

The early marriage of the Tolaki Konawe community in the perspective of critical Islamic law

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The Konawe people have a unique tradition of early marriage. Research from a critical Islamic perspective has yet to be widely studied in this tradition. This study investigated the initial legitimacy process as an ethnic tradition in early marriage. A legal ethnographic case study design was used in this study. Thirteen individuals participated in the study, including four community leaders, three indigenous peoples, two academics, and four parents of early marriage doers. In-depth interviews and observation were used to collect the data. Reduction, presentation, and interpretation are all used in data analysis methods. The study revealed three key findings: First, the chieftain decides on early marriage in the Tolakiness community. Second, decisions and agreements must be followed and upheld by everyone in the community. Thirdly, different legal systems—such as Islamic, Indonesian, or Western civil law—impact these judgments and agreements, which alters the relationship between law and freedom. This article argued that the Tolakian community needs to undergo cultural reconstruction to accommodate women's rights and freedoms and avoid coercive judgments from tribal chiefs.

Masyarakat Konawe mempunyai tradisi unik dalam pernikahan dini. Riset dalam perpektif Islam yang kritis belum banyak dikaji dalam tradisi ini. Penelitian ini bertujuan untuk mengeksplorasi proses awal legitimasi sebagai tradisi etnis dalam pernikahan dini. Penelitian ini menggunakan desain studi kasus etnografi hukum. Sumber informasi utama penelitian ini adalah tiga belas orang: empat tokoh masyarakat, tiga masyarakat adat dan dua akademisi serta empat orang tua yang anaknya melakukan pernikahan dini. Pengumpulan data dilakukan melalui observasi dan wawancara mendalam. Teknik analisis data menggunakan reduksi data, penyajian data dan interpretasi data. Hasil penelitian menunjukkan bahwa ada tiga temuan penting, pertama, pernikahan dini di masyarakat Tolaki ditentukan oleh *sachem* / kepala suku. Kedua, keputusan dan kesepakatan harus diadopsi dan ditegakkan oleh seluruh masyarakat Tolaki. Ketiga, dasar keputusan dan kesepakatan tersebut

dipengaruhi oleh sistem hukum yang berbeda, baik hukum perdata Islam, nasional atau Barat, yang membawa perubahan dalam hukum dan kebebasan. Penelitian ini menunjukkan bahwa konstruksi budaya masyarakat Tolaki harus dilakukan untuk mengakomodasi nilai-nilai dan hak kebebasan perempuan, serta untuk mencegah penilaian koersif dari kepala suku.

Keywords: *critical Islamic law; cultural construction; early marriage; Tolakinesse traditional Figures*

Introduction

The traditional marriage process does not guarantee a lasting relationship. In this case, early marriage in Tolaki society lives socially and psychologically challenging post-marriage. In this case, women are often victimized. This issue attracts attention from the International community that early marriage leads to determining the effect of personal and failure to protect children's rights (Fadlyana and Larasaty, 2016). The phenomenon of early marriage in Konawe occurs at an early age, resulting in an increase in divorce cases due to a lack of awareness of being responsible in married life (Yulianti, 2010). Girls who marry at an early age have an impact on psychological and physical aspects. Psychologically, they lose their playing time, and their physical aspects begin to prepare them for the possibility of having children who must be cared for properly. These two aspects will greatly impact the harmony and continuity of the household that is lived. In the social context, forced and improper marriages will change social life, resulting in a cultural clash (Roqib, 2010). Therefore, this research is conducted to defend women's rights due to early marriage, which has not received much attention.

Two problems usually arise in early marriage: the causing factors (Desiyanti, 2015) and the impact factor (Purwaningsih, Endah, Setyaningsih, 2013). The two studies analyze the issue of early marriage from an objective perspective but ignore the impacts of divorce on women (Sardi, 2016). Thus, women's perspectives are not accommodated in the study. Therefore, a broader and deeper study is needed without ignoring women's rights to realize justice in a socially democratic society (Reftantia *et al.*, 2022; Cho, 2013).

This study aims to get an overview of the early marriage phenomenon from various perspectives, such as psychological, physical, and personality perspectives. Remarkably, this research examines the rights of women who marry at an early age from a cultural perspective. There are three problems questions in this research, namely (a) how is the

involvement of chieftain in the early marriage process among the Tolakian community in Konawe; (b) what are the factors that cause traditional chieftain to decide to perform early marriage for their people; and (c) how the perspective of Islamic law views the customary decisions of the Tolaki tribe in Konawe in performing early marriages.

The study was based on three reasons. First, the Tolaki custom that is considered a marriage resolution in Tolaki society has not accommodated women's rights. Hence, the custom that should uphold the values of humanity fails to protect women's right. Moreover, women are often victimized by the custom. Second, the customary decision-making process on early marriage has not implemented the principle of equality. In fact, by underlying the religious teaching as the basic consideration, this decision-making neglect women's right. In other words, religion and traditions in the Tolaki community have become one entity that must be adhered to. Third, Islamic law considers that custom and traditional involvement in early marriage is risky create injustice.

Many other researchers have carried out studies on early marriage. Meanwhile, little research on the culture and customs of Konawe has been done. This research applies an in-depth literature review to discover the early marriage culture and the factors behind this phenomenon. Marriage is a sacred activity carried out by two men and women who have agreed to live together (Alghafi, Hatch and Marks, 2014). Before getting married, many conditions and other aspects need to be prepared, including the age (Barnett, 2008), financial, and knowledge of both obligations and rights in marriage (Mcclendon and Kuo, 2018).

As a pluralistic society (Waston and Suwartini, 2022), Indonesia has its customs and provisions for carrying out marriages in terms of religion (Sulistyarini *et al.*, 2018), traditions (Hafidzi *et al.*, 2021), and culture (Asrizal and Armita, 2019). The Muslim community, in particular, has its requirements for the implementation of marriage (Taufika *et al.*, 2021). Also, many indigenous peoples throughout Indonesia's territory have provisions (Situmorang *et al.*, 2021).

According to Islamic teachings, marriage is a form of worship intended to preserve human life (Kistoro and Sulaeman, 2019). Humans are asked to continue their descendants as a substitute and successors in the family (Nur *et al.*, 2022). Men and women are naturally

attracted to one another (Faidah *et al.*, 2018). Another concept taught in Islam is that, the couple becomes lawful by marrying and begins to build their household (Pongoliu, 2017). Another purpose of marriage is to prevent adultery, which causes harm and loss to the perpetrator and the social order (Khaerunisa, 2021).

People who still adhere to traditional beliefs and ancestral cultural customs also have procedures for conducting marriages. Their goal is almost the same as the teachings of Islam to build a household and get offspring (George, Ukpong and Imah, 2014). The difference is that in Islamic teachings, marriage is based on God's commands (Yunus, Rusli and Abidin, 2020), while in the belief of indigenous peoples, marriage is conducted because they follow the ancestor's custom (Nugroho *et al.*, 2021). In Indonesia, the minimum age for marriage is regulated by law. This regulation is set up to ensure the bride and groom are physically and mentally mature. The noble goal above is the desire of all people to carry out marriage. However, there are conditions where a couple gets married at an early age, where their mental, economic, and knowledge are immature (Kistoro and Sulaeman, 2019). Someone who has entered adulthood has a more mature way of thinking and behaving (Kesuma *et al.*, 2020). Therefore, he is considered capable of wisely overcoming the problems faced in marriage. In the contrary, a young and immature man tends to be careless and reckless (Parker *et al.*, 2018). Likewise, the knowledge and the economic play a significant role in supporting harmony and longevity in fostering a household, especially in understanding the duties and roles between husband and wife. The economic aspect also plays an essential role in the household. Stable finance reduces the friction between the couple. Thus, the lack of knowledge and finance in marriage trigger problems in the family (Osborne and Berger, 2012).

Given these conditions, early marriage can be discussed from religious, custom, and cultural perspectives. From a religious perspective, the practice of early marriage is the result of family's knowledge of marriage (Sholeh, Saputra and Manurung, 2021), where parents want their son or daughter to marry at a young age to prevent them from promiscuity that is forbidden by religious teaching (Latipah, Kistoro and Putranta, 2021). In some communities, this condition is widely practiced. From the custom perspective, particularly in the context of indigenous peoples, early marriage is performed to continue and preserve

the descendants in the community. Indigenous people wish their culture and customs of community groups to be maintained.

Meanwhile, from the cultural perspective the modern environment and culture are current factors for early marriage. Nowadays, the interaction between men and women is unrestricted and free, that lead to adultery (Mundakir, 2021). Adolescent are searching for their identity and existence. Thus they are curious in trying something new. Early marriage commonly happens among teenagers. Early marriage raises new problems, both mentally and materially (Djawas *et al.*, 2022). One of the significant impacts of early marriage is divorce among young couple (Nisa, 2021). Several issues that lead to divorce among young couple include mental immaturity, a lack of knowledgeable about the rights and responsibilities of husband and wife, and financial insecurity (Maswikwa *et al.*, 2015).

Method

Women's rights are sometimes overlooked in marriage. This phenomenon occurs not only on a large scale but also on a local scale, including in the indigeneous community. Thus, early marriage in the Tolaki community is the core of this research. This study uses the design of legal ethnographic case studies. Data collection is obtained by observation, interviews with indigenous figures, and documentation studies (Creswell, 2012). As a primary source, the main informant consists of four public figures, three indigenous people and two academics, and four parents of early marriage practitioners were interviewed. This interview aims to describe early marriage among the Tolakian, including the indigeneous custom involved in early marriage process. From an Islamic law point of view, this involvement is at risk of neglecting the rights and causing injustice.

Data collection was carried out through observation to determine the number of early-marriage couples. In-depth interviews is conducted to find the indigenous involvement in the early marriage process, the factors underlying decision-making, and how Islam views this practice. The data analysis techniques used in this research are interpretive analysis, where the information provided by the informant was analysed using the study framework.

The data is validated using the triangulation of sources. This triangulation is aimed to re-check the data obtained by confirming the respondents by matching the existing

references, the object of study, and the respondent (Thohir, 2019). If the data obtained is the same, then the data is considered valid.

The analysis was carried out using the theory of *Maslahah* proposed by Muḥammad Saʿīd Ramaḍān al-Bûṭī which state that Allah SWT created His servants both men and women with different characteristics, characters, pleasures, strengths, and weaknesses. *Maslahah* is a form of maintaining the goals of the Shariʿa and avoiding harm. al-Bûṭī's argument is based on the analysis that naturally, the functions of men and women are different (Syifa, 2017). Thus, women and men have different duties, obligation, and problems. If the husband and wife can manage these difference accordingly, it results in *Maslahah*. This difference makes the foundation that men and women have their duties, obligations, and matters. if the husband and wife can run it will create *Maslahah*. By understanding and implementing the spouse's rights and responsibilities, the family is expected to be the happy and worthwhile family which contributes to creating a better society.

Indigenous involvement in the early marriage process in the Tolaki

Early-marriage among the Tolakian community in Konawe is conducted throughout several stages. First, the customary norms, called *Kalosara* used as a normative foundation in the early marriage process. *Kalosara* is a symbol of customary law that is highly respected because it is considered a unifying tool in peace. *Kolasara* became the highest legal source in settling disputes between the Tolakian in Konawe, including marriage conflicts. This description is explained by one of the headmen, as stated:

“Kolasara is the highest law source among Tolakian. When people face problems, they will refer to Kolasara. Thus, it is believed as the normative basis regulating their daily life” (Abunawas, 2022).

Second, technically, customary decision-making is carried out in regular meetings. This mechanism and procession have become a hereditary tradition in the Tolaki community in Konawe in solving the problem. The meeting begins with discussions among the headmen and related parties. In the interview (2020) with the Head of Religious Affairs Office (KUA) Kec. Wanggeduku, Darwis, explained that in performing an early marriage, Putobu (chieftain) receives a complaint from Tolakian people. This report is discussed among the

headmen. For instance, the two parties involved are summoned to respond to the report on early marriage. Later, the headmaen listen to the complaints or the testimonies by the spoken person of the parties called *Patara*. *Patara* is a person who is given the mandate to convey the dispute. After listening to the testimonies from each party, Putobu decides whether early marriage can be performed. When the girl is found to be pregnant, they will be married. The village priest the marriage process.

Third, the involvement of indigenous peoples in customary decision-making regarding early marriage. Early marriage is performed through village priests based on customary decision agreements. Furthermore, as an implementation of *Kalosara*, five indigenous figures are involved in the decision-making process, those are: Sara Wonua, Sara Mbedulu, Sara Mbe' Ombu, Sara Mandarahita, and Sara Mondau. Sara Wonua is the chairman who takes care of governmental problems. Sara Mbedulu is the figure who takes care of kinship and unity matters. Sara Mbe' Ombu is a figure who takes care of religious and beliefs affairs. Sara Mandarahita is the figure who takes care of the work related expertises and skills. *Sara Monda'u, mombopabo, mombakani, elambu, dumabu, meoti-oti* are figures of the problems of land, gardens, livestock, hunting with the trained dogs, and fishing.

Sara Mbedulu plays an important role in handling disputes on marriage and divorce. In addition, to solving marriage and divorce matter, Sara Mbedulu also handles criminal and civil law cases. Darwish (2020) (KUA Wanggeduku) as an academic, said that:

“Regarding the involvement of these figures, Sara Wonua is one who is responsible for discusing and solving all the issues. The decision is in their hand. Besides, Sara Mandara is also expected to provide input and feedback regarding the problems.”

The three explanations described above shows that early marriage in Tolakian community is regulated by Kolasara, the Tolakian highest legal system. In addition, the decision-making process technically regulated in a regular metting that is conducted hereditary (Darwis, 2022).

The study's results are in accordance with previous research, which explains the struggle between Islamic law and marriage culture in the Tolaki community. The relationship between Islam and Tolaki culture shows adaptation, mutual understanding, and dialogue. This relationship means side is dominant or mutually dominant in this cycle of marriage.

Islam and Tolaki custom needs a custom leader, religious leader, and government (Ipandang and Yuliyanti, 2020). The involvement of indigeneous figures in decision-making shows that Tolakian people are attached to their customs. This fact is in line with the previous research that states traditional and religious leaders have an essential role in social conflict resolution (Koodoh, Putra and Setiadi, 2018), including family issues among the Tolakian in Konawe.

Determinants of early marriage decisions

There are three primary considerations in customary decision-making on early marriage among Tolakian. First, Islamic law consideration. According to Tolakian, religious teaching is taken into account in deciding policy, regardless of the long-standing customary adjustments. Abdul Kahar Liambo, a traditional figure says that there is a Tolakian motto called” *Inae Konasara Iye Pinesara, Inae Liasara Iye Pinekasara*, which means one who appreciates the tradition, she/he will be appreciated as well. Meanwhile, one who does not respect the custom then he will not be respected. Thus, means that the People of Tolaki are very appreciative and uphold the custom as a form of appreciation for other human beings.

Second, consideration of hereditary traditions. Among the Tolaki community, *Kalosara* is highly respected because it is the highest legal source that can resolve all disputes, including family disputes (marriage and divorce), economic arguments, land disputes, criminal and civil disputes, as well as environmental disputes. Traditionally the conflict can be resolved through traditional institutions. As an example, Bisman Sarangani, a leading indigenous figure in Konawe, explained that in the pregnancy marriage case, the disputes between families can be solved accordingly through conventional institutions. Furthermore, men who do so are fined, called *Peobala*, following the customary agreement.

Third, practical considerations. This valuable consideration is very factual and contextual. Hamrin, a public figure, said that most of those who perform early marriages are due to early pregnancy, eloping, and parental coercion. For this practical reason, Putobu decides to perform an unregistered marriage which the village priest and both parties must obey to submit to the customary decision. Sahrul Lalohao and Rusdin Kasukia also said the same thing below:

“Indeed, early marriage is very miserable because traditional leaders and the Tolaki community wish to produce the best generation in the future. The bride and groom are expected to accomplish their formal education at a higher level. However, when the girls were found to be pregnant, they got married to protect the descendant and the family’s honor” (Lalohao and Kasukia, 2022).

Based on the interview above, the classification that forms the basic of early marriage by traditional leaders can be summarized in table 1.

Table 1.
The basis for determining early marriage by traditional leaders

No	Form of consideration	Purpose	Example
1	Religion (Islamic Law)	Respect for others	All family disputes
2	History and old habits	Peace and family gathering	Pregnancy marriage
3	Practical considerations	Solving the cases	Parental coercion

From the three considerations mentioned above, apparently, in addition to apply Islamic law, Tolakian people also take *Kalosara* customary law into account. The use of *Kolasara* among Tolakian is based on heredity, where people refer to *Kolasara* as a guideline to solve their problems. Thus, *Putobu* and headmen hold the authority in solving the problems among the Tolakian community in Konawe.

Impact of early marriage

As discussed in the previous discussion, early marriage is at risk of causing divorce. If divorce occurs, the customary decision on divorce tends to negate the women’s rights. First, the unfulfillment of the interests of women’s rights in decisions. Darwis (Head of Wanggeduku Religious Affairs Office) stated that based on customary decision on divorce, and the husband is not responsible for his ex-wife’s life. He has no obligation to protect her and fulfill her financial need. In other words, he returns his wife to her family and any responsibility is bestowed upon her family. This explanation is in line with Aminuddin (Head of The Office of Religious Amonggedo), who stated that the women’s right after divorce is not regulated in customary decision.

Second, the implications of the decision cause injustice. The decision overlooked

attention to the fulfillment of women's rights. Notably, the women's rights will be considered only when the husband asks her for divorce. On the contrary, the wife gets nothing when she asks for a divorce.

Third, cultural perception over the customary decisions. Often women are obliged to accept the early marriage decision. Amunudidin said that some women disappointed with the decision. However, they are afraid of being accursed once they reject the decision.

Early marriage cultural construction on women's rights

Early marriage in the Tolaki community shows that custom is inseparable from the marriage practice in society. In other words, women have been culturally constructed (Cuddy *et al.*, 2015). The early marriage practice in Tolakian society depend on the *Kalosara* as the highest law applied among the Tolakian community in Konawe that must be obeyed. Especially those non-marriage couple who are found to be pregnant, early marriage is the only choice. They believe that misfortune will befall them if they do not obey the custom. This belief is ingrained in their minds.

This tradition is different from other tribal traditions. For example, in the Batak tribe which adheres to the patriarchal system, they implement discussion among members in solving problems, including early marriage (Dewi and Putra, 2020). In *Tolaki* tradition, shared property, child financing, and all related to the wealth are not regulated by the customary decision. This fact differs from the Minangkabau tradition which adopt a matrilineal system. Their people are free to determine their family life (Nurmaini, 2018). Based on some of these cases, it can be concluded that the *Kalosara* system, which is firmly held by the Tolaki community, neglects the woman's rights and democratic values.

Religious construction on early marriage

The decision-making process in early marriage is not based on formal legal principles but more on religious considerations (Islamic law) (Haryanto, 2015). Religion (Islamic law) and Tolakian tradition are merged into one entity. The factors considerations in the customary decision-making process on early marriage are religious factors (Islamic law), cultural/traditional consideration factors, and practical consideration factors. This fact is in line with an argument that the arrival of Islam in the early 20th century on Konawe land has

successfully integrated into Tolakian people life aspects, such as the way of life, aspects of life, social structure, relation within insider and outsiders of the tribe, and custom (Awad, 2016; Melamba 2013). The marriage system is one of the assimilated customs with religious regulation.

Thus, the Tolakian tradition and religion are inseparable. Like the Tolaki tradition, Bugis tradition, especially Bugis in West Papua, Islam and tradition coexist in harmoniously. These two entities go hand in hand in daily life, as in the marriage tradition, divorce, and so on (Nisa, 2011). As a result, religious, traditional, and practical considerations become important factors in the customary decision-making process.

Conclusion

This study concludes that there are three critical points found in process and legitimacy of early marriage, namely the vital role of a chieftain, the enforcement of decisions for the whole community, and the existence of different legal systems, both Islamic, customary and western. This study also confirms that early marriage can be a solution to problems encountered, such as cases of accidental pregnancies. On the other hand, the early marriage couple is at risk of divorce due to a lack of understanding about their partner's rights and obligations, as well as unstable economic and mental factors put the early marriage couple at the risk of getting divorce. This fact is different from the main purpose of marriage, which is to create the happiness between husband and wife, family and society in general. Synergy is needed between the government, the community, and families in encouraging legal, social, political, and economic awareness in preventing the early marriage cases that mushrooming in society.

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