtain the blessing and permission of the ninik mamak. This license shows that the marriage has gone through a deliberation process in a large family environment and is considered feasible in terms of kinship relationships, social status, and the couple's worthiness. Thus, ninik mamak has the function of supervision, protection, as well as a guarantee that the marriage to be held is truly in line with the traditional values upheld by the Minangkabau people.

Research on this problem is not new research in the academic world. Research that discusses this problem has been carried out by previous researchers in the research raised. Ade Daharis and Hertasmaldi are among several researchers who have raised this theme in their research. The research that the author raised in this study has differences that distinguish it from previous research. In this study, the author tries to look at this problem with a different analysis knife. Also, researchers relate this rule to the degradation phenomenon experienced by the Minangkabau customs in modern times.

This research seeks to examine and understand the problems raised through the perspective of Islamic law. The focus of the study is directed at how the issue is understood and analyzed within the normative framework of Islamic law. To explore this, the author uses one of the *istinbath* methods (taking legal evidence) that has been known in *ushul fiqh*, namely the *maslahah mursalah* method. Through this approach, the author seeks to assess whether a provision or view is acceptable in Islamic law based on rational and contextual considerations of benefit, as long as it does not contradict the basic principles of sharia.

This research is included in the type of library *research*, which is a form of study that is carried out by relying on written sources (documents) as primary data, such as books, scientific articles, journals, legal documents, and other academic works that are relevant to the topic discussed and reinforced with secondary data. The approach used in this study is a qualitative approach, which aims to understand the meanings, views, and patterns that emerge from non-numerical data. In data processing and presentation, a descriptive analysis method is used, which is a technique that exposes data in a systematic, structured, and in-depth manner to provide a comprehensive picture of the issue or problem being researched without conducting statistical testing or quantification of numbers. Through this approach, the researcher seeks to decipher and explain the data based on context and content in an interpretive manner.

The main purpose of this study is to review and examine the problems raised through a different perspective from the approach that has been commonly used. By offering an alternative

perspective, it is hoped that this research can open up a wider and deeper understanding of the issues discussed. In addition, this approach is intended to provide a calmer, rational, and thoughtful foundation for consideration for anyone who wants to take the next step or action. With a more comprehensive understanding, it is hoped that every decision or action taken can be made with full confidence and comfort, and remain within the corridor of applicable ethics, values, and laws.

METHOD

This research is included in the type of library *research*, which is a form of study that is carried out by relying on written sources as the main data, such as books, scientific articles, journals, legal documents, and other academic works that are relevant to the topic being discussed. In this case, data collection was carried out in the form of documents (written goods) related to this research consisting of primary and secondary data.¹ The approach used in this study is a qualitative approach, which aims to understand the meaning, views, and patterns that emerge from nonnumerical data.² In data processing and presentation, a descriptive analysis method is used, which is a technique that exposes data in a systematic, structured, and in-depth manner to provide a comprehensive picture of the issue or problem being researched without conducting statistical testing or quantification of numbers.³

RESULTS AND DISCUSSION

The Role Of Ninik Mamak In The Traditional Order Of Minangkabau

Ninik Mamak is a traditional customary institution that plays an important role in the social structure of the Minangkabau community.⁴ This institution was formed from a combination of a number of traditional leaders with the title of penghulu, each of whom came from various races or kinship groups (clans) in one or more tribes in the Minangkabau customary environment. These penghulu represent matrilineal lineages, which are a kinship system that draws lineage from the mother's side, as has been the main characteristic of Minangkabau customs and culture for generations. Leadership in this institution is not obtained through open elections, but is inherited based on female lineages according to customary principles. The position of headman is usually held by a man from the tribe who has been considered mature in age, experienced, and respected by the community because of his wisdom, wisdom, and ability to lead and resolve customary issues fairly and wisely.⁵

Ninik mamak is an inseparable part of the customary structure that exists in the Minangkabau society, especially in the scope of customary institutions at the national level. They are traditional figures who are members of an association of tribal leaders with the title Pangulu, and their existence is very important in maintaining the sustainability of traditional values in the community. This institution consists of a number of Datuks, namely chiefs or tribal leaders from various tribes in the nagari. These Datuks united to form a structured and official customary organization known as the Nagari Customary Density, abbreviated as KAN. KAN is a customary consultative forum that plays a central role in the social, legal, and cultural life of the nagari community. From the many penghulu or Datuk who are members of KAN, one is chosen who is

¹ Maryam B. Gainau, *Introduction to Research Methods* (Yogyakarta: Kanisius, 2021), 118.

² Dear Mrs. Shirley, *Research Methodology* (Yogyakarta: Deepublish, 2018), 39.

³ J. R. Raco, *Qualitative Research Methods* (Jakarta: Grasindo, 2010), 123.

⁴ Muhammad Chairul Umar and Yulfira Riza, "The Role of Ninik Mamak, Mamak and Kamanakan in Minangkabau," *Journal of Nusantara Culture* 5, no. 3 (2022): 174–80, <https://doi.org/10.36456/jbn.vol5.no3.5733>.

⁵ Hertasmaldi, "Ninik Mamak Consent as One of the Administrative Requirements in the Marriage Contract," 2013.

considered the most suitable to be the leader of the institution, and he is referred to as the Chairman of KAN. The traditional leaders who are part of KAN are known in Minangkabau culture as ninik mamak. They are respected people and become the main reference point in society. As said in the traditional expression, "Niniak mamak in nagari pai tampek batanyo, pulang tampek babarito", which means that ninik mamak is a place to ask questions when going and a place to complain or report when returning.⁶

Datuak (Datuk) is a traditional honorary title that is pusako (heritage) that applies within a tribe or tribe in Minangkabau. This title is not given arbitrarily, but is intended for someone from within the tribe or tribe who is considered worthy by the indigenous community. The selection or appointment of prospective recipients of the title is carried out by the nephews of the tribe or race concerned, namely members of the maternal lineage who have the right to determine who is worthy of the title. The process of appointing someone to a datuak is officially carried out through a sacred and meaningful traditional ceremony. This ceremony is a marker that a person has been legally recognized by indigenous peoples as a tribal leader who holds social, cultural, and customary responsibilities. The datuak title not only indicates high social status, but also reflects the community's trust in the wisdom, maturity, and ability of the person to carry out the functions of traditional leadership in daily life.

A person with the title of datuak is a traditional figure who holds the role of a leader or pangulu within the scope of his tribe or people. However, his responsibilities are not limited to the tribe alone. It also functions as part of the ninik mamak group at the nagari level, which has a broader role in customary and community affairs. In more detail, his position can be explained as follows: datuak is an honorary title pinned to him as a form of customary recognition. Pangulu is a functional position that he holds as a tribal chief who is in charge of protecting and leading his race or kinship group. Meanwhile, Ninik mamak is his position in the customary institutional structure that functions at the nagari level, which is a place for deliberation and joint decision-making for the benefit of indigenous peoples as a whole. Thus, one datuak person reflects three important elements: he holds a customary title, serves as a tribal chief, and plays the role of a member of a nagari customary institution called ninik mamak.⁷

As part of the ninik mamak group, a datuak performs an important function as a representative or official representation of his tribe or people in the customary government system at the nagari level. In Minangkabau traditional terms, this kind of role is known as *andiko*, which is a traditional representative who speaks and acts on behalf of his people. He is tasked with bringing and voicing the interests and aspirations of the tribal members he leads, both in customary deliberative forums and in official meetings related to nagari affairs. In addition, a datuak also bears social responsibility to help solve various problems or conflicts that arise in the midst of his nephew's children, both related to daily life, customary violations, and other family and social problems. Thus, it not only becomes a traditional symbol, but also becomes a link between the interests of indigenous peoples at the tribal level and decision-making at the nagari level as a whole.⁸

⁶ Hertasmaldi.

⁷ Sahrul & Daulai, "Local Wisdom of Dalihan Na Tolu, Ninik Mamak and the Density of Nagari Customs in Maintaining Inter-Religious Harmony in West Sumatra and North Sumatra," *Journal of Islamic Sciences*, 2019.

⁸ Muhammad Chairul Umar and Riza, "The Role of Ninik Mamak, Mamak and Kamanakan in Minangkabau."

Permission Required In Marriage According To Islamic Law And Law

Marriage in language means mixing and gathering.⁹ In the book *Al-Fiqh 'ala al-Mazahib al-Arba'ah*, the term marriage in language has three meanings. First, marriage can be interpreted as *watha'* (bodily relations) and *dhamm* (meeting or union). Second, in essence, *nikah* means contract, while figuratively it can be interpreted as a bodily relationship, which is contrary to the previous view that directly understands marriage as a physical relationship. Third, the meaning between the relationship between the body and the contract cannot be separated, because in the sharia, the two are used simultaneously to explain the meaning of marriage.¹⁰

In terms of marriage, it is defined as an agreement that results in the permissibility of a man to carry out *watha'* (husband-wife relationship), carried out using the words *inkah* or *tazwij* or translations of the two words.¹¹ Meanwhile, Wahbah al-Zuhaili defines marriage as a contract that legalizes the relationship of *istimta'* (sexual intercourse) with a woman, that is, allowing the occurrence of bodily relations and togetherness, as long as the woman is not forbidden to marry, either because of blood relations or because of a milky relationship. Hanafiyah scholars define marriage as a contract that results in a person having the right to *mut'ah* (having fun) deliberately.¹²

In Article 1 of Law No. 1 of 1974, marriage is described as an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. (Basic Law on Marriage, 2006: 01-02). As for the Compilation of Islamic Law (KHI) on marriage, it is explained that the Compilation of Islamic Law is contained in article 2 which says marriage is marriage, which is a very strong contract or *mitsaqan ghalidzan* to obey Allah's commands and carry them out is worship.¹³

Based on the description of the definition that has been explained earlier, it can be concluded that in the framework of Islamic jurisprudence, the majority of scholars have almost a similar understanding of the meaning and essence of marriage. The scholars view that marriage is a valid contract or agreement that under Islamic law carries certain consequences, namely the permissibility of conjugal relations between a man and a woman which were previously prohibited by shari'i without the existence of a marriage bond. With this contract, the relationship that was originally haram becomes halal because it is in the corridor of sharia.

Meanwhile, in the perspective of positive law in Indonesia, as stated in the law regulating marriage, marriage is described as a strong and sacred bond, containing noble religious and moral values. The main purpose of this bond is to form a harmonious, peaceful, and loving home life which is often formulated with the terms *sakinah*, *mawaddah*, and *rahmah*. This concept emphasizes that marriage is not merely an agreement between two individuals, but also a means of worship that must be carried out in accordance with the provisions and principles of Islamic law. Therefore, marriage should not be held carelessly, but must follow the rules of religious and state law so that its existence is legally valid and provides blessings for both couples.

The majority of scholars or known as *jumhur* agree that there are five main elements that become harmonious in the implementation of the marriage contract. The five pillars include: the groom as the party proposing the marriage, the bride as the receiving party, the guardian

⁹ Hisyam al-kamil Hamid, *Al-Imta'* (Kairo: Daar al-Manar, 2011), 297.

¹⁰ Abdurrahman Al-Jazari, *Fiqh-ul-Fiqh 'Ala Mazahab Arba'ah* (Egypt: Maktabah al-Tijarah alKubra, 1969), 2-3.

¹¹ al-kamil Hamid, *Al-Imta'*, 297.

¹² Wahbah bin Musthafa Al-Zuhaili, *Al-Fiqhu Al-Islami Wa Adillatuh Volume 9* (Damascus: Dar Al-Fikr, n.d.), 6513.

¹³ Ministry of Religion of the Republic of Indonesia, *Compilation of Islamic Law Law* (Jakarta: Directorate General of Islamic Religious Institutional Development, 2000).

representing the woman in the contract, two witnesses who witnessed the marriage contract firsthand, and *ijab qabul* as a form of official statement and mutual acceptance between the two parties to the marriage.¹⁴ All of these elements are considered inseparable components of the continuity of marriage, and without them, the marriage contract is considered invalid.

In contrast to the views of the majority, scholars from the Malikiyah school have their own opinions about what is included in the pillars of marriage. According to them, the pillars of marriage consist of five things, namely the presence of witnesses who witness the contract, the giving of dowry as a form of respect for the bride, the existence of the groom and the bride, and the implementation of *ijab qabul*.¹⁵ In this case, Malikiyah includes dowry as part of the harmony, not just a condition as in the view of other schools.

Meanwhile, scholars from the Hanafiyah school take a simpler approach in determining the pillars of marriage. They only consider *ijab* and *qabul*, which are statements of mutual agreement from both parties, as the only pillar of marriage.¹⁶ According to this view, as long as there has been a legal *ijab qabul* between the two parties, the marriage contract is considered valid, while other elements such as guardians, witnesses, and dowry are not included in the *rukun*, but rather as a valid condition or complement to the contract.

In Islamic teachings, a man who wants to get married is required to first meet a number of requirements that have been determined by the sharia. Some of them include the provision that he must not have a mahram relationship with the woman he is going to marry, meaning that there should be no blood relationship or *nasab* relationship that legally prevents marriage. In addition, the marriage process must be carried out voluntarily, without any element of coercion from any party, both from the family and the surrounding environment. The man must also have a clear and legally and religiously recognized identity, not a transgender or individual with a gender status that does not conform to the biological provisions and Islamic law. In addition, the sharia also stipulates that men who are in a state of *ihram* to perform Hajj or Umrah are not allowed to carry out a marriage contract while still in that condition, because *ihram* limits the implementation of certain activities including marriage.¹⁷

Meanwhile, according to the provisions of positive law in Indonesia, namely Law Number 16 of 2019 which is an amendment to Law Number 1 of 1974 concerning Marriage, the conditions for carrying out marriage are regulated in more detail in Chapter II, which covers Article 6 to Article 12. Among these provisions is that the marriage can only take place if the two brides-to-be have expressed mutual agreement or agreement without any coercion. If one or both prospective brides have not reached the age of 21, then permission from both parents is required as a form of guardian approval. This law also prohibits the occurrence of marriage between two people who are related by blood, as mentioned in Article 8, which includes the prohibition of marrying blood relatives, either upwards, downwards, or beyond the lineage. In addition, in Article 7 paragraph (1) it is explained that the minimum age limit for a man to be able to legally marry is 19 years old, a provision that aims to protect the rights and physical and mental readiness of the prospective groom.

On the other hand, in addition to the husband-to-be, the bride-to-be is also required to meet a certain number of conditions according to the provisions of Islamic law. Some of the conditions that must be met by a woman before she can legally become a wife include that she is not in a marriage bond with another man, meaning that she is not the wife of someone else when she

¹⁴ Al-Zuhaili, *Al-Fiqhu Al-Islami Wa Adillatuh Volume 9*, 6521.

¹⁵ Al-Zuhaili, 6521.

¹⁶ Al-Zuhaili, 6522.

¹⁷ al-kamil Hamid, *Al-Imta'*, 298.

wants to get married. Furthermore, she must also not be in the iddah period, which is the waiting period that must be lived by a woman who has been divorced or left to die by her husband before she is allowed to remarry. The woman must be a legally independent individual, not a slave, and most importantly, the marriage must be carried out on the basis of her own will without any coercion from any party and not accompanied by conditions that violate sharia law. He must also have a valid and clear identity, and not be in a state of ihram to perform Hajj or Umrah, because in the condition of ihram, all forms of marriage contracts are prohibited from being carried out until tahallul.¹⁸

In the context of national law, namely based on Law Number 16 of 2019 concerning Marriage – which is the result of amendments to Law No. 1 of 1974 – there are several provisions that regulate in detail the conditions that must be met by the bride-to-be, as stated in Chapter II, especially Articles 6 to 12. One of the main requirements is that the prospective wife must have reached the minimum age of 19 years, as stipulated in Article 7 paragraph (1). In addition, the wife-to-be must not be in a legal marital relationship with another man, as stipulated in Article 9. She is also not allowed to marry if she is still in the iddah period due to divorce or was left dead by her previous husband. Marriage can also only take place if both parties, both husband-to-be and wife-to-be, give consent consciously and voluntarily, as explained in Article 6 paragraph (1). If the age of the prospective wife has not reached 21 years old, then the approval or permission from her parents is an absolute condition to continue the marriage legally. In addition, the prospective husband and wife-to-be must not have a blood relationship, semenda relationship, or breastfeeding relationship which is prohibited under Article 8. All of these conditions aim to ensure that the marriage is not only legally valid, but also meets the principles of protection, equality, and justice for both parties.¹⁹

To be able to carry out the role of guardian in the wedding procession, one must meet several important requirements that have been set in Islamic teachings. The main requirement is that the marriage guardian comes from the biological father of the woman to be married, with the note that the relationship between the two is legally and religiously valid. If the biological father has died, his whereabouts are unknown, or for other reasons he is unable to carry out his duties, then the position of guardian can be taken over by the closest male relative of the woman's side, such as brothers, uncles, or grandfathers from the paternal line, in accordance with the order of guardianship that has been regulated in Islamic law. If none of the male relatives are eligible, then the authority as a guardian can be given to someone who has guardianship, either because of his position as a community leader or because of a determination from a religious authority.

In addition to these provisions, other conditions that must be met by a guardian in marriage include that the guardian must be male, because in the provisions of sharia, women are not allowed to be guardians of marriage. He must also have reached adulthood (puberty), have a sound mind (not suffer from mental disorders), and carry out his duties as a guardian without pressure or coercion from any party. The guardian should also be known as a fair person, that is, not wicked and has a good moral reputation in society. In addition, he must not be in a state of ihram, namely in the process of performing Hajj or Umrah, because the condition of ihram limits the implementation of several legal actions, including marrying someone.²⁰

In the positive legal system in Indonesia, the provisions regarding the requirements for marriage guardians are regulated in the Compilation of Islamic Law (KHI), which is the official

¹⁸ Mardani, *Islamic Marriage Law In The Modern World* (Yogyakarta: Grana Ilmu, 2014), 10.

¹⁹ Amiur Nuruddin, *Islamic Civil Law* (Jakarta: kencana Prenada Media Group, 2004), 67.

²⁰ Yafie, *Custom of Giving Jumper Hibah in Wedding Steps* (Yogyakarta: Journal of UIN Sunan Kalijaga, 2014), 158.

reference in the settlement of marriage cases for Muslims. In Articles 20 to 23 of the KHI it is explained that those who have the right to be guardians in the marriage contract are men who meet the conditions outlined by Islamic law. The guardian must be Muslim, have common sense, and have reached puberty or legal adulthood. In KHI, there are two types of marriage guardians, namely the guardian nasab, which is a guardian who has a direct blood relationship with the married woman, and the guardian judge, which is a guardian appointed by the state or religious authority if the guardian nasab does not exist or does not meet the requirements. This division is intended to ensure the continuity of the marriage so that it remains legally valid and in accordance with the provisions of Islam.²¹

In order for a person to act as a witness in a marriage contract, he must meet certain requirements that have been set out in Islamic law. The minimum number of witnesses required is two men who are present to witness the marriage contract procession, especially during the pronouncement of *ijab* and *qabul* between the guardian and the groom-to-be. The witnesses must have good sense, in the sense that they are able to clearly understand what they are witnessing and be able to testify responsibly if asked to do so in the future. In addition, the witness must be an adult, that is, has reached the age of puberty, and has a sufficient understanding of the meaning and consequences of the contract he witnessed.

Another criterion that is no less important is that the witness must be a Muslim, since only Muslims can give valid testimony in marriage according to Islamic law. The witnesses must also be male, because the majority of scholars do not justify female testimony in marriage contracts, except as an addition or complement. In addition, the physical presence of witnesses at the time of the *ijab qabul* is absolute. They must witness the process of pronouncing the contract directly without intermediaries or through recordings, because testimony is only considered valid if it occurs in real time and at the same time as the implementation of the contract.²²

As for *ijab qabul*, which is the core of the implementation of the marriage contract, there are special provisions that must be met in order to be considered valid according to Islamic law. The words used in *ijab qabul* must expressly state the intention to marry, and must use sentences that are known in shari'a, such as *inkah* (to marry) or *tazwij* (to marry), or it can also be translated into the local language as long as the meaning and substance do not change. In addition, *ijab qabul* must meet the provisions of the validity of a contract in muamalah, such as: between *ijab* (statement from the guardian) and *qabul* (answer from the prospective husband) must not be interspersed with other irrelevant remarks; there must be continuity and conformity between the two sayings; the statement of contract must not be temporary (e.g. for a certain period of time); and it must not contain conditions or *ta'liq* (dependence on something in the future). All of these provisions aim to maintain the clarity, seriousness, and validity of the marriage contract according to religious law.²³

Looking at the previous presentation, it can be concluded that in the perspective of Islamic law, the permission needed in marriage only comes from several parties, namely, *first*, men as people who will play the role of husbands in domestic life, *second*, women as people who will later fill the role of wives in domestic life, and *third*, The female guardian, as the party who previously had the responsibility in taking care of all women's needs and handed over these responsibilities to the man who would become the husbands of the woman.

The same thing is also explained in the laws and regulations enforced in Indonesia. Without permission from the man, the woman, and the female guardian, the marriage cannot take place.

²¹ RE *Compilation of Islamic Law Law*.

²² al-kamil Hamid, *Al-Imta'*, 300.

²³ al-kamil Hamid, 297.

For men who want to have a second marriage, permission to build a new household must also be obtained from the previous wife.

The Necessity Of Ninik Mamak's Permission On Marriage In The Perspective Of Maslahah Mursalah

Maslahah mursalah in language consists of two words, namely *maslahah* and *mursalah*.²⁴ The word *maslahah* comes from the Arabic verb *shalaha-yasluhu* which means something that brings good. The word *maslahah* is also called *istishlah* which means seeking good.²⁵

While the word *mursalah* is *isim maful* from *arsala* etymologically meaning detached, or in the sense of free. The word detachment and freedom here when connected with the word *maslahah* means detachment or freedom from the description that shows that it can or cannot be done.²⁶

The combination of two words into *maslahah mursalah* means the principle of benefit (goodness) used to establish an Islamic law. And an act that contains good or useful value.

There are several different definitions of this *maslahah mursalah*, but each has similarities and is close in definition.²⁷ Among them is the opinion of Imam Alghazali who said that *maslahah mursalah* is something that does not have strong evidence from the sharia that cancels it or also that pays attention to it.²⁸ Meanwhile, Abdul Wahab al-Khallaf said that *maslahah* has no sharia evidence that acknowledges it or rejects it.

Imam Malik as quoted by Imam Syatibi in the book *al-I'tisham* defines *maslahah mursalah* as a benefit that is in accordance with the goals, principles, and postulates of sharia', functioning to eliminate narrowness, both *daruriyyah* (primary) and *hajiyyah* (secondary).²⁹ Izz ad-Din 'Abd al-Salam said that *maslahah* is synonymous with an *al-nafi'* (benefit), *al-khair* (virtue), *al-hasan* (goodness). Meanwhile, Najm ad-Din at-Tufi said that the meaning of *maslahah* can be seen in terms of '*urfi* and *shari'i*. At-Tufi explained that the meaning of '*urfi* in *maslahah* is the reason that brings good and benefit, and the analogy is like a business that brings profit. Meanwhile, in the sense of *shari'i*, *maslahah* is the cause that leads to the purpose of *shari'a*, both concerning worship and muamalah. He emphasized that *maslahah* is included in the scope of *maqasid asy-shari'ah*.³⁰

In essence, Islamic sharia is built on the principle of benefits aimed at the welfare of human beings as servants of Allah, both in the affairs of this world and the hereafter. Islamic sharia prioritizes fundamental values such as compassion (*rahmah*), justice (*'is*), and universal goodness (*maslahah*).³¹ Therefore, any law that deviates from these basic values cannot be said to be part of the Islamic law, even if various rational justifications are sought to claim it as part of the law.

Along with the times, the application of Islamic sharia in various laws is always driven by the spirit of *maslahah*. The relationship between *maslahah* and Islamic sharia cannot be separated, because the two are complementary units. Thus, the existence of *maslahah* entrusts the existence of sharia demands. Various in-depth studies of the Qur'an and hadith prove that

²⁴ Rahmat Shafi'i, *The Science of Ushul Fiqh* (Bandung: Pustaka Setia, 2007), 113.

²⁵ Abdul Wahab Khallaf, *Masdar Al-Tasyri' Al-Islami Fi Ma La Nassa Fih*, III (Kuait: Dar Al-Qalam, 1972), 87.

²⁶ Amir Syarifuddin, *Ushul Al-Fiqh* (Jakarta: Kencana, 2009), 332.

²⁷ Muhammad Rusfi, *Ushul Al-Fiqh*, 1st ed. (Lampung: Faculty of Sharia IAIN Raden Intan, 2017), 121.

²⁸ Abu Hamid Al-Ghazali, *Al-Mustasyfa fi' revealed by AL-Ushul* (Beirut: Dar Al-Kutub AL-'Ilmiyah, 1993), 311.

²⁹ Abu Ishak Ash-Syatibi, *Al-I'tisham Jilid II* (Beirut: Dar Al-Ma'rifah, 1975), 39.

³⁰ Al-Ghazali, *Al-Mustasyfa fi' revealed by AL-Ushul*.

³¹ Ibnu Al-Qayyim Al-Jauziyah, *I'lam Al-Munawqifi'n 'an Rabb AL-'Alamin* (Beirut: Dar Al-Kutub AL-'Ilmiyah, 2005), 5.

every sharia law contains wisdom and 'illah (rational reason) that leads to the realization of benefits.

The scholars are very careful in making *maslahah mursalah* as a postulate (*hujjah*), so that there is no formation of sharia law based on lust or hidden interests. Therefore, they set a number of strict requirements for *maslahah mursalah* so that it can be used as a basis in establishing the law. Imam al-Ghazali formulated a number of important provisions that must be fulfilled in order for a form of benefit to be accepted as a valid basis in the process of istinbath or the determination of Islamic law. *First*, these benefits must have a strong conformity with the basic principles and main goals that the sharia wants to achieve, namely to protect religion, soul, intellect, descendants, and property. This means that the benefits in question must not contradict the main direction and purpose of the sharia itself. *Second*, the benefits must not contradict or contradict the shari'i nash, both from the Qur'an and the hadiths of the Prophet, because these texts are inviolable sources of law. *Third*, the benefits that are used as arguments must be included in the category of *daruriyyat*, which is a basic and very urgent need, both related to individual interests and related to the general interests of the wider community. By meeting these three conditions, a benefit can be considered in the formation of Islamic law that is responsive to reality.³² Thus, the use of *maslahah mursalah* remains within a solid sharia corridor, far from deviation or manipulation

In Minangkabau customs, the role of ninik mamak has a very important and decisive position in various aspects of people's lives, especially in marriage matters. Ninik mamak is not only a traditional symbolic figure, but also the main figure who is authorized to give consent in the marriage process. One of the tangible forms of the importance of this role is the obligation to get permission from the ninik mamak before taking care of the marriage administration. The signature of the ninik mamak is a requirement that must be attached to the marriage documents that are taken care of. Without this approval, the marriage process can experience administrative obstacles, and even potentially threaten not to be able to take place.³³

As a real illustration, in the Simalanggang nagari, a nagari in the Fifty Cities Regency of West Sumatra Province, the role of ninik mamak is very prominent and needed in various areas of people's lives. They play an active role not only in the affairs of nagari development and the settlement of customary conflicts, but also play an important role in the process of marriage administration. Every man or woman who comes from Simalanggang and intends to get married is required to first obtain a license from Ninik Mamak as one of the absolute requirements that must be met. This letter is issued as a form of recognition that the individual who is about to get married is under the supervision and joint responsibility between his parents and his mother.

In addition, the issuance of this permit also has a broader purpose, namely to ensure that each child knows clearly who the ninik mamak is, so that family relations within the tribe are still well established and harmonious. Another function of this letter is as an effort to prevent the occurrence of marriage with a tribe, which in Minangkabau customs is considered invalid and prohibited. The implementation of the ninik mamak permit has become a traditional tradition that has been maintained and preserved for a long time by the people of Simalanggang. In fact, if the bride-to-be lives or settles in Simalanggang nagari, then she is required to carry out a

³² Qorib, Ahmad, and Isnaini Harahap. "The application of *maslahah mursalah* in Islamic economics." *Analytica Islamica* 5.1 (2016): 55-80.

³³ Hertasmaldi, "Ninik Mamak's Consent as One of the Administrative Conditions in the Marriage Contract."

traditional procession called *malokok*, which is to come to face the ninik mamak who comes from the same tribe, as a form of respect and recognition for the customary authority.³⁴

If permission from ninik mamak is not successfully obtained, then the wedding is customarily not allowed to take place in the Nagari Simalanggang area. The absence of this permit is considered a violation of customary provisions that have long been maintained and inherited from generation to generation by the local community. In other words, without the blessing and formal consent of the ninik mamak, the marriage process not only loses social legitimacy, but is also not legally recognized in the Minangkabau customary order that prevails in the country.

When viewed from the point of view of Islamic law, the functions and positions carried out by ninik mamak in Minangkabau society, especially in West Sumatra, have a fairly close resemblance to the concept of wali in Islamic law. In fiqh terms, wali is defined as someone who is responsible for safeguarding, regulating, and taking care of all the interests of people who are under his responsibility or protection, whether in personal affairs, property, or marriage.

The same is true of the role of ninik mamak in the traditional structure of Minangkabau. They are figures who traditionally bear the responsibility of maintaining, guiding, and resolving various interests and problems that arise within the scope of their race or tribe. Ninik mamak plays the role of protector and manager who ensures that members of his tribe live in accordance with traditional values, including in terms of marriage, inheritance, and family harmony. Therefore, the position of ninik mamak can be seen as a form of customary representation of the role of the guardian in the Islamic sharia system, even though the context comes from two different foundations, namely religion and culture.

As a traditional leader who bears the responsibility of regulating, guiding, and resolving various affairs related to the races or tribes under his auspices, the role of ninik mamak is very vital in maintaining social order. Therefore, the need to obtain permission from ninik mamak in various aspects of life, including marriage, is very important and cannot be ignored. The approval of ninik mamak is not only a form of respect for the customary structure, but also a social mechanism to maintain harmony in interracial relations. With this permit, every social action, especially those related to family institutions, is carried out with wise coordination and supervision, so as to create an orderly, safe, harmonious community life order, and far from internal conflicts that can damage family values and customs that have been maintained for a long time.

Although in the framework of classical fiqh and in the state legal system, there is no formal recognition of the obligation to obtain permission from ninik mamak in the marriage process, in fact this practice is still carried out and considered important in the context of Minangkabau customs. The licensing is indeed not included in the elements of harmony or legal requirements for marriage according to sharia or positive law, but if viewed from the strategic role carried out by ninik mamak in the customary social structure, as well as the various benefits it causes, then this practice has a strong basis for acceptance.

Based on the concept of *maslahah mursalah* in ushul fiqh, which is the consideration of benefits that are not explicitly mentioned in the nash but support the purpose of the sharia (*maqashid al-shari'ah*), the obligation to obtain permission from ninik mamak as an administrative condition for marriage can be categorized as something permissible. This is because the practice brings real benefits to social order, strengthens the customary family system, and prevents the emergence of problems such as conflicts between races. Thus, even

³⁴ A Muslim, *Simalanggang in the Trajectory of History* (Yayasan Ranah Rantau Circle, 2019).

though it is not found textually based in Islamic law and state law, the obligation is still valid in sharia based on the principle of benefit.

In the current social context, when Minangkabau customs are undergoing a significant degradation process, it is important to reconsider the relevance of the obligation to obtain permission from ninik mamak in the implementation of marriage. This condition is characterized by the weakening of the implementation of traditional roles in the Minangkabau social structure. Many important elements such as ninik mamak, mamak, and nephews who used to have a clear and strong function in regulating and maintaining the customary order, are now no longer carrying out these tasks actively and comprehensively. Roles that were once very central are now in decline and are only performed by a small number of people in a limited scope.

With this background, it is necessary to review the obligation to obtain a ninik mamak permit in the marriage process, especially from the point of view of actual benefits. In the current conditions, the benefits or benefits that used to be produced from the active role of ninik mamak in fostering, supervising, and maintaining the lives of their people, are no longer felt significantly. Therefore, the relevance of these rules must be evaluated more deeply, whether these administrative obligations are still worthy of being strictly enforced, or whether they need to be adjusted to social realities that have changed a lot. Also, the revitalization of the role of ninik mamak in the social life of the Minangkabau people is urgently needed. This review is important so that customary rules remain functional, not purely symbolic, and really bring goodness in accordance with the values of *maslahah* that are the basis of it.

CONCLUSION

The role of ninik mamak in Minangkabau customs, especially in marriage matters, has a very important position and functions like a wali in the perspective of Islamic law. They are not only customary symbols, but also regulators, protectors, and guarantors of social order in tribal and tribal structures. The practice of granting marriage permits by ninik mamak in Nagari Simalanggang, for example, has long been a tradition that has a basis for benefits and functions to maintain family harmony and prevent customary violations such as tribal marriage.

Although it is not regulated in Islamic law or state law, the obligation to obtain a ninik mamak permit is considered valid and important when viewed from the principle of *maslahah mursalah* in *ushul fiqh*. However, in a contemporary social context where there is a degradation of customary roles, the relevance of this obligation needs to be re-evaluated. When the role of ninik mamak is no longer active and comprehensive, the social benefits of the permit obligation become less significant. Therefore, adjustments to customary rules with social conditions that continue to evolve need to be carried out so that customary values remain functionally and contextually.

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