

## Paradigm and Views of Women's Marriage in Culturs Positions



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**ABSTRACT:** The results of this study show that marriage from a traditional perspective is still used today, as evidenced in several regions, in particular, they still apply customary marriage law in the midst of modern times. It is important for women that a traditional marriage is sacred, because it is a cultural variety for the Indonesian nation that is not shared by other countries. The customary marriage law certainly has its own characteristics which are different in every region in Indonesia. The difference lies in the subject, system, principles, forms and implementation as well as prohibitions which have their own characteristics from each region.

**KEYWORDS:** Marriage, Women, Traditional Perspective

### INTRODUCTION

Marriage for women is an option, in the development of an increasingly advanced era, marriage is not only required to be based on written law, but for most women who especially live in the area or their families use customary law, it is certain that marriages are still carried out cannot be separated from the customary law that applies to ethnic groups. or the area. Marriage for women who use customary law is not only a reconstruction of the culture that has existed since the time of their ancestors, but is also believed to bring good luck and happiness because it brings the greatness of their ancestors. In the discussion regarding marriage according to customary law are customary law rules that regulate forms of marriage, ways of applying, marriage ceremonies and dissolution of marriages in Indonesia. The rules of customary marriage law in various regions in Indonesia are different, due to the different social characteristics, customs, religions and beliefs of the community.

In marriage between a man and a woman, there is always a principle where the need to care for, love and give oneself to one another is always present. Thus, within the marriage itself there is a sense of interdependence, mutual need, giving and receiving, and interpersonal reciprocity. And of course, in each region or tribe, it always has uniqueness and peculiarities related to the process or performance of marriage<sup>1</sup>. For those with a patrilineal culture, marriage is defined as an attempt by a man to marry a woman to become his wife, and the woman becomes part of the family from a male family. In this sense, the lineage follows the lineage of men. Women in this kind of culture are "bought" by men to be theirs and belongs to his tribe, belongs to his extended family. This sort of thing became possible because marriage is not only about the man and woman who want to live together, but also become a tribal and family affair. This also applies to marriage in a matrilineal culture, by following the mother's lineage.

Marriage according to customary law is a relationship sex between men and women, which brings about the relationship wider range, namely between male and female kin groups even between one society and another<sup>2</sup>. From the point of view of marriage customs for women it is still believed to bring goodness, from this marriage will be able to give birth to the next generations who will carry the good name of their families and traditions. It is known that traditional marriages are still very heavily used today in Indonesia, there are many varieties of traditional marriages in Indonesia, Indonesia is quite well known for its customary law, especially for customary marriages which are still widely used in each region. in Indonesia it is still maintained and preserved in many areas, there are traditional Batak marriages, there are Minangkabau people's marriages, there are Lampung people's marriages, there are Javanese people's marriages, and there are many other areas in Indonesia that still use traditional marriages.

Marriage is usually interpreted as an inner and outer bond between men and women as husband and wife, with the aim of forming a happy and eternal family based on the Supreme Godhead One. Whereas in the form of marriage that occurs based on the rules and norms that apply in society local<sup>3</sup>. Customary law is an unwritten rule that lives within the indigenous peoples of an area and will continue to exist as long as the community still fulfills the customary law that has been passed down to them from their

<sup>1</sup> Dony Kleden, M.A. *Belis Dan Harga Seorang Perempuan Sumba (Perkawinan Adat Suku Wewewa, Sumba Barat Daya, Ntt)* Vol.1 No.1 Jurnal Studi Budaya Nusantara (2017)

<sup>2</sup> Laksanto Utomo, 2016, *Hukum Adat*, Jakarta, Rajawali Pers, 89

<sup>3</sup> <http://repository.umsida.ac.id/bitstream/handle/123456789/10730/f.%20BAB%20II.pdf?sequence=6&isAllowed=y>

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ancestors before them. Therefore, the existence of customary law and its position in the national legal system cannot be denied even though customary law is unwritten and based on the principle of legality is an illegitimate law. Customary law will always exist and live in society.

Departing from these problems, the author is interested in knowing many things about women's marriage from the perspective of adat and customary law in force in Indonesia, therefore the author will try to formulate the problem and to stay focused on the objectives rather than the issues raised. Guidelines for traditional marriages is a set of principles sacred marriage when implemented in household life, then the goal marriage outlined by each religion can achieved, as has been exemplified by all religions on this earth.

## 2. RESEARCH METHODS

The research approach in this study is empirical legal research where the techniques used are either available separately or separately or are used together at once. This empirical means that subjective opinions or beliefs must be examined by confronting them with objective reality or conducting empirical test studies. The problems studied are empirical problems. Therefore, the data consists of the investigator's experiences with people, objects, symptoms or events. This means that the raw material is obtained through systematic observation of social reality. Empirical data is used as a problem solution so that empirical research has become the equivalent of scientific research. Tracing techniques for parts of international law, legislation, books and articles use document study techniques, with analysis using quantitative analysis.

Formulation of the problem from the background above, the formulation of this research problem is as follows what is traditional marriage like in Indonesia and what is the role of customary law in Indonesia?

## 3. RESULTS AND DISCUSSION

### 3.1 Theoretical Review

Marriage is a permanent relationship between a man and a woman that is recognized as valid by the community concerned based on the applicable marriage regulations<sup>4</sup>. In marriage, the position of women is very clear in the 1974 Marriage Law, but it is different if the marriage is carried out on the basis of adat that applies in certain areas. Women with a very unique position and also sometimes marginalized by custom, in terms of meaning women are very noble. On the Wikipedia page accessed on May 25, 2022, the meaning of the word woman is stated. Woman is a term for the human gender that is different from men. In Sanskrit the word woman is taken from the word per + empu + an. Per, means creature, and empu, which means noble, master, skilled.

Thus women can be interpreted as beings who have nobility or ability. Women have reproductive organs, namely the ovaries, uterus and vagina, and are capable of producing gamete cells called eggs. Women also have the ability to menstruate, conceive, give birth, and breastfeed<sup>5</sup>. In adat that applies in several regions in Indonesia the treatment of women in marriage is also different. Adat is a cultural notion consisting of cultural values, norms, habits, institutions, and customary laws that regulate human behavior between one another that is commonly carried out in a community group<sup>6</sup>.

From the definitions above, we can conclude that women's marriage in the traditional view is a relationship between women that is regulated in a customary community value in each region. From this understanding, the author will discuss a lot about system regulations, principles and forms of traditional marriages from various regions.

### 3.2 Customary Marriage Law System

The customary law system is known to have 3 (three) marriage systems, namely:

1. Endogamy system, where a person is only allowed to enter into marriage with someone in his own tribe. This marriage system is rare;
2. The exogamy system, where marriage is with someone of a different ethnicity or another tribe;
3. The eleutherogamy system, this system does not recognize restrictions or requirements.

Prohibitions in this system are related to family ties, namely.

- a. Nasab (same as close descendants), such as being married to mother, grandmother, biological child, sibling of father or mother;
- b. Musyahara (same as periparan), namely marriage to stepmother, daughter-in-law, mother-in-law, stepchildren, etc<sup>7</sup>.

### Examples of Customary Marriage Law Subjects in Various Regions

Following are some of the applications of traditional marriages from various regions based on the subject according to Soerjono Soekanto (1983) in his book "Indonesian Customary Law":

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<sup>4</sup> <https://id.wikipedia.org/wiki/Marriage>

<sup>5</sup> <https://id.wikipedia.org/wiki/Perkawinan>

<sup>6</sup> <https://id.wikipedia.org/wiki/Adat>

<sup>7</sup> M. Lutfi Chakim, *Perkawinan Menurut Hukum Adat Dan Menurut Hukum Islam*, Journal 2012

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1. In Batak society, they think that the ideal marriage is a marriage between rumpal (Toba: marpariban) people, namely between a man and his mother's brother's daughter. That way for a Batak man it is very taboo to marry a woman from his own clan and also with his father's daughter. But at the present time many have not done it anymore. Apart from that, the Batak people are also familiar with the Leviraat marriage custom (Karo: Lakoman, Toba: Mangabia) and marriage customs (Karo: Gancikabu, Toba: Abbreviated Rere). Specifically for the Karo people, several types of Lakoman customs are distinguished, namely: Lakoman Tiaken (a widow married to her deceased husband's brother), Lakoman Nghliken Sinina (a widow married to her deceased husband's half-brother), and Lakoman Ku Nandena (a widow married to the child of her late husband's relative).
2. In Minangkabau society, the original pattern of marriage is that a man should marry his mother's daughter whenever possible. The term mamak means mother's brother. This means that a man must marry a sister who is the child of his mother's brother. With various circumstances, other forms arise, for example, marriage with a nephew (child of the sister) of his father. People may also marry their husband's sister, or their own sister's child. Similar to traditional marriages in other regions, this marriage pattern has begun to disappear under the influence of the modern world;
3. In Lampung society, especially in the Abung Siwo Mego (Abung Sembilan Marga) and Pubian Telu Suku (Pubian Tiga Suku) communities, there is absolutely no recognition of marriage between a man and a woman who is the child of a sibling from a sibling. man. However, for the people of Rarem Mego Pak (Rarem Empat Marga) and Buay Lima (Sungkay and Way Kanan), the marriage can take place. But this marriage is not a custom. Common marriages are marriages between a man and a woman who is the offspring of two female siblings. Meanwhile, marriages between children of male and female siblings can also take place. The people of Lampung are of the opinion that it is inappropriate if every child can directly marry in the same family.
4. In Javanese society, there is a custom that dictates that two people cannot marry each other if they are siblings. If they are pancerlanang (children of two male siblings), if they are misan and finally if the man is younger according to his mother than the woman. Thus, marriages between two people who are not bound by kinship as mentioned above are permissible. Also allowed marriages are ngarang walu, namely the marriage of a widower to a woman's sister of his late wife (Sororaat)<sup>8</sup>.

Those are examples of several regions that apply customary marriage laws, there are still many that cannot be mentioned one by one because Indonesia is rich in culture, customs & traditions. It can be seen from the subject that there are subjects who are allowed and are not allowed to enter into customary marriages. However, this provision does not apply to different areas, for example the first area does not allow it, but in the second area it is actually permissible.

### 3.3 Principles of Traditional Marriage

The principles of marriage according to customary law are as follows :

- 3.3.1 Marriage aims to form a family or household and kinship relations that are harmonious and peaceful, happy and everlasting;
- 3.3.2 Marriage must not only be legally implemented according to religious law or belief, but must also receive recognition from relatives;
- 3.3.3 Marriage must be based on consent family members and relatives. Indigenous peoples can reject the position of husband or wife that is not recognized by indigenous peoples;
- 3.3.4 Marriage can be carried out by a man with several women, as wives, each position is determined according to local customary law;
- 3.3.5 Marriages can be carried out by men and women who are not yet old or still a child. Likewise, even though they are old enough to marry, they must be based on the permission of their parents/family and relatives;
- 3.3.6 Divorce is something that can be done and something that cannot be done. Divorce between husband and wife can result in the breakdown of kinship between the two parties.

The balance of position between husband and wife is based on the provisions of applicable customary law, there are wives who are housewives and there are wives who are not housewives. (Serlania, 2012).

### 3.4 Traditional Forms of Marriage

According to Serlania in her blog 'Customary Marriage Law', according to Serlania in her blog 'Customary Marriage Law', namely :

- 3.4.1 Pinang Marriage. A form of marriage in which preparations for marriage are carried out by proposing and proposing. Proposals are generally from the man to the woman to enter into a marriage;
- 3.4.2 Joint-running marriage. A form of marriage in which the prospective husband and wife are based on the agreement of both parties to avoid various obligations as a result of their marriage. Both of them run somewhere to get married;
- 3.4.3 Take off marry, A form of marriage in which a man forcibly flees a woman.

### 3.5 Arrangement Of Marital Kinship

Forms of marriage in Patrilineal society are divided into:

#### 3.5.1 Honest Marriage.

A form of marriage that is carried out by giving honesty from the man to the woman, as a symbol of the breaking of the wife's kinship

<sup>8</sup> Soekanto, Soerjono, 1979. *Mengenal Sosio-logi Hukum*, Bandung, Alumni.

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with her parents, relatives and alliance. Honest giving obligatory is to return the original magical balance became unsteady, because the occurrence of vacancies in the family of women who have left because of the marriage. Honest marriage is found in patrilineal society. The characteristics of an honest marriage are patrilocal, meaning that the wife lives in the residence of the husband or family husband<sup>9</sup>.

### 3.5.2 Mengabdi marriage

Namely marriage caused by the man's failure to meet the requirements of the woman. Then the marriage is carried out with the payment of the marriage being owed or postponed. With a serving marriage, the man does not have to pay honest money. Men serve their relatives-in-law until the debt is paid off.

### 3.5.2 Marriage Replaces/Levirate

Women's Marriage in Traditional Perspective Namely marriage between a widow and her late husband's brother. This form of marriage is as a result of the assumption that a wife has been purchased by the husband by paying honest money. Change marriage in Batak is called "**Paraekhon**", in Palembang and Bengkulu it is called "changing mats" and in Java it is known as "**Mudun Ranjang**".

### 3.5.3 Marriage Forward/Spotlight

Namely the form of marriage of a balu (widower) with his deceased wife's sister. This marriage is without payment of new honest money, because the second wife is considered to continue the function of the first wife. The purpose of this marriage is to establish family integrity (kinship relations) so that the lives of children born from past marriages are maintained as well as to maintain the integrity of wealth (marital assets), in Java it is called a "Ngarang Wulu" marriage.

### 3.5.4 Exchange Marriage

The form of marriage in which a reciprocal marriage system is allowed (symmetris connubium). So that honest payments that are owed reciprocally are calculated with one another, so that both are deleted. In Patrilineal society, it is known that marriages are carried out "without payment of marriage (honest money).

### 3.5.5 Marriage Take Children

Marriage Take Children its namely marriages carried out without payment of honest money, namely by adopting the husband as their son, so that the wife remains a member of their clan. The husband has become the son of the wife's father, so that the children who are born later will follow his father's lineage. The reason for adopting child marriages is because in a patrilineal society they do not have sons, so the patrilineal relationship will become extinct. So the son-in-law is adopted as a child, as his grandchildren can continue the family line which can be patrilineal.

## 3.6 Adoptive marriages

Adoptive marriages can take the form of: Marriage between a young man from outside the alliance and the daughter of an official, the young man is adopted as a foster child, so that the son-in-law who has been adopted can continue his greatness and receive an inheritance. Example : Semedo marriage with adopted child (in the Lampung area). Where a customary highness official only has daughters from a new wife (his old wife), then to maintain his greatness in his patrilineal relatives, adopted child marriages are carried out.

### 3.6.1 Tegak Tegik Marriage

Namely marriages between daughters from clans with a patrilineal system and nephews who are adopted as sons, so that sons-in-law who are adopted as sons can receive an inheritance which will later be passed on to their grandchildren.

### 3.6.2 Jeng Mirul's marriage

That is a marriage that causes the husband to turn into a member of the wife's relatives because the husband is made an adopted child. So that the husband becomes the absolute representative for his children to oversee the inheritance.

### 3.6.3 Jago's borrowed marriage

That is a marriage in which the husband does not switch to the wife's clan. The husband is only tolerated as a continuation of the lineage, the husband has the position of being an occupant, his children are included in the mother's clan.

## 3.7 Forms of Marriage

The form of marriage in a matrilineal society: namely the marriage system in which it is regulated according to the order of the mother's line, so that after the marriage takes place the wife remains in her matrilineal clan. Marriage adheres to exogamy provisions, the husband still lives in his own clan, is allowed to mingle with the wife's relatives as "urung sumando" or brother-in-law. The children born belong to the matrilineal clan of the mother. Forms of marriage in Patrilineal society are divided into: Namely forms of marriage that link the husband and wife, each being a relative member of both parties. Likewise their children who will be born later

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<sup>9</sup> Soerojo Wignjodipoero, 1989Pengantar Dan Asas Hukum Adat, Bandung Pg. 128

and so on<sup>10</sup>

### CONCLUSIONS

From the various cultures, customs and traditions in Indonesia that have gone through a long journey from their ancestors that have been passed down from generation to generation, it can be seen that marriage from a customary point of view is still used today, as evidenced in several areas in particular areas still applying the law traditional marriage in carrying out a very sacred event in the midst of this modern era of progress. It is very important for women to have a sacred marriage, because it is a variety of cultures and is a very important custom and custom for the Indonesian nation which is not owned by any other country. , customary marriage law certainly has its own characteristics which are different in each region in Indonesia. These differences lie in subjects, systems, principles, forms as well as applications and prohibitions which have their own characteristics from each region, therefore we are obliged to be able to appreciate the existence of customary law which is still preserved, even though nowadays it is slowly a lot of land has been lost, swallowed up by an increasingly modern era.

### CONFLICTS OF INTEREST

The authors declare no conflict of interest.

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<sup>10</sup><http://serlania.blogspot.co.id/2012/01/hukum-perkawinan-adat.html?m=1> diakses 31 oktober, 2016