

# Awareness of Minority Muslim Community of North Sumatera Indonesia towards Islamic Law (Marriage and Inheritance Analysis)

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**Abstract:** *The article is concerned with the awareness of minority Muslim community towards the laws of marriage and inheritance in North Sumatera, Indonesia. The methods used are observation and interview. Then, the data taken through observation and interview are collected, presented and analyzed through the approaches of anthropology and sociology of law, that is from the aspects of legal culture, social differentiation and legal awareness. The research result shows that the minority Muslim community implement Islamic law, state law and customary law in matters of marriage, whereas in inheritance they do not implement Islamic law and state law, instead they carry out the customary law.*

**Keywords:** Law Awareness, Minority Muslim, Marriage, Inheritance

## 1. Introduction

There are various ethnic populations as indigenous people in North Sumatera: Batak, Nias, and Malay. The widely-used languages are Indonesian, Javanese, Hokkian, Batak, Nias, Batak Mandailing, Angkola and Minang (Yasmi, 2004: 27).

The majority of North Sumatera population adheres to Islam, especially the Malay, Coastal, Minangkabau, Javanese, Acehese, Batak Mandailing and Angkola, and some Batak Karo, Simalungun and Pakpak. While Protestant and Catholic are widely embraced by Batak Karo, Toba, Simalungun, Pakpak, and Nias. Hinduism is embraced by the Tamils settling in urban areas, while Buddhism by the Chinese in urban areas. Confucianism is mostly embraced by the Chinese in urban areas. The original religion of Batak, *Parmalim* is mostly embraced by Bataknese centred in *Huta Tinggi*. But even so, there is still animism practiced by some Batakness in North Sumatera, *Pelebegu Parhabonaron* and some others of similar beliefs. (Brutu, 2015: 57-58)

The majority of people in North Sumatera are Muslims, but in some regions the Muslims community live and settle in Christian majority areas, for example in Karo, Dairi, Pakpak Bharat, Humbang Hasundutan, Toba Samosir, and Nias. The minority Muslim community settling in majority Christian community has three legal system, those are: Islamic law, customary and state laws. In circumstances like this, three law systems will appear and cannot be avoided. There is a possibility that a Muslim will impose Islamic law, but at the same time he must also be subjected to customary and state laws. The question is how they implement Islamic law and whether they are able to implement Islamic law in their surrounding that is predominantly non-Muslims.

Community legal compliance issues to the law adopted in sociology of law anthropology is closer to the study of legal awareness. In a study of legal awareness, the civil compliance and disobedience of law adopted will be seen. The subject matters of legal awareness study cover: first, the legal process, showing the process of marriage and

inheritance laws in minority Muslim community in North Sumatera. Second, the reason and background of the legal process, showing the reasons why the Muslim community obey or disobey the Islamic law that has already been adopted in society (Soekanto, 2012: 68-169); and thirdly showing the existence of Islamic law in minority Muslim community in North Sumatera. Based on the background of the above mentioned problems, this article is entitled *Awareness Of Minority Muslim Community Of North Sumatera Indonesia Towards Islamic Law (Marriage and Inheritance Analysis)*

## 2. Research Method

### 1) Approach and Research Method

This study is a non-doctrinal legal research, with the aim to describe the law behavior patterns of minority Muslim community in North Sumatera to implement Islamic law in matters of marriage and inheritance. The social and empirical non-doctrinal research will generate theories on the existence and function of law in society, together with the changes that might occur in the social change process (Wignjosoebroto, 2002: 164).

This study deals with the minority Muslim community awareness of Islamic law living in associating with the majority non-Muslim community. The approach is the sociology of law which becomes the legal knowledge of the behavior patterns of people in a social context (Raharjo, 1982: 310)

In addition to the legal sociological approach, this study is also conducted by law anthropological approach, related to the legal culture of minority Muslim community in North Sumatera Province. (Hadikusuma, 2010: 10)

### 2) Data Source

The data Source of research consists of primary and secondary sources. The primary data source are obtained from the field research directly, that is from the informant using the data collection instruments. The secondary source

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are obtained through the study of literature (library research).

### 3) Research Informant

The object of this research is the Islamic law awareness of minority Muslim community of North Sumatera province. The regions to be studied are limited to Karo, Dairi, Pakpak Barat, Humbang Hasundutan, and Toba Samosir. The informants of this study are scholars from the District Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council, or *MUI*. The informants are:

**Table 1:** List of Religious Scholars, Figures, Community as Research Informant

No	District Name	Informant Number	Details
1	Karo	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
2	Dairi	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
3	Pakpak Barat	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
4	Humbang Hasundutan	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
5	Toba Samosir	4 persons	Office of Religious Affairs, Muhammadiyah, Nahdlatul Ulama, and the Indonesian Religious Scholars Council
6	Nias Utara	4 persons	Kandepag, Muhammadiyah, Nahdlatul Ulama dan Majelis Ulama Indonesia
	Total	24 persons	

### 4) Data Collection Instrument

To get the data as reference in this study, the researcher prepares and collates the data collection instruments. Judging from how to obtain data and information on a study, the data collection tool or instrument used in this study are comprised of interviews, observation and documentation.

### 5) Data Analysis Technique

The data analysis according to the research approach. Data analysis in this research is analytical description, presenting or describing the state of the research object based on the existing facts. (Singarimbun and Efendi, 1989: 192). The researcher narrates the studies of theories of sociology and law anthropology to be reported as the results of research. At this stage, The researcher will conduct an analysis on how the minority Muslim community implements Islamic law in their respective territories.

### 6) Data Triangulation Technique

To reinforce the validity of the data of the findings and the research authenticity, the researcher refers to data validity standards consisting of: credibility, transferability, dependability and conformability.

## 3. Theoretical Framework

### 1) Batak Ethnic Culture

There are five points of life philosophy of the Batak ethnic: wealth (*hamoraon*), many descendants (*hagabeon*), honor (*hasangapon*), peace (*hadameon*) and unity (*hasadaon*). With their cultural values, Batak ethnic community emphasize on wealth, many children, honor, peace and unity, then clarified by *dalihan natolu*, and this generates norms among *hulahula*, *dongan tubu* and *boru*. (Simanjuntak, 2009: 138-157)

### 2) Social and Cultural Change in Batak ethnic Community

Every human society must change. Changes in society can be about social values, social norms, patterns of organizational behavior, structure of social institutions, layers in society, power and authority, social interaction and some others. (Soekanto and Sulistyowati, 2013: 262).

### 3) Social Differentiation

Basically differentiation shows diversity in a community in terms of ethnicity, customs, language, race, culture, religion, and so forth. The concept of social differentiation should not be interpreted as a differentiation degree and human dignity. The concept of social differentiation shows differentiation in the society regardless of the hierarchy of social classes. Thus, the concept of social differentiation is defined as horizontal, not vertical variety of class distinctions. (Setiadi and Kolip, 2010: 459)

Social differentiation can lead to social intersection and acculturation, primordial relationship, paternalism and political stream (Setiadi and Kolip, 2010: 478). Tied to the law, Anleu explains that a legal pluralism in a society will generate imposed law, convergence and parallel. Legal pluralism in a society will produce a law imposing or to be imposed and consequently other law would be ignored. Imposed law will be accepted by the society if applied by the authority to achieve political aim and social order to avoid conflict. According to Anleu, law pluralism in a society will produce a state similar to the sociological term convergence. Each law in its running in society moves towards a common point. Perhaps this is what is called eclecticism by A. Qodri Azizy (Azizy, 2004: 12). And the last third possibility is a parallel emerging. According to Anleu, when there is a legal pluralism in a society there is a possibility that each will survive and applicable to every adopter. (coexist). (Anleu, 2000: 71-73).

## 4. Law Awareness

In general, legal awareness is tied to law observance or law effectiveness. In other words, legal awareness is closely tied to the issues of whether certain statutory provisions really work or not in the society. Points to be examined tied to legal awareness are legal process, ground and background of the legal process, reason aligned or not with the law and the reasons why aligned. (Soekanto, 2012: 168-169)

According to Bierstedt, there are four reasons in the basics of compliance: indoctrination, people adhere to norms because they are indoctrinated to do so. The second reason is

habituation; socialization process since childhood, and this gradually becomes a habit to comply with applicable norms. The third reason is utility, legal norms producing usability, while the fourth is group identification reasons. One is obedient to law as a means of holding identification with a group. (Soekanto, 1982: 225-226)

While indicators of the legal awareness are each of which is a stage for the next phase: first knowledge of the law, that a person's knowledge about some specific behaviors that are regulated by law. The second, understanding of the law where a person has information about the contents of specific legal regulations. The third, legal attitude, the tendency to accept the law for respect for the law is something useful or beneficial if the law is complied with. The fourth, legal behavior, where the law is already in force in the society. Thus the extent to which the legal awareness is realized in society can be seen from the law behavior patterns of a community.

## 5. Research Result

### 5.1 Law Process in Marriage

Based on the observation, the minority Muslim community in North Sumatera carry out marriage based on three legal systems of existing together in the society, the system of customary law, Islamic law and state law. Richard Sinaga explains that the validating marriage for indigenous people is not enough only with prayer, because such procedure of confirmation of marriage is the customs of *sibontar mata*, that a wedding is only filled with prayer and there are no custom events (*mangadati*). As a matter of fact, a marriage should go through three steps: affirmation according to religion adopted, affirmation according to law (Civil / Office for Religious Affairs) and affirmation according to the customs of *dalihan na tolu* or Batak customs. The customary marriage of *Dalihan Na Tolu* must be witnessed by the elements of *dalihan na tolu* from the party of *parboru* and elements of *dalihan na tolu* from the party of *paranak*. (Sinaga, 2006: 19)

The marriage processes carried out systematically by the minority Muslim community in North Sumatera region are as follows:

- 1) *Manyapai Boru*: this stage is a part of customary law, where the prospective groom party ask the girl and her family whether willing to marry the boy who would marry her.
- 2) *Manulangi Tulang*: after the agreement between the family of the prospective groom with the family of the prospective bride is achieved, the groom asks permission from *tulang* and *inang tulang* that he will marry another girl. An ideal marriage for Batak ethnic is the marriage between a man with the daughter of his mother's brother (*pisalai, mabido*) called *marboru ni tulang* or marrying *pariban*. Similarly, a woman ideally marries the son of her father's sister (*pasapea, fassio*) or *maranak ni naboru*, also called marrying *pariban*. Therefore, when a man marries another woman he must ask permission from *tulang* and *inang tulang* (Brutudan Padang, 2013: 21).
- 3) *Mangaririt Boru*, after *manulangi tulang*, duties of parents are *mangaririt / manyisik boru/mangindangi*. In the ceremony of *mangaririt boru*, the party of the groom's parents want to know the bride and her family that will become their laws. There are some things to be done related to the bride. The first is whether the prospective bride has got a certain thing that could hinder her from marriage bases on the customary law. Second, whether the bride is obstructed or not to marry based on Islam. There are some women forbidden to be married: *nasab*, semenda and blood relationships. The third is difference of faith or religion. (Hadikusuma, 2010: 42)
- 4) *Padomos Hata / Patobang Hata / Patua Hata / Mangarisik-rustle* and *Marhusip*: the party of the prospective groom would again visit the family of the prospective bride to make a proposal. In the proposal event there are two things to be discussed, the first is the day to propose formally (*patobang hata*) by the party of *dalihan na tolu*, the family of the prospective groom. The second, the requirements to be met at the time of the proposal, namely: things needs to be prepared, such as the amount and form of dowry and the number and shape of *tuhor* (hones money), and other equipments.
- 5) *Manulak Sere / Marhata Sinamot*: in customary law, the thing related known is *sinamot*, whereas in Islamic law dowry which is the provision of a prospective groom to the prospective bride which is the requirement of marriage. (Ibnu Rusyd, 1995, the Section II , 15). While *manulak sere / marhata sinamot*, the family of the groom carry *batang boban/sinamot* previously agreed with the woman's family. *Sinamot* is a form of money or valuable objects that would normally be owned by the woman's family to be used for parties and other purposes. minority Muslim community of North Sumatera will bring a dowry and this *sinamot*.
- 6) *Mangalehen Pamunan Mangan*: before the prospective bride is married and brought on the next day after the wedding ceremony, the parents of the bride together with the relatives will gather to provide food to the bride called *mangan pamunan*, that is the farewell feast. In this *mangalehen mangan pamunan* event there will be a salvation prayer and advice from the family party of *dalihan na tolu* in Islamic way.
- 7) Marriage pact or rite: after all the customary rites are done properly, the next step, the one very important, is the marriage pact ceremony. The ceremony is not led by the customary king customary, but by the Officer of Marriage Registrar (PPN) or Employee Assistant of Marriage Registrar (PPP) from the District Office of Islamic Affairs. In the ceremony the Islamic law and state law are imposed. All wedding fittings will be examined by the Marriage Registrar Officer (PPN) or Employee Assistant Registrar of Marriage (PPP) in accordance with the rules of Islamic and administrative laws. The parties involved in the wedding ceremony are parties from government officials and *dalihan na tolu*.
- 8) Marriage Registration, after the wedlock conducted based on the Islamic and state laws, the next step is the recording of wedlock according to the legislation in force. Every lawful marriage is recorded in the marriage certificate. In Article 2 point 2 of Law in force No. 1 of 1974 on Marriage it is stated that every marriage is

recorded in accordance with the legislation in force. Thus, the state stipulates that a legal marriage is recorded in a document called a Marriage Certificate. For Muslims, marriage is recorded in documents of Marriage Certificate by the Marriage Registrar Officer (PPN) at the District Office of Religious Affairs.

- 9) *Horja Pabuat Boru*, after the wedlock and the recording are done in accordance with the Islamic and state laws, the next step is *horja* or wedding ceremony. For Batak ethnic, *horja* is a requirement of customary marriage, more recognized with the term *mangadati*. An institution of marriage conducted without *horja* involving *dalihan na tolu*, will not be declared valid under customary law. Therefore *horja* or *mangadati* is very important for Batak ethnic. Based on observations made, a lot of the minority Muslim community members of North Sumatera do not conduct *horja* (*mangadati*) owing to limited funds.
- 10) *Pasahat Mara*: after the completion of *horja* ceremony, the next stage is *pasahat mara*, where the groom and the bride are given advice before the bride is brought by the groom and his family. This *Pasahat mara* means giving safety of the bride to the groom's family.

## 5.2 Law Process in Inheritance

Indonesian people adhere to various religions and beliefs with various forms of kinship and descent systems. This descent system has been applied since time immemorial before the entry of the teachings of Hinduism, Islam and Christianity. The various descent systems have influences in the inheritance system of customary law. (Hadikusuma, 2015:23)

Based on research result, it is seen that the majority of the minority Muslim community in North Sumatera do not implement the Islamic law. They are more likely to carry out the customary inheritance law, although some families implement Islamic customary inheritance law, and such as case is rare.

The inheritance law studied concerns with heir, causes blocking heritage and parts to be gained by each heir. According to customary law of Batak ethnic, inheritor is a person who inherits property, while heir is the one receiving the inheritance and the share is determined based on the result of the agreement of by family members and *dalihan na tolu*.

There are two reasons concerning inheritance in Batak ethnic: hereditary blood (*nasab*) and adoption (adopted child). An heir according to customary law of Batak ethnic has a blood relationship with the inheritor, those are father and son. Daughters and wives are not heirs, so they are not entitled to inheritance under customary law of Batak ethnic. The second point of inheritance is tied to adopted child called *anak na niain* atau *anak na niampu*. If a male child is adopted he is called *anak na niain* atau *anak na niampu* and a female child is called *boru na nian* and becomes legitimate without having certificate and is entitled to be an heir.

In customary law of Batak ethnic, there is a term known *panjaean*, in the form of property from a father to his son

having got married, such as rice fields or garden. *Pauseang* or cultivated land is given to a female child who has got married. Such a custom is imposed only in North Tapanuli course, among others Toba Holbung, some areas of Humbang and Samosir Island.

In terms of customary law of Batak ethnic, there are terms known as *indahan arian ni pahompu* and *batu ni ansimun*. A child who is already married and has a child called *anak buha baju*, according to the customary law of Batak ethnic will go to *ompung suhut* and *ompung bao*, that is the male and female parents to inform that his grandson has been born. The ceremony is called *paebathon anak buha baju* then the grandparents will give *indahan arian ni pahompudan batu ni ansimun* untuk as a token of love in the forms rice field, garden, and livestock. All depends on the property owned by the grandfather of the grandchildren (Panggabandan Sinaga, 2007: 98-107).

## 6. Reason for Marriage Law Process

Based on the above explanation of marriage law, it seems clear that the minority Muslim community of North Sumatera stick to the three legal systems in the society. They comply with the Islamic law, but at the same time they also comply with customary law and state law. The next question is, why they obey the laws of the three systems simultaneously and why not only practicing the Islamic law or customary law, or the state law.

In sociology of anthropology law it is stated that there are several factors as to why someone obeys certain laws. According to Bierstedt, the basics of obedience consists of four factors: indoctrination, habituation, utility and group identification. (Soekanto, 1982: 225-226). These four factors greatly affect a person's level of compliance to obey the law. An individual who is continually given an understanding (indoctrination) of a legal rule will obey the law. Consciously or unconsciously, the legal norms will continue stick in his mind. Marriage in view of a Muslim is a human instinct to be taken by means of worship. Based on the interviews conducted, it is seen that the minority Muslim community of North Sumatera comply with the Islamic law in matters marriage only for the sake of worship. They realize that a marriage conducted according to the Islamic law is worship and rewarding, while if it is not based on the Islamic law it will lead to sin. They comply with Islamic law because they always get an explanation (indoctrination) from the teachers, religious scholars and employee of Religious Affairs Office. Teachers explain that marriage that is not done according to the Islamic law belongs is categorized into the great sin of adultery raising curses.

Marriage according to the Islamic law, is supported by the philosophical values of the Batak ethnic of of North Sumatera. There are five Batak philosophical values of life: *hagabeon*, *hasangapon*, *hadameon*, and *hasadaon* (Simanjuntak, 2009: 138-157). One of them is *hagabeon* meaning the needs of a lot of descendants. Batak ethnic are very proud of having many children, because that is one of their life goals. It is also in accordance with the purpose of marriage in Islam described in Q.S. an-Nisa / 4: 1 and the *hadith* of the Prophet stating that the Prophet is very proud

of the existence of many Muslims (Abū Daud, 1996: Juz V, 431)

In addition to the reasons above, the minority Muslim community of North Sumatera implement the Islamic law in marriage intended to obtain recognition in the family tradition. Batak ethnic do not accept marriage relationship incompatible with religion, either Muslims or non-Muslims. They will expel a family member performing marriage inconsistent with religion. In legal sociology, respect for the law in order to gain recognition in a particular group is called group identification (Soekanto, 1982: 225-226). A Muslim will obey the Islamic marriage law so he could be accepted into the family and ethnic groups of *daliha na tolu*.

The minority Muslim community of North Sumatra do not always practice Customary law in marriage, but they always implement the Islamic law and state law. The reason they adhere to the Islamic marriage law because it is easy to implement and does not require a very large cost, unlike the case with customary law which is very complicated, requiring much time and cost.

The minority Muslim community of North Sumatera also obey the state law in marriage. Based on interviews and observations made, there are two reasons why they obey the state law. The reasons are to receive the legality of the state and to receive recognition from family and *Adatdaliha na tolu*. A marriage that is not recorded in the marriage certificate will not obtain official copies of marriage certificate, so that one would find difficulty to obtain a family card or other facilities provided by the government. Therefore, they remain in compliance with the state law marriage. Adherence to the law of the country is due to the sanctions emerging later. Kelman states this term in the process of compliance, a compliance based on the expectation of a reward and effort to avoid punishment or sanction that may be imposed if someone is violating the law. The minority Muslim community implement the state marriage law in order not to get into trouble in the administration of the state and population.

Compliance with the state law in marriage is also due to the need for recognition in the family and the custom of *daliha na tolu*. Marriage that is not recognized by the state will get an abuse from family members and customs. Batak ethnic do not recognize a marriage that is not done in accordance with the state law.

While the adherence of the minority Muslim community of North Sumatera to the customary law is due to be accepted by the family and customs. Thus, it can be concluded that compliance with customary marriage law is caused by group identification. A marriage performed in accordance with the Islamic and the state laws will get recognition from religion and state, while marriage conducted in customs will gain recognition from family and *daliha na tolu*. A marriage not carried out in accordance with the customs (*managadati*) will lead to social sanctions, in which it is exposed that parents who do not perform the customs (*managadati*) should not celebrate (*mangadati*) before that the parents themselves do the customs or *mangadati*. Then this

*mangadati* will effect the giving of the parents to the children. A child who married without *mangadati*, will not obtain *panjaean* dan *pauseang*., because both of these things can only be given to children whose marriages are based on *mangadati*.

## 7. Reasons for Inheritance law Process

The next fundamental question is why the minority Muslim community of North Sumatera do not implement the Islamic law whereas in their marriage law they implement the Islamic law. Based on interviews, observation and analysis done, there are three reasons why they do not implement the Islamic law. The first, people do not know the Islamic inheritance law, second, the Islamic inheritance law is not met with custom heritage law. The third, the kinship system does not support the implementation of Islamic inheritance law.

The minority Muslim community does not implement the Islamic law due to many factors, one of them is because people do not know the procedure for distributing the inheritance to the heirs in Islamic way. Muslim community do not know the procedures for the implementation of the Islamic inheritance law (Interview: Limbong, 2016) The lowest legal awareness is knowing the law. If people know a law they will strive to understand it. The understanding of the content and purpose of certain laws and benefits will lead to legal attitude and will practice legal behavior. (Soekanto and Abdullah, 1987: 228)

Ignorance of the minority Muslim community towards the Islamic inheritance law is understandable when viewed from the existing facilities. Of the five districts studied there is only one Islamic college, two religious schools and about 26 *madrasah* consisting of *aliyah madrasah*, *tsanawiyah*, *ibtidaiyyah* and *takmiliyyah*. This facility is not fully realized by most Muslims settling in the respective areas so that they are still far from the knowledge of Islamic teachings. Still there are Muslims settling far from the center of Islamic education so that they cannot access to Islamic education.

From the observations made, there are many mosques and *mushollas* not active in the learning process of Islam, such as lectures and recitations. active mosques are only those in the Capital District, while mosques in districts and villages are still not touched by the teaching of the Islamic law. There are still many mosques that do not have preachers and religious teachers, so that they practice the faith merely in accordance with the knowledge.

Knowledge of Islam and its laws can only be done by continual socialization. In this case socialization facilities are necessary, such as funding, building and energy. All these facilities are minimal in Muslim minority areas of North Sumatera. There are still districts that do not have a mosque or even just one mosque. For example Merek, the sub-district of Karo located at the roadside of province road there is only one mosque. In Hasundutan Humbang and Samosir regions, many Muslim people have never studied Islam at all but they still embrace and acknowledge the religion of Islam.

When observed again on the facilities of the District Religious Affairs Office, there are many districts that do not have the District Religious Affairs Office as a Muslim public service. There are several KUA Districts covering three to five districts. This does not mean that the Muslim community are not served, only not optimally because the distance is too far.

## 8. Islamic Law Existence at minority Muslim community in North Sumatera

The marriage and inheritance process law, having been studied and analyzed at the minority Muslim community in North Sumatera as well as the reasons and compatibility with the law, the next question arises in on the existence of the Islamic laws in Muslim majority community

Before further discussion, it should be well known that the philosophical values of Batak ethnic depict the ideals of Batak community, whether he is a Muslim or not. Culture and religion adopted will continuously influence each other. The values of these philosophies undergo changes continuously, either in *bona pasogit* (Batak land) or in *parserakan* (out of the land).

The cultural values of Batak ethnic is wealth (*hamoraon*), many descendants (*hagabeon*), honor (*hasangapon*), peace (*hadameon*) and unity (*hasadaon*). The meanings of the cultural philosophy is the need of riches, having many children, recognition, respect, peace and unity. Batak ethnic must work hard to be rich, to get married in order to have children, to be noble or *maradat* so to be respected, and respect others so as to maintain peace and order of *silaturrehmi* or social relationship to gain unity.. This is the philosophy of the Batak ethnic, regardless of clan and religion.

While in the marriage system, Batak ethnic adopt exogamy, marrying another clan. (Utomo, 2016: 91) Not only the clan, Batak ethnic also allow getting married with other tribes, other citizens and even other religions. The prohibition of religious differences is not for custom orders but it is more dominant for a religious order, whether Islam or Christianity. Customs do not prohibit marrying with another religion. This shows that Batak ethnic receive clan, tribe, religion and other citizens in matters of marriage. Even in Batak customs, when a girl is married to other ethnic, religion or citizen and she has done something good to her family members and community, then she will be given land to cultivate called *parippe*.

Relating to the existence theory of Batak customary law, the Islamic and state laws in society adheres to legal pluralism, as already explained by other theories. Based on research conducted it is seen that law coexistence theory still proves good. (Irianto 2009: xvi). In Batak, community, the customary, Islamic and state laws, run simultaneously in a society in accordance with their respective portions.

The Islamic law has a big role to update the existing customary law in Batak community. In sociological theory, if there are two or more cultures meet (social differentiation) then some circumstances would appear, the social

intersection. (Setiadi and Kolip, 2010, p. 475) The social intersection is linked with relationships between individuals, individuals with a group, and a group with a group. Without the social interaction then there would be no life of togetherness. Social process is an interaction or reciprocal relationship or interplay among people lasting throughout life in the society. This is what happens between the Islamic and customary laws in minority Muslim communities of North Sumatera.

Social intersection in a pluralistic society structures impact on increasing solidarity and the emergence of conflict potential. As a result of the group formation from different sections, one of which is the strengthening of relations or ties between community members. The existing members of the public will ignore horizontal and vertical differences. Differentiation is regarded as a natural thing due to intensive mutual intercourse and mutual understanding of these things. In addition, the intersection can produce a new social group with new criteria. If differences of religious, ethnic, and race backgrounds and so on are more prominent and distinctive, then the conflict ending in a split will occur in the conflict organization. In Batak community there is an increase in solidarity supported by *dalihan na tolu*, kinship system, the also also supported by the philosophy of Batak, *hadameon*. Batak community does not like conflict, because they realize that the community is a family or siblings of *dalihan na tolu*. Religious differences will not cause conflict in society, because people of different religions are brothers in *dalihan na tolu*, that is *hula-hula*, *dongan sabutuha* and *anak boru*.

On the other hand if two cultures meet, the system of the Islamic and customary laws are social acculturation. Acculturation is a social process arising when a group of people with a particular culture are confronted with elements of an outer culture. The outer culture will gradually be accepted and processed into its own culture without causing loss of cultural elements of the group itself.

When minority Batak ethnic carry out the marriage, then cultural acculturation happens, where the culture of Batak people already accepted for generations still run customized with the Islamic law. The implementation of the Batak culture that already exists conforms to the Islamic and state laws. The state law only regulates the state administration so that there are rules that have been determined by the state in performing the marriage. Inadvertently an acculturation has occurred in minority Muslim community in North Sumatera.

The Islamic law are still the dominant force for the minority Muslim community in North Sumatera to matters of privacy while those of public, the state law is more dominant. The Customary law applies to custom groups only. The Islamic and state laws will be stronger if supported by the customary law.

One of the reasons why it is difficult to apply the Islamic law of inheritance is due to the lack of support from the customs, where customs are more dominant force for the male. However, if returned to the customs, there will be problems, because the customary law is arduous and does not have a solid footing. The customary law is based on the result of deliberation and consensus of *dalihan na tolu*.

Thus, if Islamic inheritance law socialization is done continuously, then it could fill the void of the customary law. For example detail parts of heirs are not described; in the customary law whereas the Islamic law has a provision called *fuurud al-muqaddarah*. This certainly could fill the void of the customary law. The customary law pays less tribute to women, whereas the Islamic law gives awards to women such as widows and daughters.

## 9. Conclusion

The minority Muslim community of North Sumatra implement simultaneously three legal systems in marriage. They go to the customary, Islamic and state laws. While in inheritance they implement the customary inheritance law. The reasons for the implementation of Islamic marriage law is due to worship, to obtain legitimate child according to religion, to gain recognition in the family and customs of *dalihan na tolu*, and easy to implement. While the reasons complying with the state law is to get the legality from the state and the family, adherence to the customary law in order to gain recognition from family and the customs of *dalihan na tolu* and the minority Muslim community of North Sumatera does not implement the Islamic inheritance law.

## References

- [1] Aritonang, Jan. S, *Beberapa Pemikiran Menuju Teologi Dalihan Natolu*, Jakarta: Dian Utama dan Kerabat, 2006.
- [2] Anleu, Sharyn L. Roach, *Law and Social Change*, London: Sage Publications Ltd, 2000.
- [3] Berutu, Lister dan Nurhani Padang, *Mengenal Upacara Adat Masyarakat Suku Pakpak di Sumatera Utara*, Medan: Grasindo Monoratama, 2013.
- [4] Hadikusuma, Hilman, *Antropologi Hukum Indonesia*, Bandung: Alumni, 2010.
- [5] Irianto, Sulistyowati, *Pluralisme Hukum dalam Perspektif Global*, dalam *Hukum yang Bergerak: Tinjauan Antropologi Hukum*, Jakarta: Yayasan Obor Indonesia, 2009.
- [6] Panggabean, H.P. dan Richard Sinaga, *Hukum Adat Dalihan na Tolu tentang hak Waris*, Jakarta: Dian Utama dan Kerabat, 2007.
- [7] Raharjo, Satjipto, *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoretis serta Pengalaman-pengalaman di Indonesia*, Yogyakarta: Genta Publishing, 2009.
- [8] Ka'bah, Rifyal, *Penegakan Syariat Islam di Indonesia*, Surabaya: Khairul Bayan, 2004.
- [9] Ritzer, George, *Modern Sociological Theory: Seventh Edition*, terj. Triwibowo, *Teori Sosiologi Modern*, Jakarta: Kencana, 2014.
- [10] Rato, Dominikus, *Hukum Perkawinan dan Waris Adat di Indonesia*, Yogyakarta: LaksBang Pressindo, 2015.
- [11] Rofiq, Ahmad, *Hukum Islam di Indonesia*, Jakarta: Grafindo Persada, 1997.
- [12] Sabiq, Sayyid, *Fiqh Sunnah* Berūt: Dār al-Fikr, 1983, Jilid II.
- [13] Salman, R. Otje, *Beberapa Aspek Sosiologi Hukum*, Bandung: Alumni, 1989.
- [14] Setiadi, Elly M. dan Usman Kolip, *Pengantar Sosiologi: Pemahaman Fakta dan Gejala Permasalahan Sosial*

*Teori, Aplikasi dan Pemecahannya*, Jakarta: Kencana, 2010.

- [15] Sinaga, Richard, *Perkawinan Adat Dalihan Natolu*, Jakarta: Dian Utama, 2013.
- [16] Sinulingga, Ev. Adil, *Perjumpaan Adat Karo dan Injil*, Bekasi: Law Firm A.S Lingga S.H. & Patners, 2009.
- [17] Simanjuntak, Bungaran Antonius, *Konflik Status dan Kekuasaan Orang Batak Toba*, Jakarta: Yayasan Obor Indonesia, 2009.
- [18] Soekanto, Soerjono, *Pokok-pokok Sosiologi Hukum*, Jakarta: Rajawali, 2012.
- [19] Soekanto, Soerjono dan Budi Sulistyowati, *Sosiologi: Suatu Pengantar*, Jakarta: Raja Grafindo Persada, Cet. Ke-45, 2013.
- [20] Setiadi, Elly M dan Usman Kolip, *Pengantar Sosiologi: Pemahaman Faktadan Gejala Permasalahan Sosial, Teoridan Aplikasidan Pemecahannya*, Jakarta: Kencana, 2011.
- [21] Tambunan, R., *Hukum Adat Dalihan Natolu*, Medan: MITRA Medan, 2016.
- [22] Usman, Sabian, *Dasar-dasar Sosiologi Hukum; Makna Dialog antara Hukum dan Masyarakat*, Yogyakarta: Pustaka Pelajar, 2009.
- [23] Utomo, Laksanto, *Hukum Adat*, Jakarta: Rajawali Press, 2016.
- [24] Wiradnyana, Ketut, *Legitimasi Kekuasaan pada Budaya Nias*, Jakarta: Yayasan Pustaka Obor Indonesia, 2010.

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