

# IMPLICATIONS OF THE PROHIBITION OF MARRIING THE MOTHER'S SISTER'S DAUGHTER IN THE MINANGKABAU TRADITION MASLAHAH MURSALAH PERSPECTIVE



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## Abstract

The prohibition on marrying one's mother's sister (maternal cousin) in Minangkabau custom is a customary norm that is not explicitly regulated in Islamic law, but is still highly respected by the community. This study aims to analyze the social, cultural, and legal implications of this prohibition within the Minangkabau social structure, and to examine its relevance through a maslahah mursalah approach. The method used is qualitative research with a normative-sociological approach, through literature studies and in-depth interviews with traditional leaders and Islamic law academics. The results show that this prohibition has an important function in maintaining harmonious kinship relations in the matrilineal system, preventing potential conflicts in the distribution of inheritance, and supporting social stability in the community. From the perspective of maslahah mursalah, this prohibition is included in the categories of hajiyah (need) and tahsiniyah (perfection), because it plays a role in protecting social and customary values that do not conflict with the basic principles of sharia. Thus, this prohibition can be seen as a form of ijtihad ijma'i which has sharia legitimacy, even though it does not directly originate from the text.

## Abstrak

Larangan menikahi saudara perempuan ibu (sepupu dari pihak ibu) dalam adat Minangkabau merupakan norma adat yang tidak diatur secara eksplisit dalam hukum Islam, namun tetap dijunjung tinggi oleh masyarakat. Penelitian ini bertujuan untuk menganalisis implikasi sosial, budaya, dan hukum dari larangan ini dalam struktur sosial Minangkabau, serta mengkaji relevansinya melalui pendekatan maslahah mursalah. Metode yang digunakan adalah penelitian kualitatif dengan pendekatan normatif-sosiologis, melalui studi pustaka dan wawancara mendalam dengan tokoh adat dan akademisi hukum Islam. Hasil penelitian menunjukkan bahwa larangan ini memiliki fungsi penting dalam menjaga keharmonisan hubungan kekerabatan dalam sistem matrilineal, mencegah potensi konflik dalam pembagian warisan, dan mendukung stabilitas sosial dalam masyarakat. Dari perspektif maslahah mursalah, larangan ini termasuk dalam kategori hajiyah (kebutuhan) dan tahsiniyah (kesempurnaan), karena berperan dalam menjaga nilai-nilai sosial dan adat yang tidak bertentangan dengan prinsip-prinsip dasar syariah. Dengan demikian, larangan ini dapat dipandang sebagai suatu bentuk ijtihad ijma'i yang memiliki legitimasi syariat, meskipun tidak bersumber langsung dari nash.

## INTRODUCTION

Marriage is a contract or agreement that binds a man and a woman to establish a legal husband-wife relationship. This marriage is based on the principle of mutual consent and commitment to building a harmonious, loving, and peaceful family life, in accordance with the approval of Allah SWT.(Suryantoro & Rofiq, 2021, p. 3).The prospective husband and wife have equal status as parties who will build a household based on the principles of



responsibility, love, and the approval of Allah SWT. Each has a specific role and responsibility that complements the other.

It literally states that if a person is able to provide for their physical and spiritual needs, they should marry immediately. However, for those who are unable to do so, marriage is not obligatory; instead, they are required to fast to restrain their desires. According to Firman Arifandim, Lc., MA, in his book "Series Hadith Nikah 1: Advice on Marriage and Finding a Partner," marriage is one way to achieve the fundamental goal of Islamic law, namely preserving offspring.

Islam places great emphasis on selecting a potential spouse. Not all women are permitted to marry, as there are several prohibitions that must be adhered to. Besides religious differences or poor morals, Islam also forbids marriage to women who are related to a mahram (a male relative). (Sarwat, 2018, pp. 6–8). As the Word of Allah SWT is contained in QS. An-Nisa verse 23

Even though in QS. An-Nisa verse 23 Allah SWT does not forbid marrying the child of the mother's sister, however Imam Ghazali in the book *Ihya 'Ulumuddin* recommends not marrying close relatives, because this can cause weakness in the offspring. Some jurists also argue that sexual urges tend to be weak among close relatives. Therefore, they make a mistake in marriage with bintul 'ammi ((daughter of the father's son), bintul khali (daughter of the mother's brother), bintul 'ammati (daughter of the father's sister), and bintul khalati (daughter of the mother's brother). Although inter-ethnic marriages have certain benefits, the negative impacts are considered greater. The principle of avoiding harm takes precedence over taking benefits, so inter-ethnic marriages should be avoided, as taught and upheld in Minangkabau culture (Nurchaliza, 2020, p. 9).

However, in general, when discussing marriage prohibitions, the main priority is to comply with the provisions of QS. An-Nisa verse 23. Although there are exceptions in Article 8 of Law No. 1 of 1974 and according to the provisions of Customary Law applicable in Minangkabau.

In the provisions of Islamic law, especially the ushul fiqh methodology, exceptions to a rule because it has become a habit (custom) are permitted only when there is a goal that produces more maslahah than the original rule. In ushul fiqh this provision is called 'Urf. According to Abdul Wahab Khallaf, 'urf is everything that is known and accustomed to by society, and applied continuously, whether in the form of words, actions, or abandoning things that are considered forbidden. Meanwhile, Wahbah al-Zuhaili defines 'urf as everything that has become a habit and is accepted by many people, whether in the form of actions that develop in society or terms that are used to convey certain meanings that are different from the meaning in the original language. (Sarjana & Suratman, 2017, p. 4).

The prohibition on marrying one's mother's sister's daughter is a complex issue, involving aspects of custom, religion, and social change. A maslahah mursalah perspective is crucial for evaluating the relevance and benefits of this customary prohibition in the context of modern life. The Minangkabau people have a unique marriage system that differs from other regions in Indonesia. It implements exogamy (a prohibition on marriage between members of the same tribe). Instead, a person is required to marry a partner from another tribe. According to Minangkabau customary law, marriage within the same tribe is considered inappropriate and prohibited. (Nurchaliza, 2020, p. 5). The prohibition on inter-tribal marriage

in Minangkabau, if analyzed using the Islamic legal methodology approach (ushul fiqh), appears to be something that should be avoided because it is considered bad in the eyes of the local community. (Sari, 2019, p. 69).

Based on the theory of prohibited marriage in Islam, the mahram relationship is included in the prohibited marriage according to Islamic law. However, the practice that occurs in Minangkabau customs, marrying the daughter of the mother's sister is included in the prohibited provisions of Minang Kabau customs, even though in Islamic law the daughter of the mother's sister is not considered a mahram. As far as the author knows, with the prohibition on marrying the daughter of the mother's sister in Minangkabau customs, it seems at first glance there are benefits arising from this prohibition. However, behind all that, the relationship between the brother and the daughter of the mother's sister makes their relationship closer and they are not careful about their private parts which they should protect according to Islamic law. The methodology that will be used in this study is qualitative with a normative-sociological approach, through literature studies and interviews with traditional figures and Islamic law academics. The formulation of the problem in this research is 1) Why is there a prohibition on marrying the child of the mother's sister in Minangkabau Custom, 2) What is the Islamic view in the *maslahah mursalah* regarding the prohibition on marrying the child of the mother's sister. The purpose of this research is to find out the background of what causes the prohibition on marrying the child of the mother's sister in Minangkabau custom and to explain the implications and relevance of the *maslahah mursalah* method to the prohibition on marrying the child of one's mother's sister in Minangkabau custom. Several previous studies serve as references and differentiators from this research, namely:

First, thesis written by (Suryani, 2019, p. 6) at the Faculty of Sharia and Law Study Program of Syarif Hidayatullah State Islamic University (UIN) Jakarta in 2019 AD/1440 H. The title of the thesis is *Inter-tribal Marriage in Minang Kabau Culture in Nagari Batipuh Ateh (Legal Anthropology Approach)*. In the formulation of the problem, it asks why inter-tribal marriage in Nagari Batipuh Ateh is allowed while in Minangkabau in general it is prohibited and what are the implications for perpetrators who violate inter-tribal marriage in Nagari Batipuh Ateh. Second, the thesis entitled "*Sapayuang Marriage in Minang Kabau in the Perspective of Maslahah, 'Urf and Human Rights*" written by (Maulana, 2023, p. 13) in the Master of Family Law Program, Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University (UIN) Jakarta in 1444H/2023M which discusses how the *maslahah* perspective on the sanctions for sapayuang marriage in Sariak Alahan Tigo village, how the '*urf*' perspective on the sanctions for sapayuang marriage in Sariak Alahan Tigo village, how the Human Rights perspective on the sanctions for sapayuang marriage in Sariak Alahan Tigo village. Third, the thesis written by (Hidayat, tt, p. p. 9) in the Concentration of Religious Courts, Department of Ahwal Syakhshiyah, Faculty of Sharia and Law, State Islamic University (UIN) Syarif Hidayatullah Jakarta in 2007 AD/1428H. The title of the thesis is *Marriage of One Tribe in Minang Kabau Society According to Islamic Law (Case Study in Banuhampu District, West Sumatra)*. Which discusses the reasons underlying the prohibition of marriage within the same tribe in the traditional community of Banuhampu District, West Sumatra, in what form are the customary sanctions for violations of the provisions of marriage within the same tribe in Banuhampu District, West Sumatra, the perspective of Islamic law on the prohibition of marriage within the traditional community of Banuhampu District, West

Sumatra. Fourth, the thesis entitled "Tradition of the Prohibition of Marriage Kalua from the Perspective of Maslahah Mursalah (Study in the Minangkabau Community of West Sumatra)." written by Firda Aufa Yumni in the Islamic Family Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang in 2024. Which discusses the concept and practice of kalua marriage (prohibition of inter-ethnic marriage in Minangkabau), how the Mashlahah Mursalah Review of the prohibition of kalua marriage in Minangkabau(Yumni, 2024, p. 6). Fifth, a thesis written by Elsi Kumala Sari in the Ahwal Al-Syakhsyah Study Program, Faculty of Sharia and Law, State Islamic Institute (IAIN) Curup in 2019. The title of her thesis is Analysis of the Prohibition of Inter-Cultivated Marriage in Minangkabau Reviewed from Maqashid Syari'ah. Which discusses how the kinship and tribal system in Minangkabau, how Minangkabau customs regarding the prohibition of inter-clan marriage, how the prohibition of inter-clan marriage is reviewed from maqashid syari'ah(Sari, 2019, pp. 80–82).

Based on a brief overview of previous studies, the author can state the similarities and differences between previous studies and my own research. The similarities between these studies are seen in their main theme, namely, both examine the prohibition of inter-tribal marriage in Minangkabau customs. The difference lies in the emphasis of each study's analysis, where the author places more emphasis on the prohibition of marriage to the daughter of a mother's sibling, where this prohibition has been part of one of the methods of istinbath in Islamic law, namely "Urf." However, this custom has implications for family life. This implication is the point of difference between the author's research and previous studies.

## METHOD

This study uses a qualitative approach with a normative-sociological method. The normative approach is used to examine the applicable Islamic and Minangkabau customary legal norms related to the issue of marriage prohibitions within certain kinship circles, by examining legal sources such as Islamic jurisprudence books, fatwas, and customary provisions. Meanwhile, the sociological approach aims to understand the practices, perceptions, and social dynamics of the Minangkabau community in applying these norms in everyday life. Data collection techniques are carried out through library research, namely reviewing relevant literature from books, journals, and customary law documents. In addition, this study is also supplemented with in-depth interviews with Minangkabau traditional leaders who understand the kinship structure and marriage rules in custom, in order to obtain contextual and actual data regarding customary practices in the field. The collected data are analyzed descriptively and qualitatively to describe the interaction between religious norms and customary norms in Minangkabau society.

## RESULTS AND DISCUSSION

### a. Marriage According to Islamic Law

#### Definition of Marriage

In terms of language (etymology),Nikah means comes from the Arabic al-jam'u (gather), wad'u (put), and dhamm (gather) or in other languages "gather" or "unite",Marriage

in the Arabic dictionary has the root word *nakah-yankihu-nakaahan* which means the same as *tazawwaj*. In sharia terms (terminology), Marriage is a contract that legitimizes the relationship between a man and a woman with the aim of building a household according to the rules of Allah SWT. Ibn Manzur, *Lisan al-Arab*, Juz XIV (Cairo: Makatabah al-Tawfiq) In Islam, marriage is worship and a means to maintain honor, channel human instincts in a halal manner, and create pious and pious offspring. The basis is stated in the Qur'an: *"And among the signs of His power is that He created for you wives from your own kind, so that you will be inclined and feel at ease with them..."* (QS. Ar-Rum: 21)

Law No. 1 of 1974 article 1 states that "marriage is a physical and spiritual 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 Almighty God". (Law of the Republic of Indonesia. Number 1 of 1974 concerning Marriage) Compilation of Islamic Law (KHI) article 2 states that "marriage according to Islamic law is marriage, namely a very strong contract or *mitssaqaan ghalidzan* to obey Allah's commands and carrying it out is worship. Furthermore, article 3 explains that "Marriage aims to realize a household life that is *sakinah*, *mawaddah* and *rahmah*". (Ministry of Religion of the Republic of Indonesia Directorate General of Islamic Religious Institutional Development, Compilation of Islamic Law in Indonesia. 2000)

## Marriage Law

The law of marriage in Islam is five (5) *taklifi* laws, depending on a person's circumstances, namely; **Obligatory**: For those who are physically and mentally capable, and are worried about falling into adultery if they do not marry, **sunnah (Mustahab)**: Marriage is *sunnah* for people who have the will and ability to marry, but if they do not marry, they do not worry about falling into sinful acts (adultery). In such a case, marriage is more important for them than all forms of worship. **Mubah (Permissible)**: Marriage is considered permissible for those who are able to do so, but if they don't, they don't have to worry about committing adultery, and if they do, they won't abandon their wives. This person's marriage is based solely on pleasure, not on upholding religious honor and building a family. **Makruh**: Marriage is categorized as *makruh* if a person who has the ability to marry also has the ability to restrain himself so that he does not allow himself to slip into adultery if he does not marry. It's just that this person doesn't have a strong desire to be able to fulfill the obligations of husband and wife well. **Haram** Marriage is forbidden for a person who is certain that he will not be able to provide for his wife, both physically and spiritually. Physical support here means paying the dowry and all the consequences of living in a household (housing, clothing, and food). Spiritual support, among other things, is the ability to have sexual relations with his wife. Marriage is also forbidden if a person marries with the intention of neglecting another person or harming his wife. (Rusdaya Basri, 2019, pp. 14–16)

## Pillars and Conditions of Marriage

**Pillars of Marriage**: In Islamic law, a marriage is declared valid if the five main pillars that form the foundation of the marriage contract have been fulfilled. First, there is a prospective husband, namely a man who will marry a woman who meets the requirements set by sharia. Second, there is a prospective wife, namely a woman who is the legal partner of the man, also fulfilling the requirements according to Islamic law. Third, there must be a marriage

guardian for the bride, namely a male from the family who has the right to marry, or if there is no guardian judge acts as a substitute. Fourth, the presence of two male Muslim witnesses who are just, mature, and of sound mind, as witnesses to the validity of the contract. Fifth, there is the *ijab* and *qabul*, namely a statement of acceptance of the marriage, spoken by the guardian or his representative and accepted by the prospective husband clearly and not dependent on any specific conditions. These five pillars are absolute requirements. If any one of them is not fulfilled, the marriage contract is considered invalid according to Islamic law. (Rahmawati, 2021, pp. 21–24)

**Marriage Requirements:** In addition to fulfilling the pillars of marriage, the requirements of marriage must also be met for the marriage to be considered valid according to Islamic law. The first requirement relates to the prospective bride and groom, namely the man and woman who will marry must be Muslim, not in a *mahram* relationship, not in the state of *ihram* for Hajj or Umrah, and specifically for women not in the *iddah* period. The second requirement is a marriage guardian, namely a Muslim man, mature, sane, just, and not immoral, who has the right to marry the bride; if there is no guardian of lineage, then a judge guardian can replace him. The third requirement is two Muslim male witnesses who are just, mature, sane, able to understand the *ijab qabul*, and can clearly hear the words of the marriage contract. With the fulfillment of all these requirements, the marriage is valid under Islamic law, while if any of the requirements are not met, the marriage contract can be declared invalid or null and void by law. (Rusdaya Basri, 2024, pp. 15–26)

### Women Who Are Haram to Marry

**Forbidden Forever (Muabbad):** In Islamic teachings, there are provisions regarding certain prohibitions in marriage that must be observed to ensure that the marriage contract does not fall into the category of haram. These prohibitions are divided into two categories: *muabbad* (forever forbidden to marry) and prohibition *muaqqat* (temporarily forbidden to marry). The prohibition of *muabbad* includes women who are *mahram* due to blood relations, such as mothers, grandmothers, daughters, siblings, aunts, and nieces, as well as *mahrams* due to breastfeeding and marriage. While the prohibition of *muaqqat* includes women who are married to other people (other people's wives), women who are undergoing the *iddah* period, and the plurality of two sisters in one marriage. In addition, Islam also prohibits Muslim men from marrying polytheistic or idolatrous women, unless they have converted to Islam. All of these prohibitions are established to maintain the honor, descendants, and dignity of the marital relationship in accordance with the *maqashid sharia*.

**Temporary Haram (Muaqqataah):** In Islamic law, the prohibition on marriage can be temporary (*mu'aqqatah*) or permanent (*muabbadah*). A *mu'aqqatah* prohibition is temporary and can be lifted if the reason for it disappears. Examples of this prohibition include marrying a woman who is in the *iddah* period, marrying two sisters simultaneously, or marrying another man's wife. This haram status is not permanent, because if the *iddah* period ends, the relationship between the siblings is no longer united in one marriage, or the woman is divorced, then the marriage becomes permissible. Scholars state that the *mu'aqqatah* prohibition aims to maintain order in marital relations and protect women's rights and family honor. Therefore, a person who falls into the *mu'aqqatah* haram category cannot be married as

long as the reason for the haram remains, but it can become permissible to marry if the reason has disappeared according to sharia. (Rusdaya Basri, 2024, pp. 67–80)

### **Purpose of Marriage**

Marriage in Islam is not merely intended to fulfill biological needs, but has noble aims and objectives for the good of the individual, family, and society. One of the primary purposes of marriage is to maintain offspring (hifz an-nasl) so that a legitimate, educated, and qualified generation is born according to Islamic teachings. In addition, marriage is a means to maintain self-respect from adultery and sins that are prohibited by sharia. In household life, marriage is also intended to foster affection (mawaddah wa rahmah) between husband and wife, as explained in the Qur'an, Surah Ar-Rum verse 21. Moreover, marriage is expected to be able to create peace of mind (sakinah) and build a harmonious, strong family, and play an active role in fostering an Islamic society that is obedient to Allah SWT. Thus, marriage is an act of worship that contains great wisdom, both in terms of this world and the hereafter. (Kosim, 2019, pp. 12–16)

### **The Wisdom of Marriage**

Marriage in Islam contains many profound lessons for human life, both individually and socially. One of the greatest lessons of marriage is the preservation of honor and purity, because through this legal bond, human biological needs can be channeled in a lawful and honorable manner. Furthermore, marriage serves as a means of continuing legitimate offspring, thus creating a generation whose lineage is preserved and whose basic rights are fully realized, both religiously and socially. Psychologically, marriage provides serenity, peace of mind, and tranquility of heart, because within the husband-wife relationship, there is mawaddah (love) and rahmah (mercy) bestowed by God. Socially, marriage strengthens family ties and builds a harmonious and orderly social order, as the family is the smallest unit in society. Furthermore, marriage also serves as a means of worshipping God, because through the household, a Muslim can practice religious teachings more perfectly and comprehensively. (Kosim, 2019, pp. 16–17)

## **b. Marriage According to Customary Law**

### **Understanding Traditional Marriage**

A customary marriage is a marriage bond carried out based on the norms, procedures, and customs of a particular society. This marriage is not only seen as a legal relationship between a man and a woman, but also as an effort to maintain the continuity of offspring, preserve the clan or tribe, and strengthen social and family ties within the customary community. Customary marriage is usually regulated through a local customary legal system that has been passed down from generation to generation and has binding force within the community, both in terms of ceremony, requirements, and customary sanctions if violated.

Marriage according to customary law is a custom or behavior of indigenous people in carrying out marriage ceremonies which are then made into positive law that is not written and only applies in certain communities and has sanctions in it. The marriage is a very important event in the life of indigenous people, because marriage does not only involve the bride and groom, but also the parents of both parties, their siblings, and even their respective families.

The bonds that arise as a result of customary marriage are as follows: Civil bonds, customary bonds, kinship bonds and neighbor bonds.

The legal obligations arising from customary marriages can be seen in the status of husband and wife. The same applies to the status of children and adoption. The status of the eldest child, the successor to the family line, the customary child, the foster child, and so on. Another legal consequence concerns marital property, which is the property arising from the marriage, depending on the form and system of local customary marriage. Marriage is essentially a bond that occurs and is desired by society. A form of marriage that occurs based on certain considerations does not deviate from the provisions of the rules or norms of the local community.

### Forms of Marriage

In Minangkabau tradition, there are various forms of marriage that reflect the matrilineal kinship system and the traditional values held in high regard by the community. One common form is *Sapayuang marriage (saparapat)*, namely a marriage in which the husband lives in the wife's family home (matrilocal), in accordance with the principle of maternal lineage. In addition, there are other forms *sin-law marriage*, where the husband does not live in his wife's house but remains in his original house or builds his own house, but remains bound by kinship ties with his wife. This is also known today as *marry if* (out-marriage), namely a Minangkabau woman marrying a man from outside the tribe or region, so that she leaves her mother's tribe. In tradition, there is also a strict prohibition, namely *my sasuke's marriage*, namely marriage between a man and a woman from the same tribe because it is considered to violate the principle of matrilineal lineage (Febria et al., 2022). Apart from that, it is also prohibited *marry a bako* (father's family) because even though the bako is not from the same tribe as the mother, in Minangkabau tradition the relationship with the bako is considered close like a mahram so that marriage is considered inappropriate. The next prohibition is marrying *banana child*, namely the son of the mother's sister (nephew), because they are still in the same line of descent.

In addition, there are also forms of marriage based on customary procedures, namely *bajapauik wedding*, where the woman "picks up" or proposes to the man to become her husband, according to Minangkabau matrilineal customs; this process is accompanied by the giving of harta japauik (pick-up money) to the prospective groom's side. As the opposite of this, there is also *reciprocal marriage*, a form of marriage between two families or tribes whose children have previously intermarried, resulting in a customary exchange of partners between the two families as a symbol of the close relationship between the two parties. All forms of this marriage, both encouraged and prohibited, are strictly regulated in Minangkabau customary law to maintain the purity of lineage (hifz an-nasl), tribal honor, and harmonious social relations within the community. (Isra Alqadri, n.d.)

### Principles of Customary Marriage

Marriage in Minangkabau customs must be in accordance with Islamic law, as the Minangkabau adhere to the philosophy of Islam. "*Adat basandi syarak, syarak basandi Kitabullah*", then all processes and conditions in marriage must follow Islamic law, such as the presence of consent, dowry (dowry), guardians, as well as fulfilling the prohibitions on

religious traditions according to the Shari'a. Marriage in Minangkabau also considers matrilineal lineage. Therefore, strict prohibitions apply *my sasuke's marriage*, namely marrying someone from the same tribe, because they are considered to be of the same maternal lineage. This is to maintain the sanctity of the lineage (*hifz al-nasl*) and customary order. Marriage according to Minangkabau custom is based on the principle *babaleh* (exchange) and *you* (mutual respect) between men and women, as well as between the *bako* family (father's side) and the parent (mother's side). This means that marriage must pay attention to balance, honor and goodness of both parties, both in the form of treatment, property and social position.

Marriage is not only a relationship between two individuals, but also *the link between two races* or extended family. Therefore, every marriage must go through a consultation between the extended families of the woman and the man. The approval of the clan leaders is crucial, as they are responsible for upholding the dignity and rights of the clan in the marriage agreement. Although the Minangkabau adhere to a matrilineal system, the position of the *bako* (The father's side) is still respected. In certain customs, there is a prohibition on marrying relatives from the father's side because they are still considered to be a family relationship whose honor must be maintained.

### c. The Prohibition of Marrying Your Mother's Sister's Children from the perspective of Maslahah Murlah?

#### Understanding Maslahah Mursalah

*The Problem of the Mursalah* is a consideration of benefit (goodness, benefits) which is used as the basis for determining Islamic law in matters which are not expressly regulated in the Qur'an, Sunnah, Ijma', or Qiyas, provided that it does not conflict with existing sharia evidence.

In terms of language, *benefit* means benefit or goodness, whereas *the devil* means "that which is released", meaning the benefit that is not bound by any special proposition that allows or prohibits it. (Salma, 2016)

As for Imam Al-Ghazali: Maslahah Mursalah is a benefit that is not explicitly touched upon by the sharia, either in the form of recognition or denial, but is in line with the general objectives of the sharia (*maqashid sharia*), namely protecting religion, soul, mind, lineage and property. Imam Asy-Syatibi: Maslahah Mursalah is used to establish laws regarding new problems that arise in society, as long as they bring goodness and do not conflict with the basic principles of Islamic law. (Hidayatullah, 2018)

Examples of Maslahah Murlah in Life: Making KTPs, birth certificates: Not mentioned explicitly in the text, but it is important to protect one's rights and identity (*hifz an-nasl* And *hifz al-mal*). Traffic regulations: There is no text that mandates wearing a helmet or driving license, but it is stipulated to protect the human spirit (*hifz al-nafs*). The use of new technology for online zakat or waqf: This did not exist during the time of the Prophet, but it is permitted because it facilitates the implementation of sharia obligations.

#### Conditions of Maslahah

*First*, maslahah is Real and Not Merely Suspicion: The maslahah in question must be real (truly bringing benefits and preventing harm), not just an estimate or assumption without a strong basis. If the maslahah is only illusory or subjective (depending on the judgment of

lust), then it is not valid as a legal basis. Example: The prohibition of drugs. It is not mentioned in the text, but the impact of the damage is real—clearly damaging the mind (hifz al-'aql)—then it can be prohibited through *maslahah mursalah*. Second, *Maslahah Must Be General (For Public Interest)* *Maslahah* must concern the interests of the wider community (*maslahat 'ammah*), not just for a handful of people or certain groups. Pure individual benefits cannot be used as a general basis for sharia. Example: The rule that motorcycle helmets are mandatory for the entire community to protect the soul (hifz an-nafs)—not only for personal interests. (Qorib & Harahap, 2016) *Third, Maslahah Must Not Contradict Sharia Evidence (Nas Qath'i)* *Maslahah* must not contradict the Qur'an, Sunnah, Ijma', or authentic Qiyas. If it contradicts, it cannot be accepted even if it is considered beneficial according to human reason. For example: Permitting usury for the sake of the national economy, even though it seems "profitable," is still forbidden because it contradicts the *nash qath'i*.

*Fourth, maslahah* concerns primary (*Daruriyyat*) or secondary (*Hajiyyat*) needs, *maslahah* that can be used as evidence must relate to *maqashid sharia daruriyyat* (five principles of sharia): Protecting religion (hifz ad-din), protecting the soul (hifz an-nafs), protecting reason (hifz al-'aql), protecting offspring (hifz an-nasl), protecting wealth (hifz al-mal) Or at least it concerns *hajiyyat* (secondary needs) which can reduce life's difficulties. Example: Making a KTP protects assets, inheritance rights, family identity, including in hifz al-mal and hifz an-nasl. Fifth, do not ignore bigger problems or give rise to heavier problems. The benefits taken must not sacrifice greater benefits or cause new, more severe damage/harm. Example: Closing a mosque for worldly reasons (e.g., business), even if it is economically "profitable," is a major cause in hifz ad-din. Sixth, the cause must be acceptable to common sense, and the scholars' considerations must be reasonable, logical, acceptable to the general public (not something strange or far-fetched), and recognized by the authoritative scholars. (Nyak Umar, 2017, pp. 148–149)

## Various Types of Maslahah

Based on the clarity of the sharia evidence (reviewed from the aspect of the evidence), *maslahah* is divided into several, including: *Maslahah Mu'tabarah*: *Maslahah* recognized by the sharia directly through texts (Al-Qur'an, Hadith), *ijma'*, or *qiyas*. Has been used as a basis in determining the law by sharia. Example: The prohibition of drinking alcohol because it damages the mind (hifz al-'aql) - this is *maslahah mu'tabarah* because it is supported by a clear text. Then there is *Maslahah Mursalah* *Maslahah* that has no specific evidence to support or reject it, accepted if it meets certain conditions (see the explanation of the previous conditions). Example: Policy on making driving licenses and traffic lights to protect the safety of life (hifz an-nafs). Next there is *Maslahah Mulghah* This is a benefit that is rejected by Sharia, even though it appears to be beneficial to human reason. It cannot be used as a legal basis because it contradicts Sharia texts. For example, permitting usury for the sake of economic growth is rejected because it is expressly forbidden in the Quran. (Ajuna, 2019)

Based on the level of need (viewed from its importance), there are several, including: *Public Interest*, Primary/main benefit, which is very important to maintain: Religion (Hifz ad-Din) Soul (Hifz an-Nafs) Intellect (Hifz al-'Aql) Offspring (Hifz an-Nasl) Wealth (Hifz al-Mal) If these five things are not fulfilled, human life will be damaged. Example: Prohibition of murder for the sake of protecting the soul; obligation of zakat for the sake of

protecting wealth. Next there is *Maslahah Hajiyyah*, secondary/complementary benefits, not main, but if ignored, it will cause life difficulties. Make human life easier. Example: Rukhsah (relief) for travelers so that they may not fast during Ramadan. As for the last *Maslahah Tahsiniyyah*, Tertiary/complementary benefits of life's perfection, embodying ethics, goodness, politeness, and beauty in life. Examples: Advice to wear clean and nice clothes when praying, and to maintain good manners in eating and drinking. (Adinugraha & Mashudi, 2018)

## Research Results

The classic Minangkabau expression "Adat basandi syarak, syarak basandi Kitabullah" reflects the integrative spirit of custom and Islam. However, the reality on the ground shows that custom is not always textually parallel to Islamic law, but can align with it in its values (spirit). This prohibition, although not found in fiqh (Islamic jurisprudence), has strong sociological justification. Therefore, a contextual approach is needed to view Islamic law to accommodate local wisdom.

*Basandi Syarak custom, Syarak Basandi Kitabullah* become the basis for harmonization between Islam and Minangkabau customs. In this context, even though Islam permits it, custom prohibits it for the sake of the benefit, which is accommodated in Islam through the rules of *Maslahah Murrasa*. Some Ushul Fiqh scholars, such as Al-Ghazali and Asy-Syatibi, allow legal decisions to be made based on real benefits, even if there is no specific argument, if they meet the requirements of *Maslahah Murlahan*.

There are several interviews conducted with people who are influential or play a role in Minangkabau customs, namely the datuak, namely the first (Frant Saddrosn, SE, SH, Datuak Pangulu Sati, personal communication, June 2025). He stated, "In Minangkabau tradition, the prohibition against marrying within the same rumah gadang (same clan/tribe) is based on the principle of matrilineal or matrilineal exogamy. This means that a person may not marry someone who is related by blood through the mother's line. This is to preserve the lineage, prevent incest, and protect the social order within the clan."

and the second resource person, namely (Jendri Hidayat, S.Pd.I., Datuak Pandak Marajo, personal communication, June 2025) which states, "First, in ancient times, the population was still small, and inter-tribal marriages would slow down community development. Second, this was the result of a customary consensus in the Sumpah Sati Bukik Marapalam—an agreement that remains in effect even though religion permits it. Third, inter-tribal marriages undermine the kinship system and customary structures, and violators are subject to fines from the village. Fourth, it also disrupts kinship ties and inheritance distribution."

Although in Islam there is no sharia prohibition on marrying the child of one's mother's sister (because they are not considered mahram), Minangkabau custom strictly prohibits the practice in order to maintain the matrilineal social structure. In this case, the *maslahah mursalah* can be applied as a sharia reason to respect and avoid social damage, namely the *maslahah* of this prohibition is included in the category of *maslahah hajjiyah* (secondary), for the following reasons: First, avoiding social difficulties and customary conflicts, this *maslahah* does not concern basic survival, but if violated can cause social pressure, family conflict, ostracism, and rifts in the structure of the community. therefore, this is included in the *maslahah hajjiyah*, because the goal is to avoid difficulties and social

damage. Second, it does not reach the level of emergency (dharuriyyah) the marriage does not invalidate religion, does not harm the soul, and does not directly touch the basic aspects of life. so, it is not included in dharuriyyah. Third, beyond mere ethics or aesthetics (tahsiniyah), this prohibition is not merely for manners or politeness, but has more serious social implications (damage to tribal structures and social relations), therefore, it is higher than tahsiniyah.

## CONCLUSION

The prohibition on marrying one's mother's sister (nephew) in Minangkabau custom has no explicit basis in the Quran or Hadith, as such relationships are not considered mahram under Islamic law. However, in the Minangkabau social system, which is based on matrilineal descent, this prohibition remains strictly enforced as part of the social and structural mechanisms for maintaining tribal identity, customary stability, and the integrity of kinship relations.

The principle of "Adat basandi syarak, syarak basandi Kitabullah" serves as a philosophical foundation that bridges customary norms and Islamic values. In this case, although there is no Islamic law prohibiting marriage with a nephew, this prohibition can be understood through a religious approach. *the benefit of the poor*, namely considerations of benefit that are not explicitly stated in the evidence, but are accepted as long as they do not conflict with the maqashid sharia.

This prohibition falls into the category *Hajj benefits* (secondary), because the aim is, firstly, to avoid social conflict and kinship tension, secondly to maintain the matrilineal social structure and customary inheritance system and thirdly, to prevent disintegration within the clan which could disrupt social harmony.

This prohibition is not included in the category of primary (daruriyyah) maslahah because it does not touch on basic survival such as religion, soul, or reason; and is higher than supplementary (tahsiniyyah) maslahah, because its impact is real and significant on social order.

Thus, the prohibition on marrying the child of one's mother's sister in Minangkabau tradition can be seen as a form of legitimate and sharia-compliant social ijtihad. This demonstrates that local wisdom, as long as it does not conflict with the fundamental principles of Islam, can serve as a normative basis through the maqasid sharia and 'urf sahih approaches. This affirmation of custom is proof that Islam can synergize with local culture in building a civilized and just society.

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