

## **CUSTOMARY DIVORCE PRACTICES IN THE PANYABUNGAN SOCIETY: A REVIEW OF ISLAMIC LAW**

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### **Abstrak**

Pada masyarakat Panyabungan, adat memiliki peran yang kuat dalam mengatur berbagai aspek kehidupan, termasuk urusan perceraian. Namun, praktik-praktik adat tersebut sering kali tidak sejalan dengan ketentuan hukum Islam, yang memiliki prinsip-prinsip yang ketat terkait perceraian. Penelitian ini bertujuan untuk memahami bagaimana perceraian adat dilakukan, alasan-alasan perceraian yang diakui secara adat, serta membandingkannya dengan aturan-aturan perceraian dalam hukum Islam. Pendekatan yang digunakan adalah kualitatif dengan metode deskriptif-analitis. Data diperoleh melalui observasi lapangan, wawancara dengan tokoh adat dan masyarakat, serta kajian literatur terkait hukum Islam dan adat. Hasil penelitian menunjukkan bahwa meskipun terdapat kesamaan dalam beberapa prinsip dasar seperti persetujuan kedua belah pihak, terdapat perbedaan signifikan dalam prosedur dan alasan perceraian antara adat dan hukum Islam.

**Kata Kunci : Perspektif Hukum Islam, Perceraian, Mandailing Natal, Adat**

### **Abstract**

*In the Panyabungan community, customary law plays a strong role in regulating various aspects of life, including matters of divorce. However, these customary practices often do not align with the provisions of Islamic law, which has strict principles regarding divorce. This study aims to understand how customary divorce is practiced, the reasons for divorce recognized by customary law, and to compare these with the regulations of divorce in Islamic law. The approach used is qualitative with a descriptive-analytical method. Data were collected through field observations, interviews with customary leaders and the community, as well as literature reviews related to Islamic law and customary practices. The results of the study indicate that although there are similarities in some basic principles, such as the mutual consent of both parties, there are significant differences in the procedures and reasons for divorce between customary law and Islamic law.*

**Keywords: The Perspective of Islamic Law, Divorce, Mandailing Natal, Customary Practices**

## Introduction

Divorce is one aspect of family life that is regulated by both customary law and religious law, especially in societies that have strong traditional ties such as the Panyabungan community. In this society, customs have an important role in regulating various aspects of social life, including marital relations. and divorce. Divorce practices implemented in customs often reflect local cultural values that have been passed down from generation to generation. However, in the context of Muslim society, divorce is also regulated by Islamic law which has specific provisions regarding procedures and reasons. -reasons for divorce <sup>1</sup>.

Divorce can be interpreted as the end or breakup of a husband and wife relationship, where one or both parties decide to separate. Usually, divorce occurs because one or both parties no longer fulfill their marital obligations. Divorce can be triggered by various reasons, such as economic problems, family disharmony, infidelity, domestic violence, lack of responsibility, social isolation, and so on <sup>2</sup>.

In general, divorce can be divided into two types, namely living divorce and death divorce. Death divorce occurs due to the death of one of the partners, so it does not require a divorce process according to custom or state law. Meanwhile, a living divorce occurs when a husband and wife decide to separate because they no longer fulfill their marital obligations. A living divorce requires a settlement process both according to custom and state law <sup>3</sup>.

In traditional societies, divorce is actually highly discouraged, because divorce not only sever the relationship between husband and wife, but also sever the kinship between the two families. However, if divorce is considered the only solution to family problems, then

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<sup>1</sup> Muhammad Ilman Anapi, *Divorce Mechanism in Islamic Family Law in Indonesia and Tunisia* (repository.uinjkt.ac.id, 2018), <https://repository.uinjkt.ac.id/dspace/handle/123456789/45492>; Siska Lis Sulistiani and Intan Nurrachmi, "Women's Financial Rights in the Family According to Islamic Family Law in Indonesia," *Musāwa Journal of Gender and Islamic Studies* 20, no. 2 (2021): 175–85, <https://doi.org/10.14421/musawa.2021.202.175-185>.

<sup>2</sup> Komarudin Komarudin, "Family Law in Tunisia and Indonesia," *Kordinat: Journal of Communication between Islamic Religious Universities* 18, no. 1 (2019): 194–225, <https://doi.org/10.15408/kordinat.v18i1.11481>; Nur Ali, "Transformation of Islamic Family Law as a Source of Law in Indonesia," *Khuluqiyya: Journal of Islamic Law and Studies Studies* (jurnal.staialhikmahdua.ac.id, 2021), <https://doi.org/10.56593/khuluqiyya.v3i1.67>.

<sup>3</sup> Atika Suri et al., "Analysis of the Rise in Divorce During the Pandemic," *Mizan: Journal of Islamic Law* 4, no. 2 (2020): 181–92, <https://doi.org/10.32507/mizan.v4i2.794>.

divorce is permitted<sup>4</sup>. Divorce is an undesirable situation and is generally avoided by married couples, especially if they have children. The decision to divorce is usually considered carefully, with the aim of ensuring that the decision taken is the best for all parties, including the children who will be affected<sup>5</sup>.

However, in some cases, divorce may be the only option left for a couple, especially when the conflict is too complicated to resolve or is no longer tolerable. By deciding to divorce, each party can start a new, better life. In Islamic teachings, divorce is considered an act that is highly disliked by Allah. However, Islam also permits divorce if the marriage no longer provides benefits or goodness for both parties. For example, in cases of domestic violence that makes one partner uncomfortable, or if there is a conflict that is continuous and cannot be resolved, so that divorce is the best way out<sup>6</sup>.

In Panyabungan, customary law and Islamic law often run side by side in community life. However, it is not uncommon for tensions to occur between the two, especially in matters of divorce, where customary law and Islamic law have fundamental differences in the procedures and principles underlying them. Islamic law regulates divorce strictly, such as the existence of certain conditions that must be met before a divorce can be carried out, while local customs may have different leniencies in the divorce process.

Panyabungan is one of the areas in Mandailing Natal that is still very thick with its customs. In this area, customary law regarding divorce, known as *paulakkon*, is still very strong and well maintained. In the divorce system in Panyabungan, there is a practice called *pasiingot* (giving advice), where community leaders such as village advisors, religious scholars, and harajaon (traditional leaders) have an important role in providing advice to couples in conflict.

Divorce cases in Panyabungan are relatively low because local customs are still very strong. If a couple wants to divorce, local community leaders will try to help so that the divorce can be avoided and the couple can reconcile. Although not all divorce cases end in

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<sup>4</sup> Muhammad Habibi Miftakhul Marwa, "Marital Dispute Resolution Model from the Perspective of Customary Law and Islamic Law," *Jurnal Usm Law Review* 4, no. 2 (2021): 777, <https://doi.org/10.26623/julr.v4i2.4059>.

<sup>5</sup> Ahmad Bastomi and Pinastika Prajna Paramita, "RESOLVING DIVORCE DISPUTES THROUGH THE MEDIATION OF THE PUSAKA SAKINAH PROGRAM," *Journal of Law and Notary* 5, no. 3 (2021).

<sup>6</sup> Latifah Ratnawaty, "Underhand Divorce in the Perspective of Islam and Positive Law," *Yustisi* 4, no. 1 (2017).

reconciliation, this effort has succeeded in reducing the number of divorce cases that occur in Panyabungan.

This study aims to understand how customary divorce practices are carried out in Panyabungan and how these practices compare to the provisions of Islamic law. Through a qualitative approach with descriptive-analytical methods, this study will examine key aspects of customary divorce, including the grounds considered valid for divorce, divorce procedures, and community views on customary divorce. In addition, this study will analyze how Islamic law provides guidance on divorce and the extent to which these rules are followed or adapted to local customs.

## **Method**

The type of research used in this study is qualitative research. Qualitative research is a type of research whose findings are not obtained through statistical procedures or other mathematical calculations. This study aims to reveal phenomena holistically and contextually through data collection in the natural environment, with researchers acting as the main instrument in the data collection process. Determining the location of the research is a very important stage in qualitative research, because by determining the location, the object and purpose of the research become clear, making it easier for researchers to carry out the research process. Data collection is carried out through observation, interviews and documentation studies. Furthermore, the data findings are analyzed descriptively with a normative legal approach.

## **Discussion**

### **Divorce in Islam**

Divorce is an event that causes the termination of the marriage relationship between a husband and wife, which makes it no longer lawful for them to have a relationship. In Islam, the term divorce is known as talak, which means the termination or dissolution of a marriage bond between a man and a woman, causing the relationship between husband and wife to no longer be lawful. In Arabic, divorce is called ithlaq, which means the end or termination of a

relationship. According to sharia, talak is interpreted as the termination of a marriage, which refers to the end of the relationship between husband and wife and the end of their marriage <sup>7</sup>.

According to Sayyid Sabiq, divorce should be avoided in a marriage, even though it is part of the law of marriage itself. The more a person tries to build his household, the better the results that can be achieved. Divorce can have a big negative impact, and anything that makes things worse should be avoided. Divorce not only harms the husband and wife, but also the children and the extended family, who may experience a breakdown in family relationships <sup>8</sup>.

In Indonesian, the word talak is used with the same meaning, namely the dissolution of marriage, as regulated in Islamic law. Divorce law is often misunderstood in Islam, as if this religion prioritizes men over women. In fact, Islamic law regulates divorce very carefully, reflecting a fair balance of rights between men and women. Although talak is permitted, this act is hated by Allah and is actually liked by jinns and demons <sup>9</sup>.

Divorce in Islam is something that is permitted but is greatly hated by Allah SWT. In Islamic law, divorce is referred to as "talak," which means the breaking of the marriage bond between husband and wife. Although divorce is a legitimate way out according to sharia, Islam recommends that divorce only be done as a last resort when all efforts to repair the relationship have failed. The divorce process is strictly regulated in Islam, with various terms and conditions that must be met to protect the rights of both parties, including the wife and children <sup>10</sup>.

Scholars' opinions on divorce vary, although in general, they agree that divorce is something that should be avoided as much as possible. According to Imam Al- Ghazali, divorce is the most hated lawful act by Allah SWT. Other great scholars, such as Sayyid Sabiq in his book *Fiqh al-Sunnah*, explain that divorce should be avoided in marriage except in urgent circumstances that can no longer be fixed. Contemporary scholars such as Yusuf Al-

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<sup>7</sup> W Retnowulandari, "Islamic Family Law in Indonesia: A Study of Sharia, Marriage Law and Compilation of Islamic Law," *Buku Dosen-2013*, 2015, [http://repository.trisakti.ac.id/usaktiana/index.php/home/detail/detail\\_koleksi/1/BDS/th\\_terbit/0000000000000000084381/2012](http://repository.trisakti.ac.id/usaktiana/index.php/home/detail/detail_koleksi/1/BDS/th_terbit/0000000000000000084381/2012).

<sup>8</sup> Sayyid Sabiq, *Sunnah Fiqh*, III (Jakarta: Pena Pundi Aksara, 2011).

<sup>9</sup> Syamsul Hilal, *Civil Rights of Divorced Women from the Perspective of Islamic Law and Positive Law and Its Contribution to Family Law Reform in Indonesia*, *Dissertation* (repository.radenintan.ac.id, 2021), <http://repository.radenintan.ac.id/14049/>.

<sup>10</sup> Hasan Saleh, *Study of Nabawi Fiqh and Contemporary Fiqh* (Jakarta: PT Raja Grafindo Persada, 2008).

Qaradawi also emphasize the importance of maintaining the integrity of the household and emphasize the importance of mediation before a divorce decision is taken <sup>11</sup>.

In Islamic teachings, divorce is permitted in several forms, such as talaq raj'i (where the husband can reconcile during the iddah period) and talaq bain (final divorce). In addition, khulu' is a divorce filed by the wife by returning the dowry to the husband. Islam emphasizes justice in every divorce process, by giving rights to the wife and children and ensuring that the process is not carried out in a way that is detrimental to either party. Overall, scholars agree that although divorce is permitted, Islam encourages maintaining the marriage relationship as long as possible and only making divorce a last resort <sup>12</sup>.

Divorce in the Qur'an and Sunnah is a phenomenon that is recognized and regulated in detail in Islam. Although divorce is undesirable, Islam provides clear guidance on the process and rules to be followed if divorce cannot be avoided. In the Qur'an, divorce is mentioned as something that is permitted, but is greatly hated by Allah SWT. This reflects the importance of maintaining the integrity of the household, but at the same time provides a way out if the marriage can no longer be maintained <sup>13</sup>.

The Qur'an regulates the divorce process with great care and emphasizes reconciliation efforts before the divorce decision is made. One of the verses that explicitly discusses divorce is in Surah Al-Baqarah verse 229 explaining that a husband only has two opportunities to reconcile his wife after the first and second divorce. After the third divorce, the husband can no longer reconcile unless his wife marries someone else and divorces again <sup>14</sup>.

Furthermore, the Sunnah of the Prophet Muhammad SAW also provides guidance on divorce. The Prophet Muhammad SAW himself strongly recommended reconciliation before divorce occurs. He always emphasized the importance of maintaining the bonds of marriage and solving problems in a good way. Therefore, the Prophet SAW recommended that before

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<sup>11</sup> Feni Arifiani, "Family Resilience from the Perspective of Maslahah Mursalah and Marriage Law in Indonesia," *SALAM: Journal of Social and Islamic Culture* 8, no. 2 (2021): 533–54, <https://doi.org/10.15408/sjsbs.v8i2.20213>.

<sup>12</sup> Asrul Hamid, "Divorce Practices of the Mandailing Natal Community: Analysis of the Progress from Fiqh to Marriage Law in Indonesia," *Shar-E: Journal of Sharia Law Economic Studies* 6, no. 2 (2020), <https://doi.org/10.37567/shar-e.v6i2.189>.

<sup>13</sup> Mohd. Kalam Daud, Azmil Usia, and Nurshadrina Ismail, "Factors Causing the Increasing Number of Divorce Lawsuits (Case Study at the Banda Aceh Syar'iyah Court)," *El-USRAH: Jurnal Hukum Keluarga* 3, no. 2 (2020), <https://doi.org/10.22373/ujhk.v3i2.7698>.

<sup>14</sup> Wahbah al-Zuhaili, *Wa Adillatuhu Islamic Fiqh*, Volume 2 (Jakarta: Gema Insani, 2011).

divorcing, a husband and wife should try to improve their relationship, even if necessary, involving a third party to mediate their conflict<sup>15</sup>.

In addition, the Prophet Muhammad SAW also gave a clear example of justice and protection for women in the divorce process. In the case of *khulu'*, which is a divorce filed by the wife, the Prophet SAW allowed the wife to terminate the marriage relationship by returning the dowry to her husband, as mentioned in the hadith from Al-Bukhari's narration:

Overall, the Qur'an and Sunnah deal with divorce in great detail and with great care. Islam views divorce as a last resort after all attempts at reconciliation have failed. The guidance in the Qur'an and Sunnah emphasizes the importance of maintaining justice and the rights of both parties, and provides an opportunity for the couple to reconsider their relationship before divorce actually occurs. Although divorce is permitted, Islam encourages it to be done responsibly and in accordance with the rules set forth.

### **Divorce of the Panyabungan Community**

Panyabungan, an area in Mandailing Natal, is known for its strong customs, including in matters of divorce. The people of Panyabungan still strongly adhere to traditional customs that play an important role in daily life, including in resolving family problems such as divorce. Customs in Panyabungan regulate various aspects of life, and divorce is no exception.

In Panyabungan, customary law regarding divorce is known as *paulakkon*. This customary law regulates the divorce process in detail and still plays a very important role in society. The customary divorce process involves various community figures, such as village elders, religious scholars, and *harajaon* (customary leaders), who provide advice and mediation efforts to avoid divorce. They play an important role in providing guidance and helping couples who are experiencing conflict.

In the Panyabungan customary divorce system, there is a term *pasiingot*, which is giving advice to couples who are experiencing household problems. If divorce is considered the last solution, this process is regulated according to custom by involving various parties to reach an agreement. This mediation process aims to find a solution that can avoid divorce and restore household harmony.

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<sup>15</sup> Afdhal Wardana, Syarifuddin Elhayat, and Abu Bakar, "Reform of Islamic Family Law in Indonesia (Study of Prof. Dr. Siti Musdah Mulia's Thoughts on Polygamy)," *Jurnal Taushiah FAI UISU* 10, no. 1 (2020): 9–18, <https://jurnaltest.uisu.ac.id/index.php/tsh/article/view/2696>.

Community leaders in Panyabungan, including traditional and religious leaders, play an important role in handling divorce cases. They try to provide advice and guidance so that couples can resolve their problems without having to separate. The mediation aims to reach a peaceful agreement between the two parties. Although not all cases are resolved peacefully, this effort helps reduce the divorce rate in the area.

In Panyabungan, divorce is an issue that involves various causal factors, with economic and mental readiness as the two main factors. Economic limitations are often the trigger for arguments, especially if basic needs are not met and the husband is considered lazy to work. This tension can develop into divorce, especially if the wife feels frustrated. In addition, lack of mental readiness, especially among young couples, is also a major cause of divorce, as they may not fully understand the responsibilities of marriage.

In the context of divorce, *the hatobangon* or customary administrator plays an important role in the mediation process. If one party wants to divorce but the other party does not agree, *the hatobangon* will provide advice and mediate, acting like a judge by asking the cause of the divorce and seeking a peaceful solution. This process includes making an agreement to prevent actions that can trigger a divorce. Customary divorce in Panyabungan, although heavily influenced by custom, remains in accordance with the principles of Islamic law, with a more detailed process.

The customary divorce process in Panyabungan involves several important steps. The woman does not go straight home to her parents, but goes to her brother's house from the man's side. Then, village leaders such as *harajaon*, *hatobangon*, and *religious scholars* are invited to provide advice. If mediation is unsuccessful, the husband will take the wife home to her parents' house as a sign of divorce. Usually, it is the woman who initiates the divorce, often due to dissatisfaction with her husband's behavior.

Although the divorce rate in Panyabungan is relatively stable and does not increase every year, this is due to public awareness that considers the social impact of divorce and the active role of *hatobangon* in providing advice. Strong customs in this area encourage divorce settlements through customary law, with the aim of preserving tradition. Divorce settlements are usually carried out at the homes of the parties concerned to maintain privacy and avoid embarrassment.

The community's response to divorce is often curiosity about the cause, which can cause news of the divorce to spread quickly. About 60% of couples who are advised by



*hatobangon* are able to prevent divorce, thanks to the advice given and consideration of shame and concern for children and the environment. Although divorce is avoided in Panyabungan customary law, the divorce process is still carried out in accordance with Islamic law. If the couple still wants to divorce, *the hatobangon* will ensure that the divorce is carried out in a manner that is in accordance with custom and sharia, and will be involved in managing the marital property after the divorce.

In Panyabungan, strong customs play an important role in handling divorce. Although divorce is considered something to be avoided because it can rip apart family relationships, *hatobangon* still play an active role in ensuring that the divorce process is carried out in accordance with customary norms and Islamic law. If divorce still occurs after the mediation process, the *hatobangon* not only take care of resolving the rights and obligations of both parties but also ensure that kinship relations are maintained.

The mediation process by *hatobangon* involves several stages, from investigating the cause of the divorce to making an agreement to prevent actions that could worsen the situation. If mediation does not produce results, the final step is to send the wife home to her parents' house, which signifies that the divorce has occurred. During this process, the role of *hatobangon* is to provide advice and guidance so that the divorce is carried out in a manner that is in accordance with customs and does not harm both parties excessively.

The Panyabungan community tends to consider the social impact of divorce, so many couples prefer to find a solution rather than continue with the divorce. Awareness of the impact of divorce on the reputation of the family and children plays a big role in a couple's decision to stay together. Even when divorce is unavoidable, *hatobangon* still plays a role in ensuring that the process is carried out with great care and in accordance with the principles of Islamic customs and law.

Overall, although divorce in Panyabungan is something that is highly avoided and considered as a last resort, the community still goes through this process by considering customary and religious values. The mediation and settlement process carried out by *hatobangon* reflects an effort to maintain family harmony and minimize the negative impacts of divorce, with the ultimate goal of maintaining the integrity of the community and existing kinship relationships.

### **Analysis of Islamic Law on Divorce Practices in Panyabungan**

In Panyabungan, Mandailing Natal, deep customs influence various aspects of community life, including divorce. Customs known as *paulakkon* regulate divorce in great detail and play a key role in the process. These customary laws often collaborate with Islamic sharia principles, which also regulate divorce. Customs and Islamic law in Panyabungan complement each other, combining local norms with religious teachings in handling divorce cases <sup>16</sup>.

In Islamic law, divorce is known as *talaq*, which is the formal process of ending a marriage. Islam regulates divorce with very careful principles and prioritizes reconciliation and justice. The divorce process in Islam must be carried out fairly, and there are procedures that must be followed to ensure the rights of both parties are maintained. When compared to the Panyabungan custom, there are similarities in the ultimate goal, which is to resolve the problem in a fair and normative manner, but there are differences in the mechanisms and approaches <sup>17</sup>.

In Panyabungan, the divorce process involves various community figures, including *hatobangon*, village elders, and religious scholars. These figures serve as mediators who provide advice and mediation efforts to avoid divorce. This reflects the Islamic principle of the importance of reconciliation and efforts to repair relationships before divorce is carried out. In this respect, *hatobangon* function similarly to judges in the Islamic judicial system, who have a role in providing advice and ensuring that the divorce process is carried out in accordance with religious and customary principles.

One important aspect of Islamic law regarding divorce is the *iddah period*, which is the period of time after a divorce during which a woman is still expected to live in her husband's home, if possible, to allow time for reconciliation and to ensure that no rights are violated. The customary process in Panyabungan, although not explicitly mentioning *iddah*,

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<sup>16</sup> Mohamad Faisal Aulia, "Comparative Analysis of the Implementation of Family Law in Egypt and Indonesia," *Al-Ahwal Al-Syakhsyiyah: Journal of Family Law and Islamic Courts* (ejournal.iaingorontalo.ac.id, 2022), <https://doi.org/10.15575/as.v2i2.14327>.

<sup>17</sup> Alis Maulana and Luthfi Hadi Aminuddin, *The Thoughts of Imam Al-Shāfi'i on Tafwīd Divorce and Its Relevance to the Theory of Gender Equality in the Practice of Developing Islamic Family Law in Indonesia*, *Journal of Economics, Law, and Humanities*, vol. 1 (etheses.iainponorogo.ac.id, 2022), <https://doi.org/10.21154/jelhum.v1i2.1169>.

still prioritizes mediation and advice to avoid divorce and give the couple the opportunity to resolve their conflicts.

Panyabungan custom also has the term *pasiingot* , which refers to the process of giving advice to resolve household problems before divorce is carried out. This is in accordance with Islamic principles that encourage conflict resolution through advice and guidance before taking the step of divorce. Mediation carried out by *hatobangon* . and traditional leaders is an effort to follow these principles, ensuring that all parties have the opportunity to resolve their disputes in a peaceful manner.

However, if divorce does occur, customary procedures in Panyabungan include steps to ensure that the process is carried out respectfully and with due regard for the rights of each party. For example, the woman does not go straight home to her parents, but goes to the house of her brother on the man's side, and village leaders are invited to provide advice. These steps demonstrate an effort to minimize the social impact of divorce and maintain good relations between families.

Overall, divorce in Panyabungan is carried out by considering both customs and Islamic principles. The mediation process by *the hatobangon* reflects an effort to align customary practices with religious teachings, ensuring that divorce is carried out in a fair manner and in accordance with prevailing norms. Although divorce in Panyabungan is considered a last resort and is highly discouraged, the process is carefully regulated to maintain community harmony and the integrity of kinship relationships.

### **Closing**

Based on research that has been conducted regarding customary divorce in Panyabungan, it can be explained that customary divorce... still very well maintained and carried out with great attention by the *hatobangon* . The divorce process is carried out according to custom by involving mediation from *the hatobangon* to maintain the sustainability of local culture. *Hatobangon* has an important role in handling divorce issues, providing religious advice, and explaining the consequences of divorce to married couples. Some of the main factors causing divorce in Panyabungan include economic problems, interference from third parties such as in-laws, infidelity, and lack of mental and material readiness from the couple. So, from an Islamic legal perspective, divorce in Panyabungan is carried out by considering both customs and the principles of Islamic law. The mediation process by *the hatobangon* reflects an effort to align customary practices with religious



- Saleh, Hasan. *Study of Nabawi Fiqh and Contemporary Fiqh* . Jakarta: PT Raja Grafindo Persada, 2008.
- Sulistiani, Siska Lis, and Intan Nurrachmi. "Women's Financial Rights in the Family According to Islamic Family Law in Indonesia." *Musāwa Journal of Gender and Islamic Studies* 20, no. 2 (2021): 175–85. <https://doi.org/10.14421/musawa.2021.202.175-185>.
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