

## The Traditional Wedding Feast of the Nias Gunungsitoli Muslim Community: Positive Law Perspective and Maqāṣid Ash-Sharī'ah

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### Abstract

The traditional Nias wedding procession of Gunungsitoli City studied relates to famasao marafule, which is divided into fanema marafule, baru safusi and kofo. Problem formulation: 1). How is the procession of the traditional wedding feast carried out by the Nias Muslim community in Gunungsitoli City? 2). How is the procession of the traditional wedding feast carried out by the Nias Muslim community of Gunungsitoli City from the perspective of positive law? 3). How is the procession of traditional marriage feasts carried out by the Muslim community of Nias Gunungsitoli City from the perspective of maqāṣid ash-sharī'ah? Analysing these problems using positive law and maqāṣid ash-sharī'ah approaches. Perspective of Positive Law, contrary to Article 106 of the Civil Code, contrary to Article 3 of KHI because it does not realise sakīnah, mawaddah and rahmah. The traditional marriage procession of Nias Muslims in Gunungsitoli City is contrary to Article 34 paragraph (1) and paragraph (2) of Law Number 1 of 1974 concerning Marriage, the marriage procession of famasao marafule (fanema marafule, baru safusi), the husband and wife cannot carry out their obligations, the husband does not want to provide maintenance because his wife does not live with him, while the wife cannot take care of her household because she still lives with her parents. The procession of the traditional Nias marriage ceremony in Gunungsitoli City with the condition that the husband and wife live together implemented by the Nias Muslim community in Gunungsitoli City from the perspective of Maqāṣid ash-Sharī'ah violates *ḥiżhud dīn* and *ḥiżzul 'aql* in Maqāṣid ash-Sharī'ah.

**Keywords:** Marriage, Maqāṣid ash-Sharī'ah, Nias, Positif Law



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### INTRODUCTION

Human life in this world is inseparable from its main purpose, which is to worship Allah SWT, it's just that as a creature created with spirit and body combined into a complete human being, it needs a biological and psychological channel, in the sense that it needs someone to accompany its life, both in maintaining the preservation and survival of human life (doing sexuality activities), as well as a companion who is always a place to exchange ideas and encourage each other in order to become a better servant of Allah SWT. (Yoki Pradikta et al., 2024) One of the purposes of human creation is to prosper the earth, while the prosperity of the earth needs the continuity of offspring, and offspring are only obtained by marriage. (Ali Ahmad al-Jurjawi 2018) Sabiq explained that marriage has many benefits, for oneself, as well as humanity. (Sabiq 2013) This is what is explained by Allah Swt. in Q.S. Al-Hujarat / 49: 13 about the creation of humans from male and female species, as well as the existence of

differences in tribes and nations is to get to know each other, and among the most intimate forms of introduction is by getting married in accordance with the rules and regulations that have been outlined by Allah Swt. in the Qur'an and in the Hadith of the Apostle peace be upon him. (Firdawaty et al., 2023)

Q.S. An-Nur/24:32 Allah swt. affirms that marrying a woman, whether she is a free man or a slave (in the context of the past), proves the importance of marriage for mankind. In fact, at the end of the verse, Allah swt. guarantees that if a person was poor before marriage, then Allah swt. will enrich him after marriage *iy yakūnū fuqarā' yuḡnihumullāh min faḍlih*, of course, humans must be serious in making efforts in this world. The Prophet himself encouraged his followers to marry as soon as al-ba'ah is sufficient. The existence of al-ba'ah is as a provision, the ability of a woman to marry. If there is no al-ba'ah, then it is recommended to fast, because it can avoid *faḥshā'*, such as adultery and so on. (An-Naisaburi 2018)

Not only did the Prophet recommend marriage to his people, but he even gave a way to choose a good woman (partner) in the view of Islam, namely choosing a partner who is good in religion (*fazfar bi zātiddīn*). (Al-Bukhari 2018) There are various kinds of marriage laws, the original law is permissible, which can change according to the condition of the person who will marry, namely becoming obligatory, *sunnah* (*mustahab*), *makrūh*, and *haram*. (Hermanto and Ismail 2020) Carrying out a marriage in some customs in Indonesia is sometimes easy, but there is also a custom for some young people to be reluctant or discourage marriage, this is because of the expensive costs that must be met, both before the marriage contract, during the contract, and after the contract, namely the party event which is difficult for some people to actually fulfill, this is also the case for the Nias Muslim community in Gunungsitoli City. (Pradikta et al., 2023) Nias is a tribe that has a lot of local wisdom, in the form of customs and traditions that have been carried out for generations.

Customary law itself stems from the consciousness and attitude of life in a particular community. Its origins are unknown, but it can provide a sense of tranquillity, and relieve anxiety, and has a magical-realist flavour. (Azani 2021) There are many other distinctive features of customary law, the most obvious of which is that when a prohibition or commandment is violated by a member of the community, it is a deviant, and when a deviation occurs, there are moral sanctions that must be borne by the perpetrator. (Mardiantari et al. 2022)

A tribe known for its distinctive language, as well as white stature and slanted eyes like ethnic Chinese, is among the many differences of this tribe compared to other tribes in Indonesia. (Mu'in et al., 2023) One of the problems is the implementation of marriage. The difficulty of marrying, due to the high nominal costs that must be incurred, plus the many customary processes that must be passed one by one until completion. It is important for Nias people to be obedient in carrying out their customs, as well as customs in the marriage ceremony. A hard thing in Nias customary society is that when a marriage takes place, a groom must give or pay off wedding gold to every party who is related to the bride's mother (*uwu*). (Dennis Baktian Lahagu 2022) Not only that, when the marriage occurs, the groom is expected to hold a wedding party for the general public in the form of a service party (*owasa/fa'ulu*), this party is very important, because if it is not carried out the groom is stigmatised as a child (*iraono*) (Dennis Baktian Lahagu 2022). This is one form of customary

sanction for custom violators in the form of deviants as described by Setiadi and Kolip which have been listed previously.

Adat is known in Nias society by two terms, sometimes called hada and sometimes called bowo. Among the adat or bowo that must be carried out is the custom of marriage (bowo wangowalu) (Dennis Baktian Lahagu 2022). Various customary processions that no longer exist today, namely a custom that requires a man to behead a human being (binu) when he wants to marry, known as mengayau. (Dennis Baktian Lahagu 2022) The inclusion of the history of the mengayau custom to provide information is quite a harsh custom, but along with the times, there have been many changes in customs because it is difficult or no longer suitable for current conditions. In fact, Binu is an absolute requirement in passing a customary law (fondrako) which is established by the existence of a curse oath. The sanctions given to Nias people who violate them are adjusted to the offence committed (Dennis Baktian Lahagu 2022). The tradition of the Nias tribe, which is thick with its cultural customs, is manifested in all the activities of its people. For this reason, there is a term from Nias that reads sara nidano sambua ugu-ugu, sambua mbanua sambua mbowo, the point is that each river has its own distinctive sound, and each village has its own customs. (Zendrato 2011)

Especially in Gunungsitoli City, where the majority of the people are Muslims, there is a clash between Nias customs and habits and the principles and values of marriage in Islamic Shari'ah. As we all know, marriage is mubāḥ in principle, but the performance of marriage is a commandment from Allah and His Messenger. There is nothing wrong with following the rules of customary law in the community, as long as these customary laws or provisions do not violate Shari'ah, because Shari'ah essentially aims for the benefit and goodness of mankind, as well as a mercy for all nature (QS. Al-Anbiya'/21: 107).

All aspects of human life have been supported by the values of Islamic teachings for those who want to use them, namely every Muslim who submits and obeys the teachings and shari'a of Islam. Syaltuth said that all aspects of life, not only social aspects but also worship, cannot be regulated unless it is in the Islamic Shari'at (Syaltuth 2012). The teachings and laws contained in Islam, both in the Qur'an and in the Hadith of the Prophet, are aimed at the welfare of mankind. Ash-Syathibi introduced the term Maqāṣid Ash-Sharī'ah in his book al-Muwāqāṭ. In fact, the rules in the two main sources of Islam are for the benefit of human life, whether the rules are in the form of commands or prohibitions, not only good in this world, but good until the hereafter (Ash-Syathibi 2016). There are five parts of Maqāṣid Ash-Sharī'ah, namely protecting religion (*ḥifẓud dīn*), protecting the mind (*ḥifẓul 'aql*), protecting the soul (*ḥifẓun nafs*), safeguarding property (*ḥifẓul māl*), and safeguarding offspring (*ḥifẓun nasl*), and each is categorised into 3 (three) parts, *darūryyāt*, *ḥajiyyāt* and *taḥsiniyyāt*. (Mu'in, Fathul, Firdaweri, 2022)

Returning to the issue under study, when the Nias Muslim community has carried out a marriage contract, there are many processes that must be carried out first before the husband and wife are allowed to have sexual intercourse (*jima'*), even though in essence, as stated in the meaning of marriage, after the marriage contract, it is allowed for the husband and wife to *istimtā'* (have fun), including by having intercourse, which in the concept of Islam is *halal* and allowed.

The "clash" of customary rules and Islamic law is also evident in the marriage procession in the Nias Muslim community in Gunungsitoli City, because the bride and groom who have entered into a marriage contract must carry out several other marriage processions to completion. A man and a woman who want to get married in the Nias tribe must go through many processes, starting from the pre-marriage ceremony, during the ceremony, to after the ceremony. The procession before the marriage contract may not be a problem, because the man and woman are not yet officially husband and wife, but when the customary procession must be carried out when they are already legally husband and wife, and suspended for several days before they are allowed to have conjugal relations, even if they are allowed to be together in the room, at most for about 1 (one) to 2 (two) hours. The Nias customary tradition of famasao marafule, which consists of three parts: fanema marafule, safusi, and kirim kofo, and wagaoni manga (calling for food), which is similar to the Javanese term *ngunduh mantu*.

In general, some of the Nias customs in the wedding procession listed above are not a problem, it is just that there is a rule that does not allow husband and wife to live together until the wagaoni manga ceremony is over, which is the problem that this journal wants to examine. The delay or prohibition of conjugal relations for a long period of time, such as staying overnight, is a minor problem for some people, but for a bride and groom who are just starting a new life, the delay in staying in the same room for up to days is certainly part of a custom that is contrary to positive law in Indonesia, and also in Islamic teachings analysed with the *Maqāṣid Asy-Sharī'ah* approach.

Analysing *Maqāṣid Ash-Sharī'ah* (das sollen), the implementation of Nias customary marriage in Gunungsitoli City, which requires a feast to allow husband and wife to be together (das sein), is far from the purpose of Shari'ah (*Maqāṣid Ash-Sharī'ah*), especially in terms of protecting religion (*ḥifẓud dīn*), and protecting offspring (*ḥifẓun nasl*). The writing of this journal is important, as a reference material for Nias people who are Muslims, so that in carrying out their traditions and culture they do not violate the Shari'at and teachings that have been prescribed by Allah Swt.

As a comparison, there are several relevant studies, namely previous scientific works that have existed before. The results of the search are 6 (six) works, 5 (five) in the form of journals, 1 (one) in the form of a thesis. 1). Ester Sriana Wati, S.T.P. (Ester Sriana Wati 2022). 2). Intan Tri Kristiani Gulo and Tuhoni Telaumbanua (Telaumbanua 2021). 3). Happy Majesty Waruwu, et al. (Happy Majesty Waruwu 2019). 4). Sonny Eli Zaluchu (Zaluchu 2020). 5). Lesnawati Zendrato and Noveri Amal J. Harefa (Harefa 2023). 6). Nursayani Maru'ao (Maru'ao 2014).

The journal written by Ester Sriana Wati, S.T.P., obtained the results of her research which showed that in determining the dowry for the Nias *traditional* wedding ceremony, it is adjusted to the social status of the bride's family and also the prospective bride to be married, and the dowry is known as bowo. Giving bowo is a form of respect for the prospective husband to the prospective wife and also the prospective wife's family so that the kinship is closely intertwined and is expected to prevent divorce (Ester Sriana Wati 2022). The next research results from Intan Tri Kristiani Gulo and Tuhoni Telaumbanua. The research revolves around the issue of bowo (dowry), which usually determines the level of bowo adjusted to the social status of the prospective bride to be married. The existence of such customary provisions according to Gulo and Telaumbanua is part of a custom that is not easy, because determining

social status or known as *bosi*, must have been carried out traditional rituals according to Nias custom itself, so that it can be ascertained if social status is used as a benchmark in determining *bowo* (dowry), then first ascertain the social status of the bride's family to be married. Therefore, it is necessary to carry out social transformation with the extended family (*owuloi ngafu*) in determining the *bowo* (Telaumbanua 2021).

Next is the journal of research results from Happy Majesty Waruwu, et al. Waruwu, et al. found that in conducting a traditional Nias wedding party, it is important to do a wedding *nyaniyan* known as *sinuno falowa*, because the song contains elements of belief (*sanomba adu*). However, currently the tradition of *sinuno falowa* has begun to be neglected, this is coupled with the increasing number of *sinuno falowa* leaders who perform Nias wedding customs without first performing *sinuno falowa* (wedding songs) (Happy Majesty Waruwu 2019). The next journal by Sonny Eli Zaluchu, the results showed that in the traditional Nias wedding procession there are three stages of marriage implementation, starting from the search stage (*famaigi ono alawe*), the engagement stage (*fanunu manu*), and the third stage is the stage of the wedding itself (*falowa*) (Zaluchu 2020).

The next journal work is the result of research from Lesnawati Zendrato and Noveri Amal J. Harefa, obtained information about the meaning of *fangowai* and *fame'e afo* in a traditional Nias wedding in Gunungsitoli City. There are at least 3 (three) meanings of *fangowai* and *fame'e afo*, first as a form of respect, second as a form of firstborn custom (*sia'a bowo*) and third as part of Nias traditional heritage that needs to be preserved (Harefa 2023). The next journal research is by Nursayani Maru'ao. The results of her research state that there has been a decline in the implementation of the culture of *fangowai* and *fame'e afo* in the Nias wedding custom. There are at least 6 (six) causes of the reduction in the implementation of *fangowai* and *fame'e afo*, firstly due to a shift in the knowledge of the easy generation towards their customs, secondly busy parents with personal affairs, thirdly assimilation between Nias tribes and other tribes. The fourth cause is the presence of outside influences, the fifth is because the younger generation no longer understands their Nias customs, and the last (fifth) cause of the decline in the implementation of the culture of *fangowai* and *fame'e afo* in the Nias wedding customs is because the parents of the younger generation still lack understanding of *fangowai* and *fame'e afo* (Maru'ao 2014).

This journal consists of 3 (three) problem formulations, namely: 1). How is the traditional wedding party procession carried out by the Nias Muslim community in Gunungsitoli City? 2). How is the procession of traditional wedding parties carried out by the Nias Muslim community of Gunungsitoli City from the perspective of positive law? 3). How is the procession of traditional wedding feasts carried out by the Muslim community of Nias Gunungsitoli City from the perspective of *Maqāṣid Ash-Sharī'ah*?

## RESEARCH METHODS

This type of research journal is qualitative, with 2 (two) combined approaches used, first empirical approach, second normative approach. This research is to reveal the implementation of the traditional wedding party which is used as a condition for the husband and wife to live together, analysed using positive law and *Maqāṣid Ash-Sharī'ah*. This research was conducted in Gunungsitoli City. The size of the research site was determined by 1 (one) sub-district out of 7 (seven) total sub-districts in Gunungsitoli City, namely Gunungsitoli Sub-district. The

villages/sub-districts studied were: 1). Miga, 2). Mudik, and 3). Boyo. Participants (informants) consisted of the community, religious leaders and customary leaders.

The research data sources consist of 3 (three) sources, first primary data sources, second secondary data sources and third tertiary data sources. Primary data sources are divided into two parts, the first is the results of observations and interviews, the second primary legal source is legal material in the form of normative studies, in the form of positive laws governing marriage issues, and also from the books of *munakahat* (marriage) fiqh. Other sources are books that review the theory of *Maqāsid Ash-Sharī'ah*. Secondary data sources in this research are the laws and regulations in Indonesia regarding marriage. The secondary data consists of dictionaries, Qur'anic verses, Prophet Muhammad's traditions, journals, theses, dissertations and references related to marriage. Data collection techniques consist of observation and interviews. Data analysis uses 3 (three) stages, namely reducing data (data reduction), presenting data (data display), and conclusions (conclusion).

## RESULTS AND DISCUSSION

### The Procession of Traditional Marriage Parties Performed by the Nias Muslim Community in Gunungsitoli City

The *traditional* procession of Nias Muslim marriages in Gunungsitoli City begins when there has been prior negotiation between the man and woman, either by direct acquaintance or through intermediaries. In the past, introductions were not easy to make, so whether or not a proposal was accepted was the thrilling part for the man as a human being who wanted to get the woman he wanted. There is a spokesperson from the prospective groom's side (*si'o*) during the *famaigi niha*, because they are the ones who bridge the marriage between the bride and groom. The process of *famaigi niha* is done before the continuation of the talk about the *bowo* (*uang kasih sayang/mase-mase*) (Boy Ramadhan Gea, Customary Chief of Miga Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 21/03/2024).

The *bowo* conversation will take a lot of time, because this is where the bride's request is conveyed, and also the opportunity for the groom to convey his ability, this process of determining the *bowo* can be repeated. A *si'o* must be adept at receiving messages from the woman's family to convey to the man's family. Although the role of the *si'o* is very important, they still cannot make absolute decisions, it is like they are the mouthpiece of the two parties, but the role of the *si'o* is still important in binding the two parties to become a family. The *si'o*'s repeatedly receiving and delivering messages is known as *fanofu bowo* (Muhsin Aceh, Customary Chief of Mudik Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 23/03/2024).

The amount of *bowo* is adjusted to the condition of the woman, both in terms of social status, education, and it all determines the level of *bowo* that the bridegroom must give to the bride. the dowry given by the man to the woman is also interpreted as *masi-masi*, which is a proof of love shown by the bridegroom to the bride and her family, if the proposal is accepted, then the man's family will give a ring as a sign of the validity of the proposal (*mame'e laeduru*). This event is called *manunu manu* (Anus Prianto Harefa, Customary Chief of Boyo Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 25/03/2024).

Prior to the acceptance of the engagement, *Fangosara talifuso* (family or nuclear family deliberation) is first held, and then the results of the engagement are brought back to be

discussed with the customary chief in the village, known as fangosara banua (village deliberation). The next event is famofano ana'a/tolo-tolo (delivery of the agreed jujuran to the woman's family in the form of: cash, rice and goats), while what the groom's family brings is something that has been agreed upon by both families. Another important activity in the Nias Muslim wedding custom in Gunungsitoli City is famologo tufo/ kembang lape, which is the preparation for the installation of traditional decorations in the bride's house. During this preparation period, it is also discussed together who will be the Penghulu or Master of Ceremonies, so that the wedding ceremony the next day can run smoothly and solemnly (Boy Ramadhan Gea, Customary Chief of Miga Village, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 21/03/2024).

If the proposal is accepted, the male family will give a ring as a sign of the legitimacy of the proposal (mame'e laeduru). This event is called manunu manu". "Another important activity in the Nias Muslim wedding custom in Gunungsitoli City is famologo tufo/ kembang lape, which is a preparatory event for the installation of traditional decorations at the house of the bride-to-be. When there is an agreement between the groom's family and the bride's family, the groom's family brings the jujuran, known as mangoto bongi or crossing the night (Boy Ramadhan Gea, Customary Chief of Miga Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 21/03/2024).

When there is an agreement between the man's family and the woman's family, then according to what has been determined the man's family brings the jujuran, known as mangoto bongi or crossing the night. When the jujuran or the materials or objects promised during the agreement are made, then the gong is beaten as a sign of the wedding ceremony that will take place in the village (mamozi aramba) (Zendrato 2011). The gong is sounded continuously, until the party is held, and is stopped if there is something else important. While waiting for the wedding day, the bride's family gives a sad song (mame'e) which is interpreted as a song that can make the bride-to-be sad. The content of the song is about guidance and advice for the woman. Particularly in the non-Muslim Nias custom, in the afternoon before the party the male family will bring a large pig (molau bawi) (Zendrato 2011), this custom is not carried out for the Muslim Nias community.

When the ceremony is about to begin, the master of ceremonies symbolically hands over the marriage custom to the traditional leader of latou'o ba danga zalawa, until the wedding ceremony is held, starting with the marriage contract and so on. Famasao marafule (escorting the groom to the bride's house, both brides are ready in full traditional clothing), at this event various traditional events are carried out such as: a. Fanema Marafule (welcoming the groom), and entering the bride's room at night The first night the bride and groom are still in full traditional clothing and the groom only rests for about an hour, then the groom goes out to return to his house (if close), and if his house is far away, then he can rest to sleep at the nearest family house. On the first night, the groom entrusts Rigi Famahedi (a coin made of silver) into the hands of the bride (Muhsin Aceh, Customary Chief of Mudik Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 23/03/2024).

b. The Second Night The bridegroom leaves his new safusi, namely his white shirt in the bride's cupboard, while the time he is allowed in the room is approximately 2 (two) hours only. Thereafter, the bridegroom goes out and sleeps elsewhere. c. Third Night, the groom brings and

leaves the Kofo or cover containing the required clothes, the length of time for the groom to stay in the room is approximately 2 (two) hours, and then as on the second night described above. There is also the term wagaoni manga (calling for a meal). The bride is invited by custom to come with her entourage to the groom's house. Note that wagaoni manga is similar to the term ngunduh mantu. The bride usually spends 1 (one) night at the groom's house in the bridal room, while the groom sleeps outside the room. The next day the bride and groom return to the bride's house with their entourage and the groom's family/neighbours, this night the bride and groom are allowed to sleep together in the bridal room. (Muhsin Aceh, Customary Chief of Mudik Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 23/03/2024).

Other terms in the series of traditional parties for Islamic family marriages in Gunungsitoli include: Fotu (giving advice, advice, manners by the customary chiefs, both the male customary chief, and the female customary chief), fomoto dawuo sebua (unloading the contents of large betel nut in a container in the form of a large dulang). For the telawu, one of the highlights of the Chief's and guests' deliberations is the awarding of the gala (title) to the groom. There is another part of the manunu manu, but it differs greatly from the Nias tribe that has embraced Islam. The sharing of manunu manu is known as femanga bawi nisila hulu, femanga mbawi fanunu manu, famaboob toi (Zendrato 2011). Activities surrounding the eating of animals are not allowed in Islam, but today some of the customary parts of manunu manu are still carried out by non-Muslim Nias people (Anus Prianto Harefa, Customary Chief of Boyo Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 25/03/2024).

When the marriage ceremony takes place or called falowa, there are several more events in it, such as fanika gera era mbowo, ngona mbowo, fondra'u danga nina. fanika gera era mbowo or tearing the mind, is a notification by the bride's family to the groom about the obligation to guide the wife for life. Furthermore, ngona mbowo is a form of customary confirmation that the groom has been accepted by the bride's family, therefore there are symbols of gifts in the form of konde and others from the groom to the bride's family. Fondra'u danga nina handshake, in the sense that the groom gives respect and thanks to the in-laws who have taken good care of his life companion, as a sign of respect the groom gives a gold necklace to the daughter-in-law (Anus Prianto Harefa, Customary Chief of Boyo Village, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 25/03/2024). When the marriage ceremony takes place or called falowa, there are several more events in it, such as fanika gera era mbowo, ngona mbowo, fondra'u danga nina. There are also terms such as fanika gera era mbowo or tearing the mind, which is a notification by the bride's family to the groom about the obligation to guide his wife for life (Boy Ramadhan Gea, Customary Chief of Miga Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 21/03/2024).

The implementation of a marriage with a traditional Nias procession is a must, although there are objections for some people, because the procession is quite long, and there are also conditions that cannot be ignored. The customs that are a way of life for Nias people, including in this case in the implementation of marriage, have different reasons for its implementation, including that if it is not followed there will be a negative stigma from the community, and we do not want that to happen, because so far we have continued to carry out the marriage procession in accordance with Nias customs (Desi Lestari, Mudik Village Community, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 24/03/2024). There are also



reasons for fear of being subject to social sanctions, in the form of neglect, or sometimes not being invited when there is a celebration or party, because they are still considered not to have entered the existing tradition (Dirman Hulu, Boyo Village Community, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 26/03/2024).

There are stages of the Nias Muslim wedding process in Gunungsitoli City, namely fanema marafule, then safusi and kofo. "A tradition that is indeed quite long, besides that there are rules that still limit the bride and groom from staying long with their partner, even though they have actually carried out the *ijab kabul*. It does not take long actually, at most 3 (three) days to complete all the processions of the traditional Nias wedding in Gunungsitoli City" (Dra. Syamsinar Telaumbanua, Miga Village Community, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 22/03/2024). Another informant responded, "I did not agree at that time, because we were young, and it was only by getting married that we could be together in a halal way. Because the rules did not allow us to stay together for a long time, we were forced to restrain ourselves, even though my husband sometimes asked to meet outside, and even then it was not allowed to be known by my parents, I just said that the reason was because I needed to go out shopping, even though it was to meet my husband" (Elva Dewi Hulu, Miga Village Community, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 22/03/2024).

Another informant added, regarding the stages of the Nias customary marriage process, "I personally felt awkward, because I had already carried out *ijab kabul*, but my wife and I were not allowed to stay in the same room for a long time, only a few hours. I am not saying that this customary rule is bad, but for me personally at that time I felt that I was not able to enjoy my marriage, both in terms of fulfilling my obligations as a husband, as well as getting my rights from the wife I had married" (Mhd. Yusuf Zebua, resident of Boyo Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 26/03/2024). "This is one of the main difficulties that I feel, because my wife and I are still restricted from meeting and living in a room together, even if we are given the opportunity to be together, it is not long, while we still need to be in love" (Sulaiman Waruwu, Villager of Mudik Village, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 24/03/2024).

In addition to interviewing traditional leaders and communities in Gunungsitoli City, Islamic religious leaders in the villages studied were also interviewed. There are still many problems with Nias customary marriage when considered in terms of Shari'at, one of which is prolonging the stay of husband and wife who have legally become a couple, actually it is not allowed. It is different if they are willing, it is not a problem, but many cases the bride and groom seem forced to follow the customs and traditions in the traditional marriage procession (Ahmad Syaiful Hulu, Religious Leader of Boyo Village, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 31/03/2024).

The same thing was conveyed by Mhd. Faisal Gea, explained that "in matters of marriage it is important to know the pillars and conditions. If they are fulfilled, then the marriage is complete, and that is the cause of the permissibility of *istimta`* between husband and wife. Looking at the existing customs, it is difficult to weigh them up, but for me, as long as the bride and groom are happy, there is no problem, but if not, then it is a sin and an injustice that prevents the legitimate couple from living together, even if they are separated only for a short time"

(Mhd. Faisal Gea, Religious Leader of Mudik Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 29/03/2024).

In accordance with the information obtained from the 2 (two) informants of religious leaders above, there are two opinions, the first opinion immediately does not allow a suspension in the togetherness of husband and wife, while the second opinion, it depends on the bride and groom themselves, it is not sinful to suspend if they are happy, on the contrary it is unjust if the implementation is forced on a legal husband and wife. For more information, Abdul Aziz Harefa was asked about the suspension of the fanema marafule, baru safusi and kofo customs, which are part of the Gunungsitoli City Nias Muslim famasao marafule ceremony. The informant explained:

"Customs are sometimes in accordance with sharee'ah and sometimes they are not, so this is where a Muslim must be able to judge carefully about a custom. We should not be antipathetic to customs, because good customs can be implemented, it is not a disgrace to religion, it is different if it is something that clearly violates shari'a". In relation to the Nias Muslim customs of fanema marafule, baru safusi and kofo, which are part of the Gunungsitoli City famasao marafule series of Nias Muslim customary events, we must be really vigilant, lest because of implementing customs, there are people who are harmed, I personally don't agree with it one hundred percent, the point is that after the marriage contract they can live together, but I don't know about other people, this is my personal opinion" (Abdul Aziz Harefa, Religious Leader of Miga Village, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 28/03/2024).

Ahmad Syaiful Hulu also explained, "as citizens in Indonesia who have diverse tribes, of course they have their own customs and cultures, which are entrenched and difficult to uproot from the minds and hearts of their people. Therefore, in the matter of the suspension of the togetherness of husband and wife in Nias customs in Gunungsitoli City, I myself think it is important, but nowadays it is no longer feasible, apart from the Nias tribe has been widely adopted by Muslims, then it is also feared that if the husband and wife are suspended from getting together, they can fall into committing acts that are forbidden by Allah Swt. and His Messenger" (Ahmad Syaiful Hulu, Religious Leader of Boyo Village, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 31/03/2024).

"Be wise in giving opinions and input, don't be harsh and black and white, especially religiously, Muslims in Nias are in the minority, even though in Gunungsitoli City we are the majority. For me, if you don't want to implement it, then talk to the customary chief in the village, mention the reason why it is difficult for us to implement the custom, because it is forbidden by Allah SWT, I am sure they will tolerate it. I personally do not carry out this custom, apart from the length of time, the cost, and the fear that it may oppress the husband and wife to be together" (Mhd. Faisal Gea, Religious Leader of Mudik Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 29/03/2024).

Almost similar to the previous answer, the following informant explained, "it is called adat, it has become a custom, it's just that when it collides with religious rules, or values in Islamic teachings, then the Islamic rules must take precedence" (Abdul Aziz Harefa, Religious Leader of Miga Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 28/03/2024). "This custom is not one hundred per cent wrong, the only fault is the delay, the rest is permissible according to religion in my view". "The teachings of Islam have a rule al-

`ādatu al-muḥakkamah, that custom or habit can sometimes be used as a basis or law itself, just do not do injustice, damage, or violate the corridors in Islam itself, including in this case relating to fanema marafule, For me, it is no longer suitable for Nias people who are Muslims, but for non-Muslims, it should be returned to them" (Ahmad Syaiful Hulu, Religious Leader of Boyo Village, Gunungsitoli Subdistrict, Gunungsitoli City, personal interview, 31/03/2024).

Mhd. Faisal Gea explained, "customs that are no longer in accordance with the times, will increasingly be abandoned, including in this case fanema marafule, new safusi and kofo which are part of a series of traditional Nias Muslim events in Gunungsitoli City famasao marafule, if there are still rules suspending the husband's togetherness with his wife. That is, for a Muslim, just follow the rules that have been prescribed, and in Islam it is not difficult to get married, just fulfil the rules and conditions, and if you want to get the sunnah by making a party or walimatul `urs, then it is enough to do it simply, there is no need to go into debt, because it has the potential to cause other problems in the family" (Mhd. Faisal Gea, Religious Leader of Mudik Village, Gunungsitoli Sub-district, Gunungsitoli City, personal interview, 29/03/2024).

### **The Procession of Traditional Marriage Parties Performed by the Nias Muslim Community in Gunungsitoli City from the Perspective of Positive Law**

Highlighting the procession of traditional wedding parties as a condition for allowing husband and wife to live together, known as famasao marafule (fanema marafule, baru safusi and kofo) carried out by the Nias Muslim community in Gunungsitoli City from the perspective of Positive Law, both those listed in the Civil Code (KUHPerd.), Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law or commonly known by the abbreviation KHI, and also Law Number 1 of 1974 concerning Marriage juncto Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. (Habib Shulton Asnawi, 2022)

As is understood, the tradition of famasao marafule (fanema marafule, baru safusi and kofo) is the original tradition of Nias customs, it's just that with the increasing number of Nias people who have become Muslims, the Nias customs that were originally carried out by the community need to be adjusted to the teachings of Islam, because not all of the Nias wedding customs can be directly practised by the Nias Muslim community itself. Talking about when the Nias customary marriage tradition was established, it can be said that it existed simultaneously with the existence of the Nias tribe itself, so it cannot be ascertained when it began, because custom is part of the way of survival and society of every indigenous community in Indonesia, including in this case the Nias tribe of Gunungsitoli City.

For the Nias community the marriage process in the form of famasao marafule (fanema marafule, baru safusi and kofo) still exists today, but for the Nias community who are Muslims, it turns out that some of the marriage customs are no longer carried out, either because they are clearly contrary to the teachings of Islam. An example of this is the pre-wedding ceremony where a pig is offered and eaten. This is one example of a part of Nias custom that is no longer practised by the Nias Muslim community in Gunungsitoli City. As for customs that do not conflict with the teachings of Islam, they are still carried out, in order to maintain the traditions of ancestors that have been carried out for generations by the Nias community, especially the Nias community in Gunungsitoli City. As explained in the introduction of this journal, there

are social sanctions for Nias people who do not carry out Nias customs in the marriage procession, including being stigmatised as children (*iraono*) (Dennis Baktian Lahagu 2022).

Regarding marriage, found in Chapter IV of the Civil Code, not all articles and paragraphs regarding marriage are included, only articles and paragraphs related to the issues studied in the thesis. As an opening, Article 28 lists the principles of marriage according to the KUHPerdt, namely "the principle of marriage requires the free consent of the prospective husband and prospective wife". There is no contradiction between this principle and the traditional wedding ceremony held by the Nias Muslim community in Gunungsitoli City.

Next, in relation to the prohibition of marriage, Article 30 of the same regulation states that it is prohibited to marry because of blood relations, namely from the line up, and also down, whether it is due to legal birth or not, as well as mentioning that it is prohibited to marry from the line to the side, namely between siblings. There is no contradiction with Nias Muslim customs in the marriages that are performed, because Nias Muslims follow the rules in the Qur'an and Hadith, and also do not contradict Article 30 of the Civil Code regarding the selection of prospective brides and grooms, which does not allow direct or biological blood relations.

The next article, Article 31, also explains the things that are not allowed in relation to marriage between siblings, as well as between *makcik* and his nephew, unless one of them has died. Article 31 also shows that there is no contradiction in Nias Muslim marriages in Gunungsitoli City. Article 32 relates to not allowing a person to marry an adulterer after a court decision, then Article 33 relates to the rules for marrying a divorced partner. Article 34 regulates the period of marriage for women who have been divorced, and Article 35 regulates underage marriages that must have parental permission, as well as Article 36.

Article 37 deals with the absence of parents during marriage, and Article 38 deals with the technicalities of having a guardian or supervising guardian for a minor. Article 39 deals with children out of wedlock, Article 40 deals with illegitimate children. Article 41 deals with court decisions related to the determination of marriage applications. Article 42 regulates the obligation of children who are going to marry to ask permission from their parents, even if they have reached the age of thirty. Article 43 regulates the marriage licence process, and Article 44 regulates guardians who are unable to attend, while Article 45 regulates children who are not present at the marriage application. Article 46 still deals with the issue of attendance at marriage applications. Those are some of the articles related to marriage matters in the KUHPerdt. (Habib Shulton Asnawi dan M. Anwar Nawawi, 2022)

Furthermore, in order to get a more concrete understanding related to the perspective of the KUHPerdt. in this case, it is part of the positive law in Indonesia in highlighting the problem of the traditional marriage ceremony procession carried out by the Nias Muslim community in Gunungsitoli City, it can be seen in Chapter V on "Rights and Obligations of Husband and Wife". Article 103 states that "husband and wife must be faithful to each other, help each other and help each other". Article 104 explains "husband and wife by entering into marriage have mutually bound themselves to maintain and educate their children". Both Article 103 and Article 104 show the importance of the bond between husband and wife, both in terms of being faithful, helping each other, and also both being responsible for educating and also caring for children born from their marriage.

Article 105 explains the responsibility of the husband as the head of the household, both towards his wife, property and also their offspring. Furthermore, Article 106 stipulates that "every wife must obey her husband. She shall live in the same house with her husband and follow him, wherever he deems it necessary to reside". This Article 106 seems to be in conflict with the traditional procession of Nias Muslim marriages in Gunungsitoli City. As is understood, after the marriage contract the husband and wife in the Gunungsitoli City Nias customary marriage procession are not allowed to live together, then also the husband is not allowed to bring his wife to his residence.

According to the author's analysis, in the perspective of Positive Law, especially from the Civil Code (KUHPerd.) in providing an analysis of the traditional wedding procession carried out by the Nias Muslim community in Gunungsitoli City, there is one article that does not correspond to the marriage procession, namely that contained in Article 106 which has been listed above. In accordance with the mandate of Article 106 of the KUHPerd., the wife is obliged to obey her husband, the form of compliance includes following wherever her husband lives after the marriage contract takes place. Another case with the traditional procession of Nias Muslims in Gunungsitoli City, which requires completing the wedding procession until the third day, so that the husband is allowed to bring his wife to his residence, as long as this procession has not been completed, it is as if the husband has not completed the right to own his wife. However, the wife is not necessarily to blame for disobeying her husband's invitation, it is just that due to adherence to custom that cannot be ignored, it is as if the wife is disobedient and unable to go to her husband's residence until the wedding procession is fully completed. In accordance with Gunungsitoli City's Nias Muslim custom, the condition for the husband and wife to be allowed to live together is to follow all the traditional processions that have been carried out for generations.

The next analysis of the Nias Muslim customary procession in Gunungsitoli City is from the perspective of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI). Article 1 letter "c" explains "the marriage contract is a series of *ijab* pronounced by the guardian and *kabul* pronounced by the groom or his representative witnessed by two witnesses". The marriage contract is a sacred part of the Nias traditional marriage procession, because it is part of the Islamic religious rules implemented by the community, and every community knows that after the marriage contract, the bride and groom are valid in the eyes of Islam as husband and wife. However, it is not only the marriage contract that is the main reference in marriage, the traditional procession is another important thing and becomes a necessity to be carried out, including in this case in the implementation of *famasao marafule*, which is divided into *fanema marafule*, *baru safusi* and *kofo*.

Chapter II on "The Basics of Marriage in Article 2 states "marriage according to Islamic law is a very strong marriage (*mīšāqān ḡālīzān*) to obey the commandments of Allah swt and carrying it out is an act of worship". Article 3 states "marriage aims to realise a household life that is *sakīnah mawaddah wa raḥmah*". Article 2 explains the importance of a contract in marriage according to Islam known as the *Qur'an* which is used by KHI as *mīšāqān ḡālīzān*. The strength of a marriage is emphasised by the blessing of Allah Swt. in breaking a marriage bond, although divorce is still allowed in Islam. Article 3 explains that the purpose of marriage is to realise three main things, namely the existence of *sakīnah*, *mawaddah* and *raḥmah*. *Sakīnah*

is defined as a calmness of both partners, because they have obtained their life companion, while *mawaddah* is a sense of love that is a place to combine love in order to channel their biological desires, while *rahmah* is affection that is shown by carrying out the obligations of each husband and wife in the hope of getting rights from their partners.

It is only in the procession of Nias Muslim customs in Gunungsitoli City that both partners must refrain from getting these three feelings, this is due to the necessity of completing the *famasao marafule* procession, which is divided into *fanema marafule*, *baru safusi* and *kofo*. The perspective of the Compilation of Islamic Law, in accordance with Article 3, cannot be implemented with existing customs, so in this case it appears that the purpose of marriage is not realised because it takes time to complete the customary procession which is still a few days after the marriage contract takes place.

Next, we move on to another article contained in Chapter IV on the "Pillars and Conditions of Marriage" which is included in Article 14 KHI. It states, "to carry out a marriage there must be: a. Prospective husband, b. Prospective wife, c. Marriage guardian, d. Two witnesses, and e. *Ijab and kabul*". The 5 (five) things listed are pillars in marriage, when one of them is missing, the marriage is void or cannot be carried out. Looking at Article 14, there are no other pillars listed, including in this case the traditional procession in the form of *famasao marafule*, which is divided into *fanema marafule*, then *safusi* which is in the traditional procession of Nias Muslim weddings in Gunungsitoli City. Indeed, for the people in Gunungsitoli City itself, no one states that *adat* is a pillar of marriage, but in practice, the *famasao marafule* procession (*fanema marafule*, *baru safusi*) is something that cannot be left out, and the effects if left out have social sanctions, either a negative view or stigma from the community, or it is still considered imperfect in carrying out a marriage, so that its role in society will be limited.

The analysis of the Nias Muslim traditional procession in Gunungsitoli City in the form of *famasao marafule* (*fanema marafule*, *baru safusi*) in Positive Law is in the perspective of Law Number 1 of 1974 concerning Marriage in conjunction with Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Article 1 states: "Marriage is the inward and outward bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on God Almighty". The purpose of marriage as stated in Article 1 of Law Number 1 of 1974 concerning Marriage above is not realised with the implementation of the Nias Muslim traditional procession in Gunungsitoli City in the form of *famasao marafule* (*fanema marafule*, *baru safusi*).

Looking further into marriage, Article 2 states "1). Marriage is valid if performed according to the laws of each religion and belief. 2). Every marriage shall be recorded in accordance with the prevailing laws and regulations". Together, we review one by one the paragraphs listed in Article 2 of Law Number 1 Year 1974 concerning Marriage which have been listed above. As explained in Article 1, the validity of a marriage is viewed from two sides, firstly in religious considerations, secondly from considerations of belief. Religious considerations are clear, in Islamic law if the pillars and conditions of marriage are perfect, then the marriage is valid in the eyes of religion and the state. Furthermore, in the next explanation, still in Article 2 paragraph (1), it is also included regarding the validity of marriage based on belief. Trust is mentioned, because in Indonesia itself, in addition to religion, there are also

many beliefs, so if a marriage is carried out in accordance with certain beliefs, then it is also declared valid in accordance with the person's beliefs and legitimised by the state, because it is part of human rights that must be protected in Indonesia.

Next, Article 2(2) also explains the importance of marriage being recorded. Looking at the traditional procession of Nias Muslim marriages in Gunungsitoli City, the pillars of marriage have been fulfilled, as well as the existence of marriage registration before an authorised official, namely the Marriage Registration Officer (P2N). Not only have the two conditions fulfilled above, it turns out that in its implementation there are processional matters that must also be completed, namely the implementation of adat in the form of famasao marafule (fanema marafule, baru safusi). If the custom from Nias in the form of famasao marafule (fanema marafule, baru safusi) is part of a belief that must be implemented by the Muslim community of Nias, then the state, in this case Law Number 1 of 1974 concerning Marriage, provides an umbrella for its implementation, because in the perspective of Law Number 1 of 1974 concerning Marriage, the most important thing is that the marriage is in accordance with religion, in accordance with beliefs, and has carried out marriage registration before an official authorised to record a marriage.

It appears that Law No. 1 of 1974 on Marriage does not go into other technical matters, such as the issue raised in this research, namely the marriage procession that must be carried out by the Nias Muslim community in Gunungsitoli City in the custom of famasao marafule (fanema marafule, baru safusi). (Asnawi., 2023) Article 33 of Law No. 1/1974 on Marriage states that "husband and wife shall love each other, respect each other, be faithful and provide physical and mental support to one another". Looking at the sound of Article 33, the existence of a marriage is to realise it all.

Article 34 consists of 3 (three) paragraphs, as follows: 1). The husband is obliged to protect his wife and provide all the necessities of household life in accordance with his ability. 2). The wife is obliged to manage household affairs as well as possible. 3). If the husband or wife neglects their obligations, each of them can file a lawsuit with the court". Describing the matters in Article 34 above, it can be seen that the husband has an obligation to provide for his wife after the marriage takes place, but whether this obligation must be fulfilled even though in the procession of famasao marafule (fanema marafule, new safusi), the husband has not received his rights perfectly from the wife, so this is where the problem arises, on the one hand the husband has an obligation to the wife, on the other hand the husband has not received his rights from the wife as a result of the procession of famasao marafule (fanema marafule, new safusi).

Paragraph (2) of the same article, regarding the wife's obligation to take care of the household, how can the wife take care of the household, while in the procession of famasao marafule (fanema marafule, baru safusi) she still lives at her parents' house, because it is not customary for the husband to take her to the groom's residence. According to this paragraph, the famasao marafule (fanema marafule, baru safusi) procession results in the wife not fulfilling her duties in terms of taking care of the household. Paragraph (3) relates to when there is negligence, so it appears that the regulation allows the husband to sue the court, but this has never happened, because the procession of famasao marafule (fanema marafule, baru safusi)

takes 1 (one) to 3 (three) days, meaning that cases of divorce because one of the spouses neglects their obligations are seen during the period when they live together for a long time.

### **The Procession of Traditional Wedding Parties Performed by the Nias Muslim Community in Gunungsitoli City from the Perspective of Maqāṣid ash-Sharī'ah**

Sukiati explained that Islamic law in Indonesia is partly the result of the cultural uniqueness of its people which is then modified in positive rules in Indonesia, even so it still has to prioritise Islamic law itself during adjustments in practice, the quote is as follows: "Thus, Islamic law is a reflection of cultural uniqueness and some of it is contained in positive law in Indonesia. Therefore, legal justice must be adapted to "what is practiced" by society by not releasing the legal aspects of Islamic law itself" (Sukiati 2018). Meaning: Thus, Islamic Law is a reflection of cultural uniqueness and is partly contained in positive law in Indonesia, therefore legal justice must be adapted to "what is practiced" by society by not releasing the legal aspects of Islamic Law itself.

One of the codifications in the rules in Indonesia is found in Article 2 paragraph (1) of Law Number 1 Year 1974 concerning Marriage, which understands that marriage can be carried out according to the laws or rules of each religion, and may also be carried out on trust. Including beliefs are cultural customs that are preserved from generation to generation by the people in an area, including in this case the marriage procession carried out by the Nias community in Gunungsitoli City. Not all customs can be used as law, which is why it is necessary to have conditions so that customs can be used as a basis for law. Hidayat and Qasim provide 3 (three) conditions for customs to be used as a legal basis, firstly the custom is generally applicable, secondly the custom does not conflict with the shar'i text, both the text that *isṣābit* and also the rules set by Shara', thirdly the custom has been around for a long time (Hidayat and Qasim, 2016). Ibn Taimiyah explained that customs are the habits of people in the world, and are not prohibited as long as they do not contradict the Shari'ah (Al-Harani 2012).

Although cultural customs are beliefs that can be practised, including in this case the marriage procession, it is important that customary rules do not conflict with Shari'ah, especially with the purpose of the law (Maqāṣid Ash-Sharī'ah). When a custom is in line with the Shari'ah, it is also a good thing to do in the sight of Allah. This is what Imam Ahmad stated in a *maqūf* hadith from a companion of the Prophet (peace be upon him) named Ibn Mas'ūd. Ibn Mas'ūd, regarding customs, which are the ideals of human beings, sometimes they are good if they are in accordance with the Shari'ah, and sometimes they are not good because they contradict the Shari'ah (*famā ra'al muslimūna ḥasanan fahuwa 'indallāhi ḥasanun, wa mā ra'aw sayyi'an fahuwa 'indallāhi sayyiun*) (Ash-Shibani 2012).

Looking at the procession of the traditional wedding feast as a condition for the husband and wife to live together carried out by the Nias Muslim community of Gunungsitoli City from the perspective of *Maqāṣid Ash-Sharī'ah*, it is necessary to first review *Maqāṣid Ash-Sharī'ah*. *Maqāṣid Ash-Sharī'ah* is the *idhafah* sum of the words *maqashid* and *shari'ah*. The word *maqashid* is the plural of the word *قَصْدٌ - يَقْصُدُ - مَقْصُودٌ* (Ali 2012), this word means purpose, so the word *مَقْاصِدُ* is interpreted as many purposes (Harahap 2020). The next word is *الشَّرِيعَةُ*, this word is explained by as-Sayis as *مَشْرَعَةُ الْمَاءِ*, which is the place where water appears. The meaning of *الشَّرِيعَةُ* is further expanded as a straight path *الطَّرِيقُ تُمَسْتَقِيمٌ*, meaning that the Shari'at law is not a crooked law, it is a straight law that stands upright (As-Sayis 2013). Furthermore,



Imam Ash-Shāṭibī gave a definition of *Maqāṣid Ash-Sharī'ah*, explaining that the existence of Shari'ah is a legal provision whose purpose is for the benefit of servants (humans) (*inna waḍ'asy syarā'i' innamā huwa limaṣāliḥ al-'ibād* (Ash-Syathibi 2016). To enrich the understanding of the meaning and definition of *maqāṣid ash-sharī'ah*, some other scholarly opinions are also presented.

Abū Hamīd al-Ġazālī mentions five objectives of the *Shari'ah* towards the creatures: protecting their religion, themselves, their minds, their offspring, and their property (Al-Ghazali 2016). 'Ilal al-Fasi mentioned that the purpose of *Maqāṣid Ash-Sharī'ah* is the purpose of the many secrets that the *Shari'ah* (Allah Almighty) determines in every ruling of the many rules of His *Shari'ah* (Al-Fasi 2012). Muḥammad Jamāl Barūt ar-Raisūnī explains that *Maqāṣid Ash-Sharī'ah* is the purpose of laying down laws to realise the welfare of every slave (Ar-Raisuni 2015). There are many definitions of *Maqāṣid Ash-Sharī'ah*, but there is a red line that binds the existing definitions. *Maqāṣid Ash-Sharī'ah* means the rules of Allah as *Shārī'* (the *Sharī'ah*-maker) imposed on all human beings, the purpose of which is to save human beings from harm, both worldly and afterlife harm, and at the same time to gain benefit and goodness and prosperity in human life itself in general.

The objectives of the *Maqāṣid Ash-Sharī'ah* that must be safeguarded, safeguarding religion is called *ḥifẓud dīn*, safeguarding reason is called *ḥifẓul 'aql*, safeguarding the soul is called *ḥifẓun nafs*, safeguarding property is called *ḥifẓul māl*, and safeguarding offspring is called *ḥifẓun nasl* (Al-Ghazali 2016). These five things are *ḍarūrī* in nature and are obligatory and most important to protect. The level of *Maqāṣid Ash-Sharī'ah* is explained by Sumariati, Fuad and Sukiati quoting the opinion of Ash-Syathibi. He explained that the existence of *shar'i* laws in the form of prohibitions as well as commands and options, is a *Sharī'at* from Allah Swt. for all human beings in order to protect as well as avoid difficulties and prevent harm to human life. There are three levels: *ḍarūriyyāh*, *ḥajjiyyāt*, and *taḥsiniyyāt*. *Dharuriat* is called primary interest, *ḥajjiyyāt* secondary interest, and *hajiyyat* tertiary interest (Sumariati 2020).

The wedding feast is known in the Nias language as *famasao marafule*, and in the language of Islam as *walimah*. The word *walimah* itself has become Indonesian and is defined as a wedding banquet and marriage contract (Nasional 2018). As a criticism, in discussing the meaning of *walimah* mentioned above, it appears that there is an equation between the meaning of the contract and *walimah*, even though these two words are completely different, the contract is part of the pillars of marriage, while *walimah* is a custom that is okay if it is not done, because of time and cost constraints for example. This is what is explained by Dimiyati, who states that *walimah* is part of the teachings of Islam, although it is *sunnah*. (Mukhlisin and Iwannudin 2022) Getting the meaning of *walimah* further, explained by Mujieb as an event gathered in celebrating a party and also a banquet for thanksgiving in a marriage (Tholhah 2013). The origin of the word *walimah* is *walama* which is interpreted as prayer, this means that in the *walimah* event, the owner of the event, both the parents of the two parties and also the bride and groom who are married, hopes for the prayers of everyone who is present for the realisation of harmony and harmony in the household of the two couples (Al-Jamal 2014).

The party event in the form of *walimah* is different from parties in general, in which there is a higher value of sacredness, by inviting neighbours, relatives, whoever he is regardless of title and status (Syarifuddin 2012). This is what Imam Bukhari stated in his book, regarding the

obligation to attend the wedding banquet (walimah) of fellow Muslims, which is to attend the walimahan event when invited (*izā du'iyā aḥadukum ilāl walīmah falya'tīhā*) (An-Naisaburi 2018). Fulfilling the invitation to a walimah is obligatory, and the obligation is lost if something that Allah has forbidden is displayed at the place of the walimah (Al-Musayyar 2014). (Al-Musayyar 2014). The obligation to fulfil the invitation is lost when there are haram or shubhat things at the party, or because there are unavoidable obstacles, such as death, illness and others (Basri 2019).

The procession of the traditional wedding feast as a condition for allowing husband and wife to live together carried out by the Nias Muslim community in Gunungsitoli City from the perspective of *Maqāṣid Ash-Sharī'ah*, specifically the traditional feast to be analysed is the custom of famasao marafule, in the fanema marafule section, new safusi and kofo. As explained in the previous section, the famasao marafule procession, which includes three stages, starting from the first night after the contract (fanema marafule), the second night (baru safusi), and the third night (kofo), is part of the marriage process that must be followed by the bride and groom who have become legal according to Islamic religious law and state law in Indonesia. The validity of marriage according to Islam and also according to the state, is not only sufficient for brides who come from the Muslim Nias tribe in Gunungsitoli City, there are other customary requirements and processions that must be carried out before the bride and groom can stay in the same house (room) for a long time in conjugal relations. The customs contained in fanema marafule, baru safusi and kofo, which are part of a series of traditional Nias Muslim events in Gunungsitoli City famasao marafule, only allow the bride and groom to be together or have sexual activity for 1 (one) hour to 2 (two) hours, the rest of the time the groom must return to the shelter house, and continue the long customary process. As it is understood, the existence of marriage is in the context of hifzhud din (protecting religion), as well as hifzhun nasl (protecting offspring). Both parts of the Maqāṣid Ash-Sharī'ah are found in marriage.

Analysing further the traditional procession of famasao marafule, be it fanema marafule, baru safusi, and also kofo, in the review of Islam marriage is part of the commandments of Allah Swt. and His Messenger. The principle relates to the provision of a husband as a leader and responsible for the household, as stated in the Qur'an letter an-Nisa' verse 34. A husband has not been able to realise his leadership of the wife he married, because the Nias customary process of famasao marafule with its three parts, namely fanema marafule, baru safusi, and kofo, still limits it. It is as if the Nias customary *tradition* of Gunungsitoli City wants to emphasise that although in Islam the marriage of the man and woman is valid, in the view of custom the marriage is not yet perfect, that is why the taboos and prohibitions to be together between husband and wife must heed the customary rules that have been passed down from generation to generation are still strongly held by the Nias Gunungsitoli community. In accordance with the verse Q.S. An-Nisa'/4:34, the issue of leadership of a husband is also included in the Prophet's hadith. as found in the hadith narrated by Imam Bukhari and Abu Dawud which explains that every head of a family is the leader of his family (*war rajulu ra'in `ala ahli baitih wa huwa mas'ulun `an ra'iyatih*) (Al-Bukhari 2018) (As-Sijistani 2012).

A woman who is married is responsible for her husband, both in terms of obedience to Allah Swt. and in terms of providing physical and spiritual sustenance. When Nias customs provide rules that are different and contrary to the teachings and shari'at of Islam, then this is

certainly a problem, on the one hand customs must be obeyed, but on the other hand there are rights and obligations that cannot be realised by husbands and wives. It is appropriate that when the husband and wife after the marriage contract is carried out by the groom with the woman's guardian, then the responsibility of a guardian for his daughter-in-law moves to his son-in-law, then there are no longer taboos and prohibitions for husband and wife to be together, let alone limited to only 1 (one) hour to 2 (two) hours together to sleep in the bridal room, as a Muslim, of course, this kind of custom must be reviewed, whether it must still be followed, or must be abandoned, because there are many disadvantages for husband and wife.

A Nias Muslim bridegroom who performs a marriage contract with the guardian of a woman of his choice changes his status from a single person to a married person (*muḥṣān/muḥṣanāt*). The mere execution of a marriage contract can change a person's status, hence the high sacredness of marriage, from the prohibition of sexual intercourse (*jima'*) to something that is considered an act of worship in the sight of Allah. Therefore, from the point of view of *ḥifzud dīn*, the prohibition of intercourse between husband and wife is forbidden, and this is clearly contrary to Islamic Shari'at, because there is nothing that prohibits a husband from having sexual intercourse with his wife, at any time and any number of times, except for a few reasons, including because his wife is still in the period of menstruation, postpartum, or sickness.

The Nias custom in Gunungsitoli City that places restrictions on husband and wife together is clearly a wrongful act, especially since it certainly does not approve or hurt the hearts and feelings of the bride and groom who want to be with their partner. The Prophet (peace and blessings of Allaah be upon him) stated that in addressing a rule that is "new" or not in accordance with the spirit of the Islamic Shari'ah, it should be rejected (*man aḥḍaṣa fī amrinā hazā mā laisa fīhi fahuwa ruddun*) (Al-Bukhari 2018). It is clear that the Nias wedding custom in the procession of *fanema marafule*, *baru safusi* and *kofo*, which are part of the Gunungsitoli City Nias Muslim *famasao marafule*, contradicts the objectives of Islamic law (*Maqāṣid Asy-Sharī'ah*) in terms of *ḥifzud dīn* (protecting religion).

Furthermore, the procession of *fanema marafule*, *new safusi* and *kofo* are a series of traditional Nias Muslim events in Gunungsitoli City *famasao marafule* seen in terms of *Maqāṣid Ash-Sharī'ah* in terms of *ḥifzun nasl* (protecting offspring). Makmur and Aisyah explained that the physical relationship between husband and wife is urgent, because if it is not channelled it can cause anxiety, headaches, and even insanity (Aisyah 2020). For newlyweds, the time together with their partner is a beautiful time and they do not want to be disturbed, let alone limited by hours or days, in accordance with the Nias Muslim marriage custom in Gunungsitoli City.

Makmur and Aisha explained the importance of sexual intercourse between husband and wife, because if it is not done, there will be many bad consequences of withholding sexual intercourse. He went on to say that sperm consists of hot and cold elements, because sperm is produced from the process of pure blood in channelling food and nutrients throughout the body, if it is not expelled, it will get several diseases, such as feeling humiliated and low, madness, anxiety, headaches, and many others (Aisyah 2020). Most importantly, the issue of sexual relations between husband and wife is a necessity as well as the rights and obligations of one another, so there is no reason to delay or prevent it on the grounds of any custom or tradition.

This is also explained by Basri, having intercourse is part of the effort to get offspring, and this is part of the principles of a marriage (Basri 2019). However, marriage in the Indonesian context is not just about biological relations, there are also principles that are also important in the occurrence of a marriage, such as voluntariness, consent, freedom of choice, partnership, and marriage is expected to last forever (Kuzari 2018).

Not wanting to clash between customs and Islamic teachings, it's just that there are certain limits to a custom that can be followed by a Muslim, as long as the custom does not conflict with the values of Islamic teachings. In the author's opinion, in accordance with the results of the interviews previously listed, there are many complaints from the community, whether they are migrants who marry Nias people, or even Nias youth themselves, about Nias customs that seem to burden someone to get married, either in terms of cost, or a gradual process that takes a lot of time and energy.

Looking at the traditions of fanema marafule, baru safusi and kofo, which are part of the Gunungsitoli City Nias Muslim famasao marafule, the author observes that they clearly contradict Maqāṣid Ash-Sharī'ah in the section of *hifzhun nasl* (preserving offspring). Marriage is essentially a way that Islam allows its followers to avoid falling into *fahsyā'*, such as adultery. The problem is, in the Nias Muslim custom of Gunungsitoli City, the bride and groom are already married, but are delayed to linger with their partner, and who can guarantee that one of the partners will do something that is not approved by Allah, whether it is committing adultery with another person, or doing something other *fahsyā'* just to fulfil his biological desires and needs as a human being, even though he already has a partner. (Luthfi et al., 2022) The Prophet (peace and blessings of Allah be upon him), in a Hadīth narrated by Ibn Majah, warned Muslims everywhere not to cause harm to other human beings, either by making rules that make life difficult or constrict the lives of others (*la ḍarar wa lā ḍīrar*) (Al-Qazwani 2014).

Marriage is defined as *aḍ-ḍammu* and *al-waṭ'u* in language, which means having intercourse and having sexual intercourse, so when there is a custom that prohibits a husband and wife from having sexual intercourse, the meaning of marriage is not fulfilled; it is fulfilled only in terms of the marriage contract, of course this is not perfect (Al-Anshari 2016). Therefore, in accordance with the fiqh rule that every thing that causes harm should be removed, and another rule that all difficulties should be removed (*aḍḍurār yudfa'u biqadril imkān*) (Djazuli 2016), this includes customs that make it difficult for husband and wife to be together. Another text states that every evil must be removed (*aḍḍurār yuzāl*) (Fauzi et al. 2022).

Marriage is the only way that is approved by Allah Swt. to reach the distribution of desire, so the existence of the institution of marriage, whose purpose is to glorify humans as well as facilitate humans in their lives, should not be tarnished with rules that can make it difficult for humans themselves. As a result of the research and analysis using the Maqāṣid Ash-Sharī'ah theory, the fanema marafule, baru safusi and kofo customs, which are part of the Gunungsitoli City Nias Muslim famasao marafule ceremony, clearly contradict the Maqāṣid Ash-Sharī'ah in the *hifzun nasl* (preserving offspring) section, as well as the *hifzud dīn* (preserving religion).

## CONCLUSION

The procession of the traditional wedding feast as a condition for allowing husband and wife to live together carried out by the Nias Muslim community in Gunungsitoli City is the custom of famasao marafule, which consists of 3 (three) parts, namely fanema marafule, baru

safusi and kofo. In general, in the intended custom, the suspension of togetherness between the bride and groom occurs after the culmination of the wedding ceremony in the form of a marriage contract, so in this case the prohibition of togetherness for several days is part of the custom implemented by the Nias community in Gunungsitoli City. The husband and wife are only allowed to stay in the bridal chamber for one to two hours, and must complete the event on the fourth day, then they can freely live together.

The procession of the traditional wedding feast carried out by the Nias Muslim community of Gunungsitoli City from the perspective of Positive Law there are discrepancies with several Positive Laws that exist in Indonesia. The perspective of Positive Law from the Civil Code (KUHPerd.) The marriage procession of Nias Muslims in Gunungsitoli City is contrary to the mandate of Article 106 of the KUHPerd., because after the marriage contract the wife is obliged to live together at the husband's residence, in the Nias traditional procession in the form of famasao marafule (fanema marafule, new safusi and kofo) it turns out that the wife's obligation cannot be carried out because she has to complete the traditional procession, as if the husband has not completed the right to own his wife. From the perspective of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), there is a contradiction between the traditional marriage procession of Nias Muslims in Gunungsitoli City and Article 3 of KHI, which states that marriage is to realise three main things, namely the existence of *sakinah*, *mawaddh* and *rahmah*, which cannot be carried out with a traditional procession that takes days, so that the purpose of marriage is not realised. The next analysis of Positive Law is in the perspective of Law Number 1 of 1974 concerning Marriage in conjunction with Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The traditional marriage procession of Nias Muslims in Gunungsitoli City is contrary to Article 34, both contained in paragraph (1), and paragraph (2). As a result of the famasao marafule (fanema marafule, baru safusi) marriage procession, the husband and wife cannot carry out their obligations, namely the husband does not want to provide maintenance because his wife does not live with him, while the wife cannot take care of her household because she still lives with her parents.

In terms of *ḥifẓud dīn*, it is forbidden for a husband and wife to have intercourse or to be together, and this is clearly against the Islamic Shari'ah, because there is nothing that forbids a husband to have intercourse with his wife, at any time and any number of times, except for a few reasons, including because his wife is still in the period of *ḥaiḍ*, *nifās*, illness. The Nias custom in Gunungsitoli City that places limits on the time a husband and wife can be together is clearly an unjust act, not to mention it certainly does not approve or hurt the hearts and feelings of the bride and groom who want to be with their partner. *nikah* is defined as *aḍ-ḍammu* and *al-waṭ'u* in language, which means having intercourse and having sexual intercourse. Therefore, when there is a custom that prohibits legal husbands and wives from having sexual intercourse (*jimā'*), the meaning of *nikah* is not fulfilled; it is fulfilled only in terms of the marriage contract, of course this is not perfect, thus violating *ḥifẓud dīn* in *Maqāṣid Ash-Shari'ah*.

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