

## Islamic Law and Customary Law in the Prohibition of *Sogit* Marriage in Sabah, Malaysia

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**Abstract:** This study examines the interaction between Islamic law and customary law in the context of *sogit* marriage prohibitions among the Muslim Kadazandusun community in Ranau, Sabah, Malaysia, focusing on applying '*urf*' within a framework of legal pluralism. Employing a socio-legal approach combined with empirical methods—including legal document analysis, in-depth interviews with customary and religious authorities, and direct observation—this research identifies eleven categories of marriages within the *Adat Resam* (AR) of Himbaan Village, analyzed through the Islamic legal concept of '*urf*' (custom). The findings reveal a pattern of selective accommodation: AR 8 (polygamy) and AR 10 (marriage preceding that of an elder sibling) are classified as '*urf ṣaḥīḥ*' (valid custom), whereas AR 1 (cousin marriage) and AR 11 (marriage with a relative of a former spouse) constitute '*urf fāsid*' (invalid custom). Other prohibitions involving illicit sexual relations and familial disruption (AR 2–7) are excluded from '*urf*' categorization, as they are explicitly prohibited in Islam. The *sogit* system, originally an animistic conflict-resolution mechanism involving blood sacrifice or monetary compensation, has evolved into a practice of social reconciliation aligned with the Islamic concept of *iṣlāḥ*. The Native Customary Law Enactment 1995 institutionalizes this negotiation process. This study contributes significantly to contemporary Islamic legal scholarship in Southeast Asia by demonstrating the flexible application of *uṣūl al-fiqh* principles, particularly '*urf*', in the pluralistic legal realities of a Muslim minority society. The model of selective integration illustrates how customary and Islamic legal systems may operate complementarily, provided they do not contradict *sharī'a*, thereby enabling the preservation of cultural identity alongside religious obligations.

**Keywords:** Islamic Law, Customary Law, *Sogit*, '*Urf*', Legal Pluralism.



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## Introduction

The Kadazandusun community in Sabah faces complex dynamics in marriage practices bound to two legal systems—Islamic law and *sogit* custom—as foundations of their religious identity. *Sogit* custom, derived from the word *osogit* in the Dusun language, meaning "cool" or "cold," has been an important instrument regulating marriage boundary in this community since pre-Islamic times (Animbok, 2023). The emergence of this custom is inseparable from Islamization in Sabah. The Islamization process in Sabah has unique dynamics that differ from those of other regions in the Malay Archipelago. Islam entered Sabah around the 15th century through trade routes and spread from the Sultanates of Brunei and Sulu, though its penetration was not as massive as in Peninsular Malaysia (Pugh-Kitingan et al., 2023). Islamization in Sabah occurred gradually, with more intensive conversion in the 19th and 20th centuries, thus creating complex layers of identity where Islam was accommodated into the established social and cultural structures of local communities (Abdullah, 2022; Mu Hung Ting & Kolawole, 2024; Schäfer, 2022).

When Islam entered Sabah through this wave of Islamization, a negotiation process occurred between the teachings of the Quran and Hadith and deeply rooted customary practices, particularly regarding marriage prohibitions, as in the case of *Adat Resam 1* (AR 1) on cousin marriage (*Mikawin Migid Molohing*). The relevance of the Prophet's Hadith on marriage became an important reference for Sabah Muslims, but its implementation faced customary authorities legitimized by the Native Customary Law Act of 1995. The application of blood fines (*sogit*) in the form of livestock slaughter (buffalo, cow, goat) or monetary payment equivalent to these animals became a manifestation of conflict resolution when marriage boundaries were violated by community members (Sabilin, 2024).

Research on *Sogit* practices in Sabah reveals a polarized tendency between normative approaches that assess *Sogit*'s compatibility with Islamic law and anthropological approaches that emphasise cultural values without thoroughly considering theological aspects. Studies such as those conducted by Aslom and Eleena (2019) and Buntung and Ramli (2019), although touching on cultural and gender aspects in customary communities, have not thoroughly explored the dynamics of negotiation between customary law and Islamic law, especially within the framework of *maqāṣid al-sharī'a* and *'urf* theory. Similarly, studies by Musa et al. (2018) and Pg Musa et al. (2020) have highlighted legal-normative aspects and conflicts of customary law affecting Muslims in Sabah, but still inadequately explain how the process of legal adaptation and negotiation occurs in the context of marriage prohibitions. Other research, such as Marinsah et al. (2021) and Hasmin & Azizul (2022), has also failed to comprehensively synthesize Islamic-juridical, anthropological, and sociological approaches.

This research gap becomes increasingly significant when viewing *sogit* practice as a complex interaction between Islamic law and customary law, particularly in

marriage prohibitions in Muslim Kadazandusun communities such as Himbaan Village, Ranau. To date, no research has comprehensively categorized *sogit* practices within the framework of *ʿurf ṣaḥīḥ* and *ʿurf fāsid*, nor reviewed the normative conflict resolution mechanisms applied by communities. The absence of such studies complicates mapping the forms of legal pluralism living in society. It hinders the development of analytical models capable of explaining the construction of religious authority in local contexts. In situations of legal pluralism, authority is derived not only from religious texts but also from cultural legitimacy and customary practices that continue to be negotiated, making this type of research important for understanding patterns of normative adaptation in minority Muslim communities. Therefore, this study examines the interaction between Islamic law and customary law in *sogit* marriage prohibitions among the Muslim Kadazandusun community in Ranau, Sabah, Malaysia, focusing on analyzing *ʿurf* within the framework of legal pluralism.

This article argues that the interaction between Islamic law and customary law in *Sogit* marriage prohibitions in Sabah is not confrontational but rather shows a pattern of selective accommodation, where the principle of *ʿurf* (custom) in *uṣūl al-fiqh* becomes a normative framework for integrating customary practices that do not contradict *sharīʿa*. This adaptive process is clearly seen in the transformation of *Sogit*—originally an animistic mechanism—into an instrument of social reconciliation aligned with the concept of *iṣlāḥ* in Islam, proving that legal pluralism in Sabah operates dynamically through the negotiation of authority between customary and religious stakeholders, not through the subordination of one system to another. To prove this argument, this article begins with a discussion of the concept and practice of *Sogit* Custom in the Kadazandusun community of Sabah. Next, the article reviews the categorization of *Adat Resam* (AR) marriage prohibitions. Finally, before concluding, this article examines the categorization of *ʿurf* and accommodation within Legal Pluralism to observe the theoretical implications of the interaction between custom and *sharīʿa*.

## Method

This research adopts an empirical (sociological) legal approach to explore how law functions within its real-life social context—specifically, how *so it* (customary fines) in marriage prohibitions are understood and practiced among the Kadazandusun community in Himbaan Village, Ranau, Sabah. This approach is particularly relevant to the study because it moves beyond normative or doctrinal analysis and instead examines how legal norms—both Islamic and customary—are negotiated, contested, and adapted within everyday social practices.

Unlike traditional doctrinal methods that focus solely on textual interpretation of legal sources, the empirical legal approach enables the researcher to investigate the

lived experience of law. It allows for the collection of meaningful qualitative data through interviews with customary leaders and Islamic scholars and analysis of documents such as native court records, customary texts, and religious rulings. This approach provides insight into how *sogit* is applied in practice, how conflicts between Islamic principles and customary norms are resolved, and how legal pluralism is operationalized in a specific cultural setting. For example, it helps uncover how community actors distinguish between *ʿurf ṣaḥīḥ* and *ʿurf fāsid*, and how they navigate overlapping legal authorities.

Primary data was obtained through a literature study that includes recording, quoting, and analyzing legal materials such as laws, regulations, and official documents related to *Sogit* Custom, marriage prohibitions, and Islamic Law sources (such as the concept of *ʿurf*). Primary data was also collected through interviews with relevant sources, including customary leaders and Islamic scholars in Sabah. Secondary data was gathered through literature study by analyzing books, journals, articles, and other written documents related to *Sogit* Custom, marriage prohibitions, Islamic Law, and the Sabah Native Law Act of 1995.

Data collection techniques in this research include interviews and documentation. Interviews were conducted orally with parties with knowledge of or directly connected to *Sogit* Custom, marriage prohibitions, and the application of Islamic Law and the Sabah Native Law Act of 1995. Documentation was collected by analyzing written documents, including legislation, customary records, and relevant literature. Hussin et al. (2022) emphasize the importance of this approach in analyzing the influence of customary rights and laws on tolerance and harmonious inter-ethnic relations in Sabah.

Data analysis uses an interactive model that includes data reduction, data presentation, and conclusion drawing. Data obtained from interviews and documentation was reduced by selecting and sorting information relevant to the research focus. The reduced data was then presented systematically by grouping information with similar themes or contexts. The final stage was drawing conclusions based on the explained data, with verification against the original data to ensure the accuracy and validity of the findings.

## **Concept and Practice of *Sogit* Custom in the Kadazandusun Community of Sabah**

The practice of *sogit* custom is a cultural phenomenon deeply rooted in the Kadazandusun community in Sabah. Etymologically, *sogit* derives from the word *osogit* in the Dusun language meaning "cool" or "cold" (Animbok, 2023). This terminology reflects the substantive function of the practice, which is a mechanism for cooling conflicts and restoring social balance when violations of customary norms occur. In a broader sense, it is viewed as a form of the customary fine imposed on

individuals who violate taboos or provisions passed down through generations in the community (Sabilin, 2024).

The historical development of *sogit* practice as a customary fine system shows interesting continuity and adaptation. The Dusun ethnic group has known this practice since pre-colonial times and has survived through various eras of socio-political change in Sabah. Along with modernization and the influence of major religions such as Islam and Christianity, *sogit* practice has transformed while maintaining its essence. *Sogit* became even more established when it received formal legitimacy through the Native Customary Law Act of 1992, which was later refined in the 1995 revision (Musa et al., 2018). This legislation recognizes the existence of *sogit* custom and integrates it into the state-recognized customary justice system.

As a conflict-cooling mechanism, *sogit* has a profound philosophy rooted in the traditional beliefs of the Kadazandusun. In this community's cosmological view, customary violations are believed to disturb the spiritual balance between the human world and the supernatural realm, which could then bring disaster or "village heating" (Hasmin & Azizul, 2022). The *sogit* ritual is designed to restore this balance by paying both symbolic and substantive fines. Pugh-Kitingan et al. (2023) examined the ritual origins of Sabah's customary law. They underlined how the formal legitimacy provided by the Native Customary Law Act of 1995 had strengthened the position of *logit* in Malaysia's legal pluralism.

Implementing *sogit* custom in the context of marriage prohibitions reveals interesting complexity and variation. The blood fine system (*sogit*) requires violators of custom to slaughter livestock such as buffalo, cow, goat, or village chicken as a form of compensation. Marinsah et al. (2021) studied the implementation of *sogit* in Kampung Tuwarid Liawan Keningau and noted that there are variations in fine values; for example, for heavy category *sogit*, the value reaches RM2,500 (approximately IDR8.2 million). This practice reflects the economic and symbolic values in the agrarian Kadazandusun society, where livestock represents wealth and social status.

Local authorities play an important role in the determination and implementation of *sogit*. According to the Ranau District Customary Court District Chief, Mr Muhasip Hj. Ruman, "The person who has the right to impose *sogit* (fines) on perpetrators who violate customs is the village head, and it is not necessary to call upon people from the customary court because the village head has more authority in this matter and they have the right to determine *sogit* punishment for perpetrators who violate customs. However, every case that occurs in the discussion must be reported to the customary court" (interview, May 15, 2023). This indicates a decentralization of authority that provides flexibility in the application of customary law. Adam et al. (2019), in their study of customary knowledge related to biodiversity in Kota Belud, Sabah, noted how customary practices, including the *sogit* system, are



integrated with local resource management systems that grant authority to traditional leaders.

### **Categorization of *Adat Resam* (AR) Marriage Prohibitions**

*Adat resam* (AR) marriage prohibitions in Himbaan Village, Ranau, Sabah demonstrate the complexity of customary regulations that seek to regulate the social life of the Kadazandusun community. This categorization is divided into several types of prohibitions, each with different forms of *sogit* sanctions, reflecting the stratification of moral values in that culture.

In the category of marriage prohibitions related to blood relationships, there is AR 1 (*Mikawin Migid Molohing*) which prohibits cousin marriage. This practice requires a man who marries a woman with a blood relationship to pay *sogit* to the woman's parents in the form of one head of livestock or financial compensation equivalent to a maximum of RM2,500. Meanwhile, AR 11 (*Kumawin dot kusai/tondu tompinai*) prohibits marriage with relatives of former partners who have blood relationships, with sanctions in the form of one small *tajau*, one village chicken, and one livestock. Aslom and Eleena (2019) noted that although there have been changes in the Kadazan Dusun marriage customs in Kampung Maang, Penampang, norms related to blood relationships are still considered important in maintaining kinship structures.

Marriage prohibitions related to breaches of engagement ethics encompass three types of *adat resam*. AR 2 prohibits illicit sexual intercourse for someone who is engaged to someone other than their fiancé, with sanctions in the form of one buffalo/cow or shame *sogit* of a maximum of RM2,000. AR 3 (*Manawo haboi do tulun suai*) prohibits illicit sexual intercourse with someone else's fiancé, while AR 4 (*Moi uhang do haboi tulun suai*) prohibits luring someone else's fiancé. Mohamed et al. (2016), in their research on marriage customs and beliefs of the Rungus community in Sabah, explained that engagement ethics are strongly emphasized because they are considered a social commitment involving not only the prospective bride and groom but also their extended families.

The category of prohibitions related to household disruption includes AR 5 (*Monolod do sawo tulun suai*) which prohibits taking someone else's husband/wife, AR 6 (*Moi uhang do sawo tulun suai*) which prohibits enticing someone else's husband/wife and AR 7 (*Kisawoh om kitanak noh muhang dot tondu/kusai suai*) which prohibits illicit relationships for those who are married and have children. Buntung and Ramli (2019), in their gender analysis of *sogit* practices among the Murut Tahol community in Nabawan, observed that these prohibitions reflect patriarchal values in customary society but also protect family integrity.

Prohibitions related to the family structure include AR 8 (*Magapid*), which regulates polygamy without the first wife's permission, and AR 10 (*Kumawin mogulu*

*tabang/takak*), which regulates the prohibition of marrying before an older sibling. Foo et al. (2022), in their study of the Tagal System as a biocultural conservation approach in Sabah, explained that customary systems such as *sogit* have a social function to maintain harmony and balance in community structures, including family structures. Pg Musa et al. (2020), in their study of customary law violation conflicts affecting Muslims in Sabah, emphasized that the categorization of *adat resam* marriage prohibitions reflects how the Kadazandusun community regulates social life through a structured, customary fine system, with some provisions aligned with Islamic law principles despite differences in emphasis and mechanisms.

### **Categorization of 'Urf and Accommodation in Legal Pluralism: Theoretical Implications of Custom and *Shari'a* Interaction**

The interaction between Islamic law and customary law in *sogit* practices among Muslim Kadazandusun communities in Sabah demonstrates complex dynamics through various forms of accommodation, contestation, and negotiation. From an Islamic law perspective, *sogit* custom can be categorized using the concept of '*urf*' (customary practice), which differentiates these practices based on their compatibility with *shari'a* values.

Some *sogit* practices are classified as '*urf shahih*' (custom that does not contradict *shari'a*), such as AR 8 (*Magapid*), which regulates polygamy by requiring husbands to pay *sogit* to the first wife. Although Islam does not require the first wife's permission for polygamy, this provision can be viewed as an implementation of the principle of justice emphasized in the Quran, Surah An-Nisa verse 3. Similarly, AR 10 (*Kumawin mogulu tabang/takak*), which regulates the prohibition of marrying before an older sibling, can be accepted as '*urf shahih*' as long as it is done to respect elders and not based on superstitious beliefs. Hussin et al. (2022) emphasized that customary practices that do not contradict Islamic principles can strengthen tolerance and harmonious relations between ethnic groups in Sabah.

In contrast to the above category, some other practices fall under '*urf fasid*' (a custom that contradicts *shari'a*), such as AR 1 (*Mikawin Migid Molohing*) and AR 11 (*Kumawin dot kuailton timpani*) which prohibit cousin marriage and marriage with relatives of former partners. These prohibitions contradict the provisions of *mahram* in Islamic law, which allow cousin marriage, as explained in the Quran, Surah Al-Nisa verse 23. Hasmin and Azizul (2022), in their analysis of animistic beliefs' influence on death *logit*, noted that elements contradicting *shari'a* need to transform to be acceptable within an Islamic framework.

The third category includes *sogit* practices related to AR 2 through AR 7, involving illicit sexual intercourse, enticing someone else's fiancé, or disrupting someone else's household. These practices are not included in the '*urf*' categorization because such acts are explicitly forbidden in Islam regardless of cultural context. Musa

et al. (2018) highlighted that although *sogit* practices are also applied to Sabah Muslims, not all elements of *sogit* can be accommodated within the framework of Islamic law.

The mechanism of legal adaptation and negotiation is evident from the pattern of selective accommodation practiced by the Muslim Kadazandusun community toward *sogit* practices. This process does not result in total adoption or total rejection, but rather selection and modification of customary practices to align with *sharī'a* principles. For example, although the formation of *sogit* fines is maintained, the interpretation of *sogit*'s purpose has transformed from merely cooling conflicts within the framework of animistic beliefs to a mechanism of social reconciliation aligned with the principle of *iṣlāḥ* (reconciliation) in Islam.

The Customary Court is crucial in mediating the difference between customary law and Islam. The formal legitimacy of the Native Customary Law Act of 1995 provides space for customary courts to adopt practices that do not contradict Islamic law selectively. Nuar and Lunkapis (2019) explain how customary institutions have adapted to facing modernization and Islamization, providing a framework for understanding the operation of customary courts in the context of legal pluralism.

The categorization of *sogit* custom into '*urf ṣaḥīḥ*' and '*urf fāsid*' makes a significant contribution to the discourse on legal pluralism and Islamization in Southeast Asia. The identified model of selective accommodation challenges paradigms that position Islamic law and customary law as conflicting systems (Pugh-Kitingan et al., 2023). Unlike conventional perspectives that view Islamization as a linear and monolithic process, research findings show that Islamization in Sabah takes place through a dialogical process and continuous negotiation, with selective adaptation operating at the level of specific cultural practices.

The case of *sogit* in Sabah also extends theorization about legal pluralism. This pluralism is manifested in the diversity of legal sources and authorities that coexist and in the hybridization of elements from different legal systems. The transformation of the *sogit* mechanism from animism-based conflict cooling to a social reconciliation practice parallel to the concept of *iṣlāḥ* illustrates how principles from one legal system can inform the interpretation of another legal system without erasing its basic form or structure (Hasmin & Azizul, 2022).

These findings contribute to three main academic debates. First, the debate about the universality versus particularity of Islamic law. The categorization of *sogit* practices into the '*urf*' framework shows that the universality of *sharī'a* principles can be maintained while accommodating the particularity of local contexts, offering a middle ground between the universality of Islamic law and cultural relativism (Musa et al., 2018). Second, the research findings enrich the discourse on religious authority in plural Muslim societies, where religious authority is not exclusively held by formal religious institutions but is distributed and negotiated among various stakeholders (Hussin et al., 2022). Third, this research demonstrates the relevance of classical *uṣūl*



*al-fiqh* theory in facing the challenges of modernity, where the concept of *‘urf* has flexibility and relevance for handling the complexity of contemporary issues in the context of multicultural societies (Buntung & Ramli, 2019).

The selective accommodation model found in the *sogit* case has sustainability potential that needs to be examined in the context of modernization and strengthening legal formalism. This model provides a framework for maintaining cultural practices that form community identity while ensuring their compatibility with religious values. Despite facing challenges from the pressure of legal homogenization by the modern state and Islamic reform movements that emphasize purification (Pg Musa et al., 2020), several aspects support the sustainability of this model: formal legitimacy from the Native Customary Law Act of 1995, intrinsic flexibility in the Islamic legal tradition through the concept of *‘urf*, and the adaptability of *sogit* practice itself throughout its history (Animbok, 2023; Sabilin, 2024).

However, the sustainability of this selective accommodation model also depends on the extent to which local communities can maintain their agency in collectively redefining customary and religious authority amid modernization currents. On the one hand, modern nation-state structures tend to promote uniform and standardized formal legal systems, which can weaken the role of customary institutions as legitimate legal actors (Chimni, 2018). On the other hand, the emergence of ethno-religious identity awareness among young Muslim Kadazandusun generations shows efforts to maintain local wisdom while remaining bound to Islamic values. In this case, the transformation of *sogit* practice functions as a space for simultaneously articulating a new identity that is inclusive, religious, and cultural.

The concept of legal pluralism developing in Southeast Asian legal studies increasingly affirms the importance of a dialogical and contextual approach to Islamic law. The *sogit* model in Sabah strengthens the assumption that legal pluralism is not merely a static coexistence between different legal systems but a dynamic field where legal meanings, authorities, and practices continue to be negotiated (Benda-Beckmann et al., 2011). Thus, *sogit* as a form of *‘urf* becomes a cultural instrument and an important locus in the construction of Islamic law responsive to social reality.

In this context, *‘urf* theory proves capable of bridging the tension between the need for authenticity in Islamic law and the urgency of adaptation to local realities. By recognizing *‘urf ṣaḥīḥ* as part of legal sources, Muslim communities can navigate the dilemma between religious obligations and cultural loyalty without being trapped in the binary dichotomy of Islam versus custom. This approach affirms that classical *uṣūl al-fiqh* theory—often considered obsolete in modern discourse—remains highly relevant as a normative foundation for responding to the challenges of pluralism and globalization.

Furthermore, these findings imply the need for reformulation in Malaysian national legal policies, particularly regarding the recognition and integration of

customary legal systems in areas with minority Muslim populations. The state can take a facilitative role in providing space for practices such as *sogit*, as long as the substantive values of *sharī'a* remain the main reference. This aligns with the *maqāṣid al-sharī'a* paradigm, which emphasizes not only literal compliance with legal norms but also the achievement of public good (*maṣlaḥa*) in community life (Al Idrusiah et al., 2024; Kamali, 2012; Kurniawan et al, 2020; Kurniawan & Zaiful, 2022; Kurniawan).

Finally, the Kadazandusun *logit* case expands the horizon of Islamization studies in Southeast Asia by presenting an alternative scenario to the dominant Islamization narrative often associated with harmonising Middle Eastern values. Islamization in Sabah appears to move through an adaptive localistic approach, facilitating forms of religiosity that are not rigid but still rooted in *sharī'a* principles. Thus, this selective accommodation model is not only worth maintaining but also replicating in the context of other minority Muslim communities in Southeast Asia facing similar challenges in navigating the relationship between custom and Islam.

## Conclusion

This article concludes that the interaction between Islamic law and customary law in *sogit* marriage practices of the Muslim Kadazandusun community in Sabah demonstrates a complex and dynamic selective integration mechanism. Through analysis of eleven marriage prohibitions in *Adat Resam* (AR), it was found that the community actively categorizes these practices based on the concept of '*urf*' in *uṣūl al-fiqh*. AR 8 (polygamy without first wife's permission) and AR 10 (marrying before an older sibling) are classified as '*urf ṣaḥīḥ*' (valid custom), while AR 1 (cousin marriage) and AR 11 (marriage with relatives of former partners) fall under '*urf fāsid*' (invalid custom). AR 2 through AR 7, which involve violations of sexual norms and destruction of family institutions, are outside the scope of '*urf*' because they explicitly contradict *sharī'a* provisions.

Furthermore, the *sogit* system, which was originally animistic—based on blood sacrifice or material fines—has transformed to become an instrument of social reconciliation aligned with the values of *iṣlāḥ* in Islam. Formal legitimacy through the Native Customary Law Act of 1995 strengthens the institutional role of the negotiation process between customary and religious law. This research makes an important contribution to contemporary Islamic legal studies in Southeast Asia, particularly in illustrating how *uṣūl al-fiqh* principles, especially '*urf*', can be flexibly applied in the context of legal pluralism in minority Muslim societies. This selective integration model shows that customary law and Islamic law can operate in a complementary manner as long as they do not contradict *sharī'a*, thus enabling the preservation of cultural identity alongside the fulfilment of religious obligations.

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