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PROGRESSIVE ISLAMIC LAW AND *MISEK* TRADITION OF DAYAK NGAJU IN CENTRAL KALIMANTAN

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ABSTRACT

Misek tradition is known as the proposing procession of the Dayak Ngaju community in Central Kalimantan before marriage. This tradition is still preserved by the indigenous people, even though they have converted to Islam. As a law that lives in society, *misek* has become the nation's cultural heritage and, at the same time, enriches the national cultural treasures of Indonesia. The presence of Islam in the lives of the Dayak Ngaju community did not immediately eradicate the *misek* tradition. Progressive Islamic law has an elastic accommodation to adapt *misek* cultural values. This research aimed to analyze the progressive Islamic law and *misek* tradition of the Dyak Ngaju Community in Central Kalimantan. The research was empirical legal research, with data sources from observation, interviews, and documentation. Accommodation theory is used for the research. The research showed two conclusions. First, *Misek's* traditional practice has two processes, namely the *misek hakumbang auh* process (the small proposal procession) and the *misek hakumbang hai* (the big proposal procession). Second, progressive Islamic law accommodates the cultural values of *misek*, both *misek hakumbang auh* and *misek hakumbang hai* as good customs. The *Misek* tradition can coexist with Islamic law without losing its traditional identity.

Keywords: Progressive Islamic Law; *Misek*; Dayak Ngaju;

ABSTRAK

Misek dikenal sebagai prosesi peminangan masyarakat Dayak Ngaju Kalimantan Tengah sebelum melakukan akad pernikahan. Tradisi ini masih dipertahankan oleh masyarakat adatnya, meskipun mereka telah memeluk agama Islam. Sebagai hukum yang hidup dalam masyarakat, *misek* telah menjadi warisan budaya bangsa dan sekaligus memperkaya khazanah budaya nasional negara Indonesia. Hadirnya Islam ke tengah-tengah kehidupan masyarakat adat Dayak Ngaju lantas tidak serta merta membatalkan tradisi *misek* tersebut. Hukum Islam progresif memiliki sifat elastis akomodatif dalam

upaya mengadaptasi nilai budaya *misek*. Penelitian ini bertujuan untuk menganalisis hukum Islam progresif dan *misek* Masyarakat Dyak Ngaju Kalimantan Tengah. Penelitian ini merupakan penelitian hukum empiris, dengan sumber data berasal dari observasi, wawancara, dan dokumentasi. Teori yang digunakan dalam penelitian ini adalah teori akomodasi. Temuan penelitian menunjukkan bahwa pertama, praktik tradisi *misek* memiliki dua proses, yakni proses *misek hakumbang auh* yang dikenal dengan prosesi peminangan kecil dan *misek hakumbang hai* yang dikenal sebagai prosesi peminangan besar. Kedua, hukum Islam progresif mengakomodasi nilai budaya *misek*, baik *misek hakumbang auh* maupun *misek hakumbang hai* sebagai adat yang baik. Tradisi *misek* dapat berdampingan dengan hukum Islam tanpa menghilangkan identitas adatnya.

Kata Kunci: Hukum Islam Progresif; *Misek*; Dayak Ngaju;

Introduction

The tradition of proposing marriage to prospective brides is known as *misek*.¹ It is still practiced today by the Dayak Ngaju community in Central Kalimantan.² This tradition is proof that Indonesia has cultural diversity among its people. It has become the nation's cultural heritage and, at the same time, enriches the national cultural treasures. The presence of Islam in the lives of the Dayak Ngaju community did not immediately eradicate the *misek* tradition.

The *misek* procession begins with the man's family going to the woman's family's house. This procession is the first step in proposing. The first meeting between the man's family and the woman's family aims to negotiate and find a mutual agreement. The mutual agreement is to have an answer to the proposal from the man's family, whether accepted or rejected.³ Acceptance of this proposal will continue at the second meeting. The second meeting was a big gathering of two families at the woman's place. The unique tradition is the involving of man's big family, from grandparents to second cousins. They present to witness the *misek* tradition at the woman's house.⁴ This *misek* tradition often meets in a marriage ceremony of female Dayak Ngaju in Central Kalimantan.⁵ This is different

¹*Misek* (Dayak Ngaju language of Central Kalimantan) means proposing for marriage. It is an activity of proposing or marrying a girl or women from the Dayak tribe, in which the people of Central Kalimantan perform meetings between the parties to carry out question-and-answer interactions (dialogue).

²"Kawin Adat Dayak - Maja Misek: Perkawinan Rais Dan Widiya Di Desa Petak Puti," Dunia dalam Berita, 2022, <https://www.youtube.com/watch?v=JACTpMPsHPw>.

³KT, *Interview* (Palangka Raya, 2023).

⁴Pra, *Interview* (Palangka Raya, 2023).

⁵The marriage of Reza bin M. Yuzak (from Banten and Islam by religious background) to G (Female Dayak, nurse by profession and from Palangka Raya, converted to Islam/*mualaf*) the wedding (both in Dayak tradition and Islam) in 2017 at the bride's house, Jl. Bukit Hindu Palangka Raya. The author and two friends, Surya Sukti and Mazrur (lecturers at IAIN Palangka Raya) act as witnesses at the wedding

from the marriage of the Dayak Bakumpai tribe,⁶ which does not perform this traditional marriage because it is considered not to follow Islamic teachings.

Research on Dayak Ngaju's traditional marriages is quite rare. Two studies found, including Muhammad Aulia Rahman, et. al.⁷ and Surya Sukti, et.al.⁸ While, Syaikhu, et. al. review the inheritance of Dayak Ngaju common law as part of resolving inheritance issues in Indonesia which adheres to legal pluralism.⁹ Meanwhile, Putri Fransiska Purnama Pratiwi discusses the distribution of inheritance for adopted children based on Dayak Ngaju common law.¹⁰ Satriya Nugraha discusses the enforcement of Ngaju Dayak criminal law.¹¹ Putri Fransiska Purnama Pratiwi discusses the Dayak Ngaju customary sanctions.¹² Research by Cahya Wulandari et.al discusses the mediation method in resolving criminal cases in the Dayak Ngaju community, which has been practiced for a

ceremony. The marriage follows to Dayak tradition. Meanwhile, the second Dayak traditional wedding event occur on March 5, 2022, in Bukit Rawi Village. Markoto who comes from Oreng Kambang Village, Dirung Lingkin District, Murung Raya Regency married a female from Bukit Rawi, Pulang Pisau Regency. These two couples married according to the *kaharingan* religion. During the proposal process, they practice the *misek hakumbang auh* tradition.

⁶ The Dayak Bakumpai tribe is a part of the Dayak tribe, whose people are predominantly Muslim. They inherited the religion of their ancestors.

⁷This article contains a pre-nuptial agreement according to the Dayak Ngaju tradition between the prospective husband and wife in front of the *damang* as a traditional figure. Muhammad Aulia Rahman, Roibin, and Nasrulloh, "Dayak Ngaju Customary Fines in Pre-Marriage Agreement to Minimize Divorce in The Perspective of Masalah Mursalah Ramadhan Al-Buthi," *El-Mashlahah* 13, no. 1 (2023): 57–75, <https://doi.org/10.23971/el-mashlahah.v13i1.5623>.

⁸This article reviews the phenomenon of Dayak Ngaju traditional marriage that is used as a solution by couples who are constrained by the rules in Marriage Law No. 1 of 1974, which regulates age limits, prohibitions on interfaith marriages, and so on. Surya Sukti, Munib, and Imam S. Arifin, "Pernikahan Adat Dayak Ngaju Perspektif Hukum Islam (Studi Di Kabupaten Gunung Mas Kalimantan Tengah)," *El-Mashlahah* 10, no. 2 (2020): 65–75, <https://doi.org/10.23971/maslahah.v10i2.2284>.

⁹Syaikhu et al., "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia," *Samarah* 7, no. 1 (2023): 195–215, <https://doi.org/10.22373/sjhc.v7i1.12410>; Syaikhu, Gusti Muzainah, and Rabiatul Adawiyah, "Acculturation in the Inheritance Law of the Dayak Ngaju Community," *Al-'Adalah* 18, no. 1 (2021): 97–112, <https://doi.org/0.24042/adalah.v18i1.8377>.

¹⁰Putri Fransiska Purnama Pratiwi, "Pembagian Harta Warisan Bagi Anak Angkat Berdasarkan Hukum Adat Dayak Ngaju Di Kedamangan Jekan Raya Kota Palangka Raya," *Belom Bahadat* 9, no. 2 (2019): 1–17, <https://ejournal.iahntp.ac.id/index.php/belom-bahadat/article/view/391>.

¹¹Satriya Nugraha, "Penerapan Hukum Adat Dalam Penegakan Hukum Bagi Pelaku Tindak Pidana Ilmu Hitam Pada Masyarakat Dayak Ngaju," *Belom Bahadat* 11, no. 1 (2021): 25–37; Satriya Nugraha, "Eksistensi Hukum Adat Melalui Penerapan Singer (Denda Adat) Dalam Perceraian Suku Dayak Ngaju," *Belom Bahadat* 12, no. 1 (2022): 80–93.

¹²Putri Fransiska Purnama Pratiwi and Aji Pratama, "Sanksi Adat Bagi Panyapa Dalam Hukum Adat Dayak Ngaju," *Belom Bahadat* 13, no. 2 (2023): 65–82; Putri Fransiska Purnama Pratiwi, Suprayitno Suprayitno, and Triyani Triyani, "Upaya Hukum Untuk Menjerat Tindakan Pelakor Dalam Perspektif Hukum Adat Dayak Ngaju," *Jurnal Cakrawala Hukum* 10, no. 2 (2019): 209–17, <https://doi.org/10.26905/idjch.v10i2.3469>.

long time.¹³ Meanwhile, when investigating marriage arrangements in general, surely, a lot has been done. Then, this research discusses the *misek* tradition in the Dayak Ngaju community. The research aims to analyze progressive Islamic law and *misek* in the Dayak Ngaju community of Central Kalimantan.

Method

The research was empirical legal research,¹⁴ using a sociological juridical (legal) approach. The sociology of law places social phenomena in society¹⁵ as a factor outside legal norms that can influence the enactment of Islamic law. On the contrary, Islamic legal norms can also influence the existence of traditional values.¹⁶ The sociological approach is used to understand the dynamics of society regarding the practice of its social life.¹⁷ *Misek* is a custom that is a product of the creativity of the Dayak Ngaju community in Central Kalimantan, which will intersect with progressive Islamic legal norms. But, how far progressive Islamic law can accommodate it?

Empirical legal research has primary data. First, the families of married couples. Second, several traditional community leaders. Third, Dayak's traditional academics. Interviews can provide a lot of information related to the practices of the *Misek* tradition. Furthermore, documentation data on *misek* traditional practices can be obtained via the YouTube channel. Meanwhile, secondary data was obtained from books, holy books, journals, theses, dissertations, etc that are relevant to the research topic. Meanwhile, the data will be analyzed qualitatively to obtain a comprehensive and in-depth understanding.

¹³Cahya Wulandari et al., "Penal Mediation: Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju," *Lex Scientia Law Review* 6, no. 1 (2022): 69–92, <https://doi.org/10.15294/lesrev.v6i1.54896>.

¹⁴Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2018); Nofiardi and Fahmil Samiran, "Living Under the Same Roof Before the Date of Separation: The Relevance of Maqāṣid Al-Sharī'ah and Minangkabau Custom in a New Direction for Families," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023): 305–16, <https://doi.org/10.31958/juris.v22i2.9014>; Ahmad Wira et al., "Legal Study of Dzurri Waqf and Its Implementation towards Strengthening High Heritage Assets in Minangkabau, West Sumatra, Indonesia," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023): 329–41, <https://doi.org/10.31958/juris.v22i2.9383>.

¹⁵Sasli Rais, "Harmonisasi Hukum Islam Dengan Hukum Adat Simah Nikah Adat Dayak Kalimantan Tengah," *Sultan Adam: Jurnal Hukum Dan Sosial* 1, no. 2 (2023): 262–269, <https://qjurnal.my.id/index.php/sultanadam/article/view/493>.

¹⁶Soerjono Soekanto, *Sosiologi Hukum Dalam Masyarakat* (Jakarta: PT Rajawali, 1987).

¹⁷M. Atho Mudzhar, *Pendekatan Sosiologi Dalam Studi Hukum Islam*, ed. M. Amin Abdullah (Yogyakarta: Tiara Wacana Yogya, 2000).

This research uses accommodation theory¹⁸ to analyze the relationship between Islamic law with progressive character, and the reality of the *misek* tradition in the Dayak Ngaju community in Central Kalimantan. The universality of Islamic law must accommodate the heterogeneity of customs and culture which tends to be dynamic and the fundamental nature of human creativity.

Finding and Discussion

Progressive Islamic Law and Customs

Progressive Islamic Law is understood as a method of approach to Islamic law that tries to interpret and apply the principles of Islamic law contextually and relevant to its time. This approach recognizes the need to develop the interpretation of Islamic law to be followed with changing social, economic, and technological developments. The location of the nature of the progression of Islamic law can adapt to the reality of social life that is not limited to space and time. Accommodating the value of ‘*urf* as one part of the variety of epistemology of understanding Islamic law must be understood as part of the character of progressive Islamic law.

‘*Urf* is one part of the epistemology of understanding Islamic law that is *mu’tabar*. Even, its existence is still recognized in Islamic law. It comes from Arabic, ‘*arafa* means knowing.¹⁹ While Khalaf defines it in terms of something that is not only known by the general public, it is also commonly done both concerning words and deeds.²⁰ Thus, ‘*urf* is not only known by many people, it is also believed, and practiced as a habit.²¹ There are at least two ‘*urf*, namely ‘*urf sahih* and ‘*urf fasid*.²² Only the ‘*urf Sahih* can have

¹⁸Accommodation theory is known as a social theory that places conflicting social groups trying to make adjustments so that conflict does not occur again in the future. Through the negotiation process, they agreed to stop and avoid conflict by carrying out peaceful and safe interactions. Accommodation is a process to produce cooperation that does not eliminate the identity of the two groups. So both groups can live their lives peacefully and side by side. M. Taufiq Rahman, *Glosari Teori Sosial* (Bandung: Ibnu Sina Press, 2011).

¹⁹Mohammad Hashim Kamali, *Principle of Islamic Jurisprudence* (Selangor: Darul Ehsan Publications, 1995).

²⁰Abdul Wahab Khallaf, *Mashadir Al-Tasyri’i Fi Ma La Nassha (Sumber Hukum Islam)*, ed. Bahrin Abubakar (Bandung: Risalah, 1998).

²¹Moh Rosyid and Lina Kushidayati, “Anticipating Disaster: The ‘Urf Perspective of Rebo Wekasan Ceremony in Kudus, Central Java,” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 1 (2022): 91–112, <https://doi.org/10.19105/al-lhkam.v17i1.5705>.

²²Sapiudin Shidiq, *Ushul Fiqh* (Jakarta: Kencana Prenada Media, 2020).

legal force as it does not conflict with Islamic law.²³ The reason is that ‘*urf*’ is a source of Islamic law since it has an important role in regulating the community.

The customs and local cultural traditions can play a significant role in the context of Islamic law, especially in indigenous peoples who have a strong cultural heritage.²⁴ Customs can affect how Islamic norms and laws are interpreted and praised in life. Islamic law and customs can influence each other.²⁵ Sometimes, Islamic law influences customs. On another occasion, custom also influences Islamic law, such as in the context of marriage. Customs often have a big impact on marriage and family matters. Some aspects, such as marriage processions, women’s rights, and inheritance, may be greatly influenced by local traditions. In this context, the interpretation of Islamic law can be adjusted and adapted to the customs to reach a more harmonious agreement between religious and cultural norms.

The relationship between Islamic law and the value of the traditions among society in a place is not a relationship that has occurred in recent years. However, its relationship occurred when Islam was born together with the birth of Islam itself. Islam has an accommodative character through its legal understanding. The universality of Islamic law is proof that Islam can enter the realm of space, which is free of space and time. In the perspective of Fazlur Rahman, the ideal moral of the Quran is *Qadim*.²⁶ Although Islam appears in Arab land, it does not mean attached to its culture. Thus, Islamic law can accommodate the values of customs and local culture if it does not violate the principles of Islam.²⁷

Although Islam is not always attached to Arabic culture, Arab cultures are often accommodated by Islam as Islamic law, for example, the pilgrimage and Umrah, respect for the Kaaba, the sacredness of the months as haram, and so forth. However, the

²³Muhammad Al-Baqir, “Otoritas Dan Ruang Lingkup Ijtihad,” in *Ijtihad Dalam Sorotan*, ed. Haidar Baqir and Syafiq Basri (Bandung: Mizan, 1996).

²⁴Eric J. Trozzo, “Mythos and Postdigital Theology: Beyond the Limits of Digitalization,” *Khazanah Theologia* 4, no. 2 (2022): 91–102, <https://doi.org/10.15575/kt.v4i2.19591>.

²⁵Noel J. Coulson, *A History of Islamic Law* (Edinburg: Edinburgh University Press, 1991).

²⁶Fazlur Rahman, “Islamic Modernism: Its Scope, Method and Alternatives,” *International Journal of Middle Eastern Studies* I, no. No. 4 (1970): 330–31, <https://doi.org/10.1017/S0020743800000714>.

²⁷Jazuni, *Legislasi Hukum Islam Di Indonesia* (Bandung: PT Citra Aditya Bakti, 2005).

accommodation has followed the decree of the Prophet, which is through the hadith or revelation.²⁸

Hashmi researches the *jinayat* (criminal) and *mu'amalah* law, which is sometimes frequently a continuation. It can be accommodated as a whole, but also not infrequently rejected. Nevertheless, the accommodation has adapted to the character and principle of the teachings of Islamic law. For example, in the family law field before the presence of Islam, Arabic culture already knew the *ba'ulah* marriage. This *ba'ulah* marriage is practiced as a marriage that requires the existence of *ijab-qabul* (solemnization of a marriage in Islam) by submitting the proposal first from the prospective man to the woman. This marriage is then enshrined in Q.S. Al Baqarah (2): 235. Furthermore, there is the practice of divorce *raj'i* and *ba'in*. Those have also been practiced in Arabic culture before Islam came.²⁹ Thus, the presence of Islam does not eradicate the Arabic values and culture, but Islam can be accommodated into Islamic law, if it is not against it.³⁰

Misek Practices of the Dayak Ngaju Community in Central Kalimantan

Misek is from the Dayak Ngaju language of Central Kalimantan which means to propose. Meanwhile, *Misek hakumbang auh* is an engagement ceremony carried out by a man to a woman from the Dayak tribe. This *misek* tradition involves two big families, both men and women. The parties condition the time, place, and circumstances for a question-and-answer interaction (dialogue) to occur.^{31,32}

There are at least two *misek* procession sessions in this activity, namely the small *misek* procession and the big *misek* procession. In connection with this procession, Frans stated, "*adat misek kilau je jadi tege hong adat dayak yete ati due tahapa je nyewut misek kurik dan misek hai hakumbang auh.*"³³ (The tradition of proposing as practiced in Dayak

²⁸Khalil Abdul Karim, *Syari'ah, Sejarah Perkelahian Pemaknaan* (Yogyakarta: LKiS, 2003).

²⁹Hasanuddin Hashmi, "Islamic Jurisprudence in Early Islam, A Study of the Sources of Islamic Law during the Lifetime of the Prophet Muhammad" (UCLA, 1989), <https://www.proquest.com/openview/8c0b715fb17ac7bf5d7e38ee9b55d8f9/1?pq-origsite=gscholar&cbl=18750&diss=y>.

³⁰Amir Syarifuddin, *Pembaharuan Pemikiran Dalam Hukum Islam* (Padang: Angkasa Raya, 1993).

³¹Julianti Agung Wati et al., "Sistem Tradisi Perkawinan Adat Dayak Ngaju Di Desa Pamarunan Kecamatan Kahayan Tengah," *Jurnal Kewarganegaraan* 5, no. 2 (2021): 432–40, <https://doi.org/10.31316/jk.v5i2.2290>.

³²Ela Novialayu, Sakman, and Offeny, "Pelaksanaan Perkawinan Menurut Adat Dayak Ngaju Di Kecamatan Timpah Kabupaten Kapuas," *Urnal Paris Langkis* 1, no. 1 (2020): 1–14, <https://doi.org/10.37304/paris.v1i1.1665>.

³³Frans, *Interview* (Palangka Raya, 2023).

customs is that there are two stages called small proposing and big proposing (*hakumbang auh* / asking questions and answers). In more detail, the procession is described as, first, the *misek hakumbang auh* (small proposal) procession. This procession is the first proposal procession before the *misek hakumbang hai* procession. This *misek* was started by the man's family coming to the woman's family's house. This meeting was intended to negotiate and find a mutual agreement between the two families. Agreement of the proposal from the man's family can be accepted or rejected.³⁴

In this part of the small *misek* procession, the man is represented by one or two people to meet the woman's parents. Here, *misek hakumbang auh* only discusses the status of the woman, whether she is being proposed to by another man or not. Another discussion is about whether the proposal from the man is accepted or rejected. At this meeting, the schedule for the next big *misek* procession must be determined, including the male family participants who will attend the procession. As Ruan put it:

*Ewen je umba hong acara hasundau yete ije atawa due biti uluh je nyuhu bara ewen je hatue manyundau bapa en indu bawi je ngahandak isek nah. Gawi misek kurik hakumbang auh kau nah tau inyewut nampara misek akan nyampai kahandak palus hasundau hapakat barake bara utus je hatue dengan bapa atawa indu je bawi. Palus kutak je nyampai hapakat hasundau yete manatap andau Karen tanggal misek hai, palus pandumah papire biti uluh bara ewen je hatue akan manyampai tuntang misek anak bawi ewen, mun keluarga je bawi hakun hapakat palus tau manatap andau, tanggal ah bar ate harun tau haisek hai.*³⁵ (Parties involved in conducting a small proposing meeting are one or two delegates from the man's family to meet the father and mother of the prospective woman. The *hakumbang auh* tradition is an initial application to convey the aims and objectives of the visit and a brief discussion between the envoys of the man's family and the woman's family. They convey an agreement to meet regarding the day and date of the big proposal as well as a visit from several people from the man's family to discuss the matter and business of proposing. If the woman's family was willing to agree and determine the day and date, then a *misek hai* would be carried out).

Furthermore, the *misek hakumbang auh* could be considered complete when the proposal from the man is accepted with a symbol of acceptance of the money (*pangumbang*) given to the woman. However, if the money (*pangumbang*) is rejected by the woman's family, then this is a sign that her proposal has been rejected. It is seen from

³⁴KT, *Interview* (Palangka Raya, 2023).

³⁵Ruan, *Interview* (Palangka Raya, 2023).

the alive of the common law, which is a local wisdom in arranging agreements between the parties.³⁶ This is confirmed by an explanation from Ruan:

*Nampara sundai tikas te ih je imander, limbah lepah taluh je nyurah, utus bara hatue manenga duit, mun duit je nenga te indinun ike, bara te arti eh keluarga manarima hisek uluh te akan anak bawin ikei, sabalik ah mun ikei dia mandinu duit te nampara misek kurik, arti eh ikei dia hakun anak bawi isek ukluh te. nah waktu te ikei narima duit pasisek kurik uluh te, arti eh ikei narima palus tau inarus kan misek hai hakumbang auh.*³⁷ (The first meeting only discussed the mentioned things. After the meeting ended, the envoy from the man's family handed over the money (*pangumbang*). If the money given was accepted, it meant that my family accepted the proposal. On the other hand, when the money was rejected, the *Misek kurik* was also rejected. And, at that time, my family was willing to accept the proposal and continue to the big proposal level or *misek hai*).

Second, the *misek hakumbang hai* procession (big proposal). This procession is carried out after the *misek hakumbang auh* agreement occurs when the proposal of the man family accepted. After the envoy from the man's family receives an answer that the woman is not in favor of another man and accepts his proposal, the big proposal can be carried out. The implementation of the *misek hakumbang hai* activity is very unique. The unique is that the number of men's families who come is relatively huge. The men involved their big family, from the oldest family to their children, grandchildren, and even second cousins who attended the activity. As Ruan said:

*Uluh je takait yete keluarga hai bara ewen je umba dumah manduhup palus jadi saksi hong acara misek hai te. limbah te bara handaitaulan je makat dumah bara kaluarga je tambakas sampai je tabela uras imbit dumah, kilau (bue, tambu, yapang, umai, andi, kaka, pahari, mina, mama, busu, tambusu, tambakas, sawa, bana).*³⁸ (The parties involved were extended and big families from both parties who were also present as a form of support to witness the big proposing process. The family members who were invited, from the oldest family to children and grandchildren, grandfather, grandmother, father, mother, younger brothers, sisters, brothers, aunts and uncles, father's youngest sister, youngest sister, father's oldest brother, husband, and wife's partner from the family).

Both parties, the male or female family, were each represented by several delegates. At least, these envoys can act as spokespersons, translators, witnesses, and observers. A spokesperson has the task of conveying the intent and purpose of the man's family's visit.

³⁶Muhammad Ruhly Kesuma Dinata et al., "Good Governance and Local Wisdom in Law Enforcement," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 3 (2022): 227–242, <https://doi.org/10.24090/volksgeist.v5i2.6740>.

³⁷Ruan, *Interview* (Palangka Raya, 2023).

³⁸Ruan, *Interview* (Palangka Raya, 2023).

Meanwhile, the translator has the task of translating the language conveyed by the spokesperson. Meanwhile, other delegates were witnesses and observers of this tradition.

As Frans said:

*Tege je gawi sebagai surung isek (pander) (bahut nah mina-mama), tege kea je gawi sebagai panenga pamahaman bara kutak je dia ingasene, tege kea je jadi saksi machining palus tege kea je sebagai manyeneh nampayah yete babuhan keluarga je bawi hatue masih tabela, anak ensu, nenek dan kakek.*³⁹ (Some serve as spokespersons (usually *Mina/Mama*). Also, some serve as translators of the meaning of language that they do not understand. Others serve as witnesses and observers (audience), especially the family who are still aged, such as young people and children and grandchildren, as well as *tambi/bue*).

Apart from being attended by the two big families, *Misek hakumbang hai* was also attended by traditional officials, such as a *mantir*. A *mantir* is a traditional leader who has the task of leading deliberations. Discussions in deliberations led by the *mantir* to produce an agreement regarding the requirements after the proposal is accepted. These requirements are the gift, the value of the *palaku* (dowry), determining the day of the marriage contract, and the need for a customary marriage agreement. Ruan said that:

*Hasupa hasundau maja misek hai, inyakum pandumah bara tokoh adat (waktu te gawin imandu bara mantir adat). taluh je imander hong musyawarah yete inarima paisek (waktu te) palus papire syarat manyarat je harus nenga (natekah tau hatwar bara keluarha ikei dengan calon warang watu te, palus je imander ye te: 1) paramun misek (sasarah lamaran) ye te narai bewei je tau nengan calon bana sahindai ewen hatunangan, 2) Rega Jujuran je handak inenga, 3) manantu andau nikah upacara agama palus nikah upacara adat Karen paramun syarat nikah adat dayak, 4) syarat hapa janji nikah adat.*⁴⁰ (A large proposing meeting attended by traditional leaders (at that time, the procession led by a *mantir*). The discussion in the deliberation was the acceptance of proposing (at that time) with several conditions that had to be fulfilled (although, there was sometimes bargaining between my family and the prospective in-laws), which are discussed: 1) the handover or gift of proposing for marriage is the prospective husband give before the engagement, 2) the amount of *jujukan* (dowry), 3) determining the wedding day religiously and the traditional marriage as well as the conditions for marriage Dayak customs, and 4) requirements for a traditional marriage agreement.)

They become the witness and pray to the prospective couple who will conduct the marriage contract. The extended family present at the *misek hakumbang hai* and become the witnesses that the man who agreed will marry the woman he has proposed. And they

³⁹Frans, *Interview* (Palangka Raya, 2023).

⁴⁰Frans, *Interview* (Palangka Raya, 2023).

give blessings to the bride and groom so that they can carry out their wedding ceremony on a determined date. They were there to witness the *hakumbang auh* tradition at the woman's family house.⁴¹ This *misek* phenomenon is often found in every proposal involving a Dayak Ngaju girl's marriage in Central Kalimantan.⁴² It is different from the marriages of the Dayak Bakumpai tribe, which do not conduct such traditional marriages because it is considered not to follow the teachings of the Islamic religion.⁴³

Progressive Islamic Law and *Misek* Tradition of the Dayak Ngaju Community in Central Kalimantan

The character of progressive Islamic law is based on the nature of Islamic law to accommodate the realities of life in communities that have different customs, cultures, and traditions. This condition was practiced when Islam arrived in Arabia which can accommodate the reality of these differences. It is normal if someone views that Islam as a religion emerged from the dialectic between God's desires and human culture.⁴⁴ This accommodation is a form of Islamic response to the real conditions of society, which tend to be dynamic, changing, and developing. Islamic law is for the benefit of humans (anthropocentric) to live a prosperous life in this world and the hereafter within the framework of devotion to Allah SWT.

Philosophically, the life of the Dayak tribe is *belom bahadat*, which is the basis of all aspects of their life. As part of their ancestral heritage, they must study, understand, and practice it to create a safe and comfortable living atmosphere. *Misek* is one of the noble life forms of the Dayak community. Dayak people believe that marriages that violate ancestral customs bring curses (*tulah*). This curse not only affects the violator but

⁴¹Pra, *Interview* (Palangka Raya, 2023).

⁴²The marriage of doctor Reza bin M. Yuzak (from Banten and Islam by religious background) to G (Female Dayak, nurse by profession and from Palangka Raya, converted to Islam/*mualaf*) the wedding (both in Dayak tradition and Islam) in 2017 at the bride's house, Jl. Bukit Hindu Palangka Raya. The marriage follows to Dayak tradition. Meanwhile, the second Dayak traditional wedding event occur on March 5, 2022, in Bukit Rawi Village. Markoto who comes from Oreng Kambang Village, Dirung Lingkin District, Murung Raya Regency married a female from Bukit Rawi, Pulang Pisau Regency. These two couples married according to the *Kaharingan* religion. During the proposal process, they practice *the misek* tradition.

⁴³ The Dayak Bakumpai tribe is a part of the Dayak tribe, whose people are predominantly Muslim. They inherited the religion of their ancestors. And, they are not converted (*mualaf*).

⁴⁴Sumper Mulia Harahap, "Akomodasi Hukum Islam Terhadap Kebudayaan Lokal (Studi Terhadap Masyarakat Muslim Padangsidempuan)," *Istinbath: Jurnal Hukum Dan Ekonomi Islam* 15, no. 2 (2015): 320–34, <https://istinbath.or.id/index.php/ijhi/article/view/442>.

can also affect other people and even the natural environment.⁴⁵ Violators of customary law can be subject to *singers* (customary fines). If the person's violation is too great, the customary decision will punish him by expelling him from the community's village.⁴⁶ The goal is the consequences of his actions do not result in the loss of many people.⁴⁷

Genealogically, the Dayak tribe has the Kaharingan belief, which contains rules of life, not only the scope of customs but also teachings on good behavior, called *belom bahadat* (ethical living). These rules for *belom bahadat* are conveyed orally by parents to generations (children and grandchildren) from generation to generation so that they are always *bahadat*. The term *hadat* (custom) in the Dayak Ngaju community is a form of nobility, which, according to their belief, originates from *Raying Hatala Langit* (the Creator).⁴⁸ Paying attention to *hadat* or *belom bahadat* is noble or *akhlakul karimah* (virtuous) in Islamic terms. Its scope covers all lines of daily life, for example, social interactions, marriage, norms, laws, and all matters relating to religious rituals. Furthermore, it also includes good relations between humans and the natural environment. The rules in custom are predominantly in the form of unwritten rules. Rules can grow and develop and even disappear as society grows and develops.⁴⁹

The *misek* tradition is a proposing tradition of the Dayak Ngaju community in Central Kalimantan, which is still preserved and practiced as a cultural heritage. This tradition is part of the traditional procession before the bride and groom carry out their marriage contract. This tradition, in the context of Islamic family law, is included in the chapter on *munakahat*, especially in the discussion of *khitbah* (proposal).

⁴⁵*Tulah* or misfortunes have an impact on the surrounding environment, for example, rice, vegetables, and fruit planted by the community fail to harvest, which the community believes is the result of violations of ancestral customs. Examples of acts that violate customs are marriage with pregnancy, inbreeding, and taboo marriage (*pali*).

⁴⁶Zaka Firma Aditya and Sholahuddin Al-Fatih, "The Legal Protection System of Indigenous Peoples in Southeast Asia," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 285–309, <https://doi.org/10.22219/ljih.v31i2.27619>.

⁴⁷Rena Yulia, Aliyih Prakarsa, and Mohammad Reevany Bustami, "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia.," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 803–54, <https://doi.org/10.15294/jils.v8i2.72283>.

⁴⁸Hermogenes Ugang, *Menelusuri Jalur-Jalur Keluhuran* (Jakarta: BPK Gunung Mulia, 2019).

⁴⁹Mohammad Daud Ali, *Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2019).

Khitbah (proposal) in the Islamic legal tradition is the initial process, leading to marriage between a man and a woman.⁵⁰ In the Compilation of Islamic Law, especially Article 1 Chapter I letter a, stated that “Proposing is an effort towards an arranged marriage relationship between a man and a woman.”⁵¹ his activity is carried out properly (*ma'ruf*),⁵² which is conducted by a man directly to the woman’s family or through the intermediary of a messenger to convey the intention of his proposal to the woman’s family. The intention of the proposal was made by the man clearly, namely by using words that meant the proposal. Likewise, the intention of the proposal can be done in a satire way. Both are permitted by the Quran, as stated in Q.S. al-Baqarah (2): 235. Through this verse, Allah expressly allows for implicit proposals to any woman he desires to become his wife. Even though, this verse has the context of a proposal to a woman whose husband died. However, proposals are also implicitly addressed to women who are still single if they have not been proposed to by another man.

Meanwhile, the majority of scholars stated that the proposal in a marriage is not an obligation. However, as a recommendation aimed at men who want to marry a woman, they must start the marriage process with the woman’s family. This proposal aims to provide a moral message and etiquette to start plans to build a household that wants to realize happiness, *sakinah, mawaddah, warahmah*. The status of a proposing in a series of marriages is the initial step towards realizing a good marriage.⁵³ The real purpose of proposing is to see directly the woman that is going to marry, both related to identity and personality. Following the Hadith of the Prophet SAW, “If someone among you proposes to a woman, if he can, then, he can see her, so that he can encourage her to marry, then do it.”⁵⁴

The proposal does not have any specific legal consequences for the prospective bride and groom. There is no relationship between rights and obligations as husband and wife. There is no rights as husband and wife. Moreover, they are not allowed to meet together without a *mahram* (blood relationship person). Meet-in-person or *khalwat*

⁵⁰Al-Sayyid Sābiq, *Fiqh Al-Sunnah I* (Beirut: Dār al-Fikr, 1983).

⁵¹*Kompilasi Hukum Islam* (Bandung: Citra Umbara, 2016).

⁵²Sābiq, *Fiqh Al-Sunnah I*.

⁵³Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia*, Revisi (Jakarta: Rajawali Grafindo Persada, 2015).

⁵⁴Al-Shan’any, *Subul Al-Salam* (Kairo: Dar Ihya al-Turats al-Islamy, 1960).

(seclusion) is an act that is prohibited by Islam for both prospective bride and groom. The rights and obligations of husband and wife are present by the time the marriage contract occurred along with fulfilling the conditions and harmony in marriage.

Proposals in Islamic law do not require handovers or gifts from the man to the woman.⁵⁵ An obligatory gift in the wedding procession is the dowry. The dowry does not have the substance of a gift in *mu'amalah*. However, it is a gift from a man to a woman in the form of goods, money, or services that do not conflict with Islamic law. This dowry is mandatory and one of the conditions for a marriage to be valid.⁵⁶ Regarding the dowry, Allah says in Q.S. al-Nisa (4):4. Based on the verse, the gifts at the time of marriage made by the man to the woman as a dowry are mandatory. If the dowry is not fulfilled, the marriage is considered invalid and even damaged.

The tradition of *khitbah* in Islamic law is simple without giving offerings or gifts in any form. It is only an activity carried out by the man to the woman's family to convey the intention of making her his wife. Also, it aims to find out whether the woman he is going to propose to is someone else's proposal or not. Furthermore, the proposal is intended to get to know the personality and character of the woman more closely. The man could involve his family, himself, or even through a messenger to convey his intentions.

Meanwhile, the *misek* tradition has two processions, namely *misek hakumbang auh* and *misek hakumbang hai*. The tradition of *khitbah* and *misek* have the same goal in the man's efforts to ask the woman's family about approval of the proposal. The tradition of giving a certain amount of money as a contribution towards a man's proposal and involving the man's extended family is the difference between *khitbah* and *misek*. However, this does not mean that Islamic law forbids these two things. Islamic law is accommodating to this tradition. Giving *pengumbang* is not an obligation, but has become a tradition in *misek*. This gift will also be accepted by the woman's family as a sign of acceptance of the proposal made by the man. Pra stated that:

⁵⁵Ibnu Elmi AS Pelu and Ahmad Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 1 (2021): 287–316, <https://doi.org/10.14421/ajis.2021.592.287-316>.

⁵⁶Ibnu Rusyd, *Bidayatul Mujtahid* (Mesir: Mustafa Al-Babi al-Halabi, 1960).

*Ikei dumah maja kan huma ketun tuh palus manyampai hajat misek anak bawi ketun je jadi bujang akan kabalin hatue ikei, lepah te palus inyarah duit 50 kuyan atau 100 kuyan hapa bukti katulus atei.*⁵⁷ (We came to visit her/his place and told them about our intention to propose to your adult daughter to be our son's wife. After conveying this intention, we were then handed over a sum of cash as a sign of our sincerity worth the money (the nominal value is relative, for example, IDR 50,000 or IDR 100,000))

Pangumbang, in the Dayak Ngaju tradition, is the giving of a certain amount of money by the man to the woman during the *misek* (proposal) tradition. This tradition will have different terms in other regions. For example, giving at the time of a proposal to Javanese people is known as *tukon* or *tondo tresno*. This tradition is considered good by the people as a sign that a man who will become a husband loves his wife.⁵⁸

It is crucial to know the issue of *pengumbang* during the *misek* tradition, which is the woman's family will not accept the *pengumbang* if the proposal is rejected. However, the problem arose when during *misek hakumbang auh*, the woman's family received a proposal from the man. However, when the *misek hakumbang hai* or close to the day of the marriage ceremony, there is a unilateral cancellation from the woman's family, then the *pengumbang*, which has been accepted by the woman, will become a problem. The gift of *pengumbang* during *misek hakumbang auh* should require an explanation of the status of the gift. The goal is to avoid causing unwanted problems in the future. For example, there is the potential for a broken brotherhood to occur due to the cancellation of a marriage. If the contract is a gift or grant given by a man to a woman, the man cannot demand that the money be returned.

There are at least two situations after the money is accepted by the woman but the proposal does not continue with the marriage contract. First, the man unilaterally cancels his proposal to continue with the marriage, then the man has no right to ask them to return the *pengumbang* money. When carrying out *Misek*, the man should have carefully considered whether to continue with marriage or not. Second, if the woman makes the cancellation unilaterally, then the woman's family must return the *pengumbang* to the man's family. The woman is seen as the party who has committed a disappointing act. Thus, the status of the *pengumbang* money must be understood as a form of gift or even

⁵⁷Pra, *Interview* (Palangka Raya, 2023).

⁵⁸Rofiq, *Hukum Perdata Islam Di Indonesia*.

a grant to the woman for her willingness to be proposed to be his wife. However, noted that *pengumbang* or *tukon*, *peningset*, *tondo tresno*, or other terms are different from dowry in marriage.

Islamic law and *misek* tradition are two different identities. Islamic law originates from Islamic teachings, while *misek* originates from customs. Without considering the substance, it seems as if there is a conflict between the two entities. The characteristics of progressive Islamic law accommodate dynamics (*harakah*), such as the dynamics of the life of the Dayak Ngaju community through the *Misek* tradition, which is a piece of evidence that it can interact with a good cultural values and customs of the community.⁵⁹

The *misek* tradition is considered as a tradition that holds good values to carry out a marriage contract. Even though, there are two stages of *misek*, *misek hakumbang auh* and *misek hakumbang hai* that are one unit in the Dayak Ngaju custom of carrying out the marriage proposal. The value of the proposal made by the man to the woman is the value of getting to know both parties. And, the value of ensuring that the woman is not in someone else's proposal, the value of the seriousness of his desire to get married. Even though, in the *misek* tradition, the man's family gives the *pengumbang* money. It is not considered an act that is prohibited by Islamic law. Because it is considered as a gift or grant to the woman. Even, it is to show the man's sincerity and affection for the woman who will become his wife. These values are almost the same as the values of *khitbah* of the Islamic legal tradition before further implementation at the marriage level.

Thus, the *misek* tradition, both *misek hakumbang auh* and *misek hakumbang hai*, is a tradition originating from the custom of marriage between men and women of the Dayak Ngaju community which accommodated as a law and harmony and follows with Islamic legal traditions in the context of *khitbah*. Here lies the progressiveness of Islamic law, which can enforce traditions that work together and do not eradicate each other.⁶⁰ Following the rules of *fiqhiyyah*, *al-'adah muhakkamah*,⁶¹ customary practices in a

⁵⁹Darsul S. Puyu et al., "Mansai in the Marriage Tradition of the Banggai Ethnic in Central Sulawesi, Indonesia: A Living Sunnah Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1352–72, <https://doi.org/10.22373/sjkh.v7i3.16510>.

⁶⁰Mashudi, "Membumikan Hukum Islam Progresif: Respons Konsumen Muslim Terhadap Undang-Undang Jaminan Produk Halal," *International Journal Ihya' 'Ulum Al-Din* 19, no. 1 (2017): 47–72, <https://doi.org/10.21580/ihya.18.1.1742>.

⁶¹Jalaluddin Al-Suyuthi, *Al-Asybah Wa Al-Nazha'ir*, n.d.

society can be used as a source of law because it has an important role in regulating society. Moreover, the *misek* tradition does not conflict with Islamic law. The unique accommodative character that is part of the character of progressive Islamic law still provides space for the customs and traditions of *misek* with its identity. Meanwhile, Islamic law has a tradition of *khitbah* with its identity. In this way, the accommodative character of progressive Islamic law still provides space for each with its own identity.

Conclusion

The traditional practice of *misek* practiced by the Dayak Ngaju people in Central Kalimantan is carried out in two traditional processions. First, the *misek hakumbang auh* (small proposal) procession is known as the initial proposal. The *pengumbang* money is used by the man as a gift or grant to the woman. Second, the *misek hakumbang hai* procession (big proposal). Delegates from each side of the family negotiate and attended by traditional leaders or a *mantir* to discuss and reach an agreement on the form of the offering, the value of the *palaku* (dowry), determining the day of the marriage contract, and the need for the terms of a traditional marriage agreement. *Misek hakumbang auh*, as a good custom, can be accommodated and practiced because it does not conflict with Islamic law. The values contained in this tradition synergize with the objectives of the *khitbah* in Islamic law. The relationship between progressive Islamic law and *misek* occurs in an accommodative manner that still provides space for traditional identity. The meeting point between Islamic law and customs is at the level of good values that do not conflict with Islamic teachings (*syara'*).

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