

***NJAUM-NJAUM* TRADITION AS A MARRIAGE PROPOSAL OF  
KEDAYAN'S ETHNIC IN THE PERSPECTIVE OF SARAWAK ISLAMIC  
FAMILY LAW ORDINANCE, 2001  
(CASE STUDY IN KAMPUNG BUNGAI, BEKENU, SARAWAK)**

**THESIS**

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**ISLAMIC FAMILY LAW DEPARTMENT**

**SYARIA FACULTY**

**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM  
MALANG**

**2023**

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MALANG**

**2023**

## **STATEMENT OF THE AUTHENTICITY**

In the name of Allah,

With consciousness and responsibility toward the development of science, the  
writer declares that thesis entitled:

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KEDAYAN'S ETHNIC IN THE PERSPECTIVE OF SARAWAK ISLAMIC  
FAMILY LAW ORDINANCE, 2001  
(CASE STUDY IN KAMPUNG BUNGAI, BEKENU, SARAWAK)**

Is truly writer's original work which can be legally justified. If this thesis is  
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Sarawak, 03 June 2023

Writer,



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KEDAYAN'S ETHNIC IN THE PERSPECTIVE OF SARAWAK ISLAMIC  
FAMILY LAW ORDINANCE, 2001**

**(CASE STUDY IN KAMPUNG BUNGAI, BEKENU, SARAWAK)**

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**(CASE STUDY IN KAMPUNG BUNGAI, BEKENU, SARAWAK)**

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## **MOTTO**

“When you are young, learning is for ideals and stability; when you are middle-aged, learning is to fill your empty heart; when you are old, learning is a kind of artistic conception, savor slowly and enjoy yourself.”



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1	Tuesday, 21 February 2023	Consult for thesis proposal	
2	Wednesday, 22 February 2023	Consult proposal statement of problem	
3	Thursday, 2 March 2023	Consult theoretical framework	
4	Tuesday, 7 March 2023	Correction Arabic letter on background	
5	Friday, 8 March 2023	Checking proposal thesis and acc	
6	Wednesday, 3 May 2023	Consultation chapter I	
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*Alhamdulillahirabbil'alamin*, thank to Allah for His rahmat and servant, we can finish this thesis entitled “*NJAUM-NJAUM* TRADITION AS A MARRIAGE PROPOSAL OF KEDAYAN’S ETHNIC IN THE PERSPECTIVE OF SARAWAK ISLAMIC FAMILY LAW ORDINANCE, 2001 (Case Study In Kampung Bungai, Bekenu, Sarawak)”.

Peace be Upon to our Prophet Muhammad Rasulullah SAW who has taught us guidance (*uswatun hasanah*) to Muslim *syariat* in our life. By following Him, may us belong to those who believe and get their intercession on the last day of the end. Amiin. From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

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2. Dr. Sudirman, M.A., as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Mrs. Erik Sabti Rahmawati, M.A., M.Ag., as the Head of Islamic Family Law, Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.



4. Mr. Ali Kadarisman, M.HI, as my supervisor lecturer while studying at Islamic Family Law Department of Syaria Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
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7. Staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
8. Harakah Islamiah (HIKMAH) Sarawak Organization for the main sponsor and scholarship my study.
9. My family members and helps me a lot in the side of financial, threatening me with unconditional loving and support me in every aspect of studying.
10. My friends, that are being my good supporter and help me move here and there whenever I need in purpose of completing this thesis.
11. To all the informant that help a lot on gave an information that related to this thesis with a good responds.

With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for

the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Miri Sarawak, 5 June 2023

Author,

A handwritten signature in black ink, appearing to read 'Ninti', written in a cursive style.

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## TRANSLITERATION GUIDENCE

In writing scientific papers, the use of foreign terms is often unavoidable. In general, according to the General Guidelines for Indonesian spelling, foreign words are written (printed) in italics. In the context of Arabic, there are special transliteration guidelines that apply internationally. The following table presents transliteration guidelines as a reference for writing scientific papers.

### A. CONSONANT

A list of Arabic letters and their transliterations into Latin letters can be seen on the following bellow:

Arab	Indonesia	Arab	Indonesia
أ	`	ط	ṭ
ب	b	ظ	ẓ
ت	t	ع	‘
ث	th	غ	gh
ج	j	ف	f
ح	ḥ	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	و	w
س	s	ه	h
ش	sh	ء	’
ص	ṣ	ي	y

ض	ḍ		
---	---	--	--

The hamza (ء) which is located at the beginning of a word follows the vowel without being marked. If the hamza (ء) is in the middle or at the end, it is written with a sign (').

## B. VOCAL

Arabic vowels, like Indonesian vowels, consist of single vowels or *monophthongs* and double vowels or *diphthongs*.

A single Arabic vowel whose symbol is a sign or vowel, and Arabic double vowels whose symbol is a combination of vowels and letters, the transliteration is as follows:

Huruf Arab	Nama	Huruf Latin	Nama
ا	Fatḥah	A	A
إ	Kasrah	I	I
أ	Ḍammah	U	U
أِي	Fatḥah dan ya	Ai	A dan I
أُو	Fatḥah dan wau	Iu	A dan U

## C. TA MARBUTAH

There are two transliterations for *ta marbūṭah*, namely: *ta marbūṭah* who lives or gets the dignity of fatḥah, kasrah, and ḍammah, the transliteration is [t].

Whereas *ta marbūṭah* who died or received the title of breadfruit, the transliteration is [h].

If a word that ends with *ta marbūṭah* is followed by a word that uses the article *al-* and the readings of the two words are separated, then the *ta marbūṭah* is transliterated with *ha*.

#### **D. DENOTED LETTER**

The article in the Arabic writing system is denoted by the letter ا (alif lam ma'arifah). In this transliteration guide, the article is transliterated as usual, *al-*, both when it is followed by a *syamsiah* or *qamariah* letter. The article does not follow the sound of the direct letter that follows it. The article is written separately from the word that follows it and is connected by a horizontal line.

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## ABSTRAK

Barwi, Normiwati, 16210189, 2023. **TRADISI *NJAUM-NJAUM* SEBAGAI PEMINANGAN SUKU KEDAYAN PADA PERSPEKTIF ORDINAN KELUARGA ISLAM SARAWAK 2001 (Studi Kasus di Kampung Bungai, Bekenu, Sarawak)**

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Katakunci: *Njaum-njaum*, Tradisi, Ordinan Keluarga Islam 2001

*Njaum-njaum* adalah apabila seorang laki-laki bersama beberapa wakil pihak keluarganya yang datang berkunjung ke rumah pihak perempuan. Tradisi *Njaum-njaum* adalah adat peminangan suku Kedayan. Tradisi ini diawali dengan pemberian cincin dan uang tunai oleh pihak laki-laki kepada pihak perempuan sebagai *pembuka mulut*. Jumlah uang pembukaan ini tidak tetap, tetapi tergantung pada permintaan wanita itu. Namun saat ini, orang-orang terlihat kurang mempraktekkan tradisi ini. Oleh itu, peneliti melakukan penelitian ini untuk mendeskripsikan praktik tradisi *Njaum-njaum* pada Ordinan Keluarga Islam, 2001.

Penelitian ini termasuk dalam jenis penelitian empiris yang biasa disebut dengan penelitian lapangan, dengan menggunakan pendekatan deskriptif kualitatif. Peneliti mengumpulkan data primer dari wawancara langsung dengan informan dari masyarakat di Kampung Bungai, pekan Bekenu di Provinsi Sarawak, Malaysia. Selain itu, data sekunder dikumpulkan dari literatur buku, makalah, dan artikel yang relevan dengan masalah yang akan diteliti yaitu terkait tradisi *Njaum-njaum* suku Kedayan dan pembahasan Ordinan Keluarga Islam Sarawak tahun 2001. Kemudian data tersebut diedit, diklasifikasikan, diverifikasi, dan kemudian dianalisis.

Kajian ini menunjukkan proses pelaksanaan tradisi *njaum-njaum* suku Kedayan yang masih dipraktikkan hingga saat ini. Diawali dengan proses *njaum-njaum* kemudian dilanjutkan dengan pertunangan, pernikahan dan larangan setelah akad nikah yang telah dipraktikkan sejak nenek moyang mereka. Mereka memiliki alasan sendiri mengapa mereka perlu mempertahankan tradisi ini. Berdasarkan apa yang telah tertulis di Ordinan Keluarga Islam Sarawak 2001, siapa pun yang telah melakukan lamaran atau perjanjian pertunangan, dan jika salah satu dari mereka mengingkari, maka pihak yang dikhianati dapat melaporkan ke Pengadilan Syariah untuk tindakan dan hukuman kepada yang telah mengingkari perjanjian.

## ABSTRACT

Barwi, Normiwati, 16210189, 2023. ***NJAUM-NJAUM* TRADITION AS A MARRIAGE PROPOSAL OF KEDAYAN'S ETHNIC IN CHAPTER 43 SARAWAK ISLAMIC FAMILY LAW ORDINANCE, 2001 (Case Study In Kampung Bungai, Bekenu, Sarawak)**

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**Keywords:** *Njaum-njaum*, Tradition, Islamic Family Law Ordinance 2001

*Njaum-njaum* is the term for the custom of a male by some representatives of the male side who come to visit the house and family of the female side. *Njaum-njaum* tradition as a usual event of propose marriage in Kedayan's ethnic. This tradition was initiated by the giving of a ring and cash money by the men to the woman as a *pembuka mulut* (an opening or first of the conversation). The amount of this opening money is not fix, but it is subject to the request of the woman. But nowadays, people look less appropriate about this tradition. Based on these problems, the researcher conducted this study to describe the practice of *Njaum-njaum* tradition in the side of Islamic Family Law Ordinance, 2001.

This research belongs to the type of empirical research, commonly referred to as field research, using a qualitative descriptive approach. The researcher was collected the primary data from direct interviews with informants from the community in Kampung Bungai, Bekenu town in Province of Sarawak, Malaysia. Besides, the secondary data was collected from literature books, papers, and articles relevant to the problem to be studied, namely related to the *njaum-njaum* tradition of Kedayan's ethnic and discussion of Islamic Family Law Ordinance, 2001. Then the data is edited, classified, verified, and then analyzed.

This study shows the implementing process of *njaum-njaum* tradition of Kedayan's ethnic that still practice until nowadays. Begining with *the njaum-njaum* process then continue with engagement, wedding and prohibition after the wedding ceremony has been practice since their ancestors. They has their own reasons why they need to maintain this tradition. Based from what has been written on Sarawak Islamic Family Law Ordinance 2001, whoever have already entered into marriage propose or engagement agreement, and if one of them reneges, then they cancelled the marriage proposal and engagement can report to the Syariah Court for action and penalty.

## مستخلص البحث

بروي نورميواني، ١٦٢١٠١٨٩، ٢٠٢٣. عادة نجوم نجوم في خطبة النكاح قبيلة كاديان، باب ٤٣ قانون

الاسرة الاسلامية سرواك، ٢٠٠١ (دراسة في قرية بوعى، بسكنو، سرواك)

الكلمات الرئيسية: نجوم نجوم، العادة، قانون الاسرة الاسلامية.

---

نجوم نجوم هو عندما اتى الرجل واسرته الى بيت المرأة. عادة نجوم نجوم هي عادة الخطبة قبيلة كاديان، تبدأ هذه العادة بإعطاء الخاتم والنقود من قبل الرجال للنساء كمفتحات للفم. هذا المبلغ من المال الافتتاحي غير ثابت، ولكنه يعتمد على طلب المرأة. لكن في الوقت الحاضر، يبدو أن الناس أقل ممارسة لهذا العادة. لذلك أجرى الباحث هذا البحث لوصف ممارسة نجوم نجوم في نظام الأسرة الإسلامية ٢٠٠١.

تم تضمين هذا البحث في نوع البحث التجريبي المعروف باسم البحث الميداني ، باستخدام منهج وصفي نوعي. جمع الباحث البيانات الأولية من المقابلات المباشرة مع المخبرين من المجتمع في كامبونج بونجاي ، أسبوع بيكينو في مقاطعة ساراواك، ماليزيا. بالإضافة إلى ذلك، تم جمع بيانات ثانوية من المؤلفات والكتب والأوراق والمقالات ذات الصلة بالموضوعات التي سيتم دراستها ، وتحديدًا تلك المتعلقة بعادة نجوم نجوم لقبيلة كاديان ومناقشة قانون الأسرة الإسلامي لعام ٢٠٠١. ثم تم تحرير البيانات وتصنيفها والتحقق منها ثم تحليلها

تُظهر هذه الدراسة عملية تطبيق عادة نجوم نجوم لقبيلة كيدان الذي لا يزال يُمارس حتى اليوم. ابتداءً من عملية نجوم ثم تواصلت مع الخطوبة والزواج والتحریم بعد مراسم الزواج التي كانت تمارس منذ أجدادهم. لديهم أسبابهم الخاصة لماذا يحتاجون إلى الحفاظ على هذا التقليد. بناءً على ما هو مكتوب في قانون الأسرة الإسلامية في ساراواك لعام ٢٠٠١ ، يمكن لأي شخص قدم عرضاً أو اتفاقية خطوبة ، وإذا نفى أحدهم ذلك ، يمكن للطرف الخائن رفع دعوى أمام المحكمة الشرعية لاتخاذ إجراءات ومعاقبة من ارتد. على الاتفاقية

## CHAPTER I INTRODUCTION

### A. BACKGROUND

A marriage proposal is an event where one person in a relationship asks for the other's hand in marriage. If accepted, it marks the initiation of engagement, a mutual promise of later marriage. It often has a ritual quality. Propose marriage is the first step towards a marriage by Allah prescribed, which is certainly done by Muslims before entering the marriage stage. Despite this, reality in the community related to the proposal is certainly varied. One of that was happened in the community of Kampung Bungai, Bekenu, Sarawak, which is they has a *njaum-njaum* tradition as a usual event of propose marriage in Kedayan's ethnic.

Propose marriage in Islamic law is a thing prescribed by Allah to the couple who wants to get married so that the couple knew each other before a marriage contract is conducted. This is as it is contained in his word surah Al-Baqarah verse 235:

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ<sup>1</sup>

*“And there is no sin for you to propose those women with innuendo”* (Surah Al-Baqarah: 235).

---

<sup>1</sup> Team Al-Hidayah House Qur'an Sdn Bhd. *Al-Bayan Hidayah Translation*, (Selangor: Ar-Risalah Product Sdn Bhd, 2012), 38.

Propose marriage in Islamic law aims to bring about a benefit, this is because both parties will be engaged and get to know each other. At the same time will tighten the relationship between both families. The propose is generally brought benefit for propose marriage, but the proposed marriage here has a difference because the Kedayan ethnic has its own tradition when the ceremony.

Kedayan is one of the ethnic minority groups which is found in Sarawak, Malaysia. Mostly, they was stayed in the small city which is in Bekenu, Miri and Limbang. Some of this ethnic group also found in Brunei and another province in Malaysia such as Sabah and Labuan. This community got their long history of their life journey. From their old generations, they are actually immigrated from Brunei but now they became one of ethnic groups in Sarawak, Malaysia. Kedayan are frequently linked to unique daily rituals and traditional beliefs that they inherited from their ancestors, which includes rituals for a birth, marriage or wedding, death and events pertaining to their daily economic activities. One of their ritual tradition maintained until now is *njaum-njaum* as their propose marriage.

*Njaum-njaum* is a term for the custom of divination by some male representatives who come to visit the woman's family house by bringing '*kipii*' and '*camai*'. This tradition was initiated by the giving of a ring and cash money by the men to the woman as a '*pembuka mulut*'. This opening conversation is not fixed with bringing '*kipii*' and '*caamai*' but it is depend on women's requests too. '*Kipii*' in Kedayan language is an object shaped like small plates made of copper or bronzer. But nowadays, there are usually give money as the very simple thing

or good giving to women's family as a change of *kipii* and *caamai* because it is hard to find.<sup>2</sup>At the same time, if women's family accept the men propose, they will be directly ask for the several requests including the women's needs that called '*sapangadak*'.

Kedayan community also believe by having this tradition makes the women and men, which are want to get marry become more peaceful and will have strong relation between both of family. Besides it, *njaum-njaum* are the symbolic of taking a women from her family, and also has more perception from community about this tradition.<sup>3</sup> More than that, if the men is not from the Kedayan ethnic, while the women is pure Kedayan ethnic, it is called '*langkah sungai*' and men's family needs to fulfill all the request from women's family.<sup>4</sup>

The same provision is also provided in the Islamic family law of other states in Malaysia such as the Islamic Family Law (State of Selangor) Enactment 2003, the Islamic Family Law (State of Malacca) Enactment 2002, the Islamic Family Law (State of Kelantan) Enactment 2002, and the Islamic Family Law (Kedah Darul Aman) Enactment 2008.<sup>5</sup> Futhermore, it is interesting to discuss because in Sarawak Islamic Family Law Ordinance, 2001, there are no specific law for propose marriage. But people can refer the specific rule about engagement since it has been written in Chapter 43, Islamic Family Law, 2001.

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<sup>2</sup>Hj. Nawang, *interview* (Sarawak, 6 January 2023).

<sup>3</sup>Laila, *interview* (Sarawak, 6 January 2023).

<sup>4</sup>Hj Nawang, *interview* (Sarawak, 6 January 2023)

<sup>5</sup> Nur Syaheerah, "*Engagement Under Malaysian Islamic Law*", MONCO, February 9, 2022, [https://monco.my/engagement-under-malaysian-islamic-law/#:~:text=The%20proposal%20can%20be%20made,binds%](https://monco.my/engagement-under-malaysian-islamic-law/#:~:text=The%20proposal%20can%20be%20made,binds%20)

Based from the explanation above regarding to the *njaum-njaum* tradition for propose marriage, there are several things that are interesting according to researcher to study more specifically in terms of the implementing Kedayan's ethnic tradition. At the same time it is interesting to know why this tradition need to be maintain until nowadays? Are there has any affects of cancellation *njaum-njaum* and engagement base on Kedayan custome and Sarawak Islamic Family Law 2001? This tradition is interesting to do research because the tradition of this ethnic have different from other ethnic groups in Sarawak and other countries too. Considering to the paragraphs above, the researcher has desire and aim to research it, with the tittle ***Njaum-njaum Traditon As A Marriage Proposal Of Kedayan's Ethnic In The Perspective Of Sarawak Islamic Family Law Ordinance, 2001 (Case Study in Kampung Bungai, Bekenu, Sarawak).***

## **B. STATEMENT OF PROBLEM**

1. How the process of implementing the *njaum-njaum* tradition Kedayan's ethnic in Kampung Bungai, Bekenu?
2. Why does the *njaum-njaum* tradition need to be maintain?
3. What is the effect cancellation of *njaum-njaum* and engagement in the perspective of Sarawak Islamic Family Law Ordinance's 2001?

## **C. AIMS OF RESEARCH**

1. To know the process of implementing the *njaum-njaum* tradition Kedayan's ethnic in Kampung, Bungai, Bekenu.

2. To get extra knowledge the reason *njaum-njaum* tradition need to be maintain.
3. To know the effect of cancellation *njaum-njaum* tradition in the perspective Sarawak Islamic Family Law Ordinance's, 2001.

#### **D. BENEFITS OF RESEARCH**

1. Giving information to a society about the Kedayan's ethnic traditions in Sarawak which has been preserved.
2. As one of the knowledge about different traditions in Malaysia and maybe can helps whoever want to make a comparative tradition between Malaysia and other countries.

#### **E. OPERATIONAL DEFINATION**

In one study, the existence of an operational definition element aims to make it easier for researchers to understand the discussion in this study. The researcher will explain several terms that are often used in this research. The terms used are:

1. **Tradition:** Customs that are practiced or passed down by ancestors that are carried out by the community repeatedly where the custom is not written in the law.
2. ***Njaum-njaum:*** *Njaum-njaum* is a term for the custom of divination by some male representatives who come to visit the woman family's house. One of their ritual tradition maintained until now is *njaum-njaum* tradition for propose marriage.



3. **Propose Marriage:** Propose marriage or *khitbah* contains the meaning of a request which according to custom is a statement from another party with the intention to enter into a marriage bond.<sup>6</sup>
4. **Kedayan:** The Kedayan, also called as *Kadayan*, *Kadaian* or *Kadyan* are not exclusive to Brunei, but they can also be found in some parts of Labuan, Sarawak, Sabah and some parts of the Borneo Island. Though they may come from different parts of Borneo, the Kedayan would refer to their fellow kinsfolk as '*Padian*'.<sup>7</sup>

## F. DISCUSSION STRUCTURE

In obtaining scientific work systematic discussion is needed. In this study, the authors divide into five chapters whose operational arrangements are based on the systematic discussion as follows:

CHAPTER I (first), which is the beginning of the preparation of research, in this chapter contains the background of the problem taken, namely a summary that examines the underlying factors, that this issue needs to be important to be investigated.

CHAPTER II (second) describes the previous research to see differences on the research problems studied with previous researchers. Need to include previous researchers who function as benchmarks of differences about the problem under study, so that researchers are not considered plagiarism. This chapter

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<sup>6</sup>Prof. H. A. Dzajuli, *Ilmu Fiqih*, (Jakarta: Kencana, 2005), 15.

<sup>7</sup>Nadzirah, *The Way of the Kedayan Culture*, <https://sutura.co/way-kedayan-culture>, accessed on 2 February 2023.

also explains the theoretical framework which briefly discusses the theories of research to be conducted.

CHAPTER III (third) explains the research methodology that will review the methods used by researchers in this study. These methods include the type of research, research approaches, data sources, empirical research locations, data collection methods. So that the discussion can reveal a number of systematic, logical, rational and directed about how the previous work, when and after collecting data so that it is expected to be able to answer scientifically the formulation that has been described or discussed.

CHAPTER IV (fourth), is a discussion of the results of research and discussion, containing exposure and analysis of data, namely objective conditions, background and process of the tradition of mating in the Kedayan ethnic group and how community perceptions in Kampung Jambu, Bekenu, Sarawak.

CHAPTER V (fifth), Closing conclusions and suggestions from researchers about the *Njaum-njaum Traditon As A Marriage Proposal Of Kedayan's Ethnic In Chapter 43 Sarawak Islamic Family Law Ordinance, 2001 (Case Study in Kampung Bungai, Bekenu, Sarawak)*.

## CHAPTER II

### LITERATURE REVIEW

#### A. PREVIOUS RESEARCH

Previous research is the part that explains and provides exposure to data in order to find differences and similarities with research that has been done by others before, and will also be used as consideration as well as the basis for research conducted by the author. The previous research that the authors choose as a reference are:

First, Yuni Amalia Ulfah in 2017 with the title “Tradisi *Ghabay* Dalam Peminangan Perspektif *Al-Mashlahah* (Studi Kasus di Desa Kombang Kecamatan Talango Kabupaten Sumenap)”. This research is empirical research, namely field research. The approach used in this study is a qualitative approach with *Al-Mashlahah* perspective. Types and sources of data used are primary and secondary sources. Primary data sources were obtained directly from informants who provided information about the situation and conditions at the research site. Secondary data sources were also obtained from reference books that discussed about *khitbah* and opinions according to *Al-Mashlahah*. Data collection techniques are through interviews and documentation. Data processing techniques are editing, classifying, verifying, analyzing and concluding. In relation to the similarities between this study and previous research is both are about propose marriage which is about tradition when a man want to propose their marriage.

While the different of this previous research refers to the perspective *Al-Mashlahah*.

Second, Ihda Lathif El'Arifah in 2017 with the title “*Weton Calculation Practice On A Wedding Ceremony In Muslim Scholar's Opinion (Study At Tirtomoyo Pakis Malang)*”. This is research is empirical research which is exposes the social fact too. The approach of research is qualitative which is done in place or in field location. The source of data this research is primary data and secondary data. The collecting data techniques are interview, documentation and observation, while the data processing method are editing, classifying, verifying, analyzing and concluding. The similarities about previous research and this study is before marriage process and the different is previous research compare it in perspective of *'urf*.

Third, Ros Aida Mohd Mokhtar in 2015 with the title “*Konsep Sinkretisme Menurut Perspektif Islam: Kajian Terhadap Adat Dan Kepercayaan Masyarakat Kedayan.*” This research is empirical research which is expose to the social fact and base from field research. The approach used in this study is a qualitative approach. Types and sources of data used are primary and secondary sources. Primary data sources were obtained directly from informants who provided information about the situation and conditions at the research site. Secondary data sources were also obtained from reference books that discussed about Kedayan community believe and syncretism from Quran perspective. Data collection techniques are through interviews and documentation. Data processing techniques are editing, classifying, verifying, analyzing and concluding. In relation to the

similarities between this study and previous research is both are about Kedayan tradition including the propose their marriage. While the different of this previous research is it discuss and research about Kedayan whole tradition not only about marriage tradition. This research obtained very detail about Kedayan's community life style.

Fourth, Fahmi Bahar Prabowo in 2017, with his tittle "Tradisi Gredoan Pada Suku Osing Ditinjau Dari 'Urf (Studi Kasus di Desa Macanputih Kecamatan Kaabat Kabupaten Banyuwangi)." This is research is empirical research which is exposes directly to the community environment. The approach of research is qualitative which is done in field location. The source of data this research is primary data and secondary data. The collecting data techniques are interview, documentation ada observation, while the data processing method are editing, classifying, veryfing, analyzing and concluding. The similarities about previous research and this is propose marriage process and the different is previous research compare it in perspective of 'urf.

**Table 2.1 Previous Research**

No.	Identity	Tittle	Similarities	Differences
1.	Yuni Amalia Ulfah, 2017, State Islamic University Maulana Malik Ibrahim Malang	Tradisi Ghabay Dalam Peminangan Perspektif Al-Mashlahah (Studi Kasus di Desa Kombang Kecamatan Talango Kabupaten	Both are about propose marriage which is about tradition when a man want to propose their marriage.	The different of this previous research are refers to the perspective <i>Al-Mashlahah</i> .

		Sumenap		
2.	Ihda Lathif El'Arifah, 2017, State Islamic University Maulana Malik Ibrahim Malang	<i>Weton</i> Calculation Practice On A Wedding Ceremony In Muslim Scholar's Opinion (Study At Tirtomoyo Pakis Malang)	The similarities of this research is same empirical research which is exposes the social fact in community.	The different of this previous reseach are comparing the tradition in perspective of ' <i>urf</i> .
3.	Ros Aida Mohd Mokhtar, 2015, University of Malaya Kuala Lumpur	Konsep Sinkretisme Menurut Perspektif Islam: Kajian Terhadap Adat Dan Kepercayaan Masyarakat Kedayan	The same empirical research about same ethnic in Malaysia.	The different this research is discuss about Kedayan whole tradition not only about marriage tradition.
4.	Fahmi Bahar Prabowo, 2017, State Islamic University Maulana Malik Ibrahim Malang	Tradisi Gredoan Pada Suku Osing Ditinjau Dari ' <i>Urf</i> (Studi Kasus di Desa Macanputih Kecamatan Kaabat Kabupaten Banyuwangi)	Used the same approach of research, qualitative research which is done in field location.	The different of this previous reseach are comparing the tradition in perspective of ' <i>urf</i> .

## B. THEORETICAL FRAMEWORK

### 1. *Njaum-njaum* Tradition

#### a. Definition of *Njaum-njaum*

'*Njaum-njaum*' is the term for the custom of a male by some representatives of the male side who come to visit the house of the female side.

This custom of meeting begins with the giving of a ring and cash by the man to the woman as an opening or sweetening of the conversation. The amount of this opening money is not fix, it is subject to the request of the woman. The current rate is usually RM 50.00.

After the ring and cash are received by the woman, the man will announce their presence to propose to the daughter of the family they visited.

#### **b. Definition of Tradition**

Traditional is generally intended to refer a long-standing values, norms and cutoms that are still accepted, followed and even preserved by particular group of the people. In the term of tradition, it also contains hidden meaning of relation between the past and the present, referring to something inherited by the past but it is still manifested and has function in the present.<sup>8</sup> Tradition also can be interpreted as a repetitive act in the same matter and as an evidence that many people love that action until it publicly denounced.

At the same time, tradition and culture also different matter but communities alway blend it and even make it same because both of this are comes from human or that communities self. Actually culture means wider rather than tradition which is more to customs. Culture means product or the results from human activities which is parallels to language, also a product

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<sup>8</sup>Ihda Lathif El'Arifah, *Weton Calculation Practice On A Wedding Ceremony In Muslim Scholar's Opinion (Study at Tirtomoyo Pakis Malang)*, Skripsi (Malang: UIN Malang, 2017), 16.

from the human activity. Tradition is part of culture, but tradition more common while culture more complex including the behavioural patterns, language, life style, organization, social, religious, art and other else. That all for helping human on continues community life.<sup>9</sup>

### **c. Kinds of Tradition**

Generally, tradition divided into four (4) parts, which is:

1. The real custom is custom a law of nature. Where and whenever he remains the same, among them are the custom of burning fire, the custom of wetting water and so on.
2. Customs and tradition. This is a rule that guides life in certain areas that have been followed, which means that it is accepted by the current generation from old generations, so that it can stand firmly.
3. Local customs which can be added or reduce according to place and time.
4. Customized customs. This is a custom that is used locally as in an area that decide in a wedding, the bride must wear tradition clothes. If not, it won't happen.<sup>10</sup>

### **d. The Process of The Tradition's Emergence**

There are two ways of emergence of tradition, that is: first, spontaneous and unexpected emergence of tradition involving many people.

For some reason, certain individuals find a historical legacy that attracts

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<sup>9</sup> Yuni Amalia Ulfah, *Tradisi Ghabay Dalam Peminangan Perspektif Al-Mashlahah (Studi Kasus di Desa Kecamatan Talango Kabupaten Sumenep)*, Skripsi (Malang: UIN Malang, 2017), 21.

<sup>10</sup> Soekanto, *Hukum Adat Indonesia* (Jakarta: Rajawali Press, 2010), 72-73.



attention, fear, love and admiration which is then spread through various means. So that its appearance affects many people. Second, tradition's emergence by the forcing mechanism. Something that is considered a tradition is chosen and made a public concern or forced by influential or powerful individuals.

## 2. Propose Marriage (Khitbah)

### a. Meaning of Propose Marriage (Khitbah)

A marriage proposal is an event where one person in a relationship asks for the other's hand in marriage. If accepted, it marks the initiation of engagement, a mutual promise of later marriage.<sup>11</sup> While *khitbah* comes from Arabic whose understanding as a proposal whose verb is to apply or proposal with something asking to marry. The definition of *khitbah* is the desire of the men to certain women to marry and the women spread the news the proposal. *Khitbah* is the first step before entering marriage. *Khitbah* are highly recommended before the marriage ceremony takes place, it is a way for each bride and groom know their partner.

*Khitbah* or propose marriage is a man's request to dominate a certain woman from his family and ally in the affairs of togetherness in life. It can also be interpreted a man expresses his love to marry a woman who is lawfully married in a religious manner. As for the varies implementation, sometimes the man (himself) asks directly to the person concerned, or

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<sup>11</sup> *Marriage Proposal*", <http://en.m.wikipedia.org> accessed on 14 January 2023.

through the family, and or through a messenger someone who can be trusted to ask for the desired person.<sup>12</sup>

According to the fiqh, proposal means “request”. In terminology is a statement or request from a man to a woman to marry her, whether done by the man directly or through an intermediary of another party he trusts according to religious provisions.<sup>13</sup> Some Fiqh experts also differ in the definition proposal, some of them are as follows:

1. Wahbah Zuhaili said that the khitbah was statement of a man to a woman that he wants marry her, either directly to the woman or to his guardian. Submission of this intention may be said directly or with guardian of representative.<sup>14</sup>
2. Sayyid Sabiq, briefly defined proposal (khitbah) as a request to hold a wedding by two people through clear means. This proposal is the law of Allah SWT that must be done before holding a wedding so that both candidates bride and groom know each other.<sup>15</sup>

Khitbah or propose marriage means to declare a request for marriage from a man to a woman or vice versa through the intercession of someone who is trusted.<sup>16</sup> As for women who are allowed to be married are women who are meet the conditions below:

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<sup>12</sup> Aziz Abdul Muhammad, *Fiqh Munakahat Khitbah, Nikah, dan Talak* (Jakarta: Sinar Grafika Offset, 2009), 7.

<sup>13</sup> Kamal Mukhtar, *Asas-Asas Hukum Islam Tentang Perkawinan* (Bandung: Irsyad Baitus Salam, 1995), 59.

<sup>14</sup> Wahbah Zuhaili, *Fiqhul Islami Wa Adillatuhu* (Damaskus: Dar al Fikr, 1997), 6492.

<sup>15</sup> Sayyid Sabiq, *Fiqhus Sunnah Jilid 2* (Beirut: Darul Fikri, 1998), 462.

<sup>16</sup> Ahmad Beni Saebani, *Fiqh Munakahat 1* (Bandung: CV Pustaka Setia, 2013), 146.

1. Not in someone else's proposal
2. Not in the period of *iddah raj'iyah*
3. There is no prohibition on sharia to be married
4. Women who are in the middle of the *iddah* because they are divorced, are secretly betel nut.<sup>17</sup>

#### **b. Characteristic of *Khitbah***

The substance of the *khitbah* is a promise to marry without marriage contract. *Khitbah* does not have the rights and influence as a marriage contract. Each prospective partner should return this agreement is based on their own choice because they use their own rights purely, there is no intervention from others. Even if they had agreed, the level of the dowry and even the dowry had been handed over at once, or the woman who had received various gifts from *khitbah*, all that does not shift the status of the promise only (*khitbah*). This is done because of the demands *maslahat*. *Maslahat* will occur in marriage if both parties are given perfect freedom to determine their choices, because the marriage contract is a contract that determines the continuity of their family.

Marriage proposal or engagement law can be categorized into 3 categories, that is:

- i. It should be sarcastic (*ta'ridh*), which is expressing the intention in the heart sarcastically and openly (*Sorih*) when a woman is not in someone's possession due to marriage or *khitbah* and is not in the *iddah* period. This

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<sup>17</sup> Ahmad Beni Saebani, *Fiqih Munakahat 1*, 149.

means that if the woman can be married without any reason preventing her, then the betrothal law on her is also obligatory.

- ii. It should not be done either satirically (*ta'ridh*) or openly (*sorih*) when a woman is in someone's possession due to marriage or *khitbah* or is in the period of *iddah talaq raj'ie* and if there is an engagement in the circumstances this then the law is haram.
- iii. It should be in a state of satire (*ta'ridh*) only but not in an overt state (*sorih*) when a woman is in the period of *iddah wafat* (the death of her husband which is *iddah* for 4 months and 10 days) and includes the situation of a woman who is in the period of *'iddah talaq ba'in*.<sup>18</sup>

### c. The Wisdom of Prescribed *Khitbah*

The Islamic Shari'a allows looking against women who are being sued, even though the origin is forbidden to look at other women who are not *mahram*. This is based on an emergency condition which is an element of compulsion to do this because each prospective partner indeed must know clearly the problems of people who will become life partners and specifically their behavior. That is the most important thing for the continuity of marriage, family, and children of his descendants later.

According to the scholars of fiqh wisdom, the sermon is intended to find out the characteristics and personality of the future wife. By

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<sup>18</sup> Walid Asyraf, Maqasid Hukum Pertunangan (Khitbah) Dalam Undang-Undang Keluarga Islam Di Malaysia, 21 November 2023, <https://kamarsyarie.wordpress.com/2019/11/21/maqasid-hukum-pertunangan-khitbah-dalam-undang-undang-keluarga-islam-di-malaysia/>

recognizing your partner, there will be a sense of love and mutual respect. In Islamic law in Indonesia the bride and groom are given the freedom to determine their partners. The hastiness of marriage does not bring about consequences except for the ugliness of both parties or one of the parties. In addition, the sermon is also a means of news to close a woman from the proposal of another person who wants to marry her.<sup>19</sup>

#### **d. Law of Seeing Prospective Spouses in the *Khitbah***

In the teachings of Islamic law allows women to be seen by male applicants as well as to see female proposers. Seeing potential partners in the sermon is permitted and encouraged and even encouraged. The law of permissibility is analogous to a suitor who has the same illat or reason as confirmed by the hadith of Prophet Muhammad SAW to Mughirah bin Syu'bah, the Prophet said:

أنظر إليها فإنه أحرى أن يؤدم بينكما

*Look at that woman actually the vision is more important to bring you two together.* (HR. At-Tirmidhi)

Apart from the above hadith there are also traditions that state skill, even extinction in seeing the couple's candidate, the hadith narrated by Jabir's friend, Rosulullah SAW said:

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<sup>19</sup> M. Idris Ramulyo, *Hukum Perkawinan, Hukum Kewarisan, Hukum Acara Peradilan Agama dan Zakat Menurut Hukum Islam*, (Jakarta: Sinar Grafika, 2006), 46.

إذا خطب أحدكم المرأة فإن استطاع أن ينظر الي ما يدعوهُ إلى نكاحها فليفعل, قال  
فخطبت جارية فكنت أتخبأ لها حتي رأيت منها ما دعاني الي نكاحها وتزوجها فتزوجتها

*If you propose one of you to a woman then if you are able to see what is interesting to marry, then do it! Jabir said: “Then I proposed to a woman who was originally hidden so that I saw what was interesting to me to marry her, then I married her.” (HR. Abu Dawud)<sup>20</sup>*

#### **e. Time to See The Women Who Want to be Propose**

Jumhur scholars are of the opinion that the time when it is permissible to see a betrothed woman is when a man has a strong desire to marry and has the physical and material abilities. The time to see a potential woman is before proposing and after having the real intention of marrying her. If the woman has officially become his fiancé (has been proposed), then it is forbidden to look at her face, especially to the point of seclusion.

To see a potential partner, permission from the prospective fiancé or guardian is not required. As the opinion of Imam Syafi'i explained that, one should see a woman before the khitbah with the intention of marrying her, either without the knowledge of the person concerned or the knowledge of her family. The steps above are a good step to achieve benefit. If done well, it will have good results too. If later the suitor does not marry because he is

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<sup>20</sup> Suwandi dan Ahmad Izzuddin, *Pedoman Qira'ah Al-Kutub, Tahfidh, Dan Reading Texts (Materi Tahfidh Al-Qura'an dan Al-Hadist dan Monitoring Hafalan)*, (Malang: UIN Maliki Press, 2009), 27.

not interested, then the woman's honor will be maintained, she will not be hurt, and she will not give up. Such steps are taken by respectable men who have shame.

#### **f. Body Part That Can Be Seen**

Many *fuqoha* have differing opinions regarding the limits on the permissibility of seeing the betrothed limbs. The fuqoha's opinions can be classified into four groups, as follows:

- a) Jumhur ulama such as Imam Syafi'i, Imam Malik, and Imam Ahmad is of the opinion that what can be seen from the body parts of the woman who is betrothed is only the face and the palms of the hands. As for the prospective woman, it is permissible for her to see the body parts of her future husband that are not part of her genitals (between the navel and the knees). By looking at a person's face one can know beauty and reveal many psychological, health and moral values. Meanwhile, looking at the palms is used as an indicator of the smoothness of the skin, body fertility, fat and thin. In looking at the limbs of the betrothed woman, one can do it yourself or see for yourself. Seeing the proposed woman can also be represented if it is not possible to see it for yourself. In order to see the proposed woman, the representative must be represented by a woman. Likewise with women who represent seeing that their future husbands must be with male representatives. The above opinion is based on the word of Allah SWT which reads: *And do not show her jewellery (aurat),*

*except what is usually seen from her.* (QS. An-Nur: 31). Ibn Abbas interprets the sentence *منها ظهر ما* which the meant is the face and both palms (hand). It is not permissible to look at other than the two limbs if there is no *illat dloruri* pushing it.

- b) Hanbali's scholars gave an opinion that it is permissible to look at the body parts of a betrothed woman as looking at a mahram woman, that is what women generally see when doing housework, such as the face, both palms, neck, head, both heels. It is not allowed to see parts of the body that are generally covered, such as the chest, back and thighs.
- c) Hanafiyah and Hanabilah scholars are of the opinion that the body parts that may be seen by the betrothed are the face, the palms of the hands and the feet and nothing more than that. In the khitbah it is obligatory and it is sufficient to look at the members of the body just as a woman may open her heels, face and both hands when in prayer and pilgrimage.
- d) While the fourth opinion is the opinion of Dawud Azh-Zhahiri. Azh-Zahiri's opinion is rejected by the majority of scholars, they think that Azh-Zhahiri's opinion violates the principle of demanding the permissibility of something because an emergency is estimated only lightly. Dawud Azh-Zhahiri is of the opinion that it is permissible to see all the limbs of the betrothed woman as desired.<sup>21</sup>

أنظر إليها فإنه أحرى أن يؤدم بينكما

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<sup>21</sup> Abdul Majid Khon, *Fiqih Munakahat (Khitbah, Nikah, dan Talak)*, 13.



*Look at the woman, actually the vision is more important to bring the two of you together.* (Narrated by At-Tirmidhi).

### **g. Requirement For Propose Marriage**

Broadly speaking, there are two legal requirements in preaching, namely women who are good at being married and women who have not been legally married to other people. The explanation is as detailed below:

- a) Married a good woman. That meant is marriage a woman who can complete the marriage contract. In other words, at the time of the betrothal there is no obstacle that prohibits the marriage from taking place. As explained in the definition of *khitbah* which is *khitbah* as a *washilah* to achieve the purpose of the marriage contract. If the woman being proposed are the woman who is forbidden to marry, then the proposal are not complete the marriage contract, then the *khitbah* is in vain (invalid).
- b) Women who have not been engaged or legally married. *Fuqoha* has agreed that it is forbidden for another man to marry another woman because it means openly violating the rights of the first suitor. If he keeps doing it then he is sinful and it is unlawful for women to accept it because it can invite enmity between fellow human beings. It was narrated in the hadith of Abu Huroiroh, Rasulullah SAW said:

لا يخطب أحدكم علي خطبة أخيه حتي ينكح أو يترك

*A man may not propose to his brother's proposal so that he marries or leaves her.* (Hadith narrated by Al-Bukhari).

A man who wants to propose to a woman should seek information whether the woman has been proposed by someone else or not.

#### **h. Cancellation of The Propose Marriage**

*Khitbah* is only the first step to get to the level of marriage. We often know that there are a lot of traditions in an area wherein the procession of proposing or *khitbah* is accompanied by gifts as a symbol of the suitor's seriousness in moving towards marriage. But sometimes something happens that causes the *khitbah* to be canceled which is a promise to marry either the man or the woman.

Eventhough it was happened, the proposal is still a promise to marry. The Prophet Muhammad SAW said in an authentic hadith that there are three signs of a hypocrite, when ever he speak lies, when he makes a promise he breaks it, and when he is given a mandate he betrays. By breaking the promise, we may later be classified as hypocrites, as described by the Prophet Muhammad above. It is better if the proposal or *khitbah* is discussed beforehand so that no party will be disappointed later. In addition, among scholars there are differences of opinion:

1. According to the Syafi'iyyah fuqaha, the betrothed has the right to ask for taking back what has been given by him the woman he has proposed to, and if the goods given to the betrothed are still intact then what are

they asked for existence. If the item is damaged or has been used up or lost, then it is requested to return the value for the item whether the cancellation came from the male or female side.

2. According to the Hanafiyyah fuqaha that the goods that have been given by the suitor to the proposal can be requested again if the item is still intact, if it has been changed or lost, or if it has been sold, the man has no right to ask for the item back.
3. According to the Malikiyyah fuqaha that if the goods come from the suitor, the goods what has been given cannot be asked for again, whether the gift is intact or has been changed. Conversely, if the cancellation comes from the proposed party, then if the gift is intact or if it's changed, you can ask. If the item is damaged, it must follow the terms and customs.
4. According to the Hanabilah jurists and some *tabi'in* jurists, they argue that the suitor has no right and there is no right to ask for the return of goods that have been given to the betrothed, both goods are still intact or have changed, because according to them that gifts should not be asked for return except what a father gives to his son.

*Khitbah* is only a promise to marry and is not a contract that is definitely binding, then each party has the right to cancel it. This is provided that there is a coercive reason. Even though the Shari'a does not stipulate a material punishment for anyone who violates it, this is an act that is not

good. However, if there should also be a cancellation of the *khitbah*, then the status of the gifts given can be grouped into two parts:

- a) If the gift is part of the proposal, in other words, the gift is expected to be in return in the form of marriage to the woman or the proposed party, then the suitor has the right to ask for the gift back, considering that this gift cannot take place now.
- b) If the gift is an ordinary gift, then it is considered a pure gift, and therefore the giver has no right to ask for it back. Because the proposed party has received the gift, the gift automatically becomes his right and he has the right to do whatever he has legally owned.

### **3. Marriage Proposal in Malaysia and Sarawak Islamic Family Law Ordinance, 2001**

#### **a. Propose Marriage and Engagement Law**

Propose marriage shows a big relationship that requires a big sacrifice of the partner as well as the process of getting to know the partner and family. In addition, propose marriage also means a sign of agreement on the part of both men and women in planning to live together as husband and wife. Engagement also has the same meaning as *Khitbah*, which is also known as betrothal or betrothed.

In the Muslim community in Malaysia, the marriage ceremony will usually be held by the man's immediate family who will send a party to the house of the agreed upon prospective wife. However, not all *khitbah* will end with marriage. There are also couples who cancel this bond at the last

minute due to strong, urgent and detrimental reasons if the marriage continues. In this situation, the defaulted party and the aggrieved party can make a claim for compensation due to the cancellation of the khithbah to the Syariah Court. Based on the provisions of Section 15, Selangor State Islamic Family Law Enactment 2003 allocating and allowing claims such as the following: *“If a person has entered into an engagement according to Hukum Syarak, either verbally or in writing, and either alone or through a person intermediary, and then refuses to marry the other party without any valid reason while the other party agrees to marry him, then the defaulting party is responsible for returning the betrothal gifts, if any, or their value and paying any what money has been expended in good faith by or for the other party in preparation for the marriage, and such may be claimed by action in court.”*<sup>22</sup>

When this compensation case is filed in the Syariah Court, the disputing parties will be referred to the Alternative Resolution Division (ADR) for a session of the *Sulh* Council (Majlis Sulh) first, which is conducted by a *Sulh* Officer. *Sulh* officers will conduct guided discussions to identify problems and issues that arise before they are resolved.

#### **b. Sarawak Islamic Family Law Ordinance, 2001**

Compare with the other province in Malaysia, Sarawak also have its own law about propose marriage especially for cancellation marriage

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<sup>22</sup> Section 15, Selangor State Islamic Family Law Enactment 2003.

proposal or engagement. If referred to the provision regarding marriage proposal in the Islamic family law, which is found that the provision are about a situation where one party breaks the promise to marry the other party without a valid reason. In this case, the other party can make a claim against the party who broke the promise for the losses suffered due to the breach. This claim can be made in a valid Syariah Court.

Claims that can be made against the party who broke the promise include returning marriage proposal gifts such as rings or jewellery. In addition, the law also allows a claim to pay for any money spent in good faith for the preparation of the marriage. This includes but is not limited to the cost of ordering a wedding dress, booking a hall and the cost of renovating a house for wedding preparations. That is based on the provisions that written in Part II, Chapter 43, Sarawak Islamic Family Law Ordinance, 2001: *“If a person has entered into an engagement according to Islamic Law, either orally or in writing, and either alone or through an intermediary, and then refuses to marry the other party without any valid reason while the party another agrees to marry her, then the defaulting party is responsible for returning the betrothal gifts, if any, or their value and paying any money that has been spent in good faith by or for the other party in preparation for the marriage, and which thus can be claimed through action in the Court.”*<sup>23</sup>

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<sup>23</sup> Part II, Chapter 43, Sarawak Islamic Family Law Ordinance, 2001.

## **CHAPTER III**

### **METHOD RESEARCH**

#### **A. Type of Research**

This research is a field research where this research focuses on the results of data collection from predetermined informants. Field research is a research activity carried out in a particular community environment. This is because this research is descriptive in nature as a research procedure that produces descriptive data in the form of written or oral words from people or observed behavior.<sup>24</sup> In addition, through this field research, it aims to describe how a phenomenon that applies precisely and the characteristics of an individual. Through this research also, researchers can find out in more detail how the state of social groups that occur in a society. Researchers use descriptive research as a basis that makes the analysis of the data not only from theory but from seeing this tradition clearly.

#### **B. Research Approach**

Based on this study, researchers examined directly how the reality that occurs in society by using qualitative research. So, the data that can be produced from this research is in the form of interviews, field notes, notes from previous studies and so on. This study did not collect data in the form of numbers, calculations, questionnaires and others. With this approach, it directly can be seen

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<sup>24</sup>Kasiram, *Metodologi Penelitian Kuantitatif Kualitatif* (Malang : UIN Malang Press, 2008), 151.

the relevance and appropriateness of the traditions which is the object of research with the related of Islamic law.

### **C. Research Location**

In this study, researchers took the location or object of research in Kampung Jambu Bungai, Bekenu. This village is located in the Sibuti area, Bekenu, in Sarawak province. The village is stayed by a majority of the population is Muslim and consists of ethnic Kedayan, Dayak, Malay and Chinese.

### **D. Source of Data**

As has been learned and understood, data sources can be divided into three, namely primary, secondary and tertiary data sources.

a. Primary data, it is obtained directly from the first source. The primary data uses direct interviews with informants which include:

1. People who practice the *njaum-njaum* tradition.
2. People who know the *njaum-njaum* tradition in the proposal.
3. Community leaders who know the process of customary practices and their tradition needs to maintain.

The informants in this study are listed in the following table:



**Table 3.1 Informant Name List**

No.	Name	Information
1.	Hj Nawang Bin Hadi	Community Leader at Kampung Jambu, Bungai.
2.	Laila Binti Hj Timbang	Kampung Jambu Women Team
3.	Basyirah Binti Awang Rusli	Tradition performers and pure Kedayan ethnicity
4.	Nafizuddin Bin Hj Jusoh	Lawyer at Sharia Lawyer & Firm team
5.	Sufadillah	People practicing this tradition
6.	Nurul Asmidani	People practicing this tradition
7.	Awang Mohd Hadi Bin Awang Saruni	People practicing this tradition and Kedayan Youth Community Leader 2022
8.	Hajah Napisah Binti Haji Yunos	Member of Miri Kedayan Association

b. Secondary data, namely data sources that are helpful or supportive in completing and strengthening data. Provide an explanation of the primary data source, in the form of explanations or reviews relating to the problem are:

1. The journal for example, "*Intention of Kedayan Muslims Malaysia*".
2. References from the related previous UIN Malang thesis, for example, "*Weton Calculation Practice On A Wedding Ceremony In Muslim Scholar's Opinion (Study At Tirtomoyo Pakis Malang)*."

3. References from the related Malaysian thesis, for example, “*Konsep Sinkretisme Menurut Perspektif Islam: Kajian Terhadap Adat Dan Kepercayaan Masyarakat Kedayan*”.

## **E. Data Collection Methods**

This research is a qualitative research so that the main data source is based on interviews. The main source of this research is called primary data. Based on the opinion of Lofland Moleong, explained that the main source of qualitative research is words, while the rest is additional data such as documents and so on.<sup>25</sup>

Data collection methods in this study are as follows:

1. Interview. This method is used to obtain information that cannot be obtained through simple observation. With this observation researcher will be able to obtain complete data and answer all questions throughout the study. This interview involved researchers with the community in Kampung Jambu Bungai, Bekenu, Sarawak to find out more information about this *njaum-njaum* tradition. The following below are the guideline questions to ask during interviews with informants:
  - a) How the implementing process of *njaum-njaum* tradition of Kedayan’s ethnic?
  - b) What should the man give to the woman as a gift?
  - c) Can the gift or terms that requested by woman family replace or change with other terms if one term difficult to find?

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<sup>25</sup> Lexy J. Moleong, *Metodelogi Penelitian Kualitatif*, (Bandung: PT Remaja Rosdakarya, 2006), 157.

- d) What are the gift that needed if both family decided directly to engagement?
- e) What are the reason *njaum-njaum* tradition need to be maintain?
- f) Are this tradition bring the positive vibes to the next generation if it still maintain?
- g) What are the effect of cancellation marriage proposal and engagement base on Kedayan custome?
- h) If man or woman broke the agreement and cancel the marriage prososal or engagement, can they claim it under court?

2. Documentation. This method is taken using materials that involve writing. In implementing this method, researchers will investigate objects in the form of books, newspapers, articles and so on to confirm the evidence.

## **F. Data Analysis**

Before analyzing the results of the interviews, it is necessary to process the data first to separate which data are relevant to the research objectives and which are not. The processing data for this study is as follows:

### **1. Editing**

Carrying out the research process again on records, informant files were collected by researchers in order to improve the quality of the data analyzed. In editing, it is corrected again to include matters of clarity of

answers to each other, relevance of answers and uniformity of data that been collected.

In this research, the answers from the respondents who are doing and know well about *njaum-njaum* tradition are collected and combine together to know their reasons and opinions.

## 2. Classification

Classification is an attempt to select each unit into parts that have similarities. Classification is done with the aim to distinguish between primary and secondary data. After classification, the researcher can easily distinguish the data obtained from informants about the implementation of the *njaum-njaum* tradition in the Kedayan ethnic in Kampung Bungai, Bekenu with data originally obtain from books of Malaysian traditions, sermons and laws.

## 3. Verifying

Data verification is the steps and activities carried out by researchers to obtain data and information from the field. So that their validity can be known more clearly. Therefore, the information must be checked or re-examined. Verifying data is based on the data obtained, accordance with the questions that have been asked of the people interviewed in the field. This aims are to get a clear source of information.

#### 4. Analyzing

The analysis is carried out by including the data obtained from the field with the theories in the book. The analysis aims to understand the data collected and answer questions from the concept of adat and the applicable laws.

#### 5. Concluding

The last process is the conclusion. Conclusions are drawn from the data obtained by the answers so that what is described in the problem formulation is answered. In this conclusion, researchers found answers from the results of research conducted by the Kedayan community in Kampung Bungai, Bekenu Sarawak.

## CHAPTER IV

### REVIEW OF RELATED LITERATURE

#### A. General Overview of Kampung Bungai, Bekenu, Sarawak

##### 1. Geographical Location

Bekenu, also known as Sibuti, is a town in Sarawak, Malaysia. It is located about 47 kilometers (29 miles) southwest of the city of Miri. Bekenu is the administrative center for Sibuti District. It is included in the local authority area (local government) of the Subis District Council. Kampung Bungai is one of the village in the Bekenu Town.

Bungai area generally has 5 main villages that make up the area known as Bungai, namely Kampung Jambu, Kampung Mumong, Kampung Gatas, Kampung Bungai and Kampung Peliau. Bungai is located 50 km from Miri City Center and 8.2 km from Bekenu Town which is located at Latitude 4.075179 and Longitude 113.794107.

##### 2. Customary Conditions

The Kedayan community in Kampung Bungai, Bekenu still strongly practices the customs handed down from their ancestors. Especially in terms of wedding customs. This starts from propose marriage, engagement and until marriage (wedding). They also have community leaders who will always give encouragement so that their customs are not abandoned until time passes. In marriage customs, this can clearly be seen if both the mother and father of the female side are of Kedayan ethnic descent. They will prioritize from marriage proposal to marriage process that follows Kedayan

customs. For them, if they do not introduce it to their children, then the tradition will disappear soon.

### **3. Population of Kedayan Ethnic**

The Kedayan ethnic group is one of the peoples who live in the Borneo Islands. Believed they are from Brunei and migrated to Sabah, Sarawak and Labuan. In Sarawak province, most of Kedayan ethnic groups live in town of Bekenu, Limbang and Lawas. They also found in Sabah in town of Sipitang and Kuala Penyu and Labuan province.

In terms of the origins of the Kedayan community in Sarawak, whose population is concentrated in Miri, Limbang, Lawas and Bintulu, they are actually directly related to their ancestors who came from Brunei. Perhaps because of geographical factors considering that the parts of Miri, Limbang, Lawas and Bintulu are very close to the border with Brunei, plus, once upon a time this mentioned part had a very strong influence with the Sultanate of Brunei because this part was also the land of the sultanate chief once upon a time. The language used is same like Bruneian daily language.

According to the population census (2010) through the Bekenu, Sibuti District Office, a total of 13,005 residents, of which 4,699 are Iban, 76 Bidayuh, 5,334 Kedayan, 486 Chinese, 355 Melanau, 29 others- others, and 320 non-citizens.<sup>26</sup> The population of Kampung Bungai are estimated to be almost 500 of peoples.

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<sup>26</sup> Pusat Ekonomi Digital, accessed on 27 April 2023, <http://peliaubungai.pimaxis.my/index.php>.

#### **4. Religious**

In Kampung Bungai, mostly are Muslim and also have Buddhist and Christian. But for whole Bekenu Town will also have Christian. Every each of village provided with *surau* (small mosque) for Muslim people. The largest ethnic who are live there also Kedayan.

#### **5. Education**

Nowaday, most of the young generation succeed their education level until university. For further their study, they need to move out from that village to city. However, Kampung Bungai also have own government primary school. While to continue for secondary school, also has been built up near the Bekenu Town.

#### **6. Source of Economy**

Majority of source economy in this area farming, agriculture, and usually peoples will sell their products on Fridays, Saturdays, and Sundays in the "*tamu*" area (a row of small shops) in front of Pusat Internet 1 Malaysia, Kampung Bungai.

### **B. The Implementing Process of *Njaum-njaum* Tradition of Kedayan's Ethnic in Kampung Bungai, Bekenu, Sarawak**

Tradition is a rule that has been practiced from generation to generation (since time immemorial) by a society (so that there are laws and regulations that must be obeyed) (Dewan Dictionary fourth Edition). While according to the Dictionary of Fiqh Terms, tradition mean a set of social rules in the wider



society, not including Sharia law' (religion). This rule is obeyed by all level of society, as if by will or the rule of inheritance from their ancestors, or as if it were a necessity sourced from God.<sup>27</sup>

Tradition is a form of human behavior and way of thinking that has been exists and has been practiced for so long that it is considered a custom. This matter including daily life and cultural patterns that are clearly seen through frequency of practice. So, it can be understood that custom is a carry from heritage of each ethnic, which its practicing to cover every aspect of a society's life.

The same goes happened to the Kedayan community in Kampung Bungai, they has its own norms that include customs and traditions inherited from their ancestors. Customs and norms that they are still practiced since generations in this ethnic community in the aspect of marriage. They put a lot of emphasis on the concept of traditional marriage practices. This starts from propose marriage process, called *njaum-njaum* in Kedayan language until the wedding ceremony.

### **1. Propose Marriage**

*Njaum-njaum* is the term for the tradition of marriage proposal by some representatives of the male side who come to visit the house of the female. This tradition was initiated by the giving of a ring and cash money by the men to the woman as a *pembuka mulut* (an opening or first of the conversation). The

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<sup>27</sup> Samrah Ag. Damit, Ros Aiza Mohd Mokhtar & Abd Hakim Mohad, "Birth Custom and Norms of Kedayan Community In Sipitang, Sabah," *Jurnal Sultan Alauddin Sulaiman Shah*, Special Issue (2018) : 128.

amount of this opening money is not fix, but it is subject to the request of the woman. The current rate for now is usually RM 50.00 (IR 161,704.80).

After the ring and cash are received by the woman, the man will announce their presence to propose to the daughter of the family they visited. When the women agree to accept propose marriage from the men, then they will explain about the customs and follow up with a discussion about the matter needed at on engagement ceremony later. There are a few matter from man side that need to prepare it, as the information directly got from the respondent, Mdm Basyirah Binti Awang Rusli (the one who are practicing this tradition and come from both parents are Kedayan ethnic):

a) *Balah lakik babaikan sabantuk cincin amas sebagai tandak sudah adak yang njaum atau mun kan taus bertunang, bsiak lakik baik skali kan Kingkin Saang Samut.*

The man should give a gold ring as a sign of njaum-njaum or if they want directly engaged, man should provide with Kingkin Saang Samut (gold ring that with the shape of anthill).

b) *Bsiak balah lakik mbaik sabilah keris yang lengkapkan saung nyak. Mun uang Kadayan keris anik jadik penggantik diik uang lakik. Kan jadik panjagak anak binik yang sudah bertunangkan uang bujang. Tapi keris atuk akan dimulih akan lagik ke balah lakik slapas slasai sanding nikah sabab keris atuk kan dipakai pengantin lakik aik majelis sanding jadik tandak kebiasaan.*

The man must gift a keris (dagger) complete with its sheath. For the Kedayan people, this dagger is a symbolic substitute for a man or in other words as a guardian for a girl who has been engaged to a man. However, the keris will be handed back to the man after the marriage ceremony is done because the keris will be used by the groom during the marriage ceremony as a sign of greatness.

- c) *Bsiak mesti mbaik sejenis bang bakas tradisi untuk yang pakai nauh cincin, kipii kan caamai namanyak. Tapi kiipi kenganik payah kan adak di kadai. Biasa nyak kenganik sudah digantik kan usin tunai untuk duak baang atuk, kiak-kiak dalam RM50 nyatuk la.*

The man should provide a type of traditional container to store the ring called kipii and caamai. Since kipii and caamai are no longer available in the market they are usually replaced by cash. The current rate for cash replacement of these traditional items is RM50.00.

- d) *Bsiak pihak lakik mbaik sapangadak baju kan pakai salinan lengkap daik hujung batis ke hujung ambut. Tapi adak juak bsiak keluarga lakik binik setuju kan digantik sajak pakai usin ngikut baapak kiak-kiak hargak baang atuk.*

The men must hand over sapangadak clothing, which is full set cloth from toe to hair. However, both parties agreed to replace it with the value of cash according to the estimated price mutually agreed.

e) *Mun adak kalangkahan dulang, iak adak kakak yang alum bertunang atau kawin, bsiak balah lakik pun mesti mbaik sabantuk amas untuk kakak nyak tuk.*

If there is a ‘*langkah dulang*’ where the woman that wants to be propose has a sister who is not yet engaged, then the man must gift a gold ring to her sister.

f) *Mun misal nyak ada yang kelangkahan sungai, kiak lakik tuk ukan uang Kadayan, jadik iak mesti mamanuhi apa sajak permintaan besiak balah binik atuk.*<sup>28</sup>

If there is a ‘*langkah sungai*’, means that the man is not Kedayan ethnicity, then the man must fulfil the request of that woman.

*Kipii* shaped like a small plate made of ceramic with legs or of copper without legs. *Caamai* is a place for putting the gold ring during prose marriage or engagement. It is made of from ceramic or copper, also has a yellowish-gold colour. Another gift is *sapangadak*, a full set of women cloth complete from hair to toe. But nowadays its can be change into cash money and help preparation easier.

## 2. Engagement

After process of *njaum-njaum* (propose marriage), men’s family will come again in another with carrying engagement gifts as discussed on the propose mmarriage day. The delivery is usually carried with a *talam* (big plate gift) decorated according to each person's creativity.

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<sup>28</sup> Basyirah Binti Awang Rusli, interview, (Bekenu, 17 May 2023)

The women will inform to men's family that all the items brought are as discussed at the time of *njaum-njaum* day. Meanwhile, the women will return the delivery tray by filling it with suitable items for the men's group to take home.

At this engagement ceremony both parties will discuss the following matters:

- a) Setting the engagement period and wedding ceremony.
- b) The women will set '*belanja angus*' which is the expenditure for the ceremony female marriage.
- c) The woman will determine the dowry rate which is called '*baiyan*' by the Kedayan tribe. This *baiyan* must be wrapped in three layers of white, yellow and red cloth or handkerchiefs. There are also those who use five or seven layers of cloth.

On this step, man will bring gold ring named *Kingkin Saang Semut*. *Kingkin Saang Samut* is a type of ring used by the Kadayan ethnic as an engagement ring in ancient times. Some also call this type of ring as *Cincin Bunga Pinang*. *Kingkin Saang Samut* is yellowish white because it is not made of gold or copper. Perhaps the ring was made of silver with some gold or copper alloy or plating, but now there are also made of gold, according to the value and passage of time. The ring is called *Kingkin Saang Samut* probably because of the carvings and motifs on the top that resemble anthills. However, there a few discussion will be made again during meeting on engagement day. This information directly got from the respondent, Mr. Awang Mohd Hadi Bin

Awang Saruni (the one who are practicing this tradition and Kedayan Youth Community Leader 2022):

*“Rombongan bsiak uang laki dating baamai-amai mbawak hantaan tunang manuhi apa yang sudah dipadahkan aik njaum-njaum bianik. Biasanya hantaan tuk dihias-hias la. Mun sudah sampai pihak laki ka umah yang binik tu, yang balah binik sendiik akan bepadah panuh kah indak sudah dituuti permintaan uang tuhak nyak saituk. Bsiak balah binik pun adak juak balasan hantaran aik kan mulihkan dulang aa rombongan bsiak lakik. Aik majlis betunang atuk tah adak juak hal yang dibincang akan termasuk natapkan haik kawin, balah binik natapkan bapak belanja angus, brapa hantaran dipintak.”<sup>29</sup>*

Men will come carrying engagement gifts as discussed the previous day. The delivery is usually carried with a *talam* decorated according to each person's creativity. The women will inform all the attendees that all items brought are as discussed during the time of propose marriage. Meanwhile, the women will return the delivery tray by filling it with suitable items for the men's group to take home.

During this engagement day, parent from both male and female will discussed to choosen for wedding date. Usually, parent from woman side will decide date of wedding day, while the man side just agreed with it. Both parent also will discuss about what are the preparation that need to gift for bride according to the traditional procedure.

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<sup>29</sup> Awang Mohd Hadi Bin Awang Saruni, interview, (Bekenu : 17 May 2023)

The moment on propose marriage and engagement, only the elders will discuss together. There are no need the involving others family like the young age. The parents from woman side will give an advice to the man who are propose to marriage as a reminder to follow the requirement.

### C. Reasons *Njaum-njaum* Tradition Need To Be Maintain

There are various opions about traditions either need to maintain or just forgetting by young generation until next generations. Mr. Sufadillah, one of the groom that has been practicing this tradition from the early step of *njaum-njaum* until the tradition after wedding. He also has own reason why he want to maintain this tradition, he said:

*Tujuan dan alasan saya untuk mengekalkan adat Kedayan njaum-njaum tersebut ialah untuk memudahkan menyatakan hajat ingin memperisterikan wanita tersebut sama ada wanita tersebut sudah terikat dengan mana-mana lelaki ataupun belum. Selain itu, sepanjang tempoh njaum tersebut. Pihak keluarga lelaki dan perempuan boleh mengenal antara satu sama lain dengan cara yang betul dan menjaga batas pergaulan antara lelaki dan perempuan. Pada masa yang sama sepanjang tempoh tersebut lelaki dan perempuan tersebut boleh membuat keputusan sama ada ingin meneruskan niat ataupun membatalkan niat dengan sebab yang tertentu.*<sup>30</sup>

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<sup>30</sup> Sufadillah, interview, (Miri: 25 May 2023).

From my opinion, purpose and reason for maintaining the custom of courtship is to make it easier to express the desire to marry the woman whether the woman is already tied to any man or not. In addition, throughout the *njaum-njaum* process, the male and female families can get to know each other in the right way and keep the social boundaries between men and women. At the same time throughout the this period, men and women can decide whether they want to continue the intention or cancel the intention for a specific reason.

From the interview with Mr. Sufadillah, we can see that this tradition are still use to be maintain by young generation cause he can give the positive reason in practicing this tradition. He also said that:

*Adat njaum-njaum ini tidak bertentangan dengan syariat Islam kerana tiada unsur-unsur yang tidak dibenarkan ataupun pemahaman yang berbeza oleh kerana semuanya dilakukan atas niat ingin menjalinkan hubungan yang baik dan menyatakan hajat yang baik. Jika adat ini tidak diikuti tiadalah kesan buruk ataupun akibat yang memberi kesan ke atas seseorang. Oleh kerana adat adalah satu perbuatan yang telah diturunkan turun menurun dan ingin diteruskan supaya tidak lapok ditelan zaman. Adat ini membawa banyak kesan baik kepada kedua belah pihak oleh kerana ia adalah salah satu cara perbincangan dan mengenal antara kedua belah pihak. Bak kata pepatah Melayu tak kenal maka tak cinta begitulah konsep njaum-njaum ini.<sup>31</sup>*

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<sup>31</sup> Sufadillah, interview, (Miri: 25 May 2023).



This tradition does not contra with Islamic Sharia because there are no elements that are not allowed or different understandings because everything is done with the intention of establishing a good relationship and expressing good wishes. If this custom is not followed there are no bad effects or consequences will affect a person. Because *adat* is an act that has been followed down and down and wants to be continued so that it does not fade with time. This custom brings many good effects to both parties because it is one of the ways of discussion and getting to know each other. As the Malay saying goes, “*tak kenal maka tak cinta*”, that's the concept of *njaum-njaum*.

So, from Mr. Sufadillah, he selfly gave his own reason that this tradition are does not has any contradictory to Islam. It is bringing a good effect or positive way if they still continues this tradition from their old generations. This positive opinion are supported by one other informant who are agreed with this tradition to be continue to next generation. Mrs. Nurul Asmidani, the one who are practicing this tradition, she said:

*“Kesan positif dari tradisi njaum-njaum ini adalah supaya kedua belah pihak masing-masing boleh membuat keputusan untuk meneruskan perkahwinan atau memutuskan hubungan yang dijalankan. Tujuan dikekalkan njaum-njaum supaya adat ini tidak luput ditelan zaman. Adat ini sudah menjadi satu tradisi yang diamalkan secara turun temurun sejak dahulu kala. Orang dahulu kala sangat berpegang teguh*

*dengan adat. Mereka menanamkan prinsip biar mati anak jangan mati ada”.*<sup>32</sup>

The positive effect of this tradition is that both sides can each make a decision continue the marriage or end the relationship. The purpose is to maintain the tradition so that this custom does not pass away with the passage of time. This custom has become a tradition that has been practiced from generation to generation since ancient times. Their old generation were very strict with customs. They instill principles, let the kids die, but don't let custom lost.

From the explanations that have been obtained from the informants regarding the factors that influence the Kedayan community to maintain the *njaum-njaum* tradition in this proposal, it can be concluded that these factors can be divided into internal and external factors.

a) Internal factor

- 1) The positive effect of this tradition is that both sides can each make a decision continue the marriage or end the relationship.
- 2) Another reason for maintaining the custom of courtship is to make it easier to express the desire to marry the woman whether the woman is already tied to any man or not.

b) External factor

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<sup>32</sup> Nurul Asmidani, interview, (Miri: 25 May 2023).

- 1) This custom has become a tradition that has been practiced from generation to generation since their old generation and ancient, were very strict with customs.
- 2) This tradition does not contra with Islamic Sharia because there are no elements that are not allowed or different understandings.

**Table 4.1 Affect of Factor Internal and External Factor**

<b>Factor</b>	<b>Statement</b>	<b>Informant</b>
Internal	<i>Njaum-njaum</i> are the positive effect of propose marriage tradition that both sides can each make a decision continue the marriage or end the relationship.	Nurul Asmidani (People practicing this tradition)
	It easier way to express the desire to marry the woman whether the woman is already tied to any man or not.	Sufadillah (People practicing this tradition)
External	This custom has become a tradition that has been practiced from generation to generation since their old generation and ancient, were very strict with customs.	Nurul Asmidani (People practicing this tradition)
	This tradition does not contra with Islamic Sharia because there are no elements that are not allowed or different understandings.	Sufadillah (People practicing this tradition)

#### **D. Cancellation of *Njaum-Njaum* Propose Marriage and Engagement Agreements In The Perspective of Sarawak Islamic Family Law Ordinance, 2001.**

Customary marriages in Malaysia are conducted by indigenous people in several states. Customary marriages in Sarawak are conducted based on Native Customary Marriages (Maintenance) Ordinance 2003 while in Sabah, it is carried out under the Native Court (Native Customary Law) Regulations (1995). According to the customary law of marriage in Sarawak is contained in the Native Customary Marriage (Maintenance) Ordinance 2003, customary marriage means any marriage registered or celebrated in the country according to the customs of each race. This law explaining that customary marriages can only be conducted for couples who marry according to the customary law in Sarawak or any other law customs recognized under this ordinance. In addition, customary marriages are not allowed for Muslim couples and couples who are married and registered in under the Law Reform Act (Marriage and Divorce Act 164, 1976).<sup>33</sup>

##### **1. Kedayan's Costume**

According to the custom of the Kedayan people themselves, if there is a betrothal or engagement bond that cannot be continued or has to be cancelled, then it will be fined according to the losses that have been given by one party.

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<sup>33</sup> Flavia Ary Sahwa and Tharshini Sivabalan, "Meneroka Isu Perkahwinan Bawah Umur dari Perspektif Undang-undang Perkahwinan Adat di Sarawak", *Malaysian Journal of Social Sciences and Humanities*, Vol 8 (2023): 8

This information directly got from the respondent who has been know deeply about this tradition, Hajah Napisah Binti Haji Yunos, she said:

*Mun sudah bedatang njaum-njaum bebaik baiyan, beunjuk tanda tunang tapi dah tuk ndak jadik, adak yang mintak putus kah memang terhukum tuk. Mun balah lakik yang mintak putus, biasa nyak la ada mbayar rugik dalam 150-200 inggit. Tapi atuk nuut apak yang dimintak bsiak uang tuhak balah binik mintak la. Sgala baang-baang balasan hantaran daik nalah binik haik bartunang atuk pun mauk dimulih akan. Mun misalnya sudah tepakai, baik tah diganti sehagak bang atuk. Mun misalkan yang mintak putus atuk balah binik, sgalak usin belanja angus, usin aik bukak mulut 50 inggit atuk pun bemulih akan. Belanjak kan haik betunang mun bsiak lakik adak mbaik bermulih akan juak atuk. Kinking saang samut aik njaum-njaum atau bertunang tuk memang dimulihkan. Ndak dapat diambil taus sabab balah binik yang ngundur diik. Baang-bang lain yang diunjuki aik datang menjaum atau bertunang tuk pun beantat mulih tuk, tmasuk segalak baju-baju. Mun misalnya sudah tepakai kah, binasak kah, mauk begantik tuk sabab yang banyak saahan tuk balah lakik bukan binik. Sabanarnya anik memang adat uang Kedayan daik turun-temuun. Banyak dangan yang ndak tahuk pasal adat anik. Lagik-lagik tah yang ukan uang Kedayan.<sup>34</sup>*

If they has been make an agreement during *njaum-njaum*, giving gift, already engaged but cancelled it, either one make a breech contract, so he

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<sup>34</sup> Hajah Napisah Binti Haji Yunos, interview (Miri: 8 June 2023)

or she will get fined, according to Kedayan's customary law, inheritance by old generations. If it is the man who asks to break up, he will usually be fined by paying cancellation of RM150-200. but that is according to the request of the girl's parents. All given item or gift that has been gave by women to the man must be returned. If the item has been used, then it should be replaced with money according to the price of the item. If it's the woman who wants to break up, then all the money spent on spending money, the money that you spend while looking around will be returned to the man. Likewise with the expenses on the day of the engagement, if the man has given a certain amount of money for the day of the engagement, then it must be returned as compensation. The gold ring during *njaum-njaum* or engagement day is also returned to the man family. The ring are not belonger to the woman because the woman had broke the agreement. This includes items handed over when men come to visit or get engaged including clothes. If it has been used or damaged, then it needs to be replaced with money according to the price of the item. In fact, this is the custom of the Kedayan people since generations and many people do not know this, especially those who are not Kedayan ethnicity.

## **2. Sarawak Islamic Family Law Ordinance, 2001**

In Sarawak Islamic Family Law Ordinance, 2001, there are no specific law for propose marriage. But people can refer the specific rule about

engagement since it has been written in Chapter 43, Islamic Family Law, 2001. This opinion also suggested by the one of Syaria Lawyer and Firm team, Sir Nafizuddin Bin Hj Jusoh. He said:

*“Di Sarawak bagi orang yang beragama Islam, tiada undang-undang khusus yang dibentuk atau digubal yang berkaitan dengan hukum peminangan. Akan tetapi kita boleh merujuk kepada undang-undang yang sudah tertulis di dalam Ordinan 43, Ordinan Keluarga Islam, 2001 (Bab II, Syeksen 13) tentang pertunangan. Jadi, sekiranya ada pasangan yang bertunang dan telah pun membuat perjanjian pertunangan, dan salah seorang daripadanya ada yang mengingkari, maka, pihak yang dikhianati boleh melaporkan kepada pihak Mahkamah Syariah untuk dikenakan tindakan dan denda.”<sup>35</sup>*

In Sarawak for Muslims, there is no specific law that has been created or enacted related to propose marriage law. However, we can refer to the law that is written in Ordinance 43, Islamic Family Ordinance, 2001 (Chapter II, Section 13) about engagement. So, if there is a couple who are engaged and have already entered into an engagement agreement, and one of them reneges, then the betrayed party can report to the Syariah Court for action and penalty.

The Sarawak Ordinance Family Law, 2001 about bethoral of an engagement is the revisions of Sarawak Law Ordinance written on 1992. Then, after the new Sarawak Islamic Family Law Ordinance, 2001 are

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<sup>35</sup> Nafizuddin Bin Hj Jusoh, interview, (Miri: 19 May 2023)

released, they published in again with the same rule in Chapter 43, Part II (No.13) of new ordinance 2001, as following below:

*If any person has, either orally or in writing, and either personally or through an intermediary, entered into a betrothal in accordance with Islamic Law, and subsequently refuses without lawful reason to marry the other party, the other party being willing to marry, the party in default shall be liable to return the betrothal gifts, if any, or the value there of and to pay whatever money that they has been expended in good faith by or for the others party in preparation for the marriage and the same be recovered by action in the court.<sup>36</sup>*

Based from what what been written on the Islamic Family Law Ordinance, 2001 about betrothal, there are no specific amount of payment need to be paid and no specific good or kind of gift that need to return back. It is only said it shall be return.

Provisions regarding engagement are provided in the sharia law in Malaysia. For example, Section 15 of the Islamic Family Law (Federal Territories) Act 1984 (Act 303) provides:

*“If a person has entered into an engagement according to Hukum Syarak, either orally or in writing, and either alone or through an intermediary, and then refuses to marry the other party without any valid reason while the other party again agrees to marry her, then the defaulting party is responsible for returning the betrothal gift, if any, or*

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<sup>36</sup> Islamic Family Law Federal Territories: 19



*its value and paying any money that has been spent in good faith by or for the other party to make preparations for the marriage, and such may claimed through action in the Court.”<sup>37</sup>*

In Malaysia, every each of state has provisions regarding this engagement obligation in their respective Acts/Enactments/Ordinances on Islamic Family Law (only the section number is different). This kind of legal provision definitely means that if any person, whether male or female, who wants to get married, it is necessary to tie the bond of engagement first. If doing so, this engagement should be done preferably rather than choosing a partner, dealing between both sides of the family and mutual agreement to be engaged. This engagement agreement is legally binding on the parties.

Actually, there are several state (province) that having their own law about the engagement, eventhought its not totally about marriage proposal law but it is still can be use as a reference. Another law about engagement that written in a few states in Malaysia:

- a) Section 15 Enactment of the Islamic Family Law (Selangor State) 2003 (Enactment 2 of 2003).
- b) Section 15 of the Enactment of the Islamic Family Law (Nine States) 2003 (Enactment 11 of 2003).
- c) Section 15 of the Enactment of the Islamic Family Law (State of Penang) 2004 (Enactment 5 of 2004).

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<sup>37</sup> Nur Syaheerah, “*Pertunangan Di Bawah Undang-Undang Syariah Di Malaysia*”, MONCO, February 9, 2022, <https://monco.my/pertunangan-di-bawah-undang-undang-syariah-malaysia/>

d) Seksyen 15 Enakmen Undang-Undang Keluarga Islam Negeri Sabah  
2004 (Enakmen 8 Tahun 2004)

The provisions of the law regarding this engagement clearly state the obligation or responsibility of the parties who have entered into an engagement bond to obey the bond of promise that has been made together. If not, any party who intentionally violates the agreement (breach contract) in this engagement bond can be dragged to the Syariah Court and demanded damages related to the engagement.

The parties who are aggrieved if there is a breach of this engagement agreement can file a claim for engagement compensation in the Syariah Lower Court in the district where the claimant, plaintiff lives or residency. This claim is made under Code 009 which is a Claim for Breach Contract of Engagement which must be filed through a summons and statement of claim by the plaintiff.

So, what we got from the informer is Kedayan ethnic are very strict on their custome, especially on early step to marriage. Although in Sarawak Islamic Family Law Ordinance, 2001 has been written an act about betrothal but it is not state any specific item must be return and amount that need pay. However, in Kedayan's custome, they already state the amount need to paid and the item need to return back.

Based from what has been state, we can see that it has a few different about betrothal breech contract. If in the side ordinance it still general but if in custome law it is a bit detail.

**Table 4.2 The Different of Cancellation Propose Marriage in Kedayan  
Custome and Islamic Family Law Ordinance, 2001**

<b>Matter</b>	<b>Islamic Family Law Ordinance, 2001</b>	<b>Kedayan Custome</b>
Amount need to pay	1. No specific value need to pay 2. Whatever money that they has been expended in good	Pay RM150-200
Item or gift	Only return the gift but not identify what kind of gift need to be return.	Return the ring, clothes and gift that has been given. If already used or broken, it need to be paid according to the amount of item has been broke.

## CHAPTER V

### CLOSING

#### A. CONCLUSION

Based on the results of the research that has been described, it can be concluded that:

1. This tradition has been integrated into the people of Kedayan ethnicity. This tradition been implemented by the people of Kampung Bungai from the time of their ancestors until now. As a result of interviewing some respondents who still practice this tradition, we can conclude that this tradition will not cause any bad effects if it is still practiced for the next generation. This is because in their opinion, this tradition is not against the teachings of Islam.
2. The factors that influence Kedayan's ethnic to maintain the *njaum-njaum* tradition is it can be concluded into internal and external factors.

a) Internal factor.

The positive effect of this tradition is that both sides can each make a decision continue the marriage or end the relationship. Another reason for maintaining the custom of courtship is to make it easier to express the desire to marry the woman whether the woman is already tied to any man or not.

b) External factor

This custom has become a tradition that has been practiced from generation to generation since their old generation and ancient, were very

strict with customs. This tradition does not contra with Islamic Sharia because there are no elements that are not allowed or different understandings.

3. Cancellation of marriage proposal and engagement are very strict on Kedayan's custome. Woman who are cancel the engagement or propose marriage need to pay and return back the gift or items that has been give. Although in Sarawak Islamic Family Law Ordinance, 2001 has been written an act about betrothal but it is not state any specific item must be return and amount that need pay. Based from what we can see that it has a few different about betrothal breech contract. If in the side ordinance it still general but if in custome law it is a bit detail.

## **B. SUGGESTIONS**

### **1. Academic**

For further researchers should do this research in more depth from the point of view in Islam and how it is perceived from the point of view Islamic law in Malaysia.

### **2. Community**

For the community in Kampung Bungai itself, it is hoped that this community will continue to maintain this kind of tradition because it is unique, that may not exist in others community. This is because each ethnic

group has its own unique traditions. People from outside Kampung Bungai themselves will definitely respect the uniqueness of this tradition

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## APPENDIXES



**Picture 1.** Interview with Mr. Sufadillah as the one who are practicing the *njaum-njaum* tradition.



**Picture 2.** Interview with Hj Nawang as the Community Leader at Kampung Jambu, Bungai.



**Picture 3.** *Kipii* and *Caamai* that Kedayan's ethnic used to put ring during to propose marriage or engagement day.



**Picture 4.** *Kingkin Saang Samut* or *Cincin Sarang Semut* is the gold ring that given by men to women as their symbolic of propose marriage or engagement.



**Picture 5.** Cash money RM50.00 for “*pembuka kata*” bring together during *njaum-njaum* to women house.

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