

**THE TRADITIONAL LEADER'S VIEWS ABOUT THE ROLE OF
DAYAK NGAJU MARRIAGE AGREEMENT IN PERSPECTIVE
OF *SADD ADZ- DZARÎ'AH***

(Case Study at Pahandut Sub District, Kota Palangka Raya)

Thesis

By:

Zahrotul Jannah

NIM 12210110



AL-AHWAL AL-SYAKHSHIYYAH DEPARTEMENT

SHARIA FACULTY

MAULANA MALIK IBRAHIM

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MOTTO

وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَأَنْتُمْ إِحْدَاهُنَّ قَنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا
أَتَأْخُذُونَهُ بُهْتَانًا وَإِثْمًا مُبِينًا

“And if you intend replacing one wife with another and you have given one of them a heap of gold, then do not take away anything from it. Would you take it by slander and as manifest sin?”

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

“And how could you take it while you have gone in unto each other, and they have taken a strong covenant from you?”

(Surah An-Nisa', Verse 20-21)

STATEMENT OF THE AUNTENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**THE TRADITIONAL LEADER'S VIEWS ABOUT THE ROLE OF
DAYAK NGAJU MARRIAGE AGREEMENT IN PERSPECTIVE
OF *SADD ADZ- DZARÎ'AH***

(Case Study at Pahandut Sub District, Kota Palangka Raya)

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 25 August 2016



Zahrotul Jannah

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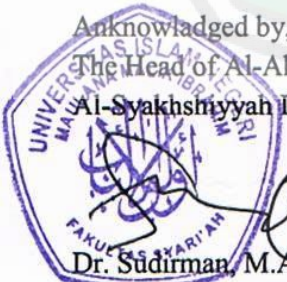
After examining and verifying the thesis of Zahrotul Jannah, NIM 12210110, Al-Ahwal Al-Syakhshiyah Departement of Sharia Faculty of State Islamic University of Maulana Malik Ibrahim of Malang, entitled:

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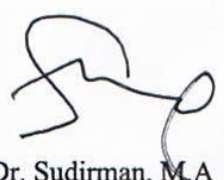
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(Case Study at Pahandut Sub District, Kota Palangka Raya)

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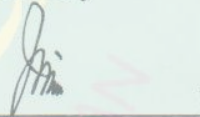
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Malang, 25 August 2016

Writer,

Zahrotul Jannah

NIM 12210110

TRANSLITERATION GUIDE

A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious' Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

B. Consonants

ا = a	ض = dl
ب = b	ط = th
ت = t	ظ = dh
ث = ts	ع = ' (comma facing upwards)
ج = j	غ = gh
ح = h)	ف = f
خ = kh	ق = q
د = d	ك = k
ذ = dz	ل = l
ر = r	م = m
ز = z	ن = n

س = s

و = w

ش = sy

ه = h

ص = sh

ي = y

The hamzah (ء) which is usually represented by *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards ('), as oppose to a comma (,) which replaces the “ع” .

C. Long Vowel and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by “i”, unless it is written as “iy” so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as “aw” da “ay”. Study the following examples:

Diftong (aw) = و example قول becomes *qawlun*

Diftong (ay) = ي example خير becomes *khayrun*

D. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as “t” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”. For example: الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlafilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example في رحمة الله becomes *fi rahmatillah*.

E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of a word, while “al” in the phrase of *lafadh jalalah* (speaking of God) which is in the middle of a sentence and supported by and (*idhafah*), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *Masyâ Allâh kâna wa mâ lam yasya' lam yakun.*
4. *Billâhi 'azza wa jalla.*

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ABSTRAK

Zahrotul Jannah, NIM 12210110, 2016, *Pandangan Tokoh Adat Tentang Peran Perjanjian Perkawinan Suku Dayak Ngaju Ditinjau Dari Perspektif Sadd Adz- Dzari'ah*, Skripsi, Jurusan Al-Ahwal Al-Syakhsiyah, Fakultas Syari'ah, Universitas Islam Negeri, Maulana Malik Ibrahim Malang.

Pembimbing: Dr. Sudirman MA

Kata Kunci: *Pandangan Tokoh Adat, Perjanjian Perkawinan, Sadd Adz- Dzari'ah*

Perjanjian perkawinan adalah perjanjian yang dibuat oleh calon mempelai wanita dan calon mempelai laki-laki sebelum mereka melaksanakan perkawinan dimana dalam perjanjian tersebut memuat hak dan kewajiban masing-masing kedua belah pihak. Perjanjian perkawinan adat suku dayak adalah wajib dilaksanakan oleh kedua calon mempelai sebelum mereka menikah. Dalam perjanjian perkawinan tersebut terdapat tiga point penting didalamnya. Perjanjian perkawinan tersebut harus diketahui dan ditanda tangani oleh *Damang* dan *Mantir* adat di setiap kelurahan. Para tokoh adat sepakat bahwa tujuan utama adanya perjanjian perkawinan adat ini adalah untuk mencegah terjadinya perceraian bagi masyarakat suku Dayak Ngaju di Kota Palangka Raya. Jika dikaitkan dengan konsep *sadd adz- dzari'ah* maka terdapat dua sudut pandang yakni dapat dilihat dari masalahnya dan dapat dilihat dari kemafsadatannya.

Penelitian ini termasuk jenis penelitian empiris dengan menggunakan pendekatan deskriptif kualitatif. Sedangkan sumber data yang digunakan adalah sumber data primer dan sekunder. Metode pengumpulan data adalah wawancara dan dokumentasi. Metode analisis data yang digunakan pada penelitian ini adalah analisis deskriptif.

Hasil penelitian ini terdapat dua poin penting. *Pertama*, orang Dayak yang akan menikah atau dinikahi wajib mengetahui adanya perjanjian perkawinan berdasarkan adat suku Dayak Ngaju. Sehingga ketika mengadakan perkawinan adat kedua calon mempelai tidak saling merasa terbebani oleh adanya persyaratan nikah. *Kedua*, dalam perjanjian perkawinan adat terdapat kemaslahatan yang lebih besar bagi masyarakat suku Dayak Ngaju di Kota Palangka Raya. Hal ini di tandai dengan tujuan utama adanya perjanjian perkawinan adat tidak lain untuk mencegah terjadinya perceraian dan menjaga hak-hak pihak yang terkait.

ABSTRACT

Zahrotul Jannah, NIM 12210110, 2016, *The Traditional Leader's Views About The Role of Marriage Agreement by Dayak Ngaju Tribe In Perspective of Sadd Adz- Dzari'ah*, Thesis, Al-Ahwal Al-Syakhsyah Departement, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim of Malang.

Supervisor: Dr. Sudirman MA

Key Words: The Traditional Leader's View, Marriage Agreement, *Sadd Adz-Dzari'ah*

Marriage agreement is a written contract created by two people (a groom and a bride) before they are married which is contained on rights and obligation of each. Marriage agreement in the Dayak Ngaju tribe is like as mandatory to be implemented by both the bride and groom before they get married. There are three important points included of that agreement. The marriage agreement is must be known and be signed by the *Damang* and *Mantir* custom in each village. The traditional leaders are agreed that the main purpose of marriage agreement is to prevent the occurrence of divorce for the Dayak Ngaju people in Kota Palangkaraya. If it is related with the concept of *sadd adz- dzari'ah* then there are two points of view that can be seen from *maslahah* and can be seen from *mafsadat*.

This research is a kind of empirical research by using descriptive qualitative approach. The data sources used is primary and secondary data sources. The method used in collecting data is interview and documentation. While in analyzing data used in this research is descriptive analysis.

There are two important points found in this research. First, The Dayak people who are getting married or married by the other have to know the marriage agreement by Dayak Ngaju tribe before. It aims that both of bride and groom they do not feel burdened by the requirement of marriage. Second, in that marriage agreement is contained many *maslahah* especially for the Dayak Ngaju People in Kota Palangka Raya. It is characterized by the main purpose of the agreement in addition to prevent divorce and safeguard the rights of the parties concerned.

مستخلص البحث

زهرة الجنة 12210110. آراء الزعماء التقليديين من داياك (Ngaju) عن دور الاتفاق الزوجية منظور سد الذريعة. البحث الجامعي، قسم الأحوال الشخصية. كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانق.

تحت الإشراف: الدكتور سودرمان الماجستير.

الكلمة الرئيسية : آراء الزعماء التقليديين، الاتفاق الزوجية، سد الذريعة

الاتفاق الزوجية هي الاتفاق بين مرسحة الزوجة ومرسحة الزوج عن الحقوق والواجبات لهما. أداء الاتفاق الزوجية من قبيلة داياك واجب قبل النكاح، فيه ثلاثة النقاط الجوهرية. و أن يكون هذه الاتفاق الزوجية معروفة عند دامانق ومنستير في الحكومة.

إن المدخل الذي استخدمتها الباحثة في هذا البحث هو المدخل وصف الكيفي. ومصدر البيانات فيه مصادر البيانات الأولية والثانوية. ومنهجه هو البحث التجريبي. وأدوات البحث فيما يلي: المقابلة والتوثيق.

وأما نتائج البحث كما يلي: (1) سگان داياك الذين يتزوجون يجب أن يعرف وجود الاتفاق الزوجية من خلال قبيلة داياك. حتى لا يشعر بالحساسة وبالندامة بوجود الاتفاق الزوجية بعد النكاح. (2) في الاتفاق الزوجية فوائد كبيرة للمجتمع قبيلة داياك (Ngaju) فائقارايا. ننظر من الأهداف الأولى الاتفاق الزوجية يعني منع الطلاق وحفظ الحقوق لكل شخص.

CHAPTER I INTRODUCTION

A. Background of Research

Human as living creatures, they needs to keep their life cycle go on. Then, the right way to have descendants is marriage. Marriage is the only way to establish a family. Allah said in Surah *Ad-Dzariyât* verse 49:¹

وَمِنْ كُلِّ شَيْءٍ خَلَقْنَا زَوْجَيْنِ لَعَلَّكُمْ تَذَكَّرُونَ

“And of all things We created to mates, perhaps you will remember”

¹ Depag RI, *Al-Qur'an Terjemah*, Semarang, CV.TOHA PUTRA, 1989.

The verse above stated that marriage is one of human being duties. The marriage caused a legal relation that includes their rights and duties. It contains of marriage agreement.

Marriage in Islamic Law is a contract, and like all other contracts it is concluded by the making of an offer (*ijab*) by one party and the giving of an acceptance (*qabul*) by the other. No particular form of words is required, as long as the intention to conclude a marriage contract is clear.²

Marriage agreements are contracts signed by couples either before they marry or shortly afterwards.³ Most marriage agreements are drafted and signed well ahead of the date of marriage. Marriage agreements are usually intended to deal with the legal issues if the marriage breaks down, but they can also deal with how day to day things will be handled during the marriage.⁴

In another sense, marriage agreement is referred to as a prenuptial agreement. It means a written contract between two people who are about to marry, setting out the terms of possession of assets, treatment of future earnings, controlling the property of each, and potential division if the marriage is later dissolved.⁵ These agreements are fairly common if either or both parties have substantial assets, children from a prior marriage, potential inheritances, high incomes, or have been taken by a bride and a groom.

²Dawoed El Alami and Doreen Hindchiff, *Islamic Marriage And Divorce Laws of The Arab World*, (London: Cimel and Kluwer Law International, 1995), Page.5

³R. Soetojo Prawirohamidjojo, *Pluralisme dalam Perundang-undangan Perkawinan di Indonesia*, (Surabaya: Airlangga University Press, 1988), Page. 57

⁴Beatrice McCutcheon, Marriage Agreement, http://wiki.clicklaw.bc.ca/index.php/Marriage_Agreements, accessed on Thursday, 21 of July 2016, at 11.35 AM.

⁵Prenuptial Agreement, <http://legal-dictionary.thefreedictionary.com/prenuptial+agreement>, accessed on Monday 1 of August 2016

While a bride and a groom can face many troubles during the course of their marriage, more typically these agreements are intended to resolve the issues that will arise if their marriage breaks down.

The reality is that many couples bring their marriages into a divorce and do not 100% separate in death. In another case, there are assets to be distributed. While it is certainly unsuitable to discuss and negotiate a prenuptial agreement between the time of engagement and the wedding, an agreement can save a lot of painful and money when it comes time to distribute those assets.

Marriage agreement is binding on the parties as a legal contract. They may be enforced by the courts if someone tries to escape or change an obligation they have agreed to. Marriage agreement is optional agreement in a marriage that may drafted by a bride and a groom.

To be sure, not everyone needs a prenuptial agreement. Especially for a young couple which is getting married for the first time, with little or no assets who are looking to make a life together and grow their marital estate beginning at the date of their marriage, without expectation of large inheritances or trusts from their families.

Basically, each couple is free to sign the marriage agreement or not, as what was written in Act 1338 of KUHP (Civil Law Act). The agreement can not be contrary with *Goeden zeden* (morality), *open bare orde* (public order), and marriage regulation.⁶

⁶ R. Wirjono Prodjodikoro, *Hukum Perkawinan di Indonesia*, (Bandung: Sumur, 1981), Page. 7

Most people of Indonesian society sign the marriage agreement based on many considerations. For example, many people were claimed that the marriage agreement is like weapon project that prevent the husband to do polygamy. Those fortunate enough to come into a marriage with either assets of their own or the expectation of assets from a trust or inheritance, a prenuptial agreement is a must to be have. It provides certainty for both parties and protections that go beyond the laws governing the distribution of assets.

A contract of marriage by custom law is viewed much differently than an ordinary. The marriage agreement which is preserved by the majority of Borneo people has many differences. Generally, the marriage agreement is contained about properties, family role and parental. Furthermore Dayak Ngaju regulates different. The regulations of marriage they made for the tradition is still applied in some districts of Kalimantan.

Astronomically, Kalimantan Island is located in the middle of Republic of Indonesia territorial, that is consisted by five Provinces, and they are: West Kalimantan, East Kalimantan, North Kalimantan, South Kalimantan and Central Kalimantan. The ethnic of Kalimantan is Dayak communities with most of them are life in the rural areas not in the coastal.⁷

The ethnic of Dayak that is recognized in the Borneo Island are: *Dayak Ngaju, Dayak Apu Kayan, Dayak Iban and Dayak Heban or Dayak Laut, Dayak Klemantan or Dayak Darat, Dayak Murut, Dayak Punan and Dayak Ot Danom*.⁸

⁷ Tjilik Riwut, *Kalimantan Membangun Alam dan Kebudayaan*, (Yogyakarta : NR Publishing, 2007), page. 265

⁸ Tjilik Riwut, *Kalimantan Membangun Alam*, Page.267.

The area that is inhabited by Dayak Ngaju tribe includes five districts and a municipal. They are lived at Kapuas regency, East Kotawaringin, South Barito regency, North Barito regency, and Palangkaraya.⁹

Dayak Ngaju's people especially Hindu Kaharingan has various religious ceremony. Marriage ritual is one of religious ceremonies and customs that reflected Dayak Ngaju's existence as a custom society.

Practically, marriage processes among Dayak Ngaju people are divided into four phases. They are: *Hakumbang Auh*, *Mamanggul*, *Mananggar Janji* or *Mukut Rapin Tuak* and then *Palaksanaan Perkawinan*.¹⁰ Marriage ritual by Dayak Ngaju is applicable for all religion, without exaptation.

In few decades, many tribes are immigrated to Palangka Raya district, such as Javanese, Banjar, Batak, Betawi also the Madurese. They are intermingled and interacted each other because Palangka Raya's people have a motto namely "*Rumah Betang*". It means that, despite they have many tribes, religions and customs of different beliefs, but with the motto of *Rumah Betang* they lives peacefully. Nevertheless the Dayak's tribe have to defend their culture as well as traditional marriage culture.¹¹

⁹ Teras Mihjng, dkk., *Adat dan Upacara Perkawinan Daerah Kalimantan Tengah*, (Palangka Raya, Kal-Teng: Departemen Pndidikan dan Kebudayaan, DIRJEN Kebudayaan, Direktorat Sejarah Dan Nilai Tradisional Bagian Proyek Pengakajian dan Pembinaan Nilai-Nilai Budaya), 1994/1995, Page.51

⁹ Compilation of Islamic Law (KHI) Article 5, Paragraph 1.

¹⁰ Departemen Pendidikan dan Kebudayaan, *Adat Dan Upacara Perkawinan Daerah Kalimantan Tengah*, (Jakarta: Depdikbud, 1984), Page. 67.

¹¹ Y. Nathan Ilon, *Ilustrasi Dan Perwujudan Lambang Batang Garing Dan Dandang Tingang, Sebuah Konspesi Memanusiakan Manusia Dalam Filsafat Suku Dayak Ngaju Kalimantan Tengah*, (Kuala Kapuas, 1987), Page. 11

The ideal marriage according to Dayak Ngaju is the marriage of those who have the equal position (*kafā'ah*) and is not prevented by kinship. The marriage process begins with a proposal (*bapinangan*), also the implementation based on Dayak traditional practices which still believed.¹² Today, intermarriage traditions (marriage with the people from other tribes) have been accepted by Dayak Ngaju tribe.

Culture is the totality of backgrounds value system, institution and people behavior as well as the realization of typical society. It was the whole ideas, the actions and the results of the work to fill full their life by learning, which have been arranged in society life. At once the culture also being an identity involved in society, than there is not two communities which have the same cultures.

Dayak Ngaju community has a lot of cultures which is still on and maintained by most of people until now. In purpose of maintaining their customs, they trusted if they do not do their belief, undesirable disaster will fall on them. They wish blesses if they implement it. The implementation of cultural activities was related by a pray, a practice and a spell (*isim*), purportedly have been useful to realize the goal of the person who had practiced it.

Marriage is the union of a man and a woman who makes a permanent and exclusive commitment to each other of the type that is naturally fulfilled by bearing and rearing children together, and renewed by acts that constitute the behavioral part of the process of reproduction. We further argue that there are decisive principled as well as prudential reasons for the state to enshrine this

¹² Y. Nathan Ilon, *Ilustrasi Dan Perwujudan Lambang Batang Garing...*, Page.59-60

understanding of marriage in its positive law, and to resist the call to recognize as marriages the sexual unions of same-sex partners.¹³

In Indonesia, marriage is one phase of life which was too sacred in human being life between a man and a woman who are declared each other to live together ever after. They will face many problems if they are marriage without legality. Sometimes marriage in Islam becomes *wajib* (obligation), *Sunnah* (optional), *makruh* (better unworked), *mubah* (possible), until *haram* (proscribed). To ensure the order of marriage every Muslim's marriage must be written.¹⁴

Customary Marriage for Muslims of Dayak Ngaju tribe is still required to implement the marriage custom first. The practice of marriage agreement maybe can to do before or after *akad nikaah* (marriage contract). Intend of that a bride and a groom becomes a peacefully family and loving each other all the life, based on motto "*sakinah mawaddah wârahmah*" family.

Marriage custom of Dayak Ngaju has proved how too important of this traditional for all religions. All procedures are purposed to solidify and perpetuity the couple's marriage to avoid divorce. Divorce is one of prohibition rule of Dayak Ngaju agreement (*perlambang*).¹⁵

Islam has wide range of source of law. Many problems arise after *Rasulullah* period that never exist as long as his life. Many scholars is developed the theory to solve the problems which never been exist before, although in *Al-Qur'an* and *Sunnah*.

¹³Referred to an academic journal. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1722155, Accessed on Saturday. 12 March 2016, 11.20 AM

¹⁴Compilation of Islamic Law (KHI). Article 5, Act No. 1.

¹⁵ *Perlambang* is The term of written agreement in the Dayak language

One of method that is developed by scholars is *Sadd az-Dzari'ah*. *Sadd az-Dzari'ah* means prevent the acts that not make any damages. The concept of *Sadd adz-Dzari'ah* is purposed that achieve *maslahat al-Ummah* or prevent all possibility of damage.

In this research, writer wants to analyze about marriage agreement of Dayak Ngaju tribe related with the concept of *Sadd adz-Dzari'ah*. The writer will undertake research with the tittle “The Traditional Leader’s Views of Dayak Ngaju Tribe about the Role of Marriage Agreement in Perspective of *Sadd adz-Dzari'ah* (Study Case at Pahandut Sub District, Kota Palangka Raya)

B. Statement of Problem

Based on the background of study which is mentioned above, the issues discussed in this research can be formulated as follows:

1. What is the analysis content of marriage agreement letter by Dayak Ngaju tribe in Pahandut Subdistrict Kota Palangka Raya?
2. What is the traditional leader’s views the roles of customary marriage agreement by Dayak Ngaju tribe?
3. How is the marriage agreement viewed in perspective of *Sadd adz-Dzari'ah*?

C. The Objective of Research

From the formulation of the problems used above, this study aims to:

1. To analyze the content of marriage agreement by Dayak Ngaju tribe in Pahandut Sub District of Kota Palangka Raya and everything includes that marriage such as all requirements of marriage, the benefits that marriage agreement for Dayak Ngaju people etc.
2. To describe the views of traditional leader and public figure about the roles of marriage agreement which is obliged before get marriage.
3. To analyze the traditional leader's opinions about the role marriage agreement viewed in the concept of *Sadd adz-Dzari'ah* whether that agreement includes *maslahah* and *mafsadah* act.

D. The Benefits of Research

1. Theoretical Benefits
 - a) To Enrich Islamic legal thought and scientific contribution in the field of jurisprudence, especially in the study of Islamic family jurisprudence.
 - b) To clarify the law in society and this research will provide a theoretical contribution in the design of renewal of Islamic law.
 - c) With this research will be known the dynamics that occur in the community about Islamic family law.
2. Practical Benefits
 - a) This research useful for education development. Useful for society particularly in family and also for bride and groom, they have to prepare their self before they get marriage, then they not face many difficulties as long as they get marriage.

- b) The results of this research can use for references of legal education by all society in Palangka Raya, especially for Dayak Ngaju moslems with the law custom to improve services that related to the study of Islamic law.

E. Operational Definitions

In operational definitions will be describes about the terms of important words that contained in this research, and then we can understand the mistaken mean of the word. It also purposes to limits the definition and scopes of those words. The word definitions are described as follows:

Traditional Leader : Is the important person who knows and understands all about the customs object. He was trusted by people around as a person who can manage and resolve all issues related in custom

Marriage Agreement : Is a written contract created by two people (a groom and a bride) before they are married. An agreement typically lists all of the property each person owns (as well as any debts) and specifies what each person's property rights will be after the marriage.

Sadd Adz-Dzarî'ah : Is to close the way (as an intermediary). The meaning is to prevent an act then it is not induce to *mafsadah* (damages). If the act causes into damages (*mafsadah*), then it becomes as prohibition act

F. The Systematic of Discussion

In this research is focused on comprehensively discussion, and then systematical discussion was structured as follows:

CHAPTER I: Introduction. In this chapter described the framework of research. Like building a house, this chapter is a foundation. Therefore, this chapter contains a discussion about background of the problem, formulation of the problem, the purpose and usefulness of discussion, the benefits of research even in theoretical, practical, and systematical of Discussion.

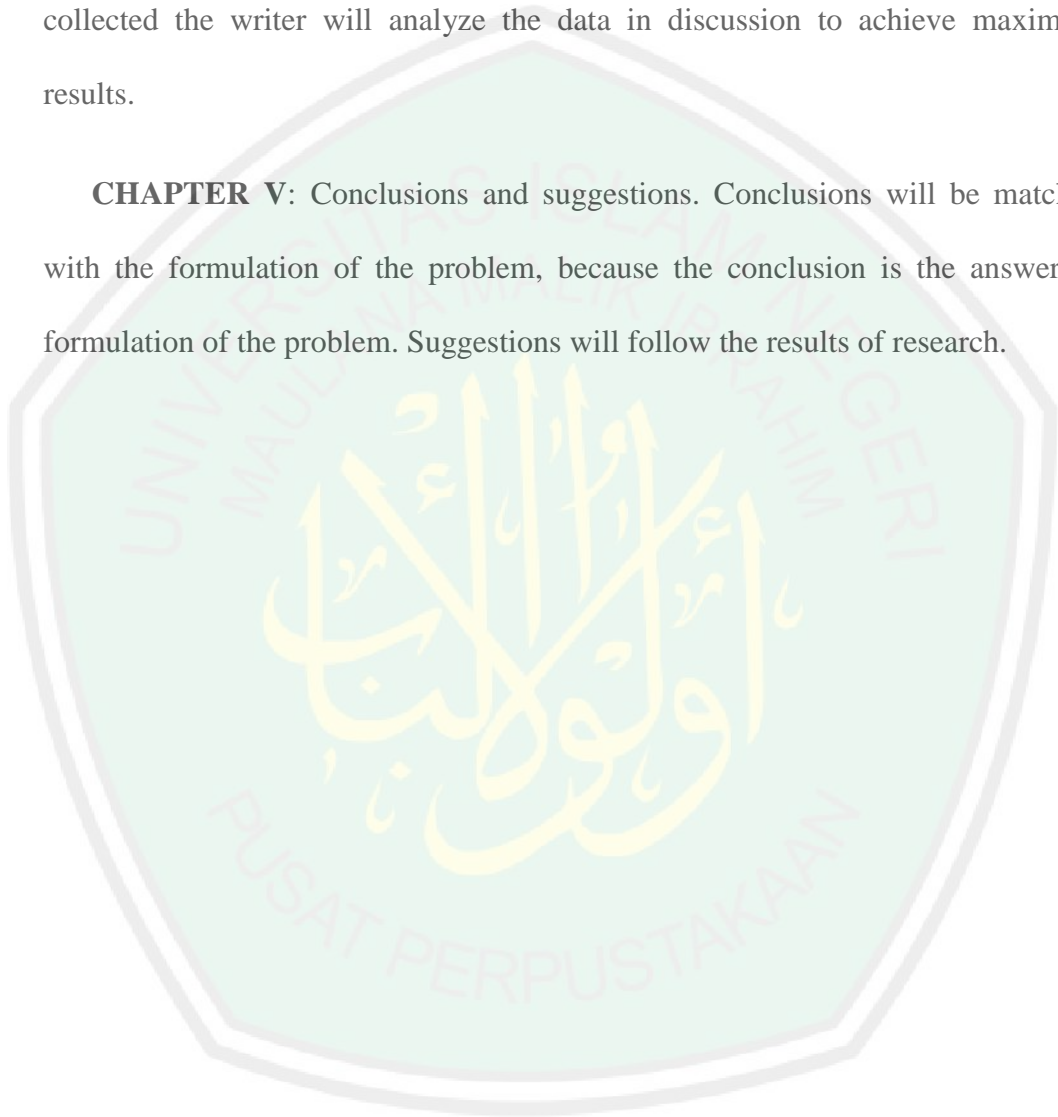
CHAPTER II: Previous Research and the theoretical framework of research are needed to make more obvious. Theoretical framework will explain or describe the title to makes the reader easy in understanding this research. Theoretical framework of research, describes the definition of marriage agreement, customary agreement by Dayak Ngaju Tribe, and the concept of *Sadd adz-Dzari'ah*

CHAPTER III: In this chapter writer analyze the data by using research methods. Research methods will be used in this research as an analytical device in a scientific paper. The type of research that will be used in this research is Field Research (fieldwork) by using qualitative methods, this research focused on data collection (interview) from informants that were determined in this research. The writer also use secondary data source as supporting data and complement of data to get more explanation about specifically contents of marriage agreements according to Dayak Ngaju society. The secondary source in this research uses

literature study. After the Data are collected, the writer will process and analyze the data by editing, classifying, verifying, analyzing, and concluding.

CHAPTER IV: Results of research and discussion. After all the data are collected the writer will analyze the data in discussion to achieve maximum results.

CHAPTER V: Conclusions and suggestions. Conclusions will be matched with the formulation of the problem, because the conclusion is the answer of formulation of the problem. Suggestions will follow the results of research.



CHAPTER II

REVIEW OF RELATED LITERATURE

A. Previous Research

Actually, the research of marriage agreement have been carried by previous researchers, they are as follows:

Table 2.1 Comparison of Previous Research

The Writter	Titles of Research	Similarities	Differentiation
Suci Rahmadhani (2011)	Perjanjian Kawin ditinjau dari Aspek dalam Undang-Undang No. 1	This thesis have a similarity theme, that is discussed about Marriage	The differences of this thesis are discussed about marriage

	Tahun 1974, KUH Perdata, dan Hukum Islam	agreement	agreement viewed of Act No. 1 In 1974 and Islamic Law, different case with the writer research which is discussed about the roles of marriage agreement
Surya Mulyani (2009)	Perjanjian Perkawinan Dalam Sistem Perundang-Undangan Di Indonesia, Studi Terhadap Pasal 29 Undang-Undang No. 1 Tahun 1974 Dan Pasal 45-52 KHI	This Thesis have a similarity theme, that discussed about marriage agreement	This thesis used Normative research (library research), that in detail is discussed about the agreement between a bride and a groom before both of them get marriage
Filma Tamengkel (2015)	Dampak Yuridis Perjanjian Pra Nikah (Prenuptial Agreement) Ditinjau Dari Undang- Undang Nomor 1 Tahun 1974 Tentang Perkawinan	This Thesis have similarity theme and source of marriage regulation that is Law act No.1 of 1974 about marriage	This thesis used Normative research (library research), that is in detail discussed about the Juridical Impact Pre Marriage Agreement

Suci Rahmadhani in her Thesis, “Perjanjian Kawin ditinjau dari Aspek dalam Undang-Undang No. 1 Tahun 1974, KUH Perdata, dan Hukum Islam”, described

the views of legislation against, that discusses the views of legislation Law No. 1 of 1974 about marriage agreement as approved thing, so long as applicable regulations. This all contrasted with the content of the legislation. The private law gives assumption that the marriage covenant by the bride and the groom have to creat with a notary, and it must be hold before they get marriage. Islamic law regard that the marriage covenant decent to hold it before, because it feared the bride and the groom when they face the divorce someday. Therefore, Islamic law anticipated before to allow the bride and the groom to make marriage agreements.¹⁶

Surya Mulyani thesis in 2009, entitled “ Perjanjian Perkawinan Dalam Sistem Perundang-undangan di Indonesia, studi terhadap Pasal 29 Undang-undang Nomor 1 Tahun 1974 Dan Pasal 45-52 KHI”, this thesis discussed about marriage agreement by a bride and a groom which recognized by Employees Marriage Registerer (PPN) before they get marriage. This is the implementation of Act No. 1 of 1974 article 29 about marriage agreement. In that article affirmed that agreement forbidden to trespass the legal limitations, religion and morality. In her thesis also explained that the marriage agreement is no including to *ta'lik talak*.¹⁷

Many weaknesses are regarding about marriage agreement regulation. The regulation that is arranged about marriage agreement have uncompleted even in Marriage regulation or in Civil Law Book. Filma said that marriage regulation is still applied the legal dualism.

¹⁶Suci Rahmadhani, *Perjanjian Kawin ditinjau dari Aspek dalam Undang-Undang No. 1 Tahun 1974, KUH Perdata, dan Hukum Islam*, Thesis of Universitas Islam Riau, Pekanbaru Riau, Faculty of Law, in 2011.

¹⁷ Surya Mulyani, *Perjanjian Perkawinan Dalam Sistem Perundang-undangan di Indonesia, studi terhadap Pasal 29 Undang-undang Nomor 1 Tahun 1974 Dan Pasal 45-52 KHI*, Thesis of UIN Sunan Kalijaga Yogyakarta, Sharia Faculty, in 2009

The most seriously thing of Pre-marriage agreement is the lack of society knowledge about realization marriage agreement. Marriage agreement is considered difficult for them to implement it. It all flagged directly or indirectly with much opposition from local communities.¹⁸

In general, many similarities of same literature in thesis above, as similarity of the theme, the object research, or the same custom in Indonesia, but it will be a bit different, because the writer will do research in the different case.

B. Theoretical Framework

1. Dayak Tribe in Indonesia

Indonesian people are pluralistic society, which consists of various tribes and sub-tribes that live in certain areas in Indonesia. Each tribe has variety customs, language, religion and they were different each other.

Central Kalimantan is part of Indonesian territory, which the most of inhabitant is by Dayak tribe. Geographically, Dayak population in general lives along the river Kahayan and Kapuas river.¹⁹ The existence of Dayak tribes is divided into 405 sub-tribes, each of these sub tribes has the language and customs of their own. There were seven ethnic of the Dayak which have different tradition and language, they are: *Dayak Ngaju, Dayak Apu Kayan, Dayak Iban Atau Dayak*

¹⁸ Filma Tamengkel, *Dampak Yuridis Perjanjian Pra-Nikah ditinjau Dari Undang-undang No.1 Tahun 1974 Tentang Perkawinan*, Thesis of Law Faculty of Sam Ratulangi, Manado, 2015

¹⁹ Tjilik Riwut, *Kalimantan Membangun Alam dan Kebudayaan*, (Yogyakarta: NR Publishing, 2007), Page. 341

*Laut, Dayak Kalimantan or Dayak Darat, Dayak Murut, Dayak Punan and Dayak Ot Danum.*²⁰

The Dayak people have beliefs by their own before the inclusion of other religions which is recognized by the government of Indonesia. That belief is called by *Kaharingan* religion. Syarif Ibrahim Alqadrie said, there is a general perception related to the belief system of the Dayak ancestors. That is an element of a reciprocal relationship between their trust with cultural values embraced by the local community, which have many affects of their lives and coloring system.²¹

Kaharingan beliefs is contained the rules of life that values and it is not just a custom, but also teachings to behave. These teachings are taught orally by parents to their children for generations. Teaching and practice is known as *hadat* (custom).

Dayak Ngaju tribe has a philosophy of life, that is “*Belom Bahadat*” it means every human is must to have life customs. This philosophy is guiding all aspects of the the Dayak Ngaju life.

Marriage is one of an important position in the life of Dayak Ngaju people. Therefore, customary marriages are arranged as good as possible, so that traditional value is always maintained. The local government of Central Kalimantan Provincial has formulated the Law in Regulation No. 16 of 2008 about “*Kelembagaan Adat Dayak di Kalimantan Tengah*”. This local regulation is

²⁰ Tjilik Riwut, *Kalimantan Membangun Alam dan Kebudayaan*, Page. 234-235.

²¹ Syarif Ibrahim Alqadrie, *Kebudayaan Dayak, Aktualisasi Dan Tranformasi, Mesianisme Dalam Masyarakat Dayak Di Kalimantan Barat*, (Jakarta: LP3S-Institute of Dayakology Research Dan Development And PT Grasiondo, 1994), Page 19-20.

become as refinement of provincial regulation level 1 Central Borneo No. 14 of 1998 about *Kedamangan* in province of Central Borneo level 1, which is valued with the development and the demands of Autonomy.²²

Institutional of Dayak is a community organization that grows and thrives with the history of Dayak's custom law. This institution has the authority to regulate, to manage and to resolve all problems that occur in the Dayak society, habits and Dayak customary law.

One of the Dayak organizations that are empowered by the government is institution of *Kedamangan*. Institution of *Kedamangan* is led by a Head of *Damang* custom which located at the district level. *Damang* is a partner of *Camat* and the Head's of the District DAD (*Dewan Adat Dayak*) in sector of preservation, development and empowerment, customs and function as law enforcement in the territories of the Dayak tribe. In performing his duties, *Damang* is assisted by *Mantir* as DAD in Village or Subdistric level.²³

The role of *Damang* is very important in society. He was obliged to provide instructions and solutions in case of people's problems in everyday lives. In the implementation of the settlement of a case always put peaceful ways. The decisions by *Damang* was appreciated and respected highly by Dayak people, because every decision is considered as reflating what they need.

²² Peraturan Daerah Provinsi Kalimantan Tengah Nomor 16 Tahun 2008 tentang Kelembagaan Adat Dayak di Kalimantan Tengah, Pemerintah Provinsi Kalimantan Tengah, Sekretariat Daerah Biro Hukum, 2008

²³ Peraturan Daerah Provinsi Kalimantan Tengah Nomor 16 Tahun 2008 tentang Kelembagaan Adat Dayak di Kalimantan Tengah, Pemerintah Provinsi Kalimantan Tengah, Sekretariat Daerah Biro Hukum, 2008

Institution of *Kedamangan* in Central Kalimantan as well as is a native heritage institutions. It means that institution not just as an ordinary customs institution, but it as a communion of communities of Dayak tribe, which is still existed long before the Dutch colonial government in this region.²⁴

Traditional leader of *Damang* or *Mantir* has the roles as bellow:

1. As a moderator or a guide in implementing their customary marriage
2. Help to formulate the customary agreements, publish and validate a certificate of customary marriage
3. Release the certificate of divorce based on Dayak custom and other papers related with the significant of parties.²⁵

2. Marriage Agreement in Indonesia

The Republic of Indonesia as a country based on Pancasila ideology, have many regulation that is arranged about marriage. The principle of marriage that used is monogamy. The means that a man allowed to have only one wife to be his spouse and a woman allowed only one husband. It was being stated in Article 3 of Law No.1 in 1974 and also in Article 27 of Civil Law Book/ BW.

In article No.1 in 1974 about Marriage is defined about the meaning that included the purposes and foundations, that formulated bellow:²⁶

²⁴ Y. Nathan Ilon, *Ilustrasi dan Perwujudan Lambang Batang Garing dan Dandang Tingang*, Pemimpin Proyek Bantuan Pembinaan Kebudayaan Dareha Tingat I Kalimantan Tengah, In 1990/1991

²⁵ See Local Regulation of Central Kalimantan Article 10 paragraph 1e

²⁶ Rusli and R. Tama, *Perkawinan antar agama dan masalahnya*, (Bandung: Shantika Dharma, 1984), Page.10

“Marriage is the union of a man and a woman who makes a permanent and exclusive commitment, with the aims to establish a happy family based on *Ketuhan Yang Maha Esa* (Belief in the one and only God)”

A legal Indonesian marriage is a marriage that registered completely. The Indonesian marriage must be performed with religious and governing system in Indonesia. An Indonesian Marriage registration means to register the marriage by submitting related civil and biographical information to the authorized Indonesian marriage registrar.²⁷

Marriage agreement is a written contract created by two people (a groom and a bride) before they are married. An agreement typically lists all of the property each person owns (as well as any debts) and specifies what each person’s property rights will be after the marriage.

In other sense, marriage agreements are contracts signed by couples either before they marry or shortly afterwards.²⁸ Most marriage agreements are drafted and signed well ahead of the date of marriage.

Marriage agreements are usually intended to deal with the legal issues if the marriage breaks down, but they can also deal with how day to day things will be handled during the marriage.²⁹

²⁷Arasindo & Partners, *Ishbat Nikaah*, <http://www.arasindo.com/index.php/pengadilan-indonesia/marriage-legalization> . Acceded on Tuesday, 08th August 2016

²⁸R. Soetojo Prawirohamidjojo, *Pluralisme dalam Perundang-undangan Perkawinan di Indonesia*, (Surabaya: Airlangga University Press, 1988), Page. 57

²⁹Beatrice McCutcheon, *Marriage Agreement*, http://wiki.clicklaw.bc.ca/index.php/Marriage_Agreements, accessed on Thursday, 26 of July 2016, at 11.35 AM.

Generally, a marriage agreement is like as others agreement. That consisted about content, validity period, and all stipulations which are mentioned. An agreement binds all parties as long as they agreed.

Wirjono Prodjodikoro said that agreement have a meaning “a law which is related with property between two parties, that one part of them promises to do something, and other side can demand of that agreement”.³⁰

The agreement can be related with marriage, include about marriage agreement and also *ta'lik talak*. The object of marriage agreement includes unity and separation all own properties by a bride and a groom. *Ta'lik talak* is agreement loyalty from the husband to his spouse.

Wirjono said that marriage comes an agreement if:

“A man and a woman are agree to have married, and they promise to obey all applicable regulations, consisted with each rights and obligations as long as they life together, and also about their position in society from their descendant”.

These agreements have been regulated in Law No. 1 of 1974 named by Marriage regulation. It is effective after publication of implementation instructions, which based on Indonesian Government Regulation No. 9 of 1975.

Marriage agreement has been arranged in article 29 of Law No. 1 of 1974, they are:

³⁰ Wirjono Prodjodikoro, *Hukum Perdata Tentang Persetujuan-Persetujuan Tertentu*, (Bandung: Sumur, 1981), Page. 11.

- 1) Two parties (a bride and a groom) are agreed to have a written contract that legalized with Employees Marriage Registrar (PPN). All contents of an agreement also related with third party.
- 2) An agreement can not be legalized if be contrary with the law, religion and morality
- 3) An agreement can be effective during their marriage
- 4) An agreement can not be change except getting the consent of both parties and the changes are not damage the third party.

Many stipulations that were existed for all Indonesian society that regulated as bellow:³¹

- a) KUHPer (Civil Law Book), in Article 139-154
- b) Customary Law (still applied for all Indonesian society until now)
- c) Religion Law

Article 119 of KUHPer (Civil Law Book) said, the assets of couple (husband and wife) applied one unity property. The agreements have to do before they get married with notarial deed, apply during their marriage and can not be changed.³²

Marriage by a couple without an agreement before can make conflict about property. The consequently is their property will be mixed. So that, all the properties by couple is considered as public property.

³¹ Wirjono Prodjodikoro, *Hukum Perkawinan di Indonesia*, (Bandung : Sumur, 1984), Page. 8

³² Ali Afandi, *Hukum Waris Hukum Keluarga Hukum Pembuktian*, (Jakarta: PT. Rineka Cipta, 1997), Page. 166.

In Indonesia, an agreement/ contract about marriage which is written and recognized by Law maked by Employees marriage register (PPN) and must be written.³³

The sources of marriage agreement are:

1. Civil Law Book KUHPer
2. Law Act No. 1 of 1974 and Republic of Indonesia Government regulations No. 9 of 1975 about the implementation of Law No. 1 of 1974.
3. Compilation of Islamic Law (KHI)

3. The Concept of *Sadd Adh-Dharî'ah*

a. The Meaning of *Sadd Adh-Dharî'ah*

Dhara'î is the plural of *dharî'ah* which have the signify means. Etymologically, the word of “*dzarî'ah*” means the way that leads to something. While, scholars of Usul Fiqh said the term of “*dzarî'ah*” can be defined as “anything that can be the way to something better as result of *mafsadat* and *maslahat*”. In another sense, *shad adh-dharî'ah* basically is setting all legal prohibition acts that allowed or prohibited to prevent other prohibition acts.³⁴

Sadd dzari'ah means is to close the way (as an intermediary). The meaning is to prevent an act then it is not induce to *mafsadah* (damages). If the act causes into damages (*mafsadah*), then it becomes as prohibition act.³⁵

³³ R. Soeroso, *Perjanjian Di Bawah Tangan*, (Jakarta: Sinar Grafika, 2010), Page. 11

³⁴ Syekh Islam Ibnu Taimiyyah, *Shadu Dhara'î*, (Riyad: Daru al Fadilah),Page. 26

³⁵ Abd. Rahman Dahlan, *Ushul Fiqh*, (Jakarta: Amzah, 2011), Page. 236

The scholars are dividing *Shad Adh-Dhari'ah* into two sides. They are: In the term quality of *mafsadah* aspect and in the term of impact *mafsadah* aspect.

1) *Sadd Adh-Dhari'ah* is formed as Quality of *mafsadah* aspect

According to Ibn Qayyim Aj-Jauziyah, the divisions in term of the contents are as follows:

- a) The actions that are bring to *mafsadah* surely. Example is digging a well in front of other people's homes at night, which causes home owners fall into the well. Then, he is must be punished for his act intentionally.
- b) The actions that can to do because rarely contains *mafsadah* act. For example is selling food that not contains *mafsadah*.
- c) The actions if be done makes many *mafsadah* act. For example is selling weapons to the enemy, which possible to be used for killing.
- d) The action can be done basically so that contains *maslahah*. For example is like *ba'iy al-ajal*.

2. *Sadd Adh-Dhari'ah* is formed as impact of *mafsadah* aspect

- a) The act which brings to damages (*mafsadah*). For example, drinking alcohol is forbidden because it led to loss sense. While, drunk is one of *mafsadat* act.
- b) An act that allowed or encouraged intentional or not, but it can be an act that is forbidden. For example is a man who married a woman in third *talaq* so that she can returns to her first husband (*nikâah muhalil*).³⁶

³⁶Muhammad Bakar Ismail Habib, *Maqaashid As-Syari'ah Al-Islamiyah Ta'shilan Wa Taf'iilan*, (Makkah: Dar Thoibah al-Khadlro), Page.48.

b. Legal Basis of *Sadd Dzar'ah*

1) In Al-Qur'an

a) Surah Al-An'am, verse 108:³⁷

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ كَذَلِكَ زَيَّنَّا لِكُلِّ أُمَّةٍ عَمَلَهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ

"And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge. Thus We have made pleasing to every community their deeds. Then to their Lord is their return and He will inform them about what they used to do".

b) Surah Al-Baqarah, verse 104:³⁸

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَقُولُوا رَاعِنَا وَقُولُوا انظُرْنَا وَاسْمَعُوا وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ

"You all who have believed, say not (to Allah's Messenger), "Ra'ina" but say, "Undzhurna" and listen. And for the disbelievers is a painful punishment".

2) In Hadîth

The *Hadîth* which is narrated by Al-Bukhari:³⁹

عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو رَضِيَ اللَّهُ عَنْهُمَا قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِنَّ مِنْ أَكْبَرَ الْكِبَائِرِ أَنْ يَلْعَنَ الرَّجُلُ وَالِدَيْهِ قِيلَ يَا رَسُولَ اللَّهِ وَكَيْفَ يَلْعَنُ الرَّجُلُ وَالِدَيْهِ قَالَ يَسُبُّ الرَّجُلُ أَبَا الرَّجُلِ فَيَسُبُّ أَبَاهُ وَيَسُبُّ أُمَّهُ

"From Abdullah bin Amr RA, he said, that the Prophet SAW said: "Included among the major sins a man is cursing his parents." Then He asked, "How can a man curse his parents?" He replied, "A man

³⁷ Depag RI, *Al-Qur'an Terjemah*, Semarang, CV.TOHA PUTRA, 1989.

³⁸ Depag RI, *Al-Qur'an Terjemah*, Semarang, CV.TOHA PUTRA, 1989.

³⁹ Abd. Rahman Dahlan, *Ushul Fiqh*, (Jakarta: Amzah, 2011), Page.20. It was excerpted from the book of Shahih al-Bukhari, hadith Number. 551

berate father of another person, then the person who abused it also replied berate elderly mother and father of the man.”

c. The position of *Sadd adh-Dharî'ah* In Islamic Law

According to aspects of the application, *Sadd adh-Dharî'ah* is one method of making a legal decision (*istinbath al-hukm*) in Islamic law. But when it sees from the legal product, *Sadd adh-Dharî'ah* is one of the sources of Islamic Law.

However, in practice, not all scholars agree with *sadd adh-dharî'ah* as a method in determining the law. In general, the views of scholars can be classified into three groups: *first*, accept completely, *second*, do not accept completely and *third*, is refused completely.⁴⁰

First, the group that is received completely *sadd adh-dharî'ah* as a method in determining the law, they are among scholars Maliki and Hanbali scholars. It is strengthened by their efforts to develop these methods in various discussions *Fiqh* and *Ushul Fiqh*. Example is *Imam al-Qarafi through of Anwar al-Buruq fi Anwa 'al Furuq* and *Imam ash-Syathibi in his book al-Muwafaqat*.

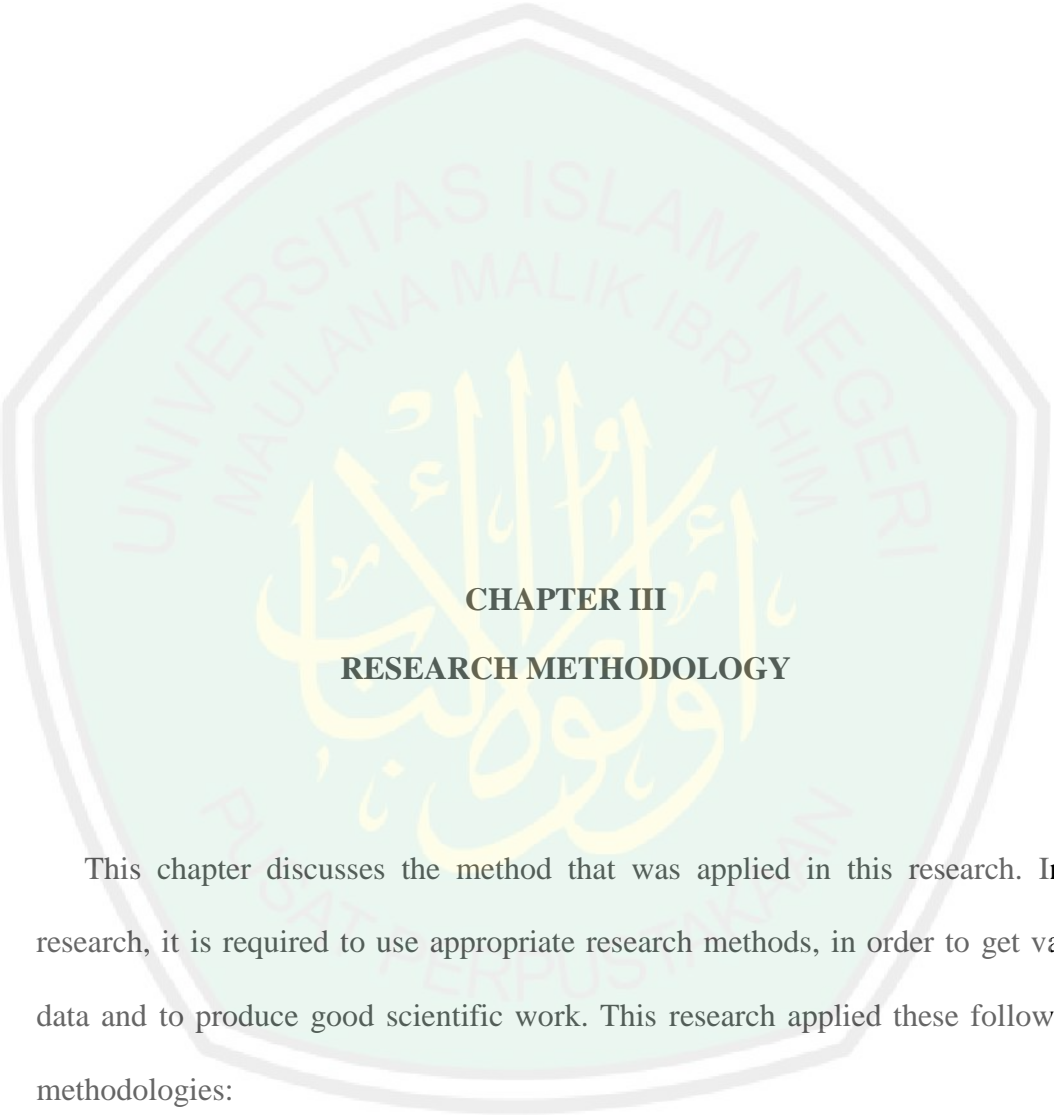
Second, the group that is not received completely *sadd adh-dharî'ah* as a method in determining the law. In other words, among the scholars who are refused *sadd adh-dharî'ah* as *istinbath* method in certain cases but they use it in another case (problem). The scholars in this group are among *madzhab* of Hanafi and Syafi'i.

⁴⁰ Amir Syarifuddin, *Ushul Fiqh jilid 2*, (Jakarta: Logos Wacana Ilmu, 2001), Page. 427.

Third, the group that refused completely *sadd adh-dhari'ah* as a method in determining the law, it is *madzhab* of Zahiri. According to their principle this method is just determining the law based on textual meaning (*Lafadz dzahir*). While, *sadd adh-dhari'ah* is based on sense product, not on the texts directly (*nâsh*).⁴¹



⁴¹ Amir Syarifuddin, *Ushul Fiqh jilid 2*, Page. 421



CHAPTER III

RESEARCH METHODOLOGY

This chapter discusses the method that was applied in this research. In a research, it is required to use appropriate research methods, in order to get valid data and to produce good scientific work. This research applied these following methodologies:

1. Kind of research

Based on the background presented by writer, this type of research is empirical research that uses field research (fieldwork) by using qualitative methods, this study focused on data collection (interviews) of informants who

have been determined in this research. That the writer goes directly to the place of research at Kota Palangka Raya, Central Kalimantan.

In Bungin book said that field research goal is to understand the social situation deeply.⁴² Generally, a descriptive qualitative research uses logical analysis and disposes or avoids statistics in theory to develop a discourse.⁴³

So the type of this research is empirical research, because the data collected in this research by using interview method. The writer asks directly to the informant about the problem that is taken in this research.

2. Research Approach

There are many approaches that are used in research. Research approach is adjusted with the type of research, the formulation of problem, and the purpose of problem.

The writer will study about the contents of marriage agreement of Dayak Ngaju Tribe at Palangka Raya. Then, the writer is judging all reality and aspects of social phenomena that happened in a society, whether that provision is good or not for them, and than the writer wants to know how the role of marriage agreement by Dayak Ngaju tribe to preventing the divorces. What are the content and the concept of marriage agreement customs, is it *masalah* or *madharat* for Islamic society at Pahandut Sub district, Palangka Raya.

3. The Location of Study

⁴² Andi Prastowo, *Metode Penelitian Kualitatif*, (Yogyakarta: Ar ruzz media, 2011), Page.179

⁴³ Burhan Bungin, *Metodologi Penelitian Kualitatif*, (Jakarta: Grafindo Persada), 2001, Page.27

The writer undertakes this research in Pahandut Sub district, exactly in Kota Palangka Raya, Central Kalimantan. Being located near by writers home it is possible to more efficiently in order to conduct the research. Kota Palangka Raya is a city and the capital of the province of Central Kalimantan.

In addition, the customs agreement in Dayak Ngaju tribe is one part of the disciplines have been studied by writer, so that it becomes easier to apply and link it with the phenomenon that occurs in the community today.

4. Type and Sources of Data

The type of empirical research use qualitative data sources. All the materials, information, facts cannot be measured mathematically but only intangible by narrative description. This research also does not use numerical values but describe the opinions that were expressed.

In this research, the writer takes two data source i.e. from primary data sources and secondary data sources.

1) Primary Data Sources

The primary sources of law are those authoritative record of law made by law-making bodies.⁴⁴ The primary data source in this research uses field research.

In this research uses Interview as process to get information by using question and answer. Interview that is used in this research is free

⁴⁴ Robert Watt and Francis John, *Concise Legal Research*, <http://www.federationpress.com.au/bookstore/book.asp?isbn=9781862877238>, Acceded on Monday 1 of August 2016

structure interview by using questions that serves as a control in order to interview process does not lose the direction.⁴⁵

This method is used to get more information about what the contents, concept and traditional leader's view about marriage agreement by Dayak Ngaju tribe for Muslim society in Palangka Raya Central Kalimantan.

So in this research uses primary data sources that obtained from various data information. It is clearly the data source that described in the data collection.

2) Secondary Data Sources

The secondary sources of law are those publication which refer and relate to the law while not being themselves primary sources.

The secondary data source in this research uses literature research, that taken from *Al-Quran* and *Hadîths*.

Another literature is from documents and books related to the regulation of marriage agreement in civil law and customary law in Indonesia, such as the regulation of article 29 Act No. 1 of 1974 about Marriage (*ta'lik talak*).

5. Data Collection Method

Data Collection Method is a device or working process to get information that will be studied in this research. So the writer use interview as process to get

⁴⁵Abu Achmadi dan Cholid Narkubo, *Metode Penelitian*, (Jakarta: PT Bumi Aksara, 2005), Page. 85.

information about data that is studied in this research, because this type of research is empirical research by using qualitative approach.⁴⁶

a) Interview

Interview is to get information or data from informer directly.

Interview method used in this research is unstructured interview, which the writer determines the questions that will be asked to informants, because the writer wants to gain deep Traditional Lerader's view about the roles, contents and the concepts of marriage agreement by Dayak Ngaju society in Pahandut Subdistrict, Kota Palangka Raya. The informants are:

Table 3.1 Informants Data

No.	Name	Date And Place of Birth	Religion	Profession	Public Figure's Clarification
1.	Sabran Achmad	Kuala Kapuas, 31 December 1930	Islam	Head of Dayak Tribe Council of Central Borneo	Traditional Leaders
2.	Rusdiana	Katingan, 21 April 1944	Islam	Wife of Head of Dayak Tribe Council in Central Borneo	Traditional Leaders
3.	Talisman D. Dayak	Pahandut, 3 May 1951	Hinduism	Secretary of <i>Damang</i> in Pahandut subdistrict	Traditional Leaders
4.	Herdi Whangtabat	Pandapiang, 17 June 1944	Christian	<i>Damang</i> in Pahandut Subdistrict	Traditional Leaders

⁴⁶ Koentjaraningrat, *Metode – Metode Penelitian Masyarakat*, (Jakarta: PT. Gramedia Pustaka Utama, 1997), Page.129.

5.	Thion Lanca	Guntung, 22 February 1961	Christian	<i>Damang</i> in Panarung Subdistrict	Traditional Leaders
6.	Supiani H.K.	Hilir Hulu Sungai, 25 July 1972	Islam	Head of The Religious Affairs Office (KUA)	Public Figure

b) Document

Document is an official paper that gives information about something or that is used as proof of something.⁴⁷

The term document to refer to materiils such as photographs, videos, films, memos, letters, clinical case records and memorabilia of all sorts that can be used as supplemental information as part of case study whose main data source is participant observation on interviewing.⁴⁸

The writer is taken the documents as supplementary material in this research, such as pictures, videos, records and letter of Dayak's Ngaju marriage agreement.

6. Data Processing Method

The data obtained from the interviews collected completely and then will be processed and analyzed to answer the problems studied in this research.

In a research, there are several methods to manage the data such as Editing, classifying, verifying, analyzing, and concluding. This method to make the data is

⁴⁷ Encyclopedia Britannica, <http://www.merriam-webster.com/dictionary/document>, acceded on Monday, 25 July, at 11.15 AM.

⁴⁸ Sugiyono, *Metode Peneltian Kuantitatif, Kualitatif dan R &D*, (Bandung: Alfabeta, 2007), Page. 82

obtained easier in order the data become good structure, orderly and systematic, the processing of data with multiple stages become urgent and significant.

So, writer uses management with several stages of the data that obtained in the research literature, the following stages is:

a. Editing

Editing is examine data that can be understood and studied, especially in terms of completeness, clarity of meaning, appropriateness, alignment, relevance, and continuity between one another.⁴⁹

In this process, the writer examines the data obtained from the interview of the informers. It aims to sort the data obtained to be easier in analyze.

b. Classifying

Classifying is collecting data obtained by arranging and classifying the specific issues to make it easy in discussions. In this process, the writer classifies the data collected from informants in accordance with the specific issues in order the writer is easy to explain.

c. Analyzing

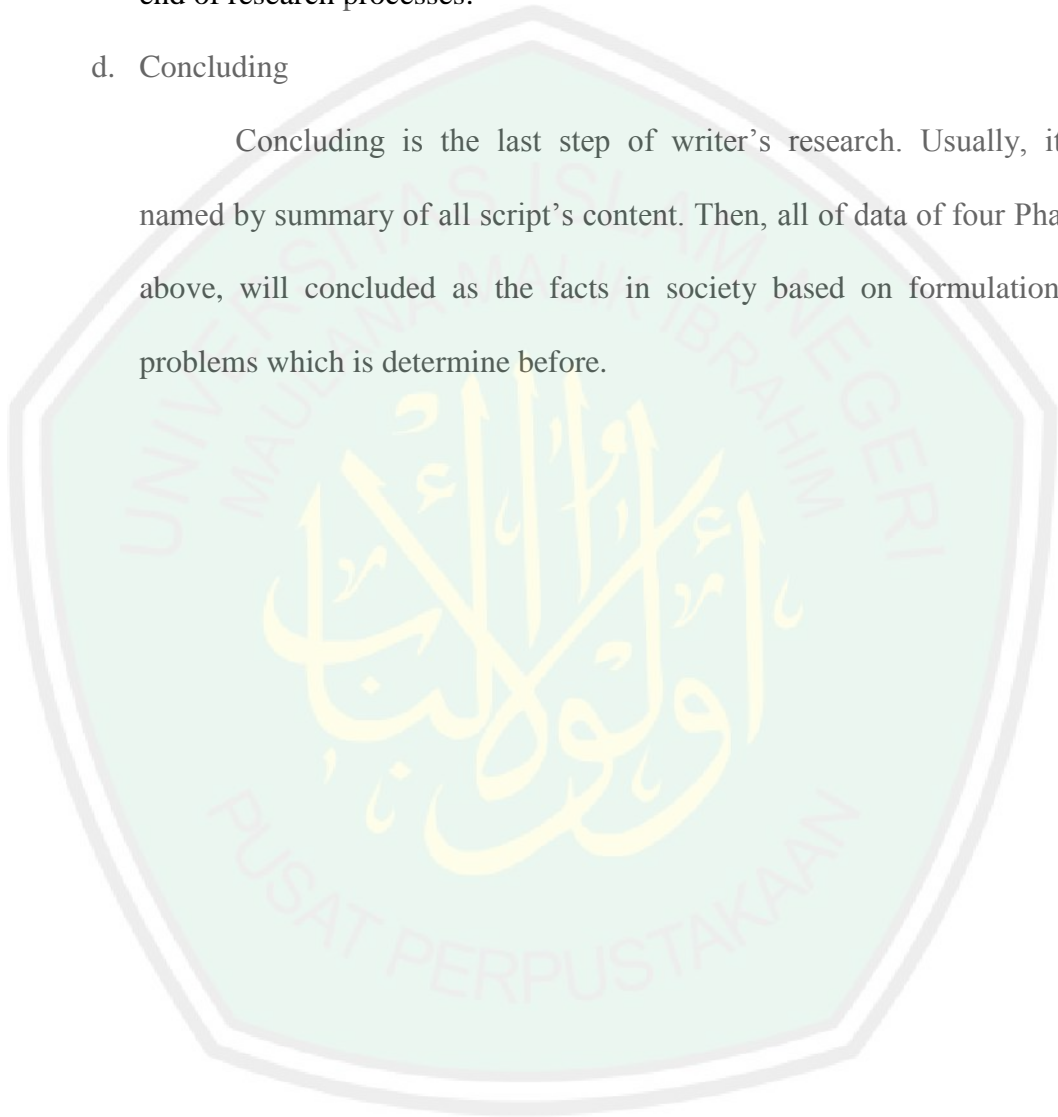
Analysis in this research is undertaken by managing and compiling data collected systematically. Then the data explained into units, compile into patterns, classify the important issues that will be studied. Then, make a conclusion so that it can be easy to understand by the writer and the reader.

⁴⁹ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajawali Pers, 2006), Page. 45.

So the writer analyzes the data by describing information data from some informants in Pahandut Subdistrict, Kota Palangka Raya in accordance with the facts in the field from beginning of research until the end of research processes.

d. Concluding

Concluding is the last step of writer's research. Usually, it is named by summary of all script's content. Then, all of data of four Phases above, will concluded as the facts in society based on formulation of problems which is determine before.





CHAPTER IV

FINDINGS AND DISCUSSION

A. The Condition of Research Location

Marriage agreement is one part of the customary marriage implementation of Dayak Ngaju. The implementation can not be separated from the organization of *Kedamangan*. Therefore, to get more explanation of the Dayak marriage custom, then in this chapter will discuss in general about Dayak Ngaju tribe which is living in the city of Palangka Raya. This research was conducted in Pahandut Sub district of Kota Palangka Raya.

a. Geographical Condition

Geographically, Palangka Raya is located at 113° 30' - 114° 07' East Longitude and 1°35'-2° 24' South Longitude.⁵⁰ The administration Region of Kota Palangka Raya consists of 5 (five) district regions, they are Pahandut, Sabangau, Jekan Raya, Bukit Batu, and Rakumpit that consist of 30 Sub district bordered by:

- 1 Northern : Gunung Mas Regency
- 2 Eastern : Gunung Mas Regency
- 3 Southern : Pulang Pisau Regency
- 4 Western : Katingan Regency

Kota Palangka Raya has the area width is 2.678,51 km² (267.851 Ha). Table of area of Palangka Raya, in 2015:⁵¹

Table 4.1 Area of Palangka Raya

Subdistric	Area (Km ²)	%
Pahandut	117,25	4,4
Sabangau	583,50	21,8
Jekan Raya	352,62	13,2
Bukit Batu	572,00	21,3
Rakumpit	1 053,14	39,3
Palangka Raya	2 678,51	100.00

⁵⁰ Statistical Yearbook Of Palangka Raya 2015, Page.57

⁵¹ Major Office Of Palangka Raya City

The city was built in 1957 on the establishment of the Autonomous Region Central Kalimantan Level I on wilderness that opened through the Pahandut village alongside Kahayan river banks. Palangkaraya is the largest city by land area in Indonesia. Most of the area is still forested, including protected forests nature conservation areas, and Tangkiling Forest.

b. Population And The Social Condition

The original inhabitant of Palangkaraya people is Dayak Ngaju. In addition, many tribes are immigrated to this city such as Javanese, Batak, Banjar tribe, Bugis and other tribes. Dayak Ngaju tribe generally is willing to get along with anyone. They trust each other.

In interacting with other people, the Dayak people are remained all the customs and laws in their environment. They face many difficulties if they violate the law regulation. It all because the active role and influence of the traditional leader.

Number of Palangka Raya Regency population in the year of 2014 is recorded 252.105. Number of males are less than females with the percentage of 51,15 % for males and 48,85 % for females. Based on total area, Pahandut Sub districts are the most crowded area with have 753 people per Kilometre square.

Dayak Ngaju tribe is divided into four (4) small parts. These four parts is divided into sixty (60) of the smallest tribe (*sedatuk*), they are:⁵²

⁵² Nila Riwut, *Maneser Panatau Tatu Hiang Menyelami Kekayaan Leluhur*, (Palangka Raya: Pusakalima, 2003), P.63

- 1) Dayak Kenya, divided into twenty four (24) small tribes
- 2) Dayak Kayan, divided into ten (10) small tribes
- 3) Dayak Bahau, divided into twenty-six (26) small tribes

The Dayak Ngaju is embraced of various religions. Although, the Dayak people has embraced various religions, that does not mean the effect of a previous tradition of religious beliefs Kaharingan is gone. That belief it still existed for general behavior of the Dayaks in Kalimantan Tengah. Total population by number of religion:⁵³

Table 4.2 Population by Number of Religion

Religion and Beliefs	Population		
	Male	Female	Total
Islam	135 285	125 765	261 050
Christian	50 186	49 618	99 840
Catholic	3 743	3 356	7 099
Hinduism	3 100	2 891	5991
Buddism	371	288	659
Konghucu	10	6	16
Current Beliefs	993	999	1 992
Total :	193 688	182 923	376 647

⁵³ SIAK Database, Department For Population And Civil Registration Of Palangka Raya City, Statistical Yearbook Of Palangka Raya 2015, Page. 116.

B. The Analysis Content of Marriage Agreement by Dayak Ngaju Tribe In Pahandut Sub District, Kota Palangka Raya

All customs marriage ritual is as one of guiding morality and behavior for Dayak Ngaju society. Then, every Dayak's Ngaju people have to defend their custom. The only way to defend is to use every customs ritual in every life event.

Marriage agreement by Dayak Ngaju tribe is the written contract that was agreed and signed by the bride and groom, their parents or guardians, the witness both sides, *Damang*⁵⁴ and *Mantir*⁵⁵. Letter of marriage agreement consists of three parts, they are:

1. Statements of both the bride and groom
2. Compliance of provisions customary law by Dayak Ngaju about "*jalan hadat*" that must be fulfilled by bride and groom and given to the bride
3. Marriage agreement between the two sides about the rights and obligations of each, legal sanctions for those who make mistakes, regulation about distributive property, include the rights of child and the right of heirs.

One of informant explained that in antiquity, the relationship marriage in a society based on mutual trust, mutual faithful, honest, obedient to the customary rules. However, such feeling has reduced as the cases of divorces are often occurring in the society right now. Marriage agreement which is originally spoken

⁵⁴ Traditional Leader and the Head of *Kerapatan Mantir Perdamaian Adat* in Subdistrict Level which has the authority to enforce the law in an indigenous territory. His appointment by election of village heads. (Article 1 point 24 of local regulations on institutional Dayak in Central Borneo)

⁵⁵ Namely by *Kerapatan Let Adat* is assistant of *Damang* or titles for members of *Kerapatan Mantir Perdamaian Adat* in Subdistrict Level. His authority is helping the *Damang Kepala Adat* to enforce the law in an indigenous territory. (Article 1 point 26 of local regulations on institutional Dayak in Central Borneo).

by *Raying Hatalla Langit* in front of witnesses who were present, that promises is violated now. The divorce regarded as a taboo, but considered as normally right now.

Marriage agreement is made as the written contract in the letter of customary marriage agreement by Ngaju Dayak tribe. It is intended both of the bride and groom to maintain the truth and honesty in a marriage, so that they remember what they agreed in the marriage.

Meanwhile, the letter of marriage agreement according of Dayak custom is written contract that issued by *Damang* and be sign both of bride and groom. These agreements are purposed as bellow:

1. To define the status both of sides
2. To protect them from the prejudice of third parties
3. To protect each of the rights and obligations
4. To define the status of children's rights

Marriage agreement includes are the statements from both sides (bride and groom), the fulfillment of *Jalan Hadat*⁵⁶ which is be the responsibility of the groom, the rights and obligations of each.

There are seven ten (17) points that a groom has to fulfil the requirements. As Rusdiana said:⁵⁷

“Ada tujuh belas macam barang hantaran yang wajib disediakan oleh calon mempelai laki-laki kepada calon mempelai wanita. Adapun tahapan-tahapan

⁵⁶ *Jalan Hadat* is like “*Jujuran*” in Indonesia named by The Dowry. The meaning is all payment that has to fulfill by a groom to a bride.

⁵⁷ Interview With Rusdiana, The Traditional Leader’s Wife Of Dayak Ngaju Tribe In Palangka Raya, Central Borneo. Interviewed On 12th of June 2016

yang harus dilakukan adalah dimulai dari Hakumbang Auh sampe acara Batua kaja, biasanya disambat dengan ngunduh mantu”

There are seven ten (17) items that must be fulfilled by the groom so that give to the bride. The stages that have to do it are beginning from *Hakumbang Auh* ritual until *Batu Kaja* ritual, that ritual famously as long as *ngunduh mantu*.

The contents of Dayak Ngaju's requirements are:

1) *Palaku*

Basically, Dayak people are accept the term of *Palaku* as long as the dowry. When it viewed from the symbolic mean, it have similar thing but not in the same.

Palaku comes as a first requirement of Dayak Ngaju's marriage. *Palaku* is the dowry which is formed in symbolic material. Anciently, the dowry is formed as *Balanga* (Guci of China) which have high priced. *Palaku* also forms as a family's heirloom such as *Gong*.

In this era, we rarely finds the historical terms of Dayak Ngaju tribe, and then it can be changed by a plot of land or other valuables thing. *Palaku* is purposed as bride's life assurance from the groom.

2) *Saput*

According to Dayak Ngaju tribe, the man is the first protector for the family. A man is deemed competent to fulfill family needs. He has the biggest responsibility to protect all his family's member from interference from other parties.

Saput is a gift from the groom to brother's bride. This Award implies as a respect, a genuine sense of brotherhood binding as part of the family of the bride. This award can be either as a cloth or some of money.

3) *Pakaian Sinde Mendeng*

A gift that given to the bride's father, as a mark of respect for his love and protection. The gifts can forms of a set of cloth.

4) *Garantung Kuluk Pelek*

Usually, the item is formed as "Gong". This item becomes as evidence of marriage agreement. We find it rarely right now, so that can be replaced with money or gold.

5) *Lamiang Turus Pelek*

Lamiang is a kind of beaded jewelry made of materials *Lamiang* red stone. Its length ranges from 6-10 cm, less more of the ring finger. In ancient times, *Lamiang* is used for events such as ceremonial rituals of birth, marriage and death.

Lamiang is bound on the wrist. In customary marriage, *Lamiang Turus Pelek* is like as a milestone for beginnings of a new household. Additionally, *Lamiang* is a symbolic of honesty and firmness of agreement both of the bride and groom.

6) *Bulau Singah Pelek*

The gifts of gold at least 1 *Kiping* (2,7 grams). *Bulau* means is gold, made of precious metals, which the light will not fade and have a high value. *Singah* means lights or lighting. *Bulau Singah* rim is a wedding ring that is mounted on the ring finger of the bride and groom.

The gold ring symbolizes pure love and sincerity of both the bride and groom to live together. Wedding rings that is used remind them of the promises were never spoken.

7) *Lapik Luang*

A long cloth that is used as *alas bokor* (sangku). This cloth will use in *Haluang Hapelek* ritual. The cloth is given to a bride as for greet preparation their child.

8) *Tutup Uwan*

Tutup Uwan have the meaning is covering the gray hair. The gift for bride's grandmother formed as 2 yard black cloth. This gift have symbolize that is a groom have to accept her as his relatives.

9) *Lapik Ruji*

Lapik Ruji is the gift that given in the form of Dutch silver coin or paid with one ringgit. The meaning of that gift is they will need basic modal if they establish a new familiy. *Lapik Ruji* is forbidden to spent it, because the money was regarded as the foundation of life

10) *Timbuk Tangga*

Timbuk Tangga is a relief from the bride and groom family. *Timbuk Tangga* is given in the form of a plate filled with rice or some of money.

11) *Sinjang Entang*

Sinjang Entang is derived from the word of "*Sinjang*" it means cloth body cover. *Entang* is a long cloth to pick up the baby. *Sinjang Entang* is reminder

of the love of the bride's mother in keeping her daughter from childhood to adulthood.

The gift is a set of cloth and given when *Jalan Hadat* ritual event. It has a symbolic of gratitude big thanks and blessings from the bride's parent.

12) *Pinggan Pananan Pahinjean Kuman*

All the set of kitchen equipment, such as: plates, bowls, cups, spoons, etc. *Pinggan/Pananan* is used for eat both of couple during their wedding. They eat a plate of both, drinking the same cup, eat with one spoon together. The purpose of that is they will learn to live in unity and solidarity.

13) *Rapin Tuak*

Rapin Tuak is a typical drink made from glutinous rice which is cooked and processed with yeast. These fermented into an alcoholic beverage called by "*Tuak*". *Rapin tuak* is be prepared with the groom before weeding party or when he comes at *Maja Misek* ritual.

14) *Bulau Ngandung/Panginan Jandau*

Panginan Jandau is all charges both of bride and groom wedding party. Usually, all the charge is certified jointly, based on a deal when *Maja Misek* ritual events.

Basically, the total of the stamp for party charges is determined based on how many of the invitations, wedding party place (maybe in a building or in bride's home).

Generally, the charges of a wedding party that held in the home is cheapest. The charges around Rp 35.000.000, 00 – Rp.50.000.000, 00 Furthermore, the wedding that held in a building is too expensive, the price around Rp.50.000.000, 00 or maybe more from that.

15) *Jangkut Amak*

Jangkut means is a net, *Amak* meaning is mat. Then, the meaning of *Jangkut Amak* is all costs of the set of sleeping bed. *Jangkut Amak* has a symbolic that is completeness of welfare family facilities. The payment of *Jangkut Amak* must to do before marriage ceremony.

16) *Duit Turus*

Duit Turus is given in the form of coins that provided by both parties. That small change is given to all audiences as the witness.

17) *Batu Kaja*

Batu Kaja is a gift from the groom's parent to bride. The gift may be given as gold or other customary items, according to their ability. *Batu kaja* will be given when the husband is carrying his wife to the parents' home when *Pakaja Manantu* ritual event.

C. The Traditional Leader's And Public Figure's views The Role of Marriage Agreement by Dayak Ngaju Tribe

Marriage is the important life position of Dayak Ngaju people. Therefore, customary marriage by Dayak Ngaju is arranged well, so that it aims to maintain the values of custom.

In Dayak Ngaju's view which is still preserved of ancestral beliefs (*Hindu Kaharingan* religion), the ritual of customary marriage is a religion principle not as a custom. While, other religions are said, that ritual is a part of custom that was inherited by Dayak Ngaju's ancestor. Then, all of Dayak Ngaju society can to implement that ritual.

There are six (6) informants which have different view about the role of customary marriage agreement. They are:

1. Shabran Ahmad and Rusdiana

Most important thing for marriage processing of Dayak Ngaju is marriage agreement. The agreement is purposed like anticipation for a bride because a woman of Dayak Ngaju is high priced. H. Shabran said:⁵⁸

“Tidak mudah mencabut seorang gadis Dayak dari keluarganya. Apabila sudah mencabut dia dari akar keluarganya, maka harus ditaruh ditempat yang terhormat. Tidak seperti perkawinan agama yang asal sah nikah saja menurut tata cara agama, dan orang dayak yang akan melakukan perkawinan harus mencari birrehnya terlebih dahulu”.

Not easily revoke a Dayak girl from her family. If she already revoked of her family's roots, then she must be palced in a respectable position. Unlike marriage religious, which was legitimated only to religious ordinances, and the Dayak people who will perform the marriage have to know the offsping before.

Sabran said in other words:

⁵⁸ Interview with Sabran Ahmad, 12 of June 2016, at 14.00 PM

“orang dayak itu sangat memperhatikan tentang keturunan calon pengantin, karena keturunan mereka tu dapat menentukan kehormatan keluarga. Orang dayak itu anti sekali menikah dengan laki-laki yang berasal dari utus jipen. Utus jipen tu adalah keturunan budak. Ujar orang dayak orang dari utus jipen itu adalah orang yang sangat buruk jadi gak cocok menikah dengan orang dayak”

Dayak society is very attention about parentage (descent) both of a bride and a groom, because it can determine the family respect. They avoids the groom comes from *Utus Jipen* (descant of slaves). They think that a groom from a descent of slave is poor human. Then, he was unsuitable to get married with Dayak's woman.

The men who will marry the Dayak girl have to bring 17 requirements as was mentioned before. For the magnitude of *Palaku*, it synchronized by the bride's mother when she was married first. *Palaku* shaped usually as the objects rather than with the money.

The example of *Palaku* object is 5 *Pikul Garantung*, 2 *Biji Belanga*. It can changes with a home, a car, a plot of land which completely with certificate based on negotiation when *Maja Misek* ritual event. Rusdiana said:⁵⁹

“Mahar itu tidak boleh diganggu gugat, andaikata dia cerai mahar tersebut tidak boleh kembali, dan suami tidak boleh ikut memanfaatkan atau makan dari hasil Palaku itu, karena dianggap harga diri si gadis. Tapi kalau berupa selemba kebun si laki-laki boleh untuk menikmati hasil kebunnya saja, bukan untuk dimiliki.”

The dowry is prohibition to be disturbed. If one day they get divorce, the dowry is never back. The husband forbidden to utilizes and

⁵⁹ Interview with Rusdiana, 12of June 2016, at 14.00 PM

takes the result of that dowry because it was considered as wife's self regard. But, if the dowry formed as a garden he is only can eat of the garden's results not to have it.

Actually there are seven ten (17) kinds of item that must be fulfilled by groom before marriage wedding. Six ten (16) items is given when marriage wedding or before that. And one of that gives after *Batu Pakaja* ritual event. The charge of wedding party is guaranteed by two sides of bride and groom.

Marriage according to Dayak Ngaju people have to hold in twice. The first marriage is according to Dayak Ngaju custom. The second is according to their respective religion. Muslims of Dayak Ngaju usually implement the marriages in Religious Affairs Office (KUA) first, so then marriage in Dayak custom. Sabran Ahmad said:⁶⁰

“Dayak itu berpedoman pada adat. jadi kalau adat di daerah dayak itu bukan agama. Adat dan agama itu terpisah. Jadi namanya perkawinan adat itu adalah perkawinan menurut adat dayak Kalimantan tengah. Itu berapa puluh macam suku dan mempunyai tata cara berlainan jua”

Dayak is guided on custom. So that Dayak is not as religion. Custom and Religion is two separate things. Marriage performs as custom is named by customary marriage of the Dayak tribe in Central Borneo. There are many kinds of tribe and they have each custom by their own.

The most important thing is the bride and the groom both of have to do marriage agreement. It becomes as vigilance, if they faces many

⁶⁰ Interview with Sabran Ahmad, 12 of June 2016, at 14.00 PM

trouble in the future. The aim of marriage agreement is to protecting the bride and children rights who were born in the marriage.

Although, other custom is used in marriage process, marriage agreement by Dayak Ngaju custom forbidden to left. Sabran said:

“Dalam hokum adat itu tujuannya berakhir pada perdamaian, tapi kalau dalam hukum Negara pasti berakhir pada lapas. Makanya orang dayak itu jarang ada yang cerai. Jadi nampaknya pengikat kawin adat itu dalam sekali, erat sekali. Sehingga Kalau si laki-laki meninggal dunia yg perempuan jarang sekali untuk kawin lagi. Biasanya istri orang dayak itu setia-setia, makanya disayang lawan mertua.”

In customary law by Dayak tribe aims to get piece between two sides, either in State law it always ended up in the jail. Then, the Dayak people are rarely to get divorce. According to Sabran customary marriage has a deeply mean. Usually, the wife rarely gets marriage again when the husband is died. So that woman of Dayak tribe famous as long as the loyalty person.

The divorce that happens for Dayak couple is must be known by *Damang* and *Mantir*. Usually, Dayak Muslim is performing divorce in Religious Court first, so that performs the divorce based on Custom Law.

In marriage agreement, Dayak Ngaju marriage custom is never discussed about congenital property, but it can include of agreements content. So when the couple gets divorce all congenital property is not calculated.

The negative impact of divorce for couples of Dayak people is they will endure the shame for whole family both of parties. For the Dayak

society marriage is not only combine about two people, but it also combine about the big family both of parties.

The positive impact for couples who make marriage agreement beside to prevent divorce is a marriage their marriage are more solid and eternal. The most important thing is morality of Dayak Ngaju people. Sabran Ahmad said:⁶¹

“Kalau bercerai itu rebut toh, dan masing-masing pihak berbicara yang kurang enak. Dan pastinya masing-masing merasa benar. Ketika bercerai harus adat surat keputusan dari Damang berupa SK bahwa mereka telah bercerai. Biasaya di sidang adat itu dibujuk lakian dan biniannya seperti mediasi di pengadilan”.

The consequence for who violates the agreement is prosecuted by Custom Law. In another, violator faces the shame and his moral is considered lowly.

2. Talisman D. Dayak

Foreigners (Non-Dayak people) who are married with the Dayak they have to follow the customary law of the local area. For example, generally the male follows the existing marriage of the woman's custom. So that the girl of foreigners which is merried with men of Dayak tribe, she have to use the Dayaks custom as long as she was standing on the Dayak land.

All of people have to know the custom what they want to use in their marriage. Especially for foreigner, who are getting married with Dayak people, must to know all the requirements before. A bride and

⁶¹ Interview with Sabran Ahmad, 12 of June 2016, at 14.00 PM

groom have to know all about seventeen (17) items of custom requirement. If they do not competent of these requirements, then they are not allowed to marriage with the Dayak people.

According to Talisman, the motivation of Dayak marriage is uphold the local customs, it is the original Dayak tribe. He said the Dayak people do not accept underage marriages. Based on his statement as bellow:⁶²

“mana dia tahu arti kehidupan kalau dia masih anak-anak, makanya orang dayak tidak menerima pernikahan dini. Usia ideal orang dayak menikah pada zaman dahulu adalah umur 25 tahun, karena sudah dianggap dewasa dan matang secara fisik. Namun zaman sekarang usia muda pun sudah banyak yang menikah”.

The Dayak people are not accepted marriage in young age. The reason is they do not know the meaning of live as well as the adults. The ideal age of marriage by Dayak people is twenty five 25 year old, they is considered as adultly person and physically mature. But, now much of the young person is perform the marriage early.

According to Talisman D. Dayak there are three phases of Dayak Ngaju marriage are:⁶³

a) *Hakumbang Auh*

Hakumbang Auh is the first step of marriage ritual that a groom wants to propose a bride to be his wife. Usually, the first proposal is sent by a groom to the bride's parent. If the proposal will be accepted so that her parent chooses the envoy to give information that a

⁶² Interview with Talisman D. Dayak, 12 of June 2016, at 13.00 PM

⁶³ Interview with Talisman D. Dayak, 12 of June 2016, at 13.00 PM

proposal is agreed. This processes named by *Uluh Helat*, *Saruhan*, or *Tatean Tupai*.

The process of *Hakumbang Auh* is the groom sends money as evidence that he wants seriously propose the bride from third party (*luang*). Talisman said as bellow:

“sebagai bukti kesungguhan hati dan niat baiknya, maka pihak lalaki melalui Uluh Helat menyampaikan mangkok berisi beras dan telur ayam yang dibungkus lawan kain kuning atau sejumlah uang sebagai Duit Pengumbang. Diterima atau tidaknya keinginan tersebut tidaklah diberitahukan langsung oleh orang tua tersebut. Jadi, lalaki tersebut harus menunggu sampai keluarga si gadis takumpul”

This way gives many considerations to the bride depended on envoy's hard effort, that the proposal will accepted or not. She gives back all the money, if she does not accept the proposal.

b) *Mamanggul*

Second step of marriage process of Dayak Ngaju people is *Mamanggul*. *Mamanggul* is the formal information about his proposal that agreed by bride's family. So that the groom gives many things as evidence such as *Balanga* (original Gucci from China) or as *Gong*.

In this event two parties of them discuss about the date of making proposal implementation (*Maja Misek*) and making a deal. The deal can formed in verbal or script that was created as the agreement named by *Surat Panggul*.

c) *Maja Misek*

Maja meant is “coming be a guest” or visiting. *Misek* have a meaning is “asking”.⁶⁴ The term of “*Maja Misek*” meant is meeting agenda between the groom’s family and the bride’s family, and making a deal about marriage. As Talisman said:

“*setelah buhannya sepakat lawan perjanjian tadi, maka pihak laki menyeraikan Paramun Pisek, maksudnya adalah persyaratan adat dalam melamar, yaitu benda-benda yang harus diberikan kepada pihak perempuan berdasarkan ketentuan hukum adat. Persyaratannya terkadang berupa perlengkapan pakaian buat binian, alat-alat kosmetik, sepatu/sandal, dan lain-lainya*”

The bride and groom both are agreed of marriage agreement, so then the groom gives *Paramun Misek*. The mean of that is requirement based on custom of proposal ritual event, such as customs object that given to bride side based on customary law. Sometimes the requirement formed as a set of cloth for woman, cosmetics item, shoes or sandal ect.

d) *Mananggar Janji* or *Mukut Rapin Tuak*

Mananggar Janji is ensuring appointments between a bride and a groom. They meet each other to ensure the marriage’s implementation date. In this chance, a groom gives to a bride the wedding’s party fee, such as:

- 1) *Rapin Tuak* or the drink makers fee
- 2) *Bulau Ngandung/ Panginan Jandau* or wedding’s party fee
- 3) *Jangkut Amak* or a set of sleeping bed

⁶⁴ Y. Nathan Ilon, “*Belom Bahadat*”, *Ilustrasi Dan Perwujudan Lambing Batang Garing Dan Dandang Tingang, Sebuah Konsepsi Memanusiakan Manusia Dalam Filsafat Suku Dayk Ngaju Kalimantan Tengah*, (Palangka Raya, Kal-Teng, 1991), P. 136.

- 4) If all items requested completely, so that a groom and a bride both of can to implement the marriage.

e) *Palaksanaan Perkawinan*

Ceremonial according to Dayak Ngaju's marriage custom is one of coronation that a couple entering marriage gates. The mean of *Palaksanaan Perkawinan* according to Dayak Ngaju's ritual is all ceremonies that held from a groom's home until the end of agenda. All processes of wedding's marriage are held in a bride's home.

The terms of marriage that is mentioned may be paid in installments during marriage. It purposed for bride and groom who is not having big assets can marry the person they love. The important thing is they have to loyal and capable each other.

When the couple get divorce someday, and the groom does not pay fullest all *Palaku* items, then the groom have to pay entirely before divorce process. If the groom does not pay the *Palaku*, he will get punishment because he violated a written agreement.

Palaku is the absolute right of a wife. It can not be taken back when bride and groom are divorced. Although *Palaku* is the absolute right of a wife, the benefits of *Palaku* can be used together. For example, *Palaku* forms as land of field. The field is the absolute right of a wife, so that the groom only becomes as consumer of field produce.

The negative impact of marriage requirement is making difficulty for people who want get marriage. The requirement is considered as something very complicated. Talisman said:⁶⁵

“Dampak negatif dari akibat persyaratan perkawinan tersebut adalah mempersulit orang untuk melakukan perkawinan karena persyaratan yang begitu rumit. Namun apabila itu memang jodoh, maka itu lain lagi dan kembali kepada tuhan. Walaupun persaratannya setinggi langit maka ia akan mampu untuk mencarinya.”

The negative impact of marriage agreement is making many difficulties for who want marriage. But both of bride and groom can do it if they were paired based on God desires. Although the requirments are difficult they can pass it away.

The positive impact of marriage agreement by Dayak Ngaju is making every couple uneasy to get divorce. He said as bellow:

“Apabila persyaratan itu tinggi dan mahal maka tidak memudahkan mereka untuk bercerai. Karena modalnya perkawinannya besar, dia sudah berjanji dengan tuhan untuk sehidup semati dan tak kan menyia-nyiakan pasanganya. Jikalau mereka bercerai maka semua akan sia-sia. Ibaratnya, ketika kita mempunyai barang mahal pasti kita akan selalu memperhatikannya, kalau barang murah pasti selalu diabaikan. Kalau murah meriah kawinnya maka murah meriah juga cerainya, maka kami orang Dayak nih jarang ada yang cerai. Kami berfikir-fikir lagi kalau hendak cerai.”

The requirement is high and expencive so that makes every couple not easy to get divorce. They were promised to the God for living together forever and never dissipate their spouse. It was like the

⁶⁵ Result of Interview with Herdi Wangtabat, 18th of June 2016, at 14.00 PM

expensive thing that always interested. It is not as the low price thing that always ignored.

3. Herdi Wangthabat

According to Herdi that Interfaith marriage is allowed. It provided when he was to wed a couple in different beliefs. He said that interfaith marriage only can be permitted by customary marriage. Herdi said:⁶⁶

“Motivasi orang yang bukan Dayak ketika ingin menikahi gadis dayak biasanya karena factor kecantikan. Gadis Dayak itu terkenal cantik-cantik dan putih putih jadi maklum aja banyak yang ingin meambil jadi istri”.

Many people of foreigner take on beauty factor to be first reason to get marriage with the Dayak woman. The Dayak girl is famous with beautiful girl then many people is want marrying them

The processes of custom marriage have to use native language of Dayak Ngaju Central Borneo. That obligation is directly instruction by Governor of Central Borneo. The people who do not understand the Dayak native language will be explained by traditional in the end of marriage event.

Every people who want to marry with the Dayak's people have to know about custom marriage agreement before. Then, they have to prepare everything that contained in that agreement. There are seven ten (17) items that must be fulfilled by groom side if he wants to get married with the Dayak's girls. These stipulations are indicated how difficult getting marriage with the Dayak people.

⁶⁶ Result of Interview with Herdi Wangtabat, 18th of June 2016, at 14.00 PM

The first step in Dayak Ngaju marriage is the gift of *Duit Pengumbang* that given to bride's parent and her family. *Duit Pengumbang* is money that given by groom with purposed to know whether his proposal is acceptable or not. If the proposal accepted by bride's side so that groom can to continue for next step *Maja Misek* ritual.

Herdi Wangtabat talked as bellow:⁶⁷

"kalau mau kawin lawan orang dayak tuh lah ada tiga syarat, yang pertama memberi duit pengumbang. Kalau sudah duit pengumbang diterima baru maja misek (tunangan). Nah setelah maja misek selsai maka baru kawin adat. Ada saksinya, ada titiran adatnya, dan ada sanksi adat bagi yang melanggar. Barang siapa yang berbuat kesalahan sehingga mengakibatkan cerai maka denda sebesar sekian, berhubung kesepakatan kedua belah pihak."

According to Hardi, *Palaku* is like as bride's self esteem. Form of *Palaku* is 5 *pikul garantung* or can be changed by plot of land, garden, and gold. The value of *Palaku* depends on family agreement. He said that *Palaku* forms as money is allowed, but Dayak people rarely want accept it.

All payment of *Palaku* is must be fulfilled by groom after *Batu Kaja* ritual event. Hardi said all point of required items is cash not as payment installments. The meaning is every people who want to marry the Dayak's girl have to know all requirements first.

⁶⁷ Interview with Herdi Wangtabat, 18 of June 2016, at 14.00 PM

Ideal age of marriage for the Dayak society is the same as the existing regulations in the law of marriage. The age is nineteen (19) for women and twenty-one (21) for men.

The consequence for who violates the agreement is prosecuted by Custom Law. He said the violator have to pay money penalties amount Rp 20.000.000, 00 based on agreement between two parties.

The positive impact about marriage agreement according to him is:⁶⁸

“Sebenarnya perjanjian kawin perlu juga dibuat dalam rangkaantisipasi jika terjadi hal-halyang tidak diinginkan dalam perkawinan, antara lain Perceraian, hutang piutang dengan pihak ketiga yang dilakukan oleh Suami/isteri”.

For the couple which was forced to divorce, they must to resolve the divorce to *Mantir* so that must be known by *Damang*. *Damang* as traditional leader has obligation to mediating both of couple first. If they can not be unified, then *Mantir* is obliged to manage the couple's divorce papers.

4. Thion Lanca

In Regulation No. 16 of 2008, one of the tasks of *Mantir* is as mediator and to guide the marriages. He comes as the leader of *Haluang* (dialogue) between bride side and groom side. Thion said:⁶⁹

“jadi lah mantir itu tugasnya sebagai penhantar orang kawin, jadi setiap calon pengantin dari pihak lakian dan pihak binian ada mantir

⁶⁸ Interview with Talisman D. Dayak, 12 of June 2016, at 13.35.00 PM

⁶⁹ Interview with Thion Lanca, 18 of June 2016, at 15.20 PM

yang mendampingi, jadi kami nih berdialog sebagai perwakilan, selain itu jua tugas kami nih mencatatkan perkawinan atau perceraian”

The motivation of marriage by Dayak society is equality of religious and ethnic unity. Thion said, custom law do not allow about interfaith marriage, because it was regulated in District Regulation.

Contents of marriage agreement is must be fulfilled by groom before marriage reception. All required items can not pay gradually but have to pay cash in marriage.

Palaku is not allowed for something chattel although in big amount, such as money. The philosophy that the girl is not just bayed by money, because money can be exhausted quickly. *Palaku*'s forms as 5 *Pikul Garantung* is absolute requirement in marriage, can not be replaced. Thion said, *Palaku* is not only used by the wife, but it can use by the husband during their marriage.

The role of marriage agreement is like spear loyalty. So that it can be effective in preventing divorce. Thion said:⁷⁰

“Bagaimana orang dayak itu mau bercerai kalau proses cerainya saja sulit. Bagi salah satu pihak yang bersalah dan mengakibatkan perceraian maka pihak yang bersalah tersebut dikenakan Singer (denda) kepada pihak yang tidak bersalah. Denda tersebut berupa uang tunai sebesar Rp.30.000.000,00 dan zaman sekarang bisa diganti dengan 1 Kg emas murni sesuai dengan negosiasi antar keluarga. Kalau banyak uang sih tidak papa, kalau bagi yang pas-pasan kan gak bisa cerai”.

How do people Dayak get divorce if the divorce was difficult? For one of the guilty parties and lead to divorce so that he must pay *Singer* (sancsion) to the innocent party amount Rp 30.000.000, 00 and can be

⁷⁰ Interview with Thion Lanca, 18 of June 2016, at 15.20 PM

changes by 1 kg of pure gold based on family's negotiation. Maybe it is something easy to get divorce for the people who have much money, but not for the poor person.

For the Dayak Ngaju people, marriage is something sublime, sacred, something meaningful, significance and has equal position of the birth and death ritual. Marriage is one part of Dayak Ngaju life which is sacred because it related to their belief in ancestors, namely *King Bunu*.

Thion said that marriage is an event that lasts a lifetime, until death separates. It was clearly revealed on the motto of Dayak "*hakambelom sampai hentang tulang*" the mean is live together to hold the bone.⁷¹ The motto have clearly mean that for the Dayak Ngaju have to respected about marriage, and must be retained until one of the parties dies. Respect and loyalty is something that always upheld by the Dayaks society.

When one of the couple dies first, then the obligation of the spouse who left is holding the bones and brought into *sandung*,⁷² when *Tiwah*⁷³ ritual.

5. Supiani H.K.

Note of marriage based on Religious Affairs Office (KUA), that many foreigners are married the Dayak's girl in Pahandut Subdistrict of Palangka Raya. Their motivations of marriage are:⁷⁴

⁷¹ Interview with Thion Lanca, 18 of June 2016, at 15.20 PM

⁷² *Sandung* Is A Small Building, Especially Built As A Place To Save The Bones Of Those Who Have Dead And Have Do *Tiwah* Ritual.

⁷³ *Tiwah* Is The Ceremony Of Delivering Spirits To *Lewu Tatau* That Is A World Filled With Pleasure, Wealth And Prosperity

1. They want to enlarge the family relationship with the Dayak people
2. The ethnic differences is a magnificent thing of life
3. Marriage with Dayak people is like missionary endeavor. Then they can invite the people to convert to Islam Religion, because most of Dayak people are not Muslim.

Dayak people tend to be suave and shy. They always accept all immigrants hospitably. In Dayak tribe customs, they were very appreciative of women. Dayak woman character known to maintain good relations to others, but they are not trusting of strangers. It is not as secret now, that if people who want to get married with Dayak girl, they have to pay very expensive.

The bride and groom who want to be married have to know about custom regulation. In Dayak Ngaju, they have to make agreements when marriage wedding. For Dayak Muslim, marriage agreement by Dayak Ngaju tribe is different with “*Ta’lik Talak*”.

According to Supiani, all the marriage agreement certainly has many purposes and objectives. He said:⁷⁵

“Tapi yang jelas mereka melaksanakan perjanjian itu adalah sebagai suatu pengikat supaya mereka ini tidak sampai terjadi perceraian. Memang baik perjanjian itu mengikat mereka supaya betul-betul melaksanakan pernikahan itu agar tidak main-main. Karena sekarang banyak orang yang menikah dengan niatan tertentu. Jadi dengan adanya perjanjian itu maka akhirnya yang pasangan ini mereka akan berpikir kalau akan bercerai karena mereka akan kena denda sekian sekian”

⁷⁴ Interview with Supiani, 14 of June 2016, at 09.00 AM

⁷⁵ Interview with Supiani, 14 of June 2016, at 09.00 AM

Supiani was agreed with other views of the traditional leaders, that the important role of marriage agreement is preventing the divorce. The roles of positive impacts are:

1. Reducing the divorce rate
2. Binding the marriage sincerity
3. Preventing the husband can not deviate
4. Create a mutually faithful marriage and could not betray

Negative impacts are:

1. The groom feel depressed because of the severity of the agreement
2. One side of couple feel disadvantaged

Supian said, as bellow:⁷⁶

"konsekuensi bagi yang tidak melaksanakan perjanjian perkawinan adat itu adalah kedua belah pihak tidak bisa diproses secara adat jika suatu hari timbul permasalahan . Mereka dianggap masyarakat suku dayak sebagai orang yang tidak mempunyai adat dan bisa dikucilkan oleh masyarakat sekitar".

The consequences for who is not perform customary marriage agreement is both of bride and groom can not to be procces in custom if they face any problems one day. They were considered as person who does not have a custom and they can be excommunicated in society.

Usually, the dowry for who married in Religious Affairs Office (KUA) is as a set of prayer tools and rarely formed as money. He said:

"Mahar bagi pasangan muslim yang menikah di KUA biasanya seperangkat alat solat dan jarang dalam bentuk uang. Alasannya karena

⁷⁶ Interview with Supiani, 14 of June 2016, at 09.00 AM

rata-rata gadis dayak yang muallaf itu belajar sholat makanya di kasih mahar seperangkat alat sholat. Kalau mahar yang dari adat suku dayak berbeda lagi”.

The dowry for Muslim which is perform their marriage in Employees Marriage Registrar (KUA) usually formed as set of prayer tools and rarely formed as money. The reason is to teach muallaf how to pray because majority of Dayak people is Unmuslim. It has been different when it is perform in Dayak custom ritual.

Based on interview above, the writer creates a table to facilitate the others to understand the gist of the interview, as bellow:

Table 4.3 Interview Result

Name of Informant	Customary Marriage According Dayak Ngaju Tribe		
	Motivation	Forms of <i>Palaku</i>	The Roles of Marriage Agreement
Sabran and Rusdiana	In customary law by Dayak tribe aims to get piece between two sides, either in State law it always ended up in the jail. Then, the Dayak people are rarely to get divorce.	<i>5 Pikul Garantung, 2 Biji Belanga</i> . It can changes with a home, a car, a plot of land which is completely with certificate	<ul style="list-style-type: none"> • The agreement is purposed like anticipation for a bride • In addition to prevent the divorce, marriage agreement is make marriage more solid and eternal • Protecting the bride and children rights who were born in the marriage.
Talisman D. Dayak	Uphold the local customs it is the original Dayak	<i>Palaku</i> is the absolute right of a wife. It can not be	Making every couple uneasy to get divorce

	tribe.	taken back when bride and groom are divorced. The forms based on a deal both of both parties	
Herdi Whangtabat	Because the beauty factor and also Interfaith marriage only can be permitted by customary marriage	5 <i>pikul garantung</i> or can be changed by plot of land, garden, and gold. <i>Palaku</i> forms as money is allowed, but Dayak people rarely want to accept it.	Marriage agreement is needed as anticipation for something undesirable when marriage. It can include divorce, debts and receivables of third parties that performed by the couple
Thion Lanca	Equality of religious and ethnic unity.	5 <i>Pikul Garantung</i> is absolute requirement in marriage, can not be replaced. <i>Palaku</i> is not allowed for something chattel although in big amount, such as money.	The role of marriage agreement is like spear loyalty. So that, it can be effective in preventing divorce
Supiani H.K.	<ul style="list-style-type: none"> • They want to enlarge the family relationship with the Dayak people • The ethnic difference is a magnificent thing of life • Marriage with Dayak people is like 	Usually, <i>Palaku</i> forms as a set of Prayer tools	<ul style="list-style-type: none"> • Reducing the divorce rate • Binding the marriage sincerity • Preventing the husband can not deviate • Create a mutually faithful marriage and could not betray

	missionary endeavor. Then they can invite the people to convert to Islam Religion, because most of Dayak people are not Muslim.		
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D. Marriage Agreement of Dayak Ngaju Tribe in the view of *Sadd Adz-Dzari'ah*

Basically, all of the Shari'a law which is stipulated by Allah on human life based on two theme, they are: effort to get *maslahat* (benefit) and avoid *mafsadah* (damage).⁷⁷

Generally, imposition of syara' concept (*taklif*) have two dimensions of destination, that is *maqasid syari'ah* (primary goal) and *wasail* (intermediary to achieve the goals). A law is recommended or prohibited sometimes, because it automatically raised the effect of *maslahah* and *mafsadah*.

All of imposition (*taklif*) is based on two words that "do it" or "do not to do". Actually, all of orientation of life was arranged in *Al-qur'an* and *hadith*.⁷⁸ Generally, the existence of the law is purposed to maintain the stability of the human race. The important point is to create a benefit for human life, so they can

⁷⁷ Forum Karya Ilmiah 2004, *Kilas Balik Teoritis Fiqh Islam*, (Kediri: Purna Siwa Aliyyah, 2004), Page. 299

⁷⁸ Mohammad Zuhri, *Terjemah Tarikh Tasyri'Al Islami (Sejarah Pembinaan Hukum Islam)*, (Semarang: Rajamurah-Alqona'ah, 1980), Page. 377.

do the good activity whether in the context of human as social being or human as religious social.

An existence of law indicates directly, that law is purposed to keep againts any damages or *mafsadah* in human life. *Maslahah* in Islam divided into three points, are: primary needs (*dlaruriyat*), secondary needs (*hajiyyat*), and complementary needs (*tahsiniyat*).⁷⁹

Primary needs (*dlaruriyat*) of human life include the needs of religion, soul, reason, honor and property. These fifth primary needs are a series of needs quality based on the sequence. It means, the most important thing of these five basic human needs is the religious needs. That argument is not an exaggeration, because basically all human creation is to worship to the God. While the other needs are used as supporting facilities in creating and maintaining the primary needs.⁸⁰

Principally, secondary needs (*hajiyyat*) of human life are all needs that can eliminate of human narrowness and ease their burdens. While the complementary need (*tahsiniyat*) of human is related with everything needed to simplify or facilitate of human condition.

Three points of human needs as mentioned above is a multilevel structure needs. It means, each of that needs have a significant value based on the quality requirements. Basically, primary needs (*dlaruriyat*) is the important need for all human life, then in fulfilling of secondary needs (*hajiyyat*) is not allowed to trespass the provision of basic needs (*dlaruriyat*), exception, if there are provisions or conditions that is allowed.

⁷⁹Abdul Wahab Khallaf, *Kaidah-Kaidah Hukum Islam*, (Jakarta: Rajawali Pers, 1991) , Page. 329-330.

⁸⁰ Abdul Wahab Khallaf, *Kaidah-Kaidah Hukum Islam...*,Page. 334.

For example, when the person is stranded in the forest and there is not any foodstuff other than pigs. Basically, eating pigs is forbidden in Islam, but to eliminate the narrowness and human difficulties and to keep his soul, then it is allowed. Allah has given the space relief of that problem, as set in *Q.S. al-Baqarah* verse 173:⁸¹

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهِلَّ بِهِ لِغَيْرِ اللَّهِ فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

“He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced (by necessity), neither desiring (it) nor transgressing (its limit), there is no sin upon him. Indeed, Allah is Forgiving and Merciful.”

In relation with the prohibition that is automatically can lead to aspect of *mafsadah* condition, so that *syara'* is prohibited of that act, although basically that aspect is allowed. This intermediary in *Ushul Fiqh* is named by *sadd adh-dzari'ah*.

Etymologically, *Sadd dzariah* is “close the way”. The meaning of that is preventing an act as long as it does not extend to the damage act (*mafsadah*).⁸² While, scholars of *Ushul Fiqh* said the term of “*dzari'ah*” can be defined as “anything that can be the way to something better as result of *mafsadat* and *maslahat*. In another sense, *sadd dzari'ah* is setting all legal prohibition acts basically that allowed or prohibited to prevent other prohibition acts.”⁸³

⁸¹ Depag RI, *Al-Qur'an Terjemah*, Semarang, CV.TOHA PUTRA, 1989.

⁸² Abd. Rahman Dahlan, *Ushul Fiqh*, (Jakarta: Amzah, 2011), Page. 236

⁸³ Syekh islam ibnu taimiyyh, *saddu dzarai'*, (Riyad: Daru al Fadilah), P. 26

When the act mentioned above viewed in terms of *maslahah* and *mafsadah*, there are some analyses of the marriage agreement of Dayak Ngaju tribe that can be described as follows:

1) In *maslahah* view

Many things which can be categorized as *maslahah* act which is included in the role of Dayak Ngaju marriage agreement. The benefit act (*maslahah*) of the role in Dayak Ngaju marriage agreement is based on the traditional leader's opinion is:

- a) Marriage agreement becomes as preventive in divorce
- b) Protecting the rights of the parties and the rights of children which born in marriage
- c) Making a marriage relationship become eternal and solidity
- d) Reducing the number of divorces for Pahandut Subdistrict society

2) In *mafsadah* view

There are two (2) important points of the content marriage agreements by Dayak Ngaju tribe that is categorized as *mafsadah* act, they are:

- a) The content of marriage agreement by Dayak Ngaju tribe that is incriminating one side party
- b) The content of marriage agreement makes many difficulties for people who want get marriage with the Dayak people

One of the content of Dayak Ngaju marriage agreement that considered as damage act (*mafsadah*) is incriminating one side party. It was proved that the high

charge of divorce sanctions. The sanctions in the divorce have been regulated in Article 4 point (a) about Sanction, as bellow:⁸⁴

“The couple which gets the divorce during their marriage someday, then they have to:

- a) For those one of side that is violate the content of marriage agreement, so that causing the divorce then, he will get custom punishment that is pay compensation to an innocent party amount Rp 30.000.000, 00”*

Basically, makes marriage agreement is allowed (*mubah*). The mean is every people are allowed to make marriage agreement or not. *Jumhur ulama*’ argued that fulfil the requirements stated in the legal form of the agreement is mandatory (*wâjib*), as the rule of another agreement. They also said that fulfill the requirements related with marriage are more entitled to be implemented. This is confirmed in the *hadith* of the prophet of Uqbah according to *jama'ah* and *hadith* scholars:

إِنَّ أَحَقَّ الشُّرُوطِ أَنْ يُؤَقَّى بِهِ مَا اسْتَحَلَّتُمْ بِهِ الْفُرُوجَ

“The most worthy requirements to fulfill agreement is the requirement with respect to marriage”

The obligation to fulfill the requirements which is contained in agreements and bound by marriage perpetuity depends on requirements form in agreement. In this case, marriage agreement of Dayak Ngaju is an agreement which does not violated the demands of marriage, but there is not the demand from *syara* 'to do it. Allah said in *Surat al-Isra*' verse 34:⁸⁵

⁸⁴ The Content Of Marriage Agreement By Dayak Ngaju Tribe, Article 4 Point (a) About Sanction.

⁸⁵ Depag RI, *Al-Qur'an Terjemah*, Semarang, CV.TOHA PUTRA, 1989.

وَلَا تَقْرُبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُ وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ
كَانَ مَسْئُولًا

“And do not approach the property of an orphan, except in the way that is best, until he reaches maturity. And fulfill (every) commitment. Indeed, the commitment is ever (that about which one will be) questioned”.

In marriage agreement by Dayak Ngaju tribe, Article 4 point (c) about sanction, stated:

“Community property became the property rights of an innocent party and became property rights of children born with in marriage”.

Provision of property community during the marriage is named by *“harta gono-gini”*. Provision of community property according Dayak Ngaju tribe is adverse unilaterally. The argument was mentioned by Supiani as bellow:

“dampak negatifnya dari perjanjian itu adalah si suami merasa tertekan, kebanyakan yang laki-laki karena yang perempuan kebanyakan dari orang sini yaitu orang dayak. Mereka melaksanakan pernikahan itu kayaknya ditekan dengan adanya perjanjian kawin, jadi gak bisa macam-macam. Bagi pasangan itu salah satu dirugikan. Dirugikannya kalau salah satu berbuat salah maka dirugikan secara sepihak saja”.

In Indonesia Law, property community in marriage is property that is reached by the couple during their marriage. This regulation has been arranged in Article 35 of Law Regulation No. 1 of 1974 about Marriage, that is:⁸⁶

1. The property which is reached during marriage became property community.
2. Property inherited from each (husband and wife) that obtained before as a gift or inheritance, is under the control of each round both of parties as long as they not hold other provisions.

⁸⁶ Departemen Kehakiman RI., *Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*, Article. 35

If we look before, the concept of property community in the content of marriage agreement and in the provisions of article 35 of Law Regulation No. 1 of 1974 about Marriage is contradiction. The provision of marriage agreement by Dayak Ngaju becomes *dzari'ah* which is lead to *mafsadah* act. That is all property which is acquired during the marriage will be the rights for an innocent party.

When the case mentioned above is viewed from *mafsadah* act, *dzari'at* which is contained in the contents of Dayak marriage agreement is an injustice for the party which led to the divorce.

In Islamic Law, making an agreement is allowed. Basically, one of principle of agreement is to create the benefits thing (*maslahah*) which is not burdensome between parties. The principle of *maslahah* purposed that *aqad* became as the benefit (*maslahah*) for them and prohibited became as imposition or damage act (*mafsadah*).

The obligation to fulfill the requirements is contained in agreements and bound in marriage depends on the forms of the agreement.⁸⁷

Marriage agreement of Dayak Ngaju tribe which is related by concept of *sadd dzari'ah* contains of many damages (*mafsadah*), because it inflicts loss one side of parties. In addition, the results of that agreement is rarely bring to the damage (*mafsadah*) or prohibition act, in opposite it becomes as benefit act that is to prevent the divorce.

⁸⁷ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia, Antara Fikih Munakahat Dan Undang-Undang Perkawinan*, (Jakarta: Kencana, 2007), Page.146

We can not find clearly the arguments about utilization of *sadd dzari'ah* concept even in *Nash* or *ijma'* Ulama. The basics of *sadd dzari'ah* only used as a method of *ijtihad* based on carefully acts, so that do not makes the damages act.⁸⁸

Mustafa Syalabi is dividing *sadd dzari'ah* into three (3) groups based on Ulama' opinion, they are: *first*, *dzari'ah* that is bringing the damage surely. *Second*, *dzari'ah* that is possible to bring the damage act or *mudhorot*. *Third*, *dzari'ah* which is occurred in the middle between the possibility of bringing damage and there is not damage.⁸⁹

According to writer's opinion, marriage agreement of Dayak Ngaju tribe includes into second group that is bringing into damages act. The damage is like as *dzari'ah* in the result of damage aspect, that is rarely leads to damage or forbidden actions. The writer is agreed that marriage agreement can be implemented by bride and groom before marriage. The writer reason is the way of *dzari'ah* is not need to close (it is not be prohibited). In the books of *fiqh madzhab* there is no prohibition on the implementation of marriage agreement, like wise there is no any prohibition for couple to do divorce. In hadith said about divorce:

حَدَّثَنَا كَثِيرُ بْنُ عُبَيْدٍ، حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ، عَنْ مُعَرِّفِ بْنِ وَاصِلٍ، عَنْ
مُحَارِبِ بْنِ دِثَارٍ، عَنْ ابْنِ عُمرَ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: ” أَبْغَضُ
الْحَلَائِلِ إِلَى اللَّهِ تَعَالَى الطَّلَاقُ

Have told us Katsiir bin 'Ubaid, has told us Muhammad bin Khaalid, of Mu'arrif bin Waashil, of Muhaarib bin Ditsaar, from Ibn' Umar -radhiyallaahu

⁸⁸ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia...*, Page.429

⁸⁹ Amir Syarifuddin, , Page. 430

'anhuma-, from Shallallaahu Prophet' alaihi wasallam, he said, "The matter that is allowed and most hated by Allah is divorce

The main principle of *Ulama* 'are used *saddu dzari'ah* method is be careful in commit when they face contradiction between *maslahah* and *mafsadah*. If the life's problem more leads to goodness (*maslahah*), then results of *saddu dzari'ah* method is applicable to use it. If the damages which is dominant, then it must must be abandoned. In addition, if the extent of *maslahah* and *mafsadah* are in same, then it has to take the valid principle. It purposed to maintain the prudence in determining the rule of law, as was defined in the formulation of *kaidah fiqhiyah*:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

"Resist the damages is preferred than take the benefit"

Finally, the roles of marriage agreement of Dayak Ngaju tribe surely have two side of impact that is *maslahah* dan *mafsadah* aspect. In the view of *maslahah* dan *mafsadat*, traditional leader argue that there are more beneficiaries act than the damage act in the life of Dayak Ngaju people. They agreed and assumed of that agreement becomes as kindness for bride and groom who want get married.



CHAPTER V

CONCLUSIONS AND SUGGESTIONS

A. Conclusion

After describing all of the discussions to answer the main problems, the writer can conclude as follow:

1. Marriage agreement by Dayak Ngaju tribe is the written contract that was agreed and signed by the bride and groom of Dayak Ngaju people, their parents or guardians, the witness both sides, and were signed by *Damang* and *Mantir*. It contains about 3 points they are:
 - a) Statements of both the bride and groom

- b) Compliance of provisions customary law by Dayak Ngaju about “*jalan hadat*” that must be fulfilled by bride and groom and given to the bride
 - c) Marriage agreement between the two sides about the rights and obligations of each, legal sanctions for those who make mistakes, regulation about distributive property, include the rights of child and the right of heirs.
2. The traditional leaders of Dayak Ngaju tribe are argued that the marriage agreement has positive and negative impacts. They agreed that marriage agreement is one of their efforts to preventing divorce and protecting the children’s rights. In addition, marriage agreement of Dayak Ngaju has negative impact that is make every people who want get divorce are intricate and complicated.
 3. Marriage agreement of Dayak Ngaju tribe which is related by concept of *sadd dzari’ah* actually contains of many damages (*mafsadah*), because it inflicts loss one side of parties. In addition, the results of that agreement is rarely bring to the damage (*mafsadah*) or prohibition act, in opposite it becomes as big benefits act that is to prevent the divorce.

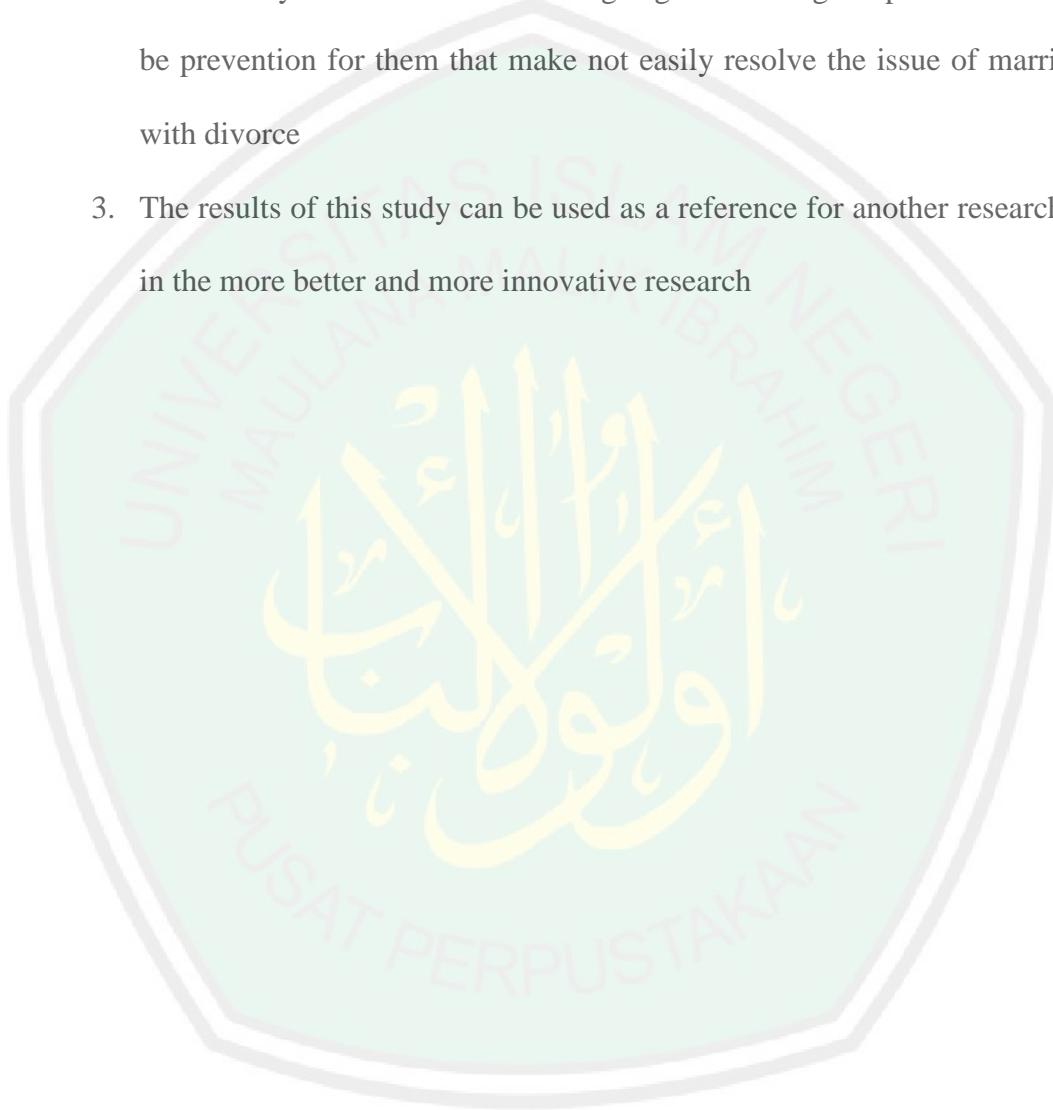
B. Suggestion

From the results of those conclusions, there are several recommendations:

1. Marriage agreement for the Dayak people in Kota Palangka Raya may not perform in difficulties. Many people want to get marriage with the Dayak

people based on honestly feel. They relation is stunted with the complicated requirements. Therefore marriage agreement is making it easier for couples who are get married and divorce.

2. For the Dayak Muslim those marriage agreement is good performs. It may be prevention for them that make not easily resolve the issue of marriage with divorce
3. The results of this study can be used as a reference for another researchers in the more better and more innovative research



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The Letter of Marriage Agreement By Dayak Ngaju Tribe



ATTACHMENTS



Informants Profile

INTERVIEW PART I

Interview on 12 June 2016



Informant's Profile

Name : Sabran Ahmad & Rusdiana
Date and Birth : Kuala Kapuas, 31 December 1930/ Katingan, 21
Place : April 1944
Religion : Islam
Profesion : Head of The Dayak Tribe Council of Central
Borneo

INTERVIEW PART II

Interview on 14 June 2016



Informant's Profile

Name : Supiani H.K.
Date and Birth : Kuala Kapuas, 31 December 1930
Place
Religion : Islam
Profesion : Head of The Religious Affairs Office (KUA) in
Pahandut Subdistrict

INTERVIEW PART III

Interview on 14 June 2016



Informant's Profile

Name : Talisman D. Dayak
Date and Birth : Pahandut, 3 May 1951
Place
Religion : Hinduism
Profesion : Secretary of *Damang* in Pahandut Subdistrict

INTERVIEW PART IV

Interview on 18 June 2016



Informant's Profile

Name : Herdi Whangtabat
Date and Birth : Pandapiang, 17 June 1944
Place :
Religion : Christian
Profesion : *Damang* in Pahandut Subdistrict

INTERVIEW PART V

Interview on 18 June 2016



Informant's Profile

Name : Thion Lanca
Date and Birth : Guntung, 22 February 1961
Place :
Religion : Christian
Profesion : *Damang* in Panarung Subdistrict

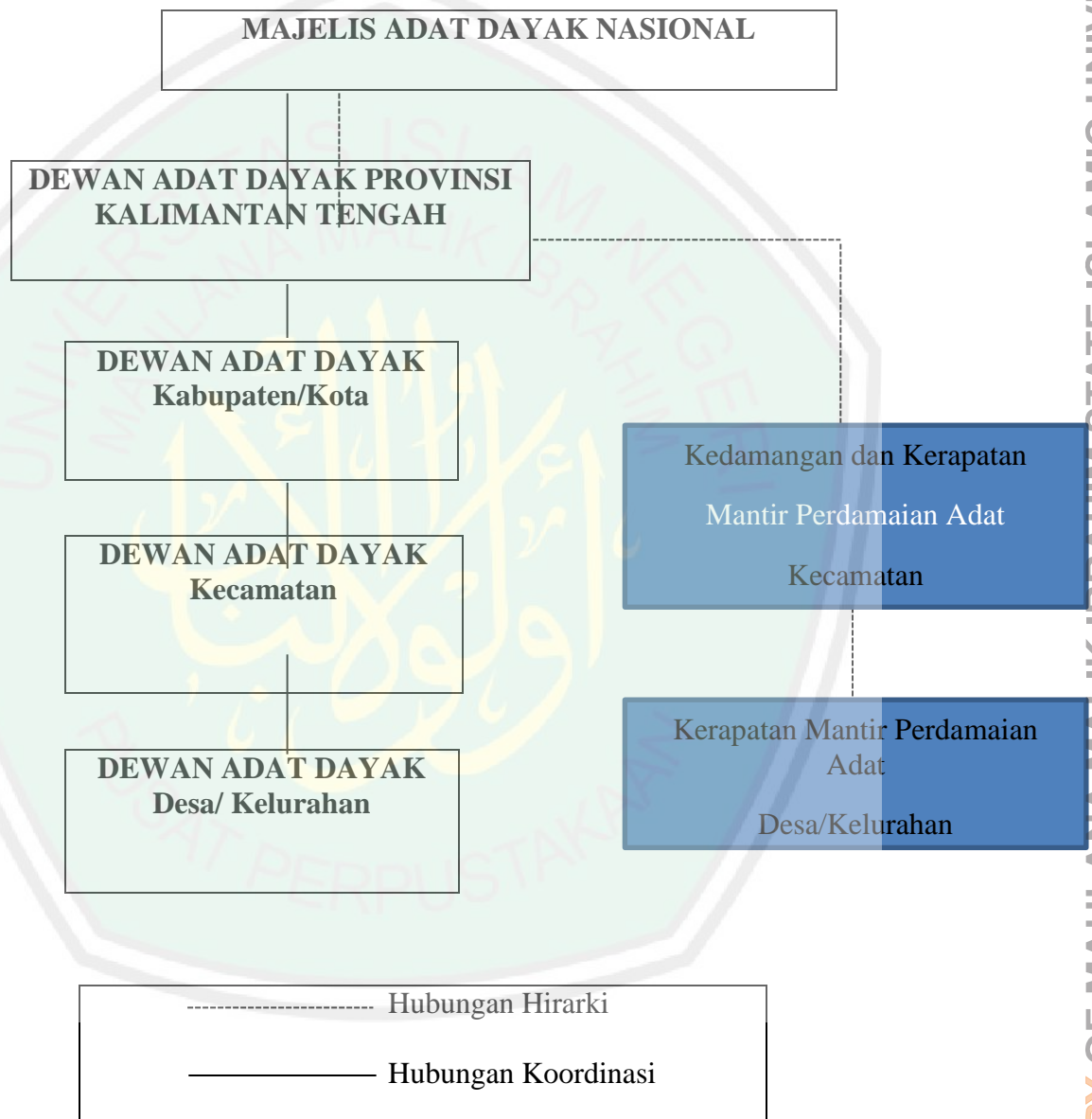


Structure Organization of Dayak Ngaju

**Struktur Organisasi Kelembagaan Adat Dayak Di Kalimantan
Tengah**

Lampiran Peraturan Daerah Provinsi Kalimantan Tengah

Nomor 16 Tahun 2008 Tanggal 18 Desember 2008





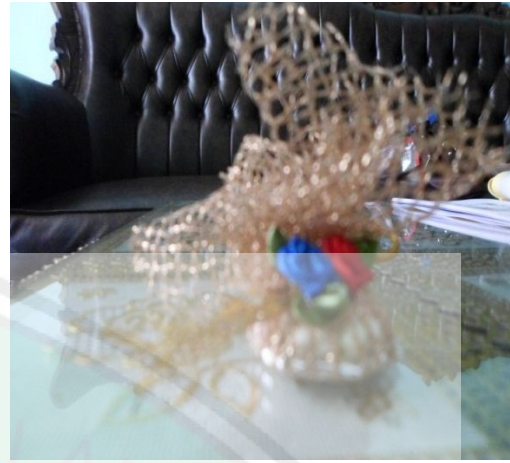
Marriage Agreement Letters of Dayak Ngaju Tribe



Custom Objects of Dayak Ngaju



Garantung



Duit Turus



Lamiang Turus Pelek



Batu Lamiang



Balanga (Ghuci China)



The Processing of Marriage Agreement Ritual



Damang and Mantir becomes as the Haluang in Customary Marriage



Dayak Ngaju's Marriage Ritual





Reading of Marriage Agreement In Front of The *Damang* And *Mantir*



Dayak Ngaju's Marriage Ritual

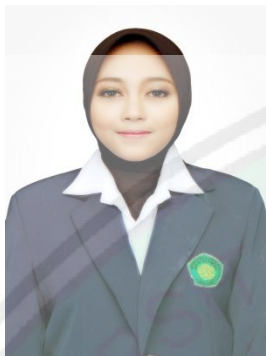




Reading of Marriage Agreement In Front of The *Damang* And *Mantir*

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Elementary School	: 1999-2005	State Madrasah Ibtidaiyah Model of Pahandut, Palangka Raya
Junior High School	: 2006-2008	Islamic Teacher Training College (ITTC) Darussalam Gontor 3 for Girls
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Lecture	: 2012-2016	State Islamic University of Maulana Malik Ibrahim Malang