



CHAPTER II

REVIEW OF RELATED LITERATURE

A. Previous Research

There are some research which have relation with this topic. For example, a student's of *Al-Ahwal Al-Syakhsiyyah* department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University, Abd Qarib Hidayatullah (2010) discussed about *Bhekalan* phenomenon in Kerang Village, Probolinggo Regency. Moreover, he explained about *Bhekalan* phenomenon and scholars arguments about the

social relation between woman and man through this tradition. In addition, this research is descriptive-qualitative research which uses social definition as a branch of sociological phenomenon. In order to get the data, researcher uses three data collection methods: observation, interview and documentation.

In the end of the research, the result shows that the social interaction between woman and man during *bhekalan* period is very free. They are often holding hands, getting ride, going out together, and staying a night in their couple's home. They usually argue that they do those activities in order to recognize each other. Moreover, some scholars state that *bhekalan* tradition must be followed by *sirri* marriage, but other says that *sirri* marriage has negative effect to the woman because she might become the victim. The other scholars argue that the *mahram* should accompany the couple when they do meeting.

Another researcher who discussed about this topic was Judarseno. He focused on the *Hantaran* tradition as Malay tradition in Sanggau West Kalimantan. Moreover, he explains the background of *hantaran* tradition and the opinion of Malay Muslim society opinion there. Additionally, the researcher uses sociological research method or field research in order to get the real fact of *hantaran* tradition. Then, he uses qualitative approach and gets the data sources by two major ways, the first is primary data sources which is taken from the respondents, and the second one is the secondary data sources as a complement of the thesis. Moreover, observation, interview, and documentation are used to collect the data. Furthermore, the data is analyzed by descriptive-qualitative method.

The result of the research shows that there are some processes of *hantaran* tradition in engagement process. *Hantaran* tradition is not only well-known as habit but also as written traditional law that must be obeyed. In addition, there is a written verse of Sanggau Kingdom written law such as “the man proposes a woman and give something called *hantaran* for her without promise, if sometime the relation is breaking down, the man may not take *hantaran* back. Historically, *hantaran* tradition was only done by Kingdom’s family as the legal status of engagement. In additional, the kingdom’s family will give many properties to fiancée’s family.

Considering the previous studies the researcher attempts to take the same topic in the different object. Moreover, the researcher will focus on the *ngebruk* tradition of Bajulmati society in ‘*urf*’ perspective.

B. Theoritical Framework

1. The Overview of Tradition and Custom Engagement

a. The Definition of Tradition

Tradition refers to the custom, and word “custom” is from Arabic “*aadah*” which means habit similar to ‘*urf*’, something that is well known and generally accepted. Moreover, custom is commonly refers to old conversion, weather it is consciously taken or as an effect of unconsciously adaptation for particular condition which is accepted and an action which is left away.¹

¹Muhaimin, *Islam dalam Bingkai Budaya Lokal Potret Dari Cirebon* (Jakarta: PT. Logos Wacan Ilmu, 2001), p. 166.

Generally, tradition or custom can be interpreted as local tradition (local custom) that govern the society's interaction. Encyclopedia of Islam explains that the customary meaning of "*custom*" or "*tradition*" to the community that has been done over and over again for generations. The word "*custom*" is typically used to distinguish which one has no sanction, such as "customary law" and which do not have sanctions, as called custom.²

The word "culture" comes from the Sanskrit "*Budhayah*" the plural form of *budhi* which means mind and intellect. So culture is the result of mind or the human mind to attain the perfection of life. Taylor, E.B. in his "*Primitive Culture*" formulate a systematic and scientific definitions of culture as follows: "Culture is a complication in the whole which includes knowledge, belief, art, moral, religion, laws, custom and other facts and habits that is made by human beings as member of society."³

Tradition and culture in positive legal experts' view is human habits over a particular behavior in one side of their social life that produces *kaedah* which is belief as *am* and should be respected as law. On the other hand, Islamic law scholars' see that custom is what should be done by the majority of people, both in the form of word or action repeatedly, to infuse the spirit and accepted in their mind or what has been known in word or deed, or what has been known to man and they did it or leave of word or actions.

²*Ensiklopedi Islam, Jilid I* (Cet, 3; Jakarta: PT Ichtiar Baru Van Hoeve, 1999), p.21

³Abu Ahmadi, *Ilmu Sosial Dasar* (Jakarta: Rineka Cipta, 1997), p. 50.

According to Hasan Hanafi, tradition is the starting point as the responsibility of civilization. Moreover he states that tradition can be found in various levels. First, the tradition can be found in various forms of literatures: books, manuscripts, or others, which are stored in different libraries or other places. Second, the tradition can also be found as concepts, thoughts, and ideas that are still exist and develop among realities. Each tradition brings the spirit of its time, reflecting the stages of history.⁴

When the tradition is not only a treasure of writing and also not just a theoretical world of autonomous, then in fact, it is a tradition that treasures buried deep in the soul of society, consciously or not, every individual directed the daily behavior. Therefore, the traditions of the past could live and direct behavior today, the tradition becomes a way of life. We live in the modern era, but still remains in the traditions of the past.⁵ In Indonesian dictionary, tradition means everything, like customs, habits, and teachings passed down from ancestors which is run by the community.⁶

In other words, tradition is heritage of the past which is preserved continuously until now. Heritage of the past can be values, social norms, human behaviors and other customs that are the manifestation of various aspects of life. The terminology of tradition refers to something that is inherited from generation to generation; its form still exists today. Therefore, tradition in simple is

⁴M.Faisol, *Mengubah Dunia Melalui Tradisi (Membaca Proyek Peradaban Hasan Hanafi)*, Religion And Science, Vol.2, No.1 (Juni, 2006.), p.101

⁵M. Faisol, *Mengubah Dunia Melalui Tradisi*, p.102.

⁶Bambang Marhiyanto, *Kamus Lengkap Bahasa Indonesia* (Surabaya: Media Centre, Tth), p. 627

something that is inherited from the past to the present. Some of these things are not much different from *ngebruk* tradition that is still preserved until now by Bajulmatisociety.

b. Engagement Custom in Marriage Tradition Law

Engagement custom in traditional (customary) law is the rule of engagement before wedding ceremony.⁷ Based on the traditional law, before having wedding ceremony to make a family happy family, a person should propose someone based on the rules of each custom. The customary rule of engagement in various regions in Indonesia are different. In general, it is done by the man's family to the woman's family. In contrast, the engagement custom in Minangkabau or Rejang Bengkulu which is influenced by Minangkabau custom, the engagement is done by the women.

The engagement's rule in various regions in Indonesia, it is usually begun by sending a messenger (women or men), in Aceh called *Selangka*; in Malay, *Telangai*; in Toba, *Domu-Dome*; in Lampung, *Lalang*; in Java, *Cangkok*; in Banyuwangi, *Garuman*; in Dayak, *Kendayan*, *Picara*, *Patone*, from someone who want to propose. Furthermore, the messenger visits the woman to do "*penjajakan*". After *penjajakan* is done, then proposal is formally carried out by man's family by carrying engagement or binding property.⁸ In Aceh, the binding

⁷C. DewiWulansari, *HukumAdat Indonesia* (Bandung: PT RefikaAditama, 2010), p. 67.

⁸P.HilmanHadikusuma, *HukumPerkawinanAdat* (Bandung: Citra AdityaBakti, 1990), p. 193.

property is called *Konghaba/Arit*; in Toba is called *Tuhor/Boli*; in Karo, *Petindih Pudun*; in Nias, *Bobomibu*; in Mentawai, *Sesere*; in Java, *Paningset/Sasrahan*.⁹

The engagement's properties usually consists of *tepak sirih*, moneys (dowry, custom money), cooked foodlike *dodol*, *wajik*, *reginang*, and other stuff like clothes, jewelry, etc. The engagement are delivered by a spokesman using beautiful proverb and full of courtesy and respect by introducing the member of the group who come and the relationship with the man one by one. The spokesman from the woman will declare the acceptance using the customary language and proverbs. After completing the speech from both sides, the goods (engagement properties) are given to the elder family's members. In Lampung it is called *Toala Anaw*; in Minangkabau, they are given to the elder family's woman. Moreover, both family's members continue by doing negotiations to make a deal, those are:¹⁰

1. Amount of money (custom money, custom fines, or dowry)
2. Amount of demand money is from women, in Minangkabau is from the men
3. The model of marriage and husband-wife position
4. The agreement of marriage, except *ta'lik talak*
5. The position of marriage property
6. Events and traditional ceremonies
7. The time and place of wedding ceremonies

⁹P.HilmanHadikusuma, *HukumPerkawinan*, p. 194.

¹⁰P.HilmanHadikusuma, *HukumPerkawinan*, p. 194.

Not all of wedding events and ceremonies are performed by someone who will marry, it depends on the circumstance, capabilities, and the society's custom.

2. Overview of Engagement in Islam

a. Definition of engagement

Engagement means applying for, requesting, and asking.¹¹ In Arabic, engagement called *khitbah*, from the word: خطبت - خطبا - يخطب - خطب word *khitbah* is *masdar* from word *khataba* which is defined as propose or apply.¹² Word *khitbah* in Arabic term are *al-khitbah* and *al-khatbu*. *Al-khitab* can be defined as conversation. If *al-khitab* (talk) related to the women, then the explicit meaning is talking to marriage. Thus, the meaning of proposal is talking which is related to application for marriage.¹³ While the meaning of *al-khatbu* are problems, interests and circumstances. So the meaning of engagement is a request by man to woman and the answer is in woman. The result, meaning association that can be understood firstly by women is issues or interests in relation to marriage. Whereas, according to the *fiqh*, engagement means "*request*". Terminologically, it is a statement or a request from a man to the woman to marry, both performed by the man directly or through intermediaries that they trust the other person in

¹¹EkoEndarmoko, *KamusTesaurosBahasa Indonesia* (Jakarta: Gramedia, 2006), p. 477.

¹²WarsonMunawir, *Kamus Arab-Indonesia* (Yogyakarta: PP al-Munawir, 1984), p. 376.

¹³Abd.NashirTaufik al-Athar, *SaatAnda*. (Jakarta: PustakaAzam, 2001)

accordance with the religion's norm.¹⁴ Moreover, it is done based on the general principles that have been prevailed in the society.

The engagement process is the first step of serious marriage planning. Allah SWT manages that the couples want to marry should recognize and know each other before holding the marriage.¹⁵ So, the marriage is really based on a clear reality and assessment. Another definition of engagement, in Indonesian Encyclopedia of Islam is identical to the application or engagement. The application is a step for a man who wants to marry a woman, whether she is a girl or widow. In this case engagement could be made by the man or the woman in accordance with the custom prevailing in the community or the environment.¹⁶

The Compilation of Islamic Law (KHI) Article 1, Chapter 1a, states that engagement is an effort to arrange marriage relationship between a man and woman that can be performed by a person who wishes to find a partner of life, but it can also be done by intermediaries who is trusted.¹⁷ In practice, engagement can be carried out directly to single woman. However, when engagement to the woman who is still in a period of 'iddah wafat¹⁸ or 'iddah talak bain¹⁹ done with *kinayah* (satire) to respect the feelings of the woman. Thus, engagement becomes

¹⁴Kamal Mukhtar, *Asas-asas Hukum Islam tentang Perkawinan* (Bandung: Irsyad Baitus Salam, 1995), p. 59.

¹⁵Muhammad Thalib, *40 Petunjuk Menuju Perkawinan Islam* (Bandung: Irsyad Baitus Salam, 1995), p. 60.

¹⁶Tim Penyusun IAIN Syarif Hidayatullah, *Ensiklopedi Islam Indonesia* (Jakarta: Djambatan, 1992), p. 555-556.

¹⁷Cik Hasan Bisri, *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional* (Jakarta: Logos, 1999), p. 139.

¹⁸The waiting period (do not allow to marry) for a woman who has been divorced by the husband because of his death

¹⁹Talak that is said by the husband to his wife when the period 'iddah is expired. Talak bain is divided by two: sugra and kubra

preparation steps towards marriage as Allah's command. Before the implementation of the marriage ceremony, to increase the understanding and recognition of each couple, a husband and wife might know about their character, behavior in order to make stronger the feeling when they enter the after marriage procession of life.²⁰

Thus, engagement can be considered as a requestor statement from a man to woman in accordance with the customs prevailing in the area either *sharih* (overt) or in *kinayah* (satire) by themselves or through intermediaries. When the engagement process already is concreted and the proposal is accepted by the woman (female), it implicitly means that they agree to do the marriage. Furthermore, by the agreement, directly or indirectly, it means woman have tied up with the engagement. The period between receiving the proposal with implementation of the marriage procession (if there is no cancellation) is called engagement.²¹

b . Law of Engagement

The study above contains an understanding that engagement becomes a method toward the marriage. Indeed, engagement is not an obligation, but it has become a tradition in the society. In addition, engagement is regulated by Islamic law, both in the Qur'an and al-Hadith. Surat al-Baqarah 235 becomes the basic of engagement process:

²⁰M. Baqir al-Habsyi, *FikihPraktis*(Bandung: Mizan, 2002), p.42.

²¹Kamal Mukhtar, *Asas-asasHukum Islam tentangPerkawinan*(Bandung: IrsyadBaitus Salam,1995), p.34.

حَدَّثَنَا مَكِيُّ بْنُ إِبْرَاهِيمَ حَدَّثَنَا ابْنُ جُرَيْجٍ قَالَ سَمِعْتُ نَافِعًا يَخْتَدُّ أَنَّ ابْنَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا

- كَانَ يَقُولُ نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعَ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ , وَلَا يَخْطُبُ

الرَّجُلُ عَلَى خِطْبَةِ أَحَدِهِ , حَتَّى يَتْرَكَ الْخَاطِبُ قَبْلَهُ , أَوْ يَأْذَنَ لَهُ الْخَاطِبُ²³

This hadith mentions the prohibition for Muslim to propose a woman who has been proposed by another Muslim. In other words, this hadith implies the obligation to respect the right of suitor who has proposed someone. Moreover, the hadith explained that the engagement is permitted by Islamic law, which can be found as *sunnahfi'liyah* and *sunnahtaqririyah*. *Sunnahfi'liyah* means *sunnah* which reflected from Prophet's action, in this case, the engagement was done by Prophet Muhammad to some of his wife such as UmmuSalamah and Juwariyah. Another *sunnah* called *sunnahtaqririyah* means the Prophet's agreement of a certain action, in this case, there was some companion of Prophet who done engagement and Prophet did not prohibited them, for example, in Prophet era Mugirah bin Syu'bah RA did engagement. Rasulullah SAW said:

²³Al-Bukhari, *Shahihul al-Bukhari: Kitab al-Nikah*(Bairut: Dar al-Fikr, 1994), VI: 166. HadistNo.5142.

حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ حَدَّثَنَا ابْنُ أَبِي زَائِدَةَ قَالَ حَدَّثَنِي عَاصِمُ بْنُ سُلَيْمَانَ هُوَ الْأَحْوَلُ عَنْ بَكْرِ

عَبْدِ اللَّهِ الْمَزْنِيِّ بْنِ شُعْبَةَ أَنَّهُ خَطَبَ امْرَأَتَهُ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - انْظُرْ إِلَيْهَا فَإِنَّهُ أُخْرَى

أَنْ يُؤَدَمَ بَيْنَكُمَا²⁴

From the hadith, the scholars also agreed that engagement is allowed in Islam because it is not opposing the Al-Qur'an and Sunnah.²⁵

There are steps that must be done before engagement, as Islam recommends for suitor (men) to see who will be proposed (women) to be steadier in his choice. Prophet Muhammad SAW said:

حَدَّثَنَا مُسَدَّدٌ حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ دَاوُدَ بْنِ حُصَيْنٍ عَنْ وَاكِدِ بْنِ

عَبْدِ الرَّحْمَنِ - يَعْنِي ابْنَ سَعْدِ بْنِ مُعَاذٍ - عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

و سلم - إِذَا خَطَبَ أَحَدُكُمُ الْمَرْأَةَ فَإِنْ اسْتَطَاعَ أَنْ يَنْظُرَ إِلَى مَا يَدْعُوهُ إِلَى نِكَاحِهَا فَلْيَفْعَلْ

From the hadith instructs the men (suitor) to see the women who will be proposed, and the women should see the men who want to propose her.

²⁴Hadist ini diriwayatkan Tirmidzi dari Bakr dari Mughirah bin Syu'bah, *al-Jami' al-Shahih wa Huwa Sunan Tirmidzi* (Beirut: Dar al-Fikr, 1983), II, 275. Hadist No. 1093.

²⁵Nashir Taufik al-Athar, *Saat Anda Meminang* (Jakarta: Pustaka Azam, 2001), p. 25-26.

c. The Purpose and Background of the Engagement

1. The Purpose of the Engagement

Basically, the purpose of engagement and the marriage are similar. Explicitly, the purpose of the engagement is not mentioned like in the marriage, but implicitly, the purpose of the engagement can be seen from the requirement of engagement. The engagement's purpose are avoiding from misunderstanding between both of them, and also keeping the marriage in the deep thought and getting the God's guidance. Furthermore, the family atmosphere will run closely between a husband and wife, and of course the other family members.

Moreover, SoerojoWignjodipoero²⁶ states, the reason of the people who do the engagements, commonly are:

1. They want to ensure the marriage which is desired in the near time
2. Especially, in the region that social relationship is freely for young generation so the engagement is one of method to limit the social interaction.
3. A facility for the couple to recognize each others

In Abu Zahra's book, entitle *Al-Ahwal Al-Syakhsiyyah* states that the purpose of engagement is a medium for seeingeach others, in order to avoid the regret, because of seeing is the best way to do something.²⁷

²⁶Soerojo Wignjodipoero. *Pengantar dan Asas-Asas Hukum Adat* (Jakarta: Sabdodadi, 1987),p. 124

²⁷Muhammad Abu Zahrah. *Kitab Al-Ahwal Al-Syakhsiyyah* (Kairo:Dar al-Fikr al-Arabi, 1984),p. 238

The important things for the purpose of the engagement are:

1. To make easy the couple for recognizing each others and their family.
2. To build the love and affection both of them.
3. Make the effect of peace mind and the stability of heart for the couple who want to marry.

2. The Background of the Engagement

Engagement is a formation of the whole thing which is originally separated between man and the woman. The engagement is to reinforce the binding of marriage, because the couple have known each other. As the building, to build the solid and whole building absolutely needs the strong foundation, ranging from accurate calculation, lessons, as well as careful planning. Similarly, the marriage bond, not only as material lust that eventually "use and throw", moreover, the marriage is a sunnah of Prophet Muhammad SAW, and also to build a family and establish the friendship.

Every human who want to marry, they must find the appropriate couple by their criteria. To choose the couple, the physical performance is not the main criteria, but the important one is the quality of the couple. So *wali*²⁸ should consider the main criteria.

The explanation above shows that the engagement has the great background before the marriage carried out. It can be an adaptation facility for the couple to know the life habbit and all about themselves. Finally, they have a confidence to continue marriage. The engagement gives a chance for the couple to

²⁸Wali is someone who has the authority to the woman, for example a father

face the problem (good or bad) wisely. The marriage that is not begun by introduction, it can be potentially sad ending or regret and the Islamic law is avoiding the regret. Thus, the couple can introduce themselves both the good side and the bad side of each person. So that, a big purpose in family will be reached.

d. Social Relationship Limitation in Engagement Period

There is no legal law in engagement, because for the couple are not *mahram* relationship. So, they are not allowed to interact freely, because it can cause the damage activate which is prohibited by Islamic law. Therefore, in engagement, they must know the limitation of the social relationship both man and woman, in order to avoid free social relationship in the society. For marriage, Islam has managed which if exercised and maintained will be the power to make a good foundation in family life. In addition, there is also a major concern before entering marriage, namely the exclusion of selfish attitude of each and not just look at marriage only one side, which is only according to the needs. Thus, they can know each other and willingly accept each other's lacks.

It has been seen that the principal of marriage in Islam, there is sincerity between the couple until the marriage can be held and the death is the only separating. Islam ask the man to know the woman's characteristic who will be proposed firstly. It is done for getting happiness of the family. It relates with the boundaries which permitted to see at engagement. *Jumhur* have the different argument. *Jumhur* states that the man who engage the woman is allowed to see a

face and palm of hand, because it is enough to see the attraction and palm of hand to see fertility of woman. Another statement of Imam Abu Hanifah, permit to see the face, palm of foot, and palm of hands. But, some *fuqaha* is permitted to see all of the body, except the genital. Imam Dawud and the scholar from Madzhab Zuhairi have other statement that the groom can see all the body of the bride. The statement have a reason, but in Hadith of Prophet Muhammad SAW to see the woman firstly, and not followed by rules in explanation about part of bodies that can not be seen by the man.

Based on Hadith Prophet SAW narrated by Tirmidzi and Bakr Bin Mughirah Bin Syu'ban, Rasul says:

حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ حَدَّثَنَا ابْنُ أَبِي زَائِدَةَ قَالَ حَدَّثَنِي عَاصِمُ بْنُ سُلَيْمَانَ هُوَ الْأَخْوَلُ عَنْ بَكْرِ
عَبْدِ اللَّهِ الْمَزْنِيِّ بْنِ شُعْبَةَ أَنَّهُ خَطَبَ امْرَأَتَهُ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - انْظُرْ إِلَيْهَا فَإِنَّهُ أُخْرَى
أَنْ يُؤَدَمَ بَيْنَكُمَا²⁹

As a hadith based on Rasulullah, which narrated by Abu Dawud by Jabir Bin Abdullah:

²⁹Imam Tirmidzi, *al-Jami' as-SahihwaHuwaSunanTirmidzi*: Abwab an-Nikah (Beirut: Dar al Fikr, 1983), 1093.

حَدَّثَنَا مُسَدَّدٌ حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ دَاوُدَ بْنِ حُصَيْنٍ عَنْ وَاقِدِ بْنِ

عَبْدِ الرَّحْمَنِ - يَعْنِي ابْنَ سَعْدٍ بْنِ مُعَاذٍ - عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

و سلم - إِذَا خَطَبَ أَحَدُكُمْ الْمَرْأَةَ فَإِنْ اسْتَطَاعَ أَنْ يَنْظُرَ إِلَى مَا يَدْعُوهُ إِلَى نِكَاحِهَا فَلْيَفْعَلْ³⁰

In addition, observing the women are only for needs. Based on Ushul's principle:

وَمَا يُبَيِّحُ لِلضَّرُورَةِ يُقَدَّرُ بِقَدْرِهَا³¹.

In fact, in society is also found giving the picture as a substitution for seeing the woman by the man. Islam is allowed to give the picture. But, sometimes the picture is different with the fact. Consequently, by the picture only is not enough to know the characteristic of the people. M. FauzilAdhim argued that the benefit for observing the woman, are:

1. It should not use the special norm for seeing the bride
2. To see the bride is not taboo during the limitation for it
3. To know the woman that will be married and there is no regret after marriage

³⁰Abu Dawud, *Abwab an-Nikah : Bab Fi RajuliIla al-Mar'ahWaYuriduTajwijaha*(Beirut: Dar al-Fikr), II: 228.

³¹Mahmud Yunus, *HukumPerkawinan Islam* (Jakarta: al-Hidayah, 1956), p.13.

It is not simple for recognizing the woman if just see her. The personality usually can be caught after social relationship for longtime in the certain conditions. Every man and woman in engagement period can know the important things, from the characteristic and all the attitude until they hold the marriage. According to Abd.NashirTaufiq Al-Athar, the groom is allowed to visit the woman and find the information about the bride. Some people are not allowed the groom for visiting the woman.³² Moreover, they are prohibited to go together in lonely place (*khalwat*). In other side, some people do not give the limitation for the couple, they are allowed to meet, talk each other, or go together until in the night.

Islam permits for the man to visit the woman who want to be proposed, talking each other but with the clear purpose, not just for having fun, and also should be accompanied with *mahram*. *Khalwat* (only with the couple) is prohibited by Islam, because there is no legal relation between the couple. So that, the couple do not have *mahram* relationship.

Rasulullahs says, narrated by At-Tirmidzi by Uqbah Bin amir:

حَدَّثَنَا قُتَيْبَةُ حَدَّثَنَا اللَّيْثُ عَنْ يَزِيدَ بْنِ أَبِي حُبَيْبٍ عَنْ أَبِي الْخَيْرِ عَنْ عُقْبَةَ بْنِ عَامِرٍ مَا رَوَى عَنْ

النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَا يَخْلُونَ رَجُلٌ بِامْرَأَةٍ إِلَّا كَانَ تَالِثُهُمَا الشَّيْطَانُ³³

³²NashirTaufik al-Athar, *SaatAndaMeminang*(Jakarta: PustakaAzam, 2001), p. 25-26

³³M. Ibnu Isa SarwahIbnu at-Tirmidzi, *al-Jami as-SahihWaHuwaSunan at-TirmidziAbwabar-Rada, Bab Ma Ja'a Fi Kariyahati ad-DukhuliAla al-Mugibati*(Beirut: Dar al-Fikr, 1983), II:318 nomor 1181.

The interaction can avoid nad activity for the couple when they have not been maariage. But it is expected to build the falling love and readiness for going marriage.

In engagement period, the couple should use the opportunity efficiently to know and find the information about the couple. So when the couple has known all about each other, there is no regret during the marriage. And if they want to break the engagement relation, absolutely, they must keep and save the information for keeping their courtesy.

3. 'Urf Theory

a. 'Urf Definition

'Urf is well-known things and habitual for society which covers words or actions.³⁴ Moreover, some scholars of *ushulfiqh* state that 'urf is custom. In addition, most of people understand that 'urf has more general meaning than custom because custom is well-known and has been done by society, although both of them do not have any different technical term. Furthermore, custom also seems like law which has several punishments for someone who break it down.

³⁴Abdul WahabKhallaf, *UshulFikih*(Jakarta: PT RinekaCipta, 2005), p.104.

'Urfis an interest relation which becomes custom and establishes constantly in the society. Al-Gazali in his book Al-Musthafastates :

الْعَادَةُ وَالْعُرْفُ مَا اسْتَقَرَّ فِي النُّفُوسِ مِنْ جِهَةِ الْعُقُولِ وَتَلَقَّيْتُهُ الطَّبَائِعِ السَّالِمَةِ بِالْقَوْلِ

Many references describe that 'urf and custom have a single meaning that is habit.

According to Abdul WahâbKhalâf, 'urf is²:

الْعُرْفُ هُوَ مَا تَعَارَفَهُ النَّاسُ وَسَارُوا عَلَيْهِ مِنْ قَوْلٍ أَوْ فِعْلٍ أَوْ تَرْكِ وَيُسَمَّى الْعَادَةُ. وَفِي لِسَانِ الشَّرِّ عَيْنٌ لَا فَرْقَ بَيْنَ الْعُرْفِ وَالْعَادَةِ.

“Al-'Urf is something familiar and done by many people in form of words, action, or something that forbidden. Moreover, it is also named by al-âdah, in scholars mindset, al-'urf and al- âdah are equal.”

Al-Jurjânî opinion about al-'urf which is quoted by Abdul Mudjib says:

الْعُرْفُ مَا اسْتَقَرَّتْ النُّفُوسُ عَلَيْهِ بِشَهَادَةِ الْعُقُولِ وَتَلَقَّيْتُهُ الطَّبَائِعِ بِالْعُقُولِ. وَهُوَ حُجَّةٌ أَيْضًا لَكِنَّهُ

أَسْرَعُ إِلَى الْفَهْمِ بَعْدَ أُخْرَى.

“Al-'Urfis something (words or action) which create peace for our soul because it make sense. Then, Al-'Urfis also a hujjah that easily understood”.

Al-'Adahinterpreted as:

الْعَادَةُ مَا اسْتَمَرَّ النَّاسُ عَلَى حُكْمِ الْمَعْقُولِ وَعَادُوا إِلَيْهِ مَرَّةً بَعْدَ أُخْرَى.

“Al-'Adahis something (words or actions) which is continually done by people since it is rational and people always do it for many times.”³⁵

Based on the previous explanations, it can conclude that *al- 'Urf* and *al- 'Adah* have similar meaning as words or actions. Then, custom can be accepted as something familiar and practice consistently. Furthermore, *'Urf* is a law which is taken from Hanafy and Maliki's thought which is not included in *nash* and *syar'i*. Additionally, it is crystallized from *ushul fiqh* which is taken from Prophet Muhammad SAW hadiths:

مَا رَأَاهُ الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ أَمْرٌ حَسَنٌ.

"Something which is good for Muslims is also categorized as good by Allah”

³⁵ Abdul Mudjib, *Kaidah-kaidah Ilmu Fiqh* (Cet, 3; Jakarta: Kalam Mulia, 1999), p. 44.

This *hadits* (metaphorically or directly) shows that every actions which becomes tradition for Moslem and approves as a good things will also good for Allah. Furthermore, many scholars state that '*urf*' is one of Islamic law sources and we can use it if there is no others nash from Al-Quran and As-Sunnah. In contrast, when an '*urf*' does not fit with Al-Quran or As-Sunnah we can not take it as Islamic law.

b. The position of '*Urf*' in determining law in Islam

Generally, '*urf*' or custom is used by many scholars, especially from Hanafiyah and Malikiyah. Hanafiyah scholar use *istihsan* or *ijihad*, and one type of *istihsan* is *istihsan al-'urf* (*istihsan* which use '*urf*' as its basic). Moreover, Hanafiyah Scholars prioritize '*urf toqiyaskhafi*' and a nash that has general meaning, in this case, '*urf*' specify the *nash*.

On the other hand, Malikiyah scholars use '*urf*' or Medina's tradition as background in determining Islamic law and prioritize it.

Syafi'iyah scholar's commonly used '*urf*' for any topic that do not have limit in *syara*' or using language. Their principal is "*Every things that come with syara' absolutely and do not have standard in syara or language will refer to 'urf'*".

Al-Syuyuthi perceives the usage of '*urf in fiqh*' by reflecting it to the principal theory:

“Custom or ‘urf becomes law consideration”.

Scholars, when they use ‘urf, take *hadist* from Abdullah IbnMas’ud which is narrated by Imam Ahmad: *"Something which is good for Muslims is also categorized as good by Allah."*

Scholars use ‘urf in understanding and determining law, then, they also make some criteria for ‘urf:³⁶

1. Custom or ‘urf should have positive value and approve the logic.

This criterion is very common for *shahih* (acceptable) custom and it is accepted generally. For example, visiting the family after *idulfitri*, most people in Indonesia do the tradition. By doing that activity, it can gives some advantages for the family and also it avoid the breakness of the family when they visit each other.

2. Custom or ‘urf is generally and equally practiced by most of people.

Imam As-Suyuti argues that: *“a significance custom is generally practice, but if this criterion does not fulfill the custom will not accepted”*

3. ‘Urf which becomes the fundamental reference in determining Islamic law is widely accepted for a long time ago so it does not happen suddenly. In other words, the ‘urf has existed before the law is determined.

³⁶Amir Syarifuddin, *UshulFiqh* (Jakarta: Kencana, 2011), p. 392.

4. The Custom may not contradict *tosyara* or absolute principal.

Those criteria only support the right (*shahih*) custom because scholars concurs that *fasad* customs that opposing *syara* principal or *nash* will be rejected.

Undoubtedly, based on the explanations above, '*urf* or custom can be used as based for maintaining Islamic law. Essentially, scholars do not directly approve the '*urf* or custom because of its pure status, but it becomes *dalil* or *hujjah* only if there are supports inform of '*ijma* or *maslahat*. In other words, '*urf* or custom will be proved if all of *ummah* and scholars approve and practice it for a very long period which means that it has been become an '*ijma* although in form of *sukuti*.

Moreover, the custom which is approved and practiced by many people must have advantages. Consequently, people who reject this custom is similar to reject the advantages, while others agree to take something that has advantages, even though there is no direct *nash* that support it.

c. '*Urf* Types

Based on the requirements above, '*urf* or custom can be divided into two major groups:

a. *Fasad'Urf* (rejected)

This group of '*urf* does not have positive aspect and is not approved because opposing the *qath'iynash* (*syara*). For instance, the habit that

gives *sesaji* for a statue or mystic place. Additionally, it is not acceptable since it breaks the Islamic *tauhid* of belief.³⁷

b. Shahih '*Urf*' (approved)

This group of '*urf*' is generally known, does not contradict *tosyari*'at, change haram and halal status, and avoid the Islamic obligation. It is also approved as main Islamic law resource. For example, having engagement before marriage that is practiced and becomes habit for many people, and it also does not break *syara*'.³⁸

Moreover *sahih*'*Urf*' can be grouped into two:

1) '*Urf*' *Aam* (general custom)

This '*urf*' is accepted by people all over nations. Hanafiyah scholar stated that '*urf*' *aam* have more power than *qiyas* (also known as *istishna* '*urf*'), also can specify an '*aamnash*' that has *zhanny* character. In addition, it is approved by *ijma*' and grouped as strongest *ijmah* which is supported by many *mujtahid* and other scholars from complainer generation or after it. Moreover, we can say that this '*urf*' is legalized in all countries without reflected on the realities from the previous centuries.

2) '*Urf*' *khas* (special custom)

³⁷Muhamad Abu Zahrah, *UshulFiqih* (Jakarta: Pustaka Firdaus, 2005), p. 418

³⁸Abdul Wahab Khallaf, *UshulFikih* (Jakarta: PT Rineka Cipta, 2005)

It is an '*urf*' which is applied in a specific country, area or group of people. For instance, marketing '*urf*', agricultural '*urf*' and others. In addition this '*urf*' may not oppose the *nash* but it may oppose *qiyas* which had taken from *notqad'i illat*. Furthermore, law that is determined by *qiyas* will frequently change. For that reason, scholars argue that the latest scholar may have different opinion from the previous scholar because in determining *qiyas* they are mostly influenced by familiar '*urf*' in that period.

