



## Legal Relations of Contemporary Islamic Family: A Study of The Existence of Local Culture in Sambas, West Kalimantan

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### ABSTRACT

This research investigates marriage laws in Islam, aiming to explore the scientific knowledge of Islamic family law related to the local Sambas culture in marriage practices. The people of Sambas deeply intertwine their regional loyalties with local customary culture, particularly in the context of Muslim weddings. This study addresses whether Islamic marriage laws conflict with local cultural traditions, especially within Indonesia's framework of Islamic family law. The focus of this research examines how the implementation of Islamic marriage laws interacts with or conflicts with the local Sambas culture. The research employs a qualitative methodology that combines fieldwork and literature review. The empirical normative approach is designed to describe data related to contemporary Islamic family law legislation in the context of the local cultural axiology of Sambas, West Kalimantan. This approach systematically examines and explains the facts and characteristics of the subject in detail and depth. The researcher closely ties the research methods to the procedures, techniques, tools, and designs used throughout the study. The primary finding of this research underscores that culture is fundamentally a product of human intellect, comprising patterns, ways of thinking, emotions, and reactions shaped by and expressed through symbols created collectively by the Sambas community. The study identifies significant issues in the current legislative framework, where policymakers often prioritize intellectual subjectivity over human objectivity. As a result, emerging policies fail to address societal needs adequately. In response, the researcher catalogs various forms of local wisdom within Islamic communities in Sambas, proposing these as relevant methodologies for establishing laws that align with local culture.

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## 1. INTRODUCTION

Culture results from man's unrestricted and dual creative ability in the natural world, including real and imaginary objects, *malmusah* and *ghairu malmusah*, and *ma'nawi* and *maddi* things. Culture (*Tsaqafah*) is a product of human reason consisting of various patterns, steady behaviors, thoughts, feelings, and reactions acquired and mainly derived by symbols that compose their achievements separately from human groups. (Veissière et al., 2020) Culture is everything that contributes to the development and formation of the soul. One of the meanings of cultivation (*tatsqif*) is coaching. If civilization is the cultivation of reality with something, then culture is the cultivation of the human soul with thought or reason. Meanwhile, culture has an important meaning for a society. (Tamariz, 2019) Culture arises because of human beings and the interaction of fellow human beings.

Culture is typical of human creativity, so it is attached to diversity and human diversity as its creators. The diversity of human creativity, called culture, is a logical consequence of the diversity of man and his society. (Duffy, Poell, and Nieborg, 2019) The resulting form of a culture is in the form of material objects of value and essential things such as traditions, ideals, understandings, and attachments to values, for example, gender, language, race, ethnicity, nation, and other natural groups. (Graff, Kapur, and Walters, 2019) Meanwhile, the creation was born due to the interaction of individuals or groups with groups amid a society with believed values. Internal and external factors can influence culture in general.

The concept of culture brought by Islam entrusts the interaction between a profane human being and a sacred god again transcendental, in addition to the necessity of a relationship between each other and his natural environment. In other words, The Islamic ummah forms Islamic culture through its passion for humanity and the values shared in all relationships to address challenges from the external environment (Sahin 2018). Considering the cultural concept above, we can understand that culture holds plural values, and each region develops its cultural differences. It is why legal, political, economic, and even Islamic jurisprudence policies differ. (Yilmaz, 2021)

Culture is a reality of life that is impossible for humans to live in: religious differences, ethnic differences, language differences, differences in life patterns, differences in traditions, and even differences in ideologies. In the context of Islamic family law, the law is one of the products of civilization. We can understand that law functions as a sub-system of culture, distinct from the law of shari'a, which fosters civilization. Implementing Islamic shari'a in a region becomes the source that gives rise to Islamic civilization (Josef W, 2018). From this, we can conclude that human cultural laws must align with the laws established by Allah SWT in the realm of creation, which embody justice. Only the laws of Allah SWT harmonize with the laws of nature. The law serves as the juridical expression of a concept of justice. Meanwhile, the function of the legal system, in the view of legal experts, is to distribute and maintain the allocation of values that society sees as correct. (Lubis and Azizah, 2018)

In the context of legislative regulations, which are the result of culture (creation of reason), experts in the legislative, judicial, and excursive fields should always prioritize aspects of justice and natural balance as well as the provisions of sharia principles (revelation) (Maciej Serda, 2018). According to Sanchez (2023), the resulting legislation can be used as a legal basis and even form a new culture of noble character. This paper will discuss how local culture affects legislation in Sambas Kalimantan Barat. So, it can be described in this paper that there are a lot of Islamic family

laws in Indonesia that accommodate the local culture of the Sambas Regency Community. Then, how does Islam view this? Islam is a producer of culture, not only the local culture but the culture of the universe universally, even though, on the one hand, Islam also sometimes reforms, reconstructs, and even revolutionizes the culture that already exists in a situation. (González Zarandona, Albarrán-Torres, and Isakhan, 2018). The very famous Sambas culture is the culture of cooperation, especially regarding marriages in the Sambas community. In this case, this spirit of togetherness significantly affects family law legislation in Indonesia. Islamic law has never recognized common property (Crone, 2019). However, the compilation of Islamic law includes this concept. Although it does not explicitly mention common property, the concept significantly influences the people of Sambas.

## 2. METHODS

This research uses a type of qualitative research of a library nature by collecting data through library research techniques and then analyzing it from an Islamic legal perspective. The method used is a qualitative descriptive literature type and uses a normative approach, namely describing data related to contemporary Islamic family law legislation: an axiological study of local culture in Sambas Kalimantan Barat. This normative approach aims to describe data related to contemporary Islamic family law legislation in the study of local cultural axiology in Sambas Kalimantan Barat and to describe and explain systematically in the form of facts and characteristics of an object studied in depth and carefully. This literature research closely relates to the procedures, techniques, tools, and research design. The data needed in this research are references to books, journals, and mass media relevant to explaining the discussion of Islamic marriage laws and data related to local marriage culture in Sambas.

## 3. RESULTS AND DISCUSSION

### The Existence of Culture and Islam's Response to Culture

The cultural response of the world's Muslims can be seen from the development of Islamic law among the Muslim community because the teachings of Islam have formed a good culture in terms of its application in the Muslim community. As the Messenger of Allah said, "Whoever pioneers in Islam a good habit, then he acquires the *pahala* of that good habit and the reward of the one who does it after himself without diminishing in the slightest their reward. Moreover, pioneers in Islam who have a bad habit will accept the sin of that bad habit and the sin of the one who does it after himself without diminishing in the least their sin. (HR. Muslim). (Mohd and Kadir, 2020)

The above hadith linguistically interprets *sunnah* as a procedure, custom, custom, or behavior. Allah SWT responds positively to His servant, who is creative in forming a positive culture in Islam but must be by the provisions of the law of Allah SWT stated in the Qur'an and the universe. A positive culture will be reciprocated with individual and collective rewards from those who follow that culture.

In principle, Islam forbids its ummah only to have the nature of following and adopting. Even taqlid to a culture just like that, as Allah SWT said, "and if ye obey most of the people on this earth, they will undoubtedly lead us astray from the ways of God. they are nothing but merely following mere presumptions, and they are nothing but lying (against Allah)" (al-an'am verse 116). (Massoud, 2018) Likewise, the Messenger of Allah (PBUH) said: "Truly you will follow the customs of the people before you inch by inch, sehasta by sehasta, until if they walk into the hole

of the monitor lizard, indeed you will follow him. We (friends) asked, "Are they Jewish and Nashrani? The Apostle replied, "Who else? (HR. Bukhari in the Book of Bada' al Wahyu). (Hasan, 2020)

The above verses and hadith very clearly indicate that Islam gives great motivation to the Islamic ummah to optimize its jurisprudence in order to produce a good and just culture (in this context of the Law) so that when the legal policy is implemented, then the legislators of the law get a promise of great reward from Allah swt. However, if they deliberately make legal policies that are not by the rules of Allah swt and the balance of nature, they will get sin and recompense as the hadith above. (Umar, 2019) It is what makes Islam *washatiyah*. It is an attitude of diversity that does not get stuck at extremes. This attitude allows at least one to pick up every kindness from various groups. (Uyun, Kurniawan, and Jaufalaily, 2019) They readily accept any culture rooted in the principles of goodness in Islam.

The socio-cultural-historical conditions of each country are relevant to the discourse on implementing marriage laws in each country. The extent to which the implementation of marriage laws can be applied in each country in the context of today's modern government system. The final stage compares the actual application of law in each country with different government systems, constitutions, historical rationale bases, and the prospects for implementing marriage law in Malaysia in the future (Ismail, 2023).

Morocco has the Maliki school of thought, which can guide it, and in Indonesia, the Shafi'i perspective is the role model for society. Morocco upholds traditional values and local wisdom. They also like beauty and love traditional entertainment as long as it does not conflict with the basic principles of Islamic teachings they adhere to (Nasiri, 2022)

The culture of marriage law in Libya explains that Article 2 of the 1969 Libyan Constitutional Declaration makes Islam the state religion. Sharia is made a source of law (in practice, people do not respect this) in Article 3 (2) of the 1973 Libyan Constitution. Article 3 of the 1973 Syrian Constitution (as amended in 2012) states that the president must be a Muslim and that Islamic jurisprudence is the primary source of laws (Jessica Carlisle, 2019).

Regarding cultural accommodation, Islam does not necessarily make the existing culture a legal and statutory basis; it is a process that goes through. Is the culture by Sharia and nature or not? When opposed, the culture needs to be done several things (Syauqi Seff, Dyah Ochterina Susanti, 2022), namely:

1. The process of *tabdil* (replacing) the old culture with the new culture, just as Islam replaced the culture of idolatry and polytheist beliefs into a monotheist culture (tawhid) and only worshipped Allah swt.
2. The *tajdid* (reform) process is re-updating the concept in previous cultures, as the concept of jahiliah inheritance does not give women inheritance. However, Islam comes by changing the format of inheritance by giving inheritance to women even though it is not the same as men. There is also in this *tajdid* the process of *tarkibis* (the granting of waivers from earlier cultures).
3. The *tansikh* (abolition) process is to altogether abolish the existing culture without substitutes or renewals, just as mut'ah marriages are forbidden without any substitutes, Allah swt forbids liquor.

4. The process of *ta'kid* (strengthening and affirmation) is the affirmation of the existing culture that it is good to carry out, for example, the guardianship path under the path of the *ubumab* (father), which before the Arabs were indeed men became the center of the family.

Islam responds positively to culture, even when today we consider the West to be a destroyer of this culture. It is unfair because many Western cultures are by Islamic principles. Examples include the exceptional research culture in the West, its immaculate culture, well-organized administrative systems, and other similar practices.

### **Sambas Culture From an Islamic Perspective**

Since its early development, Islam in Indonesia has received cultural accommodation. Islam, as a religion, provides many norms and rules about life compared to other religions. When viewed from the relationship between Islam and culture, there are at least two things that need to be clarified: Islam as a sociocultural concession and Islam as a cultural reality. (Akalay, 2021) Islam as a conception of this culture by experts is often referred to as the grand tradition, while Islam as a cultural reality is called the little tradition or local tradition or also Islamicate, areas that are "Islamic," which are influenced by Islam. (Rambe, 2023).

The great traditions (Islam) are the original doctrines of Islam that are permanent, or at least they are interpretations strictly attached to the fundamental teachings. (Nasir, 2019) In a smaller space, this doctrine is encompassed in the Islamic conception of faith and sharia, which is the inspiration for the mindset and pattern of action of Muslims. These traditions are often referred to as centers contrasted with peri-ferries (periphery). (Chaplin, 2018) The small tradition (local tradition, Islamicate) is the realm of influence of areas under the influence of Islam (great tradition). (Bashirov, 2018) This local tradition includes elements in the cultural sense that include concepts or norms, human activities and actions, and works produced by the community.

In other terms, the process of acculturation between Islam and local culture then gave birth to what is known as local genius, namely the ability to absorb while conducting selection and active processing of foreign cultural influences (Ahmad Subakir 2020) so that a unique new creation can be achieved, which is not found in the territory of the nation that carries its cultural influence. On the other hand, local culture in Sambas West Kalimantan has characteristics, including being able to survive outside cultures and accommodating elements of outside cultures, which can integrate elements of outside culture into the original culture and can control and give direction to the subsequent development of culture.

As a norm, rule, and all activities of Indonesian society, Islamic teachings have become a pattern of community linkage. (Suharto, 2018) In this context, Islam as a religion has also become the culture of Sambas society. The local cultures within the community are not automatically erased With the introduction of Islam. (Rifat, Toriq, and Ahmed, 2020) Sambas local cultures continue to be partially developed by getting Islamic colors. This development later led to "cultural acculturation in Sambas" between local and Islamic cultures and Islamic family law in Indonesia.

### **The Attitude of the Sambas Muslim Community Towards Culture**

Many groups consider the event to be something misleading; there are also understandings from different groups that understand it as something distinctive and positive. The two groups conflict with each other's truth claims. Not surprisingly, the atmosphere became rowdy. The first

group was stuck on Arabcentric. (Manjapra, 2020) Indeed, this first group also had the ambition to homogenize all the cultures in the world into one, as practiced by the Prophet Muhammad. Different cultures are not considered part of Islam. Meanwhile, the second group wants Islam to be presented as a value that can affect all existing cultures. (Husin and Kernain, 2019)

The number of Muslim population in Sambas Regency reached 87.97%. Sambas culture of Islamic society lies in values, not the physical form of that culture. A Sambas community group interprets the universality of Islamic teachings as not limited to time and place so that it can enter any culture. Meanwhile, the Salafi group considers Islamic teachings to be limited and not universal. Ahmad Baso "convicted" the two groups of Wahabi-Salafists and Secular Liberals. He is a writer about both Islamic groups offering seductive and seductive thoughts, but behind it is deceptive. The liberal group advertised, "Muslims need to enlighten their minds, try not to be easy targets for terrorist groups." Similarly, Wahabi groups advertised, "Muslims need to uphold Islamic law so that Indonesia can get out of a multidimensional crisis," he said. (Baso 2019)

Although the author disagrees with the above terms because the local Sambas culture does not conflict with the Islamic teachings, in principle, the local culture of Sambas is polarized between these two views of culture. Some of them resist the extreme, and some accept the extreme. Islam's position as a moderate religion provides a middle ground for the meaning of culture in Samba.

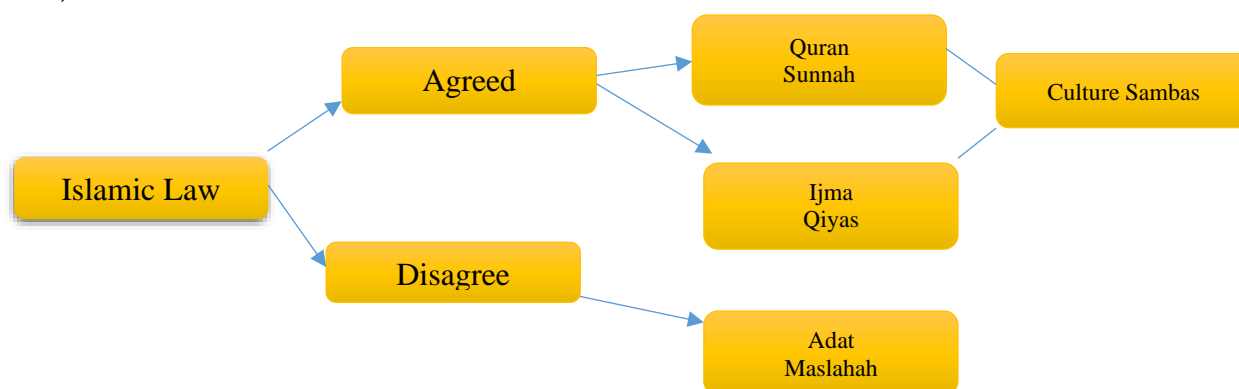
### **Legal Sources of Relevance to Local Culture in Sambas, West Kalimantan**

In Islamic law, culture is often referred to as '*urf*' or '*adab*' and is defined as '*urf*', which is a state, utterance, deed, or provision that has become known to man and has become a tradition to carry it out or leave it. In this case, Jamal al-Banna defines it differently in the context of '*Urf*' with the preferred word. (Malik 2019) In *al-ta'rifat al-Jurjani* defines '*urf*' as being recognized by the soul by the testimony of reasoning and accepted by habit. (Irawan, Jayusman, and Hermanto 2019) '*Adab*' (habit) is what becomes a human habit based on reasoning and is carried out repeatedly. In the concept of '*urf*' the scholars' *ushul* divides '*urf*' into two things, namely '*urf*' *sahih*, which is a custom or culture that is true by Shari'a, and '*urf*' *fasid* is a culture that is contrary to sharia. (Rosyid and Lina Kushidayati 2022) In this context, it can be understood simply that the science of *ushul fiqh* classifies *urf* by two criteria. Meanwhile, the context of *urf* law does not include a separate legal postulate.

In general, '*urf*' is intended to preserve the benefit of humanity and support the formation of laws and interpretations of some Nash. (Muslimin 2017) The determination of '*urf*' as a legal basis (*hujjah*) can be explained as follows:

1. Shari'a pays attention to the law of causality. Shari'a also establishes laws based on custom. From this, the law of *qishash* is passed in shari'a because it can preserve the benefit of the human soul.
2. The existence of a command with one standard shows that Sharia takes into account habits. Otherwise, there will be many standards in sharia standards.
3. The benefit of society will not become real without paying attention to their habits. Shari'a, come and pay attention to benefits; this is a habit that is considered.
4. If the law does not consider customs, it means that the law is not to their abilities, and Sharia does not justify this.

Islam is present for humans, so it must also respond to everything humans need. Sometimes, fiqh is still in the state of conceptualization of Islam, not lowering Islam to the level of humanity; this is where it is necessary to mediate between shari'a and human habits, between revelation and human reason in order to create a new thought that can respond to the benefits of human life and even the universe. This Islamic responsiveness was built by the Prophet Saw when he forbade *khamr*, forbidding the worship of idols and other shari'a. (Badawi, 2020) The Prophet saw how he was cautious and gradual in carrying out his proselytizing so that the success of proselytizing in enforcing the Islamic creed and shari'a was achieved at that time. (Hefner, Shah, and Berkeley, 2021)



**Figure 1. The conceptual framework of the journey of Islamic law in cultural applications in Sambas.**

The sources of Islamic law (is a source of Islamic teachings or a source of Muslim law) 2. Agreed upon (Muslim consensus on the determination of the laws). 3. Disagree (do not agree with existing agreements sourced from Islamic law). 4. Quran and Sunnah (Muslim way of Life). 5. Ijma' and Qiyas (ijma' agreement of the fiqh scholars and Qiyas figure of speech applied from the time of the Prophet to the present).

The conceptual framework of the journey of Islamic law in its cultural application in Sambas can be analyzed through a historical and contextual approach that pays attention to the Sambas community's social, cultural, and customary characteristics. Here is an analysis of five key aspects:

1. Sources of Islamic Law: The sources of Islamic law, namely the Qur'an and the Sunnah, are the primary basis for determining the teachings and norms that apply to Muslims, including in Sambas. In the context of Sambas culture, principles derived from the Qur'an and Sunnah are integrated with local traditions, such as customs and social norms passed down from generation to generation. It creates harmony between Islamic teachings and local culture, especially regarding marriage, heritage, and social relations.
2. Deliberation (Consensus of Muslims). Deliberation or consensus is one of the relevant ways of decision-making in the context of the Sambas community. The tradition of deliberation in local cultures is often combined with Sharia principles, allowing the community to collectively agree on Islamic legal issues. For example, in determining the schedule of religious celebrations or dispute resolution, deliberations involve religious and customary leaders to create solutions that reflect Islamic values while respecting customs.
3. Disagree (difference of opinion). Differences in applying Islamic law arise because individuals interpret it differently or because customary influences do not fully align with Islamic teachings. In Sambas, these differences frequently occur in matters such as the distribution of inheritance

or ritual practices that incorporate traditional elements. However, these differences are usually managed through discussion and dialogical approaches, resulting in a middle ground that still refers to Sharia principles but respects the diversity of local cultures.

4. Al-Qur'an and Sunnah (The Way of Life of Muslims). The Qur'an and Sunnah are the primary guides for Muslims in Sambas in living their daily lives. The values contained in it are often applied in social interactions, such as mutual help, respect for parents, and respect for honesty values. The Sambas people also practice this teaching in traditional ceremonies, such as weddings or circumcision, where Islamic prayers are an integral part of the implementation of the ceremony.
5. Ijma' and Qiyas. Ijma' (the agreement of the scholars) and Qiyas (analogy of law) play an important role in answering legal issues not explicitly mentioned in the Qur'an, and the Sunnah is addressed through the principles of *ijma'* (consensus) and *qiyas* (analogical reasoning). In Sambas, the influence of *ijma'* and *qiyas* is evident in applying Islamic law that is adaptive to the local situation. For example, some customary rules related to the distribution of inheritance or the implementation of marriage contracts are harmonized with fiqh principles through analogies and agreements of local religious leaders.

Islamic law in Sambas is a normative guideline and a combination of local customs and culture, creating harmony between Islam and the uniqueness of Sambas culture. The deliberation approach, acceptance of differences of opinion, and the use of *ijma'* and *qiyas* show the flexibility of Islamic law in responding to contextual challenges without leaving its theological foundation. It proves that Islamic law can be a relevant and applicable solution to the cultural dynamics of the Sambas community.

There are many problems in establishing laws and regulations today, where legislators are more concerned with their intellectual subjectivity and interests than with humanitarian objectivity towards the benefit. Hence, policies that are not responsive to the needs of society occur.

### **History of Law Legislation No. 1 of 1974 Related to Marriage Culture in Indonesia**

The marriage law's inception has a lengthy historical background. Beginning with Islamic women's understanding of their rights, who feel castrated by the supremacy of legally recognized classical or conventional jurisprudence, they consider this in meetings that eventually give rise to the Marriage Law. Kathryn Robinson noted that in 1928, the Indonesian Women's Congress held a forum discussing the vices that occurred in marriage among Muslims. (Robinson, 2020) Later, this was also discussed by the People's Council.

Then, at the end of 1950, the decree of the Minister of Religious Affairs No. B/2/4299, dated October 1, 1950, an Investigating Committee for The Regulation and Law of Marriage, Talak and Reference for Muslims was formed. (Faisal & Adelina Nasution, 2021) Meanwhile, various organizations continue to urge the Government and the House of Representatives to complete the work on the Bill that enters the DPR as soon as possible. These organizations include the Social Workers' Deliberation (1960), the Family Welfare Deliberation (1960) (Foley, 2019), the Conference of the Central Marriage, Disputes and Divorce Advisory Board (BP4), and the Legal Seminar by the Indonesian Law Scholars Association PERSAHI, 1963. (Perangin Angin, Wisnaeni, and Angin, 2022) Muslims then urged the DPR to invite a bill on the Principles of Marriage for



Muslims. However, this effort, according to Arso Sosroatmodjo, was unsuccessful. Then, after the efforts of Muslims to fight for the Bill on the Principles of Marriage of Muslims were unsuccessful, the DPR, resulting from the 1971 general elections, returned the bill to the government. (Reza Idria, 2020)

Every effort has been made to produce a marriage law appropriate for Muslims. Arso noted that in 1972/1973, various joint organizations continued to fight for the law's birth. (Ayubi, 2019) The Symposium of the Indonesian Women's Scholars Association (ISWI) in 1972 suggested that pp ISWI fight for the Marriage Law. Then, the Deliberative Body of Indonesian Islamic Women's Organizations on February 22, 1972, resulted in a decision to urge the government to re-submit the Bill on the Principles of Marriage of Muslims and the Bill on the Provisions of the Principles of Marriage. (Hasyim, 2020) Furthermore, the Student organization that took part in the struggle for the Islamic Marriage Bill was the Islamic Student Association, which held a panel discussion on February 11, 1973. Finally, after hard work, the government prepared a new bill, and on July 31, 1973, with No. R. 02/PU/VII/1973, the government submitted a new Bill on Marriage to the DPR, comprising 15 (fifteen) chapters and 73 (seventy-three) articles. (Kharlie, 2020)

This bill has three objectives. First, it provides legal certainty for marital issues because, before the existence of the law, marriage was only a judge-made law. Second, to protect women's rights and, at the same time, fulfill the wishes and expectations of women. (Maras, 2019). Third, a law based on the demands of the times must be created. The Minister of Justice submitted the Government's statement on the Draft Law on August 30, 1973. (Solski, 2021) The general view and information of the Government were given by the representatives of the Faction on September 17 and 18, 1973, namely from the ABRI Faction, the Development Union. (Kusman, 2019)

In addition, many people submitted suggestions and proposals to the DPR. The proposal was submitted based on the assumption that several articles in the bill on marriage submitted to the House of Representatives of the Republic of Indonesia do not conform to the conditions of Indonesian society, which is religious and contrary to the religious norms adopted. According to Abdul Qadir Zaelani, there are at least 11 articles that are contrary to Islamic teachings (Fiqih Munakahat), namely Article 2 paragraph (1), Article 3 paragraph (2), Article 7 paragraph (1), Article 8 letter c, Article 10 paragraph (2), Article 11 paragraph (2), Article 12, Article 13 paragraphs (1) and (2), Article 37, Article 46 paragraphs (c) and (d), Article 62 paragraphs (2) and (6). (Zaelani, 2020)

Then, on September 17-18, representatives of the faction on the Bill on Marriage held a forum of views. The Minister of Religious Affairs answered to the government on September 27, 1973.22. In essence, the government invited the DPR to break the deadlock related to the Marriage Bill jointly. (Jarhum and Hoppe, 2019) Simultaneously, to break the deadlock between the government and the DPR, lobbying was held between the factions and the government. Between the ABRI faction and the PPP faction, an agreement was reached (Riza, 2020) including:

1. Islamic religious law in marriage will not be reduced or supplemented.
2. As a consequence of that first point, the things that have existed in Law Number 22 of 1964 and Law Number 14 of 1970 are still guaranteed continuity, and no changes will be made.
3. The House will soon eliminate matters that contradict the religion of Islam and cannot be adapted to the proposed marriage law under discussion.

The final result of the marriage law passed by the House of Representatives consists of 14 (fourteen) chapters divided into 67 (sixty-seven) articles, as noted earlier. The original draft submitted by the government to the DPR consisted of 73 articles, so it can be understood that Law No. 74 is very thick with political nuances. In the end, the law that was born seemed to defend one of the interests, in this case, the interests of women. (Hermanto 2022) It is because there are indeed many women who did not get justice before the birth of the law. In this history, law no. 1 of 1974 responded to the needs of Indonesian women at that time, which was a marriage culture that was not good among the Islamic ummah. How are the irregular marriage and the abundance of deviations in the family?

### **The Principle of Open Monogamy and Tolerance Culture in Sambas, West Kalimantan**

The Compilation of Islamic Law Chapter IX on Beristeri More Than One Person has five articles (55, 56, 57, 58, and 59). In these articles, it is stated that polygamy is allowed under various conditions, which, in fact, in the Qur'an and hadith, there is not a single strictly binding condition. When a person can practice polygamy, he is allowed to carry it out. In the marriage law no. 1 of 1974, which adheres to the principle of monogamy in Indonesia. Suppose the person concerned desires to practice polygamy. In that case, the law and the religion of the person concerned allow a man to have more than one wife, which is how this marriage can only be carried out if he has met various requirements determined and decided by the court. (Muflihah, Munandar, and Hamzah 2021) Thus, marriage with more than a wife or polygamy, even if it is desired by the parties concerned, can only be performed if certain conditions are met and decided by the court.

According to the author's analysis, the Sambas' open monogamy and tolerant society are as follows:

#### ***The Principle of Open Monogamy in the Context of Sambas Culture***

Open monogamy can be interpreted as a commitment to marriage with one partner. However, it provides space for discussion, agreement, or flexibility in dealing with specific situations, such as a second marriage based on mutual understanding. In Sambas, the strong Islamic culture and local customary values influence people's views on marriage.

##### *Religious and Cultural Foundations*

From an Islamic perspective, monogamy is a recommended option, although polygamy is allowed under certain conditions. In Sambas, people often prioritize monogamy as a form of respect for family stability. However, under special conditions, for example, for social or economic reasons, polygamy can be accepted with the consent of all parties concerned.

##### *Customary Flexibility and Family Discussion*

The Sambas culture that upholds deliberation allows the principle of open monogamy to become an adaptive practice. The decision to involve the element of polygamy is usually discussed in depth with the extended family so as not to damage social harmony or internal family relations.

#### ***Culture of Tolerance in Sambas***

Tolerance is one of the key values in Sambas culture that reflects mutual respect, empathy, and maintaining good relations within the community. This value comes from the strong Malay tradition and the influence of Islamic teachings.

#### *Manifestations of Tolerance in Daily Life*

In Sambas, tolerance is reflected in various aspects of life, such as cooperation in traditional events, respect for traditional leaders or religious leaders, and efforts to maintain harmony between individuals. For example, in resolving family or social conflicts, the people of Sambas prefer a dialogical approach emphasizing tolerance and respect.

#### *Linkage to the Open Monogamy Principle*

The culture of tolerance is a counterweight in applying the principle of open monogamy. Decisions related to family life, including marriage, are often made with the feelings and needs of all parties in mind. It ensures that every step taken does not hurt the couple's feelings or damage the harmony of the extended family.

### ***The Relationship Between Open Monogamy and Tolerance***

Open monogamy and a culture of tolerance complement each other in shaping the social dynamics of the Sambas community. These two principles create a relationship based on belief, understanding, and respect for religious values and customs.

#### *Adjustment to Social and Religious Values*

Although rarely explicitly stated, the principle of open monogamy aligns with Islamic teachings that provide room for *ijtihad* (interpretation of the law) according to the local context. Tolerance is important in ensuring that flexibility in family relationships does not violate social norms and still respects cultural values.

#### *Real-Life Practice*

In practice, the Sambas prioritize monogamy as a form of family stability. However, where certain conditions require consideration for polygamy, a culture of tolerance ensures that every decision is made with transparency, mutual consent, and respect for the parties involved.

### ***Challenges and Opportunities***

The development of modernity can affect the application of these principles, especially with the emergence of individualism, which is sometimes contrary to collective culture and tolerance. In addition, different interpretations of religious or customary law can create conflicts. By strengthening religious education and cultural understanding, the people of Sambas can maintain harmony between the principles of open monogamy and a culture of tolerance, making it a relevant and sustainable model of family relationships.

The principle of open monogamy and a culture of tolerance in Sambas reflects the fusion of Islamic values and local customs. Both show how the people of Sambas maintain a balance between family commitment and social harmony while remaining flexible in facing the challenges of the times. However, Samba culture prioritizes feelings and deliberations. Tradition Indonesian marriage patterns adhere to the principle of monogamy (Warto 2021). The tradition of tolerance, which has been built for a long time, presents a high respect for spouses, so these norms

subjectively influence legislators. Determining the legal attitude in terms of polygamy is not the same as other States that adhere to the principle of open polygamy.

### **Common Property due to the Culture of Togetherness that Exists in Sambas, West Kalimantan**

The very famous Indonesian culture is the culture of cooperation, so in this case, this spirit of togetherness significantly affects family law legislation in Indonesia. Islamic law has never recognized common property (McCrudden, 2014). However, the compilation of Islamic law includes this concept. Although the text does not mention it, the concept significantly influences discussions (Boutz, Benninger, and Lancaster, 2019). The position of women in marriage is reinforced by the provisions on common property (Kim, 2017). Joint property refers to assets acquired during the marriage, distinct from the consignment's estate.

According to the researcher's analysis, common property is one of the important concepts in the culture of the people of Sambas, West Kalimantan. It is very closely related to the values of togetherness and cooperation. In the Sambas community, the culture of togetherness is reflected in various aspects of life, including the management and utilization of common property. The following is an analysis of common property in the culture of togetherness in Sambas:

#### ***Definition of Joint Property in the Context of Sambas Culture***

Shared property in Sambas culture usually refers to assets or resources collectively owned by a family, community group, or community. These assets can be customary land, fields, houses, production tools, or heritage objects used for the common good. This concept is rooted in the values of solidarity and mutual support, which are at the core of the social life of the Sambas people.

#### ***Philosophy of Togetherness***

The culture of togetherness in Sambas is based on the principle that collective interests take precedence over individual interests. It is reflected in the management of common property, where all family members or communities have the same rights and responsibilities for the property. This philosophy encourages creating harmonious relationships and prevents conflicts caused by differences in ownership.

#### ***Practice of Joint Asset Management***

The management of common property in the Sambas community is carried out in ways that respect local customs and traditions. Some of the key practices include:

1. **Deliberation Practice:** Any decision related to the use or division of common property is made through deliberation. It ensures that the decision is accepted collectively.
2. **Gotong Royong Practice:** The use of common property, such as in-house construction or farm management, is often carried out by family members or the community.
3. **Property Inheritance Practice:** The inheritance of common property follows customary rules prioritizing justice for all parties.

#### ***Social and Economic Value***

Common property serves not only as an economic asset but also as a symbol of solidarity and social identity. In a social context, shared property strengthens family and community relationships. Economically, these properties help people overcome collective needs, such as wedding expenses, medical treatment, or traditional events.

### ***Challenges in Managing Common Property***

While shared wealth reflects a substantial value of togetherness, there are several challenges, including:

1. **Social Change:** Modernization and individualism are beginning to erode the value of togetherness, thus affecting standard property management.
2. **Conflicts Between Members:** Disagreements in the management or distribution of assets can cause internal conflicts.
3. **Land Conversion:** In the case of customary land, economic pressures and development needs often force communities to sell or change the function of common property.

### ***Efforts to Preserve the Value of Togetherness***

In the culture of collective management of common property, the following steps are needed:

1. **There must be Indigenous Education:** Teaching the younger generation about the importance of togetherness and joint property management.
2. **Providing Strengthening of Local Customs:** Involving customary institutions in conflict mediation and decision-making related to common property.
3. **Delivering Innovation in Management:** Integrating traditional values with modern approaches, such as creating legal documents to protect common assets.

Shared property reflects the value of togetherness, which is highly upheld in Sambas culture. Managing shared assets remains relevant to maintaining solidarity and collective welfare despite various challenges. Efforts to preserve these values are significant so that the culture of togetherness remains a solid foundation in the lives of the Sambas people. Husband and wife have the same obligations and rights in managing the expenditure of joint assets with the condition that it must be based on the permission or agreement of both parties. The wife is allowed to file a lawsuit to have joint assets confiscated through marriage due to the husband's condition of committing acts that can deplete joint assets, such as gambling, drunkenness, and others. (Mulia, 2020) In Indonesia, the issue of joint assets is regulated in articles 35-37 of the Marriage Law and 85-97 of the Compilation of Islamic Law.

## **4. CONCLUSION**

This study illustrates that Islamic family law in Sambas experiences significant dynamics due to the interaction between Islamic values and local culture. The traditions of the Sambas community, influenced by Malay customs and Islamic teachings, create unique characteristics in the implementation of family law, including marriage, divorce, and inheritance rights. The lexicographic approach suggests that the Sambas believe Islamic family law fulfills religious rules and reflects local cultural norms. This integration creates social harmony that supports community stability. However, challenges arise when local culture conflicts with Sharia principles. In such cases, the community and stakeholders seek to adapt customary rules to Islamic teachings through deliberation and contextual adjustment. This research also highlights the importance of the role of

religious and customary leaders in guiding the community to implement family law that is culturally relevant but still by Islamic law. It shows that Islamic law can be flexible and adaptive to cultural diversity as long as its basic principles are not violated. Overall, this study confirms that Islamic family law in Sambas is a normative tool and a forum for integrating local religious and cultural values, contributing to the community's identity and social sustainability. Culture should be dialogued with the Sharia to be able to give birth to laws that are responsive and of good value. The Sambas culture that prioritizes feelings and emotions causes family law regulations in Indonesia to be emotionally nuanced and unclear in their firm values. The reform of Islamic family law in Indonesia has undergone various stages of evaluation and evolution, ranging from applying the inculturation model to reducing the acculturation model. The acculturation phase is the most extended and powerful because of the dominance of the study of Islamic sciences, including family law, from one *madzhab*, the Ash-Shafi'iyah *madzhab*. This research is still imperfect due to the lack of relevant references in this study, so many shortcomings still need to be addressed.

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