

## ***Njaum-Njaum* As A Marriage Proposal Of Kedayan's Ethnic Perspective Sarawak Islam Family Law Ordinance 2001**

**Normiwati Binti Barwi**

State Islamic University Maulana Malik Ibrahim Malang

[normiwatibarwi94@gmail.com](mailto:normiwatibarwi94@gmail.com)

### **Abstrak:**

*Njaum-njaum* tradition as a usual event of propose marriage in Kedayan's ethnic. This tradition was initiated by the giving of a ring and cash money by the men to the woman as a *pembuka mulut*. The amount of this opening money is not fix, but it is subject to the request of the woman. Nowadays, people look less appropriate about this tradition. This research belongs to the type of empirical research, using a qualitative descriptive approach. The researcher was collected the primary data from direct interviews with informants from the community in Kampung Bungai, Bekenu town in Province of Sarawak, Malaysia. The secondary data was collected from literature books, papers, and articles relevant and related. This study shows the implementing process of *njaum-njaum* tradition of Kedayan's ethnic that still practice until nowadays. They has their own reasons why they need to maintain this tradition. Based from what has been written on Sarawak Islamic Family Law Ordinance 2001, whoever have already entered into marriage propose or engagement agreement, and if one of them reneges, then they cancelled the marriage proposal and engagement can report to the Syariah Court for action and penalty.

**Keyword:** *Njaum-njaum*; Tradition; Marriage.

### **Introduction**

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

Propose marriage in Islamic law is a thing prescribed by Allah to the couple who wants to get married so that the couple knew each other before a marriage contract is conducted. This is as it is contained in his word surah Al-Baqarah verse 235: "And there is no sin for you to propose those women with innuendo." Propose marriage in Islamic law aims to bring about a benefit, this is because both parties will be engaged and get to know each other. At the same time will tighten the relationship between both families. The propose is generally brought benefit for propose marriage, but the proposed marriage

here has a difference because the Kedayan ethnic has its own tradition when the ceremony.

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

*Njaum-njaum* is a term for the custom of divination by some male representatives who come to visit the woman's family house by bringing 'kipii' and 'camai'. This tradition was initiated by the giving of a ring and cash money by the men to the woman as a '*pembuka mulut*'. This opening conversation is not fixed with bringing 'kipii' and '*caamai*' but it is depend on women's requests too. 'Kipii' in Kedayan language is an object shaped like small plates made of copper or bronzer. But nowadays, there are usually give money as the very simple thing or good giving to women's family as a change of kipii and caamai because it is hard to find.<sup>1</sup> At the same time, if women's family accept the men propose, they will be directly ask for the several requests including the women's needs that called '*sapangadak*'.

Kedayan community also believe by having this tradition makes the women and men, which are want to get marry become more peaceful and will have strong relation between both of family. Besides it, *njaum-njaum* are the symbolic of taking a women from her family, and also has more perception from community about this tradition.<sup>2</sup> More than that, if the men is not from the Kedayan ethnic, while the women is pure Kedayan ethnic, it is called 'langkah sungai' and men's family needs to fulfill all the request from women's family.<sup>3</sup>

The same provision is also provided in the Islamic family law of other states in Malaysia such as the Islamic Family Law (State of Selangor) Enactment 2003, the Islamic Family Law (State of Malacca) Enactment 2002, the Islamic Family Law (State of Kelantan) Enactment 2002, and the Islamic Family Law (Kedah Darul Aman) Enactment 2008.<sup>4</sup> Furthermore, it is interesting to discuss because in Sarawak Islamic Family Law Ordinance, 2001, there are no specific law for propose marriage. But people can refer the specific rule about engagement since it has been written in Chapter 43, Islamic Family Law, 2001.

## Method of Research

<sup>1</sup>Hj. Nawang, *interview* (Sarawak, 6 January 2023).

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

<sup>3</sup>Hj Nawang, *interview* (Sarawak, 6 January 2023)

<sup>4</sup> Nur Syaheerah, “Engagement Under Malaysian Islamic Law”, MONCO, February 9, 2022, [https://monco.my/engagement-under-malaysian-islamic-law/#:~:text=The%20proposal%20can%20be%20made,binds%](https://monco.my/engagement-under-malaysian-islamic-law/#:~:text=The%20proposal%20can%20be%20made,binds%20the%20woman%20to%20the%20husband%20and%20his%20family)

This research is a field research where this research focuses on the results of data collection from predetermined informants. Field research is a research activity carried out in a particular community environment. This is because this research is descriptive in nature as a research procedure that produces descriptive data in the form of written or oral words from people or observed behavior.<sup>5</sup> Researchers use descriptive research as a basis that makes the analysis of the data not only from theory but from seeing this tradition clearly.

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

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

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

**Table 1.** Informant Name List

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

Secondary data, namely data sources that are helpful or supportive in completing and strengthening data. Provide an explanation of the primary data source, in the form of explanations or reviews relating to the problem are: The journal for example, "*Intention of Kedayan Muslims Malaysia*". References from the related previous UIN Malang thesis, for example, "*Weton Calculation Practice On A Wedding Ceremony In Muslim Scholar's Opinion (Study At Tirtomoyo Pakis Malang)*." And References from the related Malaysian thesis, for example, "*Konsep Sinkretisme Menurut Perspektif Islam: Kajian Terhadap Adat Dan Kepercayaan Masyarakat Kedayan*".

This research is a qualitative research so that the main data source is based on interviews. The main source of this research is called primary data. Based on the opinion of Lofland Moleong, explained that the main source of qualitative research is words,

<sup>5</sup>Kasiram, *Metodologi Penelitian Kuantitatif Kualitatif* (Malang : UIN Malang Press, 2008), 151.

while the rest is additional data such as documents and so on.<sup>6</sup> Data collection methods in this study are firstly is Interview, this method is used to obtain information that cannot be obtained through simple observation. With this observation researcher will be able to obtain complete data and answer all questions throughout the study. This interview involved researchers with the community in Kampung Jambu Bungai, Bekenu, Sarawak to find out more information about this *njaum-njaum* tradition. The following below are the guideline questions to ask during interviews with informants about How the implementing process of *njaum-njaum* tradition of Kedayan's ethnic, What should the man give to the woman as a gift, Can the gift or terms that requested by woman family replace or change with other terms if one term difficult to find, What are the gift that needed if both family decided directly to engagement, What are the reason *njaum-njaum* tradition need to be maintain, Are this tradition bring the positive vibes to the next generation if it still maintain, What are the effect of cancellation marriage proposal and engagement base on Kedayan custome, and lastly If man or woman broke the agreement and cancel the marriage prososal or engagement, can they claim it under court. Secondly is documentation, this method is taken using materials that involve writing. In implementing this method, researchers will investigate objects in the form of books, newspapers, articles and so on to confirm the evidence.

For the data Analysis, before analyzing the results of the interviews, it is necessary to process the data first to separate which data are relevant to the research objectives and which are not. The processing data for this study *Firstly* is Editing, this is about carrying out the research process again on records, informant files were collected by researchers in order to improve the quality of the data analyzed. In editing, it is corrected again to include matters of clarity of answers to each other, relevance of answers and uniformity of data that been collected. In this research, the answers from the respondents who are doing and know well about *njaum-njaum* tradition are colleted and combine together to know their reasons and opinions. *Secondly* is Classification is an attempt to select each unit into parts that have similarities. Classification is done with the aim to distinguish between primary and secondary data. After classification, the researcher can easily distinguish the data obtained from informants about the implementation of the *njaum-njaum* tradition in the Kedayan ethnic in Kampung Bungai, Bekenu with data originally obtain from books of Malaysian traditions, sermons and laws. *Thirdly* is Data verification is the steps and activities carried out by researchers to obtain data and information from the field. So that their validity can be known more clearly. Therefore, the information must be checked or re-examined. Verifying data is based on the data obtained, accordance with the questions that have been asked of the people interviewed in the field. This aims are to get a clear source of information. *Fourthly* is the analysis is carried out by including the data obtained from the field with the theories in the book. The analysis aims to understand the data collected and answer questions from the concept of adat and the applicable laws. And the last process is the conclusion. Conclusions are drawn from the data obtained by the answers so that what is described in the problem formulation is answered. In this conclusion, researchers found answers from the results of research conducted by the Kedayan community in Kampung Bungai, Bekenu Sarawak.

<sup>6</sup> Lexy J. Moleong, *Metodelogi Penelitian Kualitatif*, (Bandung: PT Remaja Rosdakarya, 2006), 157.

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

Bekenu, also known as Sibuti, is a town in Sarawak, Malaysia. It is located about 47 kilometers (29 miles) southwest of the city of Miri. Bekenu is the administrative center for Sibuti District. It is included in the local authority area (local government) of the Subis District Council. Kampung Bungai is one of the village in the Bekenu Town. Bungai area generally has 5 main villages that make up the area known as Bungai, namely Kampung Jambu, Kampung Mumong, Kampung Gatas, Kampung Bungai and Kampung Peliau. Bungai is located 50 km from Miri City Center and 8.2 km from Bekenu Town which is located at Latitude 4.075179 and Longitude 113.794107.

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

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

In terms of the origins of the Kedayan community in Sarawak, whose population is concentrated in Miri, Limbang, Lawas and Bintulu, they are actually directly related to their ancestors who came from Brunei. Perhaps because of geographical factors considering that the parts of Miri, Limbang, Lawas and Bintulu are very close to the border with Brunei, plus, once upon a time this mentioned part had a very strong influence with the Sultanate of Brunei because this part was also the land of the sultanate chief once upon a time. The language used is same like Bruneian daily language. According to the population census (2010) through the Bekenu, Sibuti District Office, a total of 13,005 residents, of which 4,699 are Iban, 76 Bidayuh, 5,334 Kedayan, 486 Chinese, 355 Melanau, 29 others- others, and 320 non-citizens.<sup>7</sup> The population of Kampung Bungai are estimated to be almost 500 of peoples.

In Kampung Bungai, mostly are Muslim and also have Buddhist and Christian. But for whole Bekenu Town will also have Christian. Every each of village provided with *surau* (small mosque) for Muslim people. The largest ethnic who are live there also Kedayan. Nowadays, most of the young generation succeed their education level until university. For further their study, they need to move out from that village to city. However, Kampung Bungai also have own government primary school. While to continue for secondary school, also has been built up near the Bekenu Town. Majority of source economy in this area farming, agriculture, and usually peoples will sell their products on Fridays, Saturdays, and Sundays in the "*tamu*" area (a row of small shops) in front of Pusat Internet 1 Malaysia, Kampung Bungai.

---

<sup>7</sup> Pusat Ekonomi Digital, accessed on 27 April 2023, <http://peliaubungai.pimaxis.my/index.php>.

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

Tradition is a rule that has been practiced from generation to generation (since time immemorial) by a society (so that there are laws and regulations that must be obeyed) (Dewan Dictionary fourth Edition). While according to the Dictionary of Fiqh Terms, tradition mean a set of social rules in the wider society, not including Sharia law' (religion). This rule is obeyed by all level of society, as if by will or the rule of inheritance from their ancestors, or as if it were a necessity sourced from God.<sup>8</sup>

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

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

#### **Propose Marriage**

*Njaum-njaum* is the term for the tradition of marriage proposal by some representatives of the male side who come to visit the house of the female. This tradition was initiated by the giving of a ring and cash money by the men to the woman as a *pembuka mulut* (an opening or first of the conversation). The amount of this opening money is not fix, but it is subject to the request of the woman. The current rate for now is usually RM 50.00 (IR 161,704.80).

After the ring and cash are received by the woman, the man will announce their presence to propose to the daughter of the family they visited. When the women agree to accept propose marriage from the men, then they will explain about the customs and follow up with a discussion about the matter needed at on engagement ceremony later. There are a few matter from man side that need to prepare it, as the information directly got from the respondent, Mdm Basyirah Binti Awang Rusli (the one who are practicing this tradition and come from both parents are Kedayan ethnic), "*Balah lakik babaikan sabantuk cincin amas sebagai tandak sudah adak yang njaum atau mun kan taus bertunang, bsiak lakik baik skali kan Kingkin Saang Samut.*" The man should give a gold ring as a sign of njaum-njaum or if they want directly engaged, man should provide with Kingkin Saang Samut (gold ring that with the shape of anthill).

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

<sup>8</sup> Samrah Ag. Damit, Ros Aiza Mohd Mokhtar & Abd Hakim Mohad, "Birth Custom and Norms of Kedayan Community In Sipitang, Sabah," *Jurnal Sultan Alauddin Sulaiman Shah*, Special Issue (2018) : 128.

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

*“Bsiak mesti mbaik sejenis bang bakas tradisi untuk yang pakai nauh cincin, kipii kan caamai namanyak. Tapi kiipi kenganik payah kan adak di kadai. Biasa nyak kenganik sudah digantik kan usin tunai untuk duak baang atuk, kiak-kiak dalam RM50 nyatuk la.”* The man should provide a type of traditional container to store the ring called kipii and caamai. Since kipii and caamai are no longer available in the market they are usually replaced by cash. The current rate for cash replacement of these traditional items is RM50.00.

*Bsiak pihak lakik mbaik sapangadak baju kan pakai salinan lengkap daik hujung batis ke hujung ambut. Tapi adak juak bsiak keluarga lakik binik setuju kan digantik sajak pakai usin ngikut baapak kiak-kiak hargak baang atuk.* The men must hand over sapangadak clothing, which is full set cloth from toe to hair. However, both parties agreed to replace it with the value of cash according to the estimated price mutually agreed.

*Mun adak kalangkahan dulang, iak adak kakak yang alum bertunang atau kawin, bsiak balah lakik pun mesti mbaik sabantuk amas untuk kakak nyak tuk.* If there is a ‘*langkah dulang*’ where the woman that wants to be propose has a sister who is not yet engaged, then the man must gift a gold ring to her sister.

*Mun misal nyak ada yang kelangkahan sungai, kiak lakik tuk ukan uang Kadayan, jadik iak mesti mamanuhi apa sajak permintaan bsiak balah binik atuk.*<sup>9</sup> If there is a ‘*langkah sungai*’, means that the man is not Kedayan ethnicity, then the man must fulfil the request of that woman.

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

## Engagement

After process of *njaum-njaum* (propose marriage), men’s family will come again in another with carrying engagement gifts as discussed on the propose mmarriage day. The delivery is usually carried with a *talam* (big plate gift) decorated according to each person's creativity. The women will inform to men’s family that all the items brought are as discussed at the time of *njaum-njaum* day. Meanwhile, the women will return the delivery tray by filling it with suitable items for the men's group to take home.

At this engagement ceremony both parties will discuss the following matters: Setting the engagement period and wedding ceremony, The women will set ‘*belanja angus*’ which is the expenditure for the ceremony female marriage, The woman will determine the dowry rate which is called ‘*baiyan*’ by the Kedayan tribe. This *baiyan* must be wrapped in three layers of white, yellow and red cloth or handkerchiefs. There are also those who use five or seven layers of cloth.

On this step, man will bring gold ring named *Kingkin Saang Semut*. *Kingkin Saang Samut* is a type of ring used by the Kadayan ethnic as an engagement ring in ancient

<sup>9</sup> Basyirah Binti Awang Rusli, interview, (Bekenu, 17 May 2023)

times. Some also call this type of ring as *Cincin Bunga Pinang*. *Kingkin Saang Samut* is yellowish white because it is not made of gold or copper. Perhaps the ring was made of silver with some gold or copper alloy or plating, but now there are also made of gold, according to the value and passage of time. The ring is called *Kingkin Saang Samut* probably because of the carvings and motifs on the top that resemble anthills. However, there a few discussion will be made again during meeting on engagement day. This information directly got from the respondent, Mr. Awang Mohd Hadi Bin Awang Saruni (the one who are practicing this tradition and Kedayan Youth Community Leader 2022):

*“Rumbungan bsiak uang laki dating baamai-amai mbawak hantaan tunang manuhi apa yang sudah dipadahkan aik njaum-njaum bianik. Biasanya hantaan tuk dihias-hias la. Mun sudah sampai pihak laki ka umah yang binik tu, yang balah binik sendiik akan bepadah panuh kah indak sudah dituuti permintaan uang tuhak nyak saituk. Bsiak balah binik pun adak juak balasan hantaran aik kan mulihakan dulang aa rombongan bsiak lakik. Aik majlis betunang atuk tah adak juak hal yang dibincang akan termasuk natapkan haik kawin, balah binik natapkan bapak belanjak angus, brapa hantaran dipintak.”<sup>10</sup>*

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

During this engagement day, parent from both male and female will discussed to choosen for wedding date. Usually, parent from woman side will decide date of wedding day, while the man side just agreed with it. Both parent also will discuss about what are the preparation that need to gift for bride according to the traditional procedure. The moment on propose marriage and engagement, only the elders will discuss together. There are no need the involving others family like the young age. The parents from woman side will give an advice to the man who are propose to marriage as a reminder to follow the requirement.

### **Reasons Njaum-njaum Tradition Need to Be Maintain**

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

*“Tujuan dan alasan saya untuk mengekalkan adat Kedayan njaum-njaum tersebut ialah untuk memudahkan menyatakan hajat ingin memperisterikan wanita tersebut sama ada wanita tersebut sudah terikat dengan mana-mana lelaki ataupun belum. Selain itu, sepanjang tempoh njaum tersebut. Pihak keluarga lelaki dan perempuan boleh mengenal antara satu sama lain dengan cara yang betul dan menjaga batas pergaulan antara lelaki dan perempuan. Pada masa yang sama sepanjang tempoh tersebut lelaki dan perempuan tersebut boleh membuat keputusan sama ada ingin meneruskan niat ataupun membatalkan niat dengan sebab yang tertentu.”<sup>11</sup>*

<sup>10</sup> Awang Mohd Hadi Bin Awang Saruni, interview, (Bekenu : 17 May 2023)

<sup>11</sup> Sufadillah, interview, (Miri: 25 May 2023).

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

From the interview with Mr. Sufadillah, we can see that this tradition are still use to be maintain by young generation cause he can give the positive reason in practicing this tradition. He also said that, "*Adat njaum-njaum ini tidak bertentangan dengan syariat Islam kerana tiada unsur-unsur yang tidak dibenarkan ataupun pemahaman yang berbeza oleh kerana semuanya dilakukan atas niat ingin menjalinkan hubungan yang baik dan menyatakan hajat yang baik. Jika adat ini tidak diikuti tiadalah kesan buruk ataupun akibat yang memberi kesan ke atas seseorang. Oleh kerana adat adalah satu perbuatan yang telah diturunkan turun menurun dan ingin diteruskan supaya tidak lapok ditelan zaman. Adat ini membawa banyak kesan baik kepada kedua belah pihak oleh kerana ia adalah salah satu cara perbincangan dan mengenal antara kedua belah pihak. Bak kata pepatah Melayu tak kenal maka tak cinta begitulah konsep njaum-njaum ini.*"<sup>12</sup>

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

So, from Mr. Sufadillah, he selfly gave his own reason that this tradition are does not has any contradictory to Islam. It is bringing a good effect or positive way if they still continues this tradition from their old generations. This positive opinion are supported by one other informant who are agreed with this tradition to be continue to next generation. Mrs. Nurul Asmidani, the one who are practicing this tradition, she said "*Kesan positif dari tradisi njaum-njaum ini adalah supaya kedua belah pihak masing-masing boleh membuat keputusan untuk meneruskan perkahwinan atau memutuskan hubungan yang dijalankan. Tujuan dikekalkan njaum-njaum supaya adat ini tidak luput ditelan zaman. Adat ini sudah menjadi satu tradisi yang diamalkan secara turun temurun sejak dahulu kala. Orang dahulu kala sangat berpegang teguh dengan adat. Mereka menanamkan prinsip biar mati anak jangan mati ada.*"<sup>13</sup>

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

From the explanations that have been obtained from the informants regarding the factors that influence the Kedayan community to maintain the *njaum-njaum* tradition in

<sup>12</sup> Sufadillah, interview, (Miri: 25 May 2023).

<sup>13</sup> Nurul Asmidani, interview, (Miri: 25 May 2023).

this proposal, it can be concluded that these factors can be divided into internal and external factors. From the Internal factor there are positive effect of this tradition is that both sides can each make a decision continue the marriage or end the relationship and another reason for maintaining the custom of courtship is to make it easier to express the desire to marry the woman whether the woman is already tied to any man or not. For External factor, This custom has become a tradition that has been practiced from generation to generation since their old generation and ancient, were very strict with customs. This tradition does not contra with Islamic Sharia because there are no elements that are not allowed or different understandings.

**Table 2.** Affect of Factor Internal and External Factor

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

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

Customary marriages in Malaysia are conducted by indigenous people in several states. Customary marriages in Sarawak are conducted based on Native Customary Marriages (Maintenance) Ordinance 2003 while in Sabah, it is carried out under the Native Court (Native Customary Law) Regulations (1995). According to the customary law of marriage in Sarawak is contained in the Native Customary Marriage (Maintenance) Ordinance 2003, customary marriage means any marriage registered or celebrated in the country according to the customs of each race. This law explaining that customary marriages can only be conducted for couples who marry according to the customary law in Sarawak or any other law customs recognized under this ordinance. In addition,

customary marriages are not allowed for Muslim couples and couples who are married and registered in under the Law Reform Act (Marriage and Divorce Act 164, 1976).<sup>14</sup>

According to the custom of the Kedayan people themselves, if there is a betrothal or engagement bond that cannot be continued or has to be cancelled, then it will be fined according to the losses that have been given by one party. This information directly got from the respondent who has been know deeply about this tradition, Hajah Napisah Binti Haji Yunos, she said, “*Mun sudah bedatang njaum-njaum bebaik baiyan, beunjuk tanda tunang tapi dah tuk ndak jadik, adak yang mintak putus kah memang terhukum tuk. Mun balah lakik yang mintak putus, biasa nyak la ada mbayar rugik dalam 150-200 inggit. Tapi atuk nuut apak yang dimintak bsiak uang tuhak balah binik mintak la. Sgala baang-baang balasan hantaran daik nalah binik haik bartunang atuk pun mauk dimulih akan. Mun misalnya sudah tepakai, baik tah diganti sehagak bang atuk. Mun misalkan yang mintak putus atuk balah binik, sgalak usin belanja angus, usin aik bukak mulut 50 inggit atuk pun bemulih akan. Belanjak kan haik betunang mun bsiak lakik adak mbaik bermulih akan juak atuk. Kinking saang samut aik njaum-njaum atau bertunang tuk memang dimulihkan. Ndak dapat diambil taus sabab balah binik yang ngundur diik. Baang-bang lain yang diunjuki aik datang menjaum atau bertunang tuk pun beantat mulih tuk, tmasuk segalak baju-baju. Mun misalnya sudah tepakai kah, binasak kah, mauk begantik tuk sabab yang banyak saahan tuk balah lakik bukan binik. Sabanarnya anik memang adat uang Kedayan daik turun-temuun. Banyak dangan yang ndak tahuk pasal adat anik. Lagik-lagik tah yang ukan uang Kedayan.*”<sup>15</sup>

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

### **Sarawak Islamic Family Law Ordinance 2001**

In Sarawak Islamic Family Law Ordinance, 2001, there are no specific law for propose marriage. But people can refer the specific rule about engagement since it has been written in Chapter 43, Islamic Family Law, 2001. This opinion also suggested by the one of Syaria Lawyer and Firm team, Sir Nafizuddin Bin Hj Jusoh. He said “*Di*

<sup>14</sup> Flavia Ary Sahwa and Tharshini Sivabalan, “Meneroka Isu Perkahwinan Bawah Umur dari Perspektif Undang-undang Perkahwinan Adat di Sarawak”, *Malaysian Journal of Social Sciences and Humanities*, Vol 8 (2023): 8

<sup>15</sup> Hajah Napisah Binti Haji Yunos, interview (Miri: 8 June 2023)

*Sarawak bagi orang yang beragama Islam, tiada undang-undang khusus yang dibentuk atau digubal yang berkaitan dengan hukum peminangan. Akan tetapi kita boleh merujuk kepada undang-undang yang sudah tertulis di dalam Ordinan 43, Ordinan Keluarga Islam, 2001 (Bab II, Syeksen 13) tentang pertunangan. Jadi, sekiranya ada pasangan yang bertunang dan telah pun membuat perjanjian pertunangan, dan salah seorang daripadanya ada yang mengingkari, maka, pihak yang dikhianati boleh melaporkan kepada pihak Mahkamah Syariah untuk dikenakan tindakan dan denda.”<sup>16</sup>*

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

The Sarawak Ordinance Family Law, 2001 about betrothal of an engagement is the revisions of Sarawak Law Ordinance written on 1992. Then, after the new Sarawak Islamic Family Law Ordinance, 2001 are released, they published in again with the same rule in Chapter 43, Part II (No.13) of new ordinance 2001, as following below:

*If any person has, either orally or in writing, and either personally or through an intermediary, entered into a betrothal in accordance with Islamic Law, and subsequently refuses without lawful reason to marry the other party, the other party being willing to marry, the party in default shall be liable to return the betrothal gifts, if any, or the value there of and to pay whatever money that they has been expended in good faith by or for the others party in preparation for the marriage and the same be recovered by action in the court.”<sup>17</sup>*

Based from what what been written on the Islamic Family Law Ordinance, 2001 about betrothal, there are no specific amount of payment need to be paid and no specific good or kind of gift that need to return back. It is only said it shall be return. Provisions regarding engagement are provided in the sharia law in Malaysia. For example, Section 15 of the Islamic Family Law (Federal Territories) Act 1984 (Act 303) provides:

*“If a person has entered into an engagement according to Hukum Syarak, either orally or in writing, and either alone or through an intermediary, and then refuses to marry the other party without any valid reason while the other party again agrees to marry her, then the defaulting party is responsible for returning the betrothal gift, if any, or its value and paying any money that has been spent in good faith by or for the other party to make preparations for the marriage, and such may claimed through action in the Court.”<sup>18</sup>*

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

<sup>16</sup> Nafizuddin Bin Hj Jusoh, interview, (Miri: 19 May 2023)

<sup>17</sup> Islamic Family Law Federal Territories: 19

<sup>18</sup> Nur Syaheerah, “Pertunangan Di Bawah Undang-Undang Syariah Di Malaysia”, MONCO, February 9, 2022, <https://monco.my/pertunangan-di-bawah-undang-undang-syariah-malaysia/>

choosing a partner, dealing between both sides of the family and mutual agreement to be engaged. This engagement agreement is legally binding on the parties.

Actually, there are several state (province) that having their own law about the engagement, even though it's not totally about marriage proposal law but it is still can be used as a reference. Another law about engagement that written in a few states in Malaysia: Section 15 Enactment of the Islamic Family Law (Selangor State) 2003 (Enactment 2 of 2003), Section 15 of the Enactment of the Islamic Family Law (Nine States) 2003 (Enactment 11 of 2003), Section 15 of the Enactment of the Islamic Family Law (State of Penang) 2004 (Enactment 5 of 2004), Section 15 Enactment of the Islamic Family Law Sabah State 2004 (Enactment 8 of 2004)

The provisions of the law regarding this engagement clearly state the obligation or responsibility of the parties who have entered into an engagement bond to obey the bond of promise that has been made together. If not, any party who intentionally violates the agreement (breach contract) in this engagement bond can be dragged to the Syariah Court and demanded damages related to the engagement. The parties who are aggrieved if there is a breach of this engagement agreement can file a claim for engagement compensation in the Syariah Lower Court in the district where the claimant, plaintiff lives or residency. This claim is made under Code 009 which is a Claim for Breach Contract of Engagement which must be filed through a summons and statement of claim by the plaintiff.

So, what we got from the informer is Kedayan ethnic are very strict on their custom, especially on early step to marriage. Although in Sarawak Islamic Family Law Ordinance, 2001 has been written an act about betrothal but it is not state any specific item must be return and amount that need pay. However, in Kedayan's custom, they already state the amount need to paid and the item need to return back. Based from what has been state, we can see that it has a few different about betrothal breach contract. If in the side ordinance it still general but if in custom law it is a bit detail.

**Table 3.** The Different of Cancellation Propose Marriage in Kedayan Custom and Islamic Family Law Ordinance 2001

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

## Conclusion

Based on the results of the research that has been described, it can be concluded that, his tradition has been integrated into the people of Kedayan ethnicity. This tradition been implemented by the people of Kampung Bungai from the time of their ancestors until now. As a result of interviewing some respondents who still practice this tradition, we can conclude that this tradition will not cause any bad effects if it is still practiced for the next generation. This is because in their opinion, this tradition is not against the teachings of Islam.

The factors that influence Kedayan's ethnic to maintain the *njaum-njaum* tradition is it can be concluded into internal and external factors. From internal factor is the positive effect of this tradition is that both sides can each make a decision continue the marriage or end the relationship. Another reason for maintaining the custom of courtship is to make it easier to express the desire to marry the woman whether the woman is already tied to any man or not. And from external factor this custom has become a tradition that has been practiced from generation to generation since their old generation and ancient, were very strict with customs. This tradition does not contra with Islamic Sharia because there are no elements that are not allowed or different understandings.

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

Suggestions for academia is further researchers should do this research in more depth from the point of view in Islam and how it is perceived from the point of view Islamic law in Malaysia. And For the community in Kampung Bungai itself, it is hoped that this community will continue to maintain this kind of tradition because it is unique, that may not exist in others community. This is because each ethnic group has its own unique traditions. People from outside Kampung Bungai themselves will definitely respect the uniqueness of this tradition.

## References

- Al-Quran Al-Karim, Team Al-Hidayah House Qur'an Sdn Bhd. *Al-Bayan Hidayah Translation*. Selangor: Ar-Risalah Product Sdn Bhd. 2012.
- Ary Sahwa, Flavia and Sivabalan, Tharshini, "Meneroka Isu Perkahwinan Bawah Umur dari Perspektif Undang-undang Perkahwinan Adat di Sarawak", *Malaysian Journal of Social Sciences and Humanities*, Vol 8 (2023)
- Asyraf, Walid, "Maqasid Hukum Pertunangan (Khitbah) Dalam Undang-Undang Keluarga Islam Di Malaysia", 21 November 2023, <https://kamarsyarie.wordpress.com/2019/11/21/maqasid-hukum-pertunangan-khitbah-dalam-undang-undang-keluarga-islam-di-malaysia/>
- Awang Mohd Hadi Bin Awang Saruni, interview, (Bekenu: 17 May 2023)
- Basyirah Binti Awang Rusli, interview, (Bekenu, 17 May 2023)
- Chapter 43 Sarawak Islamic Family Law Ordinance, 2001.
- Dzajuli, H. A. *Ilmu Fiqih*. Jakarta:Kencana, 2005.
- Hajah Napisah Binti Hj Yunos, interview, (Miri: 8 June 2023)
- Hj Nawang Bin Hadi, interview, (Kampung Jambu: 6 January 2023).
- Kasiram. *Metodologi Penelitian Kuantitatif Kualitatif*. Malang: UIN Malang Press, 2008.
- Laila Binti Hj Timbang, interview, (Kampung Bungai: 6 January 2023).
- Lathif El'Arifah, Ihda. *Weton Calculation Practice On A Wedding Ceremony In Muslim Scholar's Opinion (Study at Tirtomoyo Pakis Malang)*. Thesis. Malang: UIN Malang, 2017.

- Moleong, Lexy J. *Metodelogi Penelitian Kualitatif*. Bandung: PT Remaja Rosdakarya, 2006.
- Mukhtar, Kamal. *Asas-Asas Hukum Islam Tentang Perkawinan*. Bandung: Irsyad Baitus Salam, 1995.
- Nadzirah. *The Way of the Kedayan Culture*, accessed on 2 February 2023, <https://sutura.co/way-kedayan-culture>.
- Nafizuddin Bin Hj Jusoh, interview, (Miri: 19 May 2023)
- Nur Syaheerah, “*Pertunangan Di Bawah Undang-Undang Syariah Di Malaysia*”, MONCO, February 9, 2022, [https://monco.my/engagement-under-malaysian-islamic-law/#:~:text=The%20proposal%20can%20be%20made,binds%](https://monco.my/engagement-under-malaysian-islamic-law/#:~:text=The%20proposal%20can%20be%20made,binds%20).
- Nurul Asmidani, interview, (Miri: 25 May 2023)
- Pusat Ekonomi Digital, accessed on 27 April 2023, <http://peliaubungai.pimaxis.my/index.php>.
- Ramulyo, M. Idris. *Hukum Perkawinan, Hukum Kewarisan, Hukum Acara Peradilan Agama dan Zakat Menurut Hukum Islam*. Jakarta: Sinar Grafika, 2006.
- Sabiq, Sayyid. *Fiqhus Sunnah Jilid 2*. Beirut: Darul Fikri, 1998.
- Samrah Ag. Damit, Ros Aiza Mohd Mokhtar, Abd Hakim Mohad. “Birth Custom and Norms of Kedayan Community In Sipitang, Sabah,” *Jurnal Sultan Alauddin Sulaiman Shah*, Special Issue (2018) : 127-145
- Selangor State Islamic Family Law Enactment 2003.
- Shahira, “Perkahwinan Suku Kaum Kedayan,” 30 September 2016, accessed on 14 May 2023, <http://berangankejap.blogspot.com/2016/09/perkahwinan-suku-kaum-kedayan.html>
- Sufadillah, interview, (Miri: 25 May 2023).
- Zuhaili, Wahbah. *Fiqhul Islami Wa Adillatuhu*. Damaskus: Dar al Fikr, 1997.