

# The Marriage Law of the Dayak Bakumpai Traditional Society in Palangka Raya, Central Kalimantan Province

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**Abstract:** *The Kaharingan belief contains rules of life whose values and contents are not just customs, but also teachings to behave. It is taught orally by parents to their children from generation to generation. The teachings and habits carried out from generation to generation are known as hadat (adat). It is used juridical empirical research, In legal research terms, it is called socio-legal research. Data are collected by visiting the field to obtain information about the marriage of the Dayak indigenous people and the practice of the marriage of the Bakumpai community in Central Kalimantan. The results showed that marriage by custom and religion is sacred and must be passed by the couple and their family. Meanwhile, the administration of marriage as stipulated in the Marriage Law is only considered as a complement, where some of the indigenous Dayak Bakumpai people consider it not too important to be implemented. The marriage law is still unable to accommodate traditional marriages in Indonesia. The main reformation of the marriage law is the legal substance, especially the material in the UUP Marriage Law, which needs to be changed immediately.*

**Keywords:** Dayak Bakumpai, Marriage Law

## 1. Introduction

Indonesian society is a plural society consisting of various ethnic groups who live and live in certain areas in Indonesia. Each ethnic group has customs, languages, religion and so on which are different from one another. Each of these ethnic groups has a peculiarity which is a unique reality, which describes the cultural wealth possessed by the Indonesian people. Based on Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, hereinafter abbreviated to the 1945 Constitution, which reads: "The state recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in Law. As well as Article 28 I paragraph (3) of the 1945 Constitution, which reads: "The cultural identity and rights of traditional communities are respected in accordance with the times and civilization". These articles reinforce recognition as well as respect for indigenous peoples.<sup>1</sup>

The Republic of Indonesia, as a country based on Pancasila, where the first precept is the Supreme Lordship, then marriage is considered to have a very close relationship with religion or spirituality, so that marriage does not only a matter of physical elements, but also mental or spiritual elements. It has a very important role.<sup>2</sup> Definition of Marriage Based on Law No.1 of 1974 and the Civil Code or BW. In Article 1 of the Marriage Law of 1974 concerning Marriage, the definition of Marriage is formulated which

contains the purpose and basis of marriage with the following formulas:

"Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty."<sup>3</sup>

In principle, marriage or marriage is a contract to legalize the relationship and limit the rights and obligations, helping between men and women who are not mahram. When viewed from a legal perspective, it is clear that marriage is a sacred and noble contract between a man and a woman which validates the status of husband and wife and legalizes sexual relations with the aim of achieving a *sakinah* family, full of love and virtue and mutual support between the two.<sup>4</sup>

Marriage according to Islamic law marriage is a very strong contract or *mitsaaqon gholiidhan* to obey Allah's orders and carry out it is worship. A marriage contract according to Islamic law is valid and some is not. A marriage contract is said to be valid, if the contract is carried out with complete terms and conditions, in accordance with the provisions of Religion. On the other hand, a marriage contract is said to be invalid if it is not carried out with complete terms and conditions in accordance with the provisions of Religion. Meanwhile, in the view of the scholars, a marriage is considered valid if it has been fulfilled both in terms of conditions and in terms of the marriage.<sup>5</sup>

The Criminal Code or BW considers marriage only in civil terms (Article 26). This means that the law recognizes that a

<sup>1</sup>DokumentasiPusatPenelitian,

*PengembanganPelestarianBudaya Dayak Kalimantan Tengah (Development and Preservation of the Dayak Culture of Central Kalimantan)*, Palangkaraya, 2014, Hal. 4.

<sup>2</sup>Sudarsono, *HukumPerkawinan Nasional (National Marriage Law)*.PT RinekaCipta.Jakarta, 1994. Hal 7

<sup>3</sup> Focus Media Tim, *Undang-undangPerkawinan*. Focus Media. Bandung, 2005.hal 71

<sup>4</sup>Abd. Rahman Ghazaly, *Fiqh Munakahat*, Kencana Prenada Media Group, 2006 Hal 285

<sup>5</sup>*Ibid*. Hal 290

civil marriage is a legal marriage, that is, a marriage that meets the requirements stipulated in the Criminal Code, while religious terms or conditions are not considered or set aside.<sup>6</sup>

Customary marriage law is the rules of customary law that regulate the forms of marriage, methods of proposals, marriage ceremonies and the termination of marriage in Indonesia. These customary law rules in various regions of Indonesia differ from one another due to different social characteristics, customs, religions and beliefs. In addition, customary law has also undergone several changes or shifts in value due to the changing factors of the times, the occurrence of inter-ethnic marriages, customs, and different religions and beliefs.<sup>7</sup>

The meaning of marriage for customary law is important because it does not only concern the relationship between the two brides, but also the relationship between the two parties of the bride and groom such as their relatives or their other families. Even in customary law it is believed that marriage is not only an important event for those who are alive, but also an important event for their departed ancestors. It is hoped that the ancestral spirits of both parties will also bless the continuity of their household to be more harmonious and happier.<sup>8</sup>

Because the meaning of this marriage is so important, the implementation of the marriage is always on and on, accompanied by various ceremonies complete with offerings. This is all as if it were superstition, but in fact it is still very pervasive today in the beliefs of the majority of the Indonesian people and therefore it is still practiced everywhere.<sup>9</sup>

Hazairin in his book, *Rejang*, states that there are three series of magical acts that appear when the marriage event occurs, namely those aimed at ensuring calm (*koelte*), happiness (*welvaart*), and fertility (*vruchtbaarheid*).<sup>10</sup>

Central Kalimantan is part of the territory of Indonesia inhabited by indigenous peoples. There are many kinds of marriage customs in Indonesia. Each ethnic group has its own marriage customs. Among the marriage customs, some are almost the same, especially in neighboring tribes, but some are completely different. Basically, the marriage customs of the Indonesian ethnic groups originate from members of the community that marriage is a sacred bond and is one of the divine *sunnahs* of Allah SWT that cannot be avoided by humans.<sup>11</sup>

In this study, researchers were interested in researching the Bakumpai Dayak tribe. The Bakumpai Dayak tribe is one of the 53 sub-tribe of the Dayak Ngaju, which mostly inhabit along the Barito and Kapuas rivers, especially the downstream. As a result of the activities of the people engaged in the trade sector, the Bakumpai Dayak sub-tribe traveled all over Kalimantan Island so that this community was found in the central part of the Katingan River, to be precise in Tumbang Samba Village, Long Iram, East Kalimantan Province, and in Marabahan the river estuary. Barito, South Kalimantan Province.<sup>12</sup>

The Marriage of the Bakumpai Indigenous Peoples As we all know that the marriage law of the Dayak Bakumpai indigenous peoples is a culture, tradition and religion that has not yet been accommodated in the Marriage Law in effect in Indonesia. The problem of customary marriages is generally not registered with the relevant agencies due to the various reasons for the considerations that the indigenous people have. The problem raised in this article is how the marriage of the indigenous Dayak Bakumpai community is based on the statutory regulations in National law.

### Marriage Law

The definition of marriage according to Law No. 1 of 1974 is based on religious / religious elements, as regulated in Article 1, namely marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Supreme Lordship. In this definition, the following elements are contained:<sup>13</sup>

- a) Physical and mental bonds  
Physical and mental bonding is that it is not enough with physical or mental bonds but that the two must be tightly integrated. A birth bond is a bond that can be seen and reveals the existence of a legal relationship between a man and a woman to live together as husband and wife, which is called a formal relationship. Meanwhile, an inner bond is an informal relationship, a bond that does not seem real which can only be felt by the parties concerned. The inner bond is the basis of a physical bond that can be used as a foundation in forming and fostering a happy family.
- b) Between a man and a woman
- c) The marriage bond may only occur between a man and a woman. In this case also contained the principle of monogamy, namely at the same time a man is only attached to a woman. Likewise, a woman is only married to a man at the same time.
- d) As husband and wife  
A man's bond with a woman can be viewed as husband and wife if their bond is based on a legal marriage. The validity of a marriage is regulated in Article 2 of Law No. 1 of 1974 which contains two conditions that must be fulfilled in the implementation of marriage. Article 2

<sup>6</sup>Sudarsono, *Hukum Perkawinan Nasional*. (National Marriage Law) PT RinekaCipta. Jakarta, 1994. Hal 48

<sup>7</sup>Dewi Wulansari, *Hukum Adat Indonesia Suatu Pengantar*. (Indonesian Customary Law An Introduction) Refika Aditama, Bandung, 2012, Hal. 47-49.

<sup>8</sup>Soerojo Wignjodipoero, *Pengantar dan Azas-azas Hukum Adat*, Haji Masagung, Jakarta, 1983, Hal. 14.

<sup>9</sup>*Ibid.*, Hal. 122.

<sup>10</sup>*Ibid.*, Hal. 123

<sup>11</sup>Adil Abdul Mun'im Abu Abbas, *Ketika Menikah Jadi Pilihan*. (When Getting Married becomes a Choice) Almahira, Jakarta, 2001, Hal. 9.

<sup>12</sup>Abdul Fattah Nahan, dkk, *Mengenal Dayak Lawangan, Ma'Anyan Bakumpai dan Biaju*, (Introducing Dayak Lawangan, Ma'Anyan Bakumpai dan Biaju) PT. Eqwa Torial Bumi Persada, Jakarta, 2014, Hal. 39.

<sup>13</sup>Wienarsih Imam Soebekti dan Sri Soesilowati Mahdi, *Hukum Perorangan dan Kekeluargaan Perdata Barat, (Western Private and Family Law)* (Jakarta: Gitama Jaya Jakarta, 2005), Hal. 44-47.

paragraph (1) of Law No. 1 of 1974 stipulates that a marriage will be valid if it is carried out according to the law of each religion and belief. In his explanation it is said that there is no marriage outside the law of each religion and belief of the parties who will carry out the marriage in accordance with the 1945 Constitution. Religious groups and beliefs as long as they do not conflict with or are determined otherwise in this law.

Article 2 paragraph (2) of Law No. 1 of 1974 states that marriages are recorded according to the prevailing laws and regulations. Recording is an administrative act similar to recording other important events in a person's life such as death and birth. Even though registration is not an element that determines the legality of a marriage, such registration is a must in accordance with the prevailing laws and regulations. The registration of marriage is further regulated in Chapter II of Government Regulation No. 9 of 1975 concerning the Implementation of Law no. 1 of 1974 concerning Marriage.

- e) The purpose of marriage is to form a happy and eternal family / household Family is a unit consisting of father, mother and children. Forming a happy family is closely related to offspring which is the goal of marriage, while the care and education of children is the right and obligation of the parents. In order to achieve this, it is hoped that the immortality of marriage is that once a person is married, there will be no divorce forever except for death.

- f) Based on the One Godhead

The previous law looked at marriage only from a civil relationship, whereas Law No. 1 of 1974 sees marriage based on spiritual principles. As a country based on Pancasila, where the first precept is God Almighty, marriage has a close relationship with religion / spirituality so that marriage does not only have physical / physical elements but also has an important role.

In the concept of marriage according to the Marriage Law above, a signal is found so that there are no restrictions on the length of the marriage period. This is clearly and firmly stated in the sentence that marriage aims to form a happy and eternal family. Based on the concept of marriage according to the Marriage Law which is disclosed in the editorial section of the article as stated above, of course it will be understood that a marriage which in its contract excludes (denies) the eternal meaning, clearly cannot be categorized as marriage according to the applicable law. In other words, it could be *de facto* (in society people call it) marriage but *de jure* (according to law, it was) not marriage. For example, a contract marriage in which there is a limitation on the length of the marriage period, even though the harmonious conditions and conditions of marriage according to religious law are fulfilled, according to the law it is not marriage.

If a marriage ceremony that is carried out is not recognized as a marriage according to law, then the consequence is that the marriage will not be recorded. They cannot get the right to get a marriage certificate. And because the marriage is not recognized as a marriage by law, then the marriage also does not have a deed, then the marriage has no legal force.

### Indigenous Marriage

Marriage is one of the most important events in the life of our society. Because the marriage does not only involve the woman and the man to be the bride, but also the parents of both parties, their siblings, and even their respective families.

In the customary law, marriage is not only an important event for those who are still alive, but marriage is also a very meaningful event that receives full attention and is followed by the spirits of the ancestors of both parties. Thus, marriage according to customary law is a sexual relationship between a man and a woman, which brings a wider relationship, namely between groups of male and female relatives, even between one community and another. The relationship that occurs is determined and supervised by the norms system prevailing in that society.<sup>14</sup>

The ideal marriage is a form of marriage that occurs and is desired by society. A form of marriage that occurs based on certain considerations does not deviate from the provisions of the rules or norms that apply in the local community.<sup>15</sup>

A. Van Gennepe, a French sociologist, called all the wedding ceremonies the "rites de passage". Transitional ceremonies that symbolize the transition or change in status of the bride and groom; who originally live separately, after carrying out the marriage ceremony, they become united in a life together as husband and wife. Initially they were members of their respective parents' families, after marriage they were both their own families, a new family that was independent and they led themselves.<sup>16</sup>

Their relationship after becoming husband and wife is not a binding relationship based on an agreement or contract, but is an association or organization.<sup>17</sup> A living community becomes the main arena of life for husband and wife along with their children. The community of life is usually called *somah* (a Javanese term which means family) and in that *somah* the relationship between husband and wife is such that in the eyes of the Javanese they are both one and only.<sup>18</sup>

Marriage is something sacred, great, and monumental for every spouse. Therefore, marriage is not just following religion and continuing the instincts of the ancestors to form a family. The legal relationship between man and woman, but also has a very deep and broad meaning for human life in leading to the ark of life as it is narrated.

Marriage is usually defined as a physical and mental bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family based on the Supreme Lordship. From pair to pair, successive babies are born who eventually fill and change the color of life in this

<sup>14</sup> Purwadi, *Upacara Tradisional Jawa, Menggali Untaian Kearifan Lokal*, (Javanese Traditional Ceremony, Explore Strands of Local Wisdom) Yogyakarta: Pustaka Pelajar, 2005, Hal. 154.

<sup>15</sup> *Ibid*, Hal. 155.

<sup>16</sup> Soerojo Wignjodipoero, *Pengantar dan Asas-asas Hukum Adat*, (Introduction and Principles of Customary Law), Jakarta: Gunung Agung, cet. VII, 1984, Hal. 123.

<sup>17</sup> Paguyuban or organization referred to here is a small organization led by a husband or father as the head of the family.

<sup>18</sup> Soerojo Wignjodipoero, *op. cit.*, Hal. 124.

world. Therefore, for Javanese people in particular, the meaning of a marriage is very important. In addition to having clear seeds, *bebet*, and weight for the prospective partner, various other ritual calculations must also be taken into account so that the marriage can be sustainable, happy and prosperous by God Almighty, and in the end give birth to intelligent children, obedient to both.<sup>19</sup>

The purpose of marriage for kinship customary law communities is to maintain and continue the lineage of fatherhood or motherhood or motherhood, for family / relative household happiness, to obtain cultural customary values and peace, and to maintain sanity. Because the system of descent and kinship between Indonesian ethnic groups varies from one ethnic group to another, including different environments and religions, the purpose of customary marriage for indigenous peoples also differs between one ethnic group and another, as well as with the legal consequences and the marriage ceremony.<sup>20</sup>

According to customary law, there are 3 types of marriage systems, namely:<sup>21</sup>

#### a) Endogamy System

In this system, people are only allowed to marry someone from their own clan. This marriage system is now rare in Indonesia. According to Van Vollenhoven, there is only one area that is practically familiar with this endogamy system, namely the Toraja area. But now, in this area too this system disappears by itself if the region's relations with other regions will become easier, closer and more extensive. Because this system exists only in practice; moreover, endogamy is not in accordance with the nature of the family structure that exists in the area, namely parental.<sup>22</sup>

#### b) Exogamy System

In this system, people are required to marry another tribe. Marriage with your own tribe is prohibited. However, as time went by, and the times went on, gradually experienced a softening process in such a way that the prohibition of marriage was treated only in a very small family environment. This system can be found in the Gayo, Alas, Tapanuli, Minangkabau, South Sumatra, Buru and Seram areas.<sup>23</sup>

#### c) Eleuthero gamy system

The eleuthero gamy system is different from the two systems above, which have restrictions and obligations. Eleuthero gamy knows neither these prohibitions nor musts. The prohibitions contained in this system are prohibitions related to kinship related to the lineage (descent), such as marrying a mother, grandmother,

biological children, grandchildren, as well as siblings, relatives of the father or mother or the prohibition of marrying by *musyahrah* (in-law), such as marrying a stepmother, parents-in-law, son-in-law, and stepchild.<sup>24</sup> This system can be found in almost all Indonesian society, including Java.

## 2. Research Methods

The type of research used is juridical empirical research, namely a careful research into the field (research location). In legal research terms, it is called socio-legal research. The author, in this case, goes directly to the field where the research was carried out, namely in the City of Palangka Raya, in order to obtain information about the marriage of the Dayak indigenous people and the practice of the marriage of the Bakumpai community in Central Kalimantan. The research specifications used in this study are descriptive analytical, namely research that aims to provide a detailed, systematic and comprehensive description of everything related to the marriage problem of the Dayak Bakumpai indigenous people in Palangkaraya City, by describing the prevailing laws and regulations relating to splitting in relation to legal theories and positive law enforcement practices concerning the above problems.

## 3. Results and Discussion

Marriage is a right for every individual who has met all the requirements.<sup>25</sup> Marriage in Indonesia in order to be legally valid in the state must be registered. Marriage registration is basically an obligation for all Indonesian citizens. This obligation is because it will have implications for population events.<sup>26</sup> Marriage registration is carried out by the Marriage Registration Officer (PPN) as regulated by Law No. 24 of 2013 concerning Population Administration which stipulates "every marriage must be carried out before and under the supervision of a marriage registrar employee".

With regard to legal marriage registration in Indonesia, it must meet the requirements stipulated in Article 2 of Law No. 1 of 1974, which states that "a legal marriage is a marriage which is carried out according to the law of each religion and belief, and is registered according to the prevailing laws and regulations".<sup>27</sup>

Even though it has been stipulated in statutory regulations, there is still a reality of marriage that is still considered taboo and legally illegal in Indonesia. The customary

<sup>24</sup> *Ibid*, Hal. 132-133.

<sup>25</sup> It is not merely worldly needs (happiness or sexuality), but also ukhrowi which is ubudiyah in nature. Kamal Mughtar, *Azas-Azas Hukum Islam Tentang Perkawinan*, (Islamic Law Principles About Marriage) Jakarta, Bulan Bintang 1974. 11.

<sup>26</sup> Direktorat Jenderal Kepercayaan, *Himpunan Peraturan Perundang-Undangan yang Berkaitan Dengan Kepercayaan Terhadap Tuhan Yang Maha Esa*, (Compilation of Laws and Regulations Related to Belief in Almighty God), diterbitkan oleh Direktorat Kepercayaan Terhadap Tuhan Yang Maha Esa. Jakarta. Dirjen Kepercayaan 2006. Hal. 98.

<sup>27</sup> R. Subekti dan R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, (Code of Civil law) Yogyakarta, Pradnya Paramita, 2008. Hal.538.

<sup>19</sup> Artati Agoes, *Kiat Sukses Menyelenggarakan Pesta Perkawinan Adat Jawa (Gaya Surakarta dan Yogyakarta)*, Tips for Success in Organizing a Traditional Javanese Wedding Party (Surakarta and Yogyakarta Style) Jakarta: Gramedia Pustaka Utama, 2001, Hal. X.

<sup>20</sup> Hilman Hadikusuma, *Hukum Perkawinan Indonesia, Menurut Perundangan, Hukum Adat, Hukum Agama*, (Indonesian Marriage Law, According to Legislation, Customary Law, Religious Law), Bandung: Mandar Maju, 1990, Hal. 23.

<sup>21</sup> *Ibid*, Hal. 131.

<sup>22</sup> *Ibid*, Hal. 132.

<sup>23</sup> *Ibid*, Hal. 132

marriage of the Dayak Bakumpai community is a fact that occurs in society. Traditional Dayak Bakumpai marriages often cause controversy in the community because they are considered legally inappropriate and not recognized by the government.

The community often considers Dayak Bakumpai marriages to be invalid because they are not registered with the authorized agency to administer marriage administration in Indonesia.<sup>28</sup> In fact, in principle, a Dayak Bakumpai marriage is like the principle of marriage in general. Such as the principle of marriage in the teachings of religions that are "recognized" by the state. Even Dayak Bakumpai sharply criticized the portrait of marriage and the life of a husband and wife who practice polygamy. In the view of Dayak Bakumpai, marriage is very important because in his teaching, marriage is a "bridge" to attain further nobility to create noble children.<sup>29</sup>

Unfortunately, the registration of Dayak Bakumpai marriages was "hampered" by administrative requirements. Community or Dayak Bakumpai marriages cannot be registered at the Office for Religious Affairs (KUA) or at the Civil Registry Office (Capil), because marriage registration at KUA is only for followers of the Islamic religion and in the Civil Registry Office only for adherents of five religions (Non-Muslim) and Believers. Meanwhile, there are the Dayak Bakumpai people who are not part of the six religions nor are they followers of the faith. Therefore, it refuses to be recorded through the six religions way or by means of belief.

The laws and regulations in Indonesia regarding marriage only protect the registration of marriages for adherents of the six state "official religions" and adherents of the faith. In fact, not all citizens in Indonesia are classified or grouped into the six state religions and believers.

Therefore, the registration of the marriages of Dayak Bakumpai who do not adhere to this belief in the Marriage Law cannot be registered because they do not belong to the state "official religion" nor are they followers of the belief. Therefore, in this section, we will first describe the meaning of marriage, the laws and regulations on marriage for adherents of the state "official religion" and adherents of faith.

Furthermore, the registration of a marriage in Indonesia is a condition for the validity of marriage from the perspective of the state (not religion). The statutory regulations which serve as the legal basis for the registration of marriages for believers are regulated in Law No. 24 of 2013 concerning Population Administration.<sup>30</sup> In Article 34 paragraph (1) determining the UUa quo it is emphasized that legal marriages based on the provisions of statutory regulations

must be reported by residents to the executing agency where the marriage took place no later than 60 (sixty) days from the date of marriage.

With regard to the procedure for recording marriages of the believers as regulated in PP. 37 of 2007 concerning the implementation of Law no. 23 of 2006 which has been amended into Law No. 24 of 2013 concerning Population Administration. In the chapter on the requirements and procedures for marriage registration for believers of belief, Article 81 paragraph (1) determines that marriages for Believers of Belief are carried out in the presence of leaders of believers.<sup>31</sup> Paragraph (2) determines that the leader of the believers as referred to in paragraph (1) shall be appointed and stipulated by the organization of the believers, to fill and sign the marriage certificate for the believers of the faith. Paragraph (3) determines the leader of the believers as referred to in paragraph (2) to be registered with the ministry whose field of duty is technically fostering the organization of believers in God Almighty".<sup>32</sup>

Furthermore, Article 82 stipulates that the marriage incident as referred to in Article 81 paragraph (2) must be reported to the implementing agency or UPTD of the executing agency no later than 60 (sixty) days by submitting: Marriage certificate of a Believer of Belief;

The law on marriage in Indonesia does not protect the marriages of Dayak Bakumpai people who adhere to the belief and are not included in the official religion. Marriages of Dayak Bakumpai adherents are not protected because the existing regulations in Indonesia only regulate marriages for adherents of the six state "official religions" and adherents of the faith. In fact, the Bakumpai Dayak adherents are reluctant to be registered by means of the "official state" religion and belief. They want to be listed if it is in accordance with the Dayak Bakumpai procedure or local customary marriage. Therefore, regulations regarding marriage must be improved or revised.

At present, the wider community, part of the research community and legal practitioners tend to view customary law as a legacy from the past. Customary law once grew and developed in traditional societies. The customary law system was local in nature, until its existence was undermined by the colonial government and faded after independence.

Areas where customary law is still considered relevant for research relate more to land. This assumption is understandable considering that currently there are thousands of land conflicts in Indonesia and covering millions of hectares of land in Indonesia. However, in other areas, especially those related to marriage matters, academics do not pay as much attention to customary law as customary law related to land. Through this article, we want to show that the study of customary law on family is very useful.

<sup>28</sup> Moh. Rosyid, *Samin Kudus: Bersahaja di Tengah Asketisme Lokal*. (Samin Kudus: Unpretentious in the Middle of Local Asceticism) Yogyakarta, Pustaka Pelajar 2008. Hal. 212.

<sup>29</sup> *Ibid.* Hal. 110

<sup>30</sup> Harun Nur Rosyid, dkk, *Pedoman Pelestarian Kepercayaan Masyarakat Jakarta; Proyek Pelestarian dan Pengembangan Tradisi dan Kepercayaan*. (Guidelines for Preserving Jakarta Public Trust; Project for Preservation and Development of Traditions and Beliefs) Jakarta. Kementerian dan Kebudayaan Pariwisata 2004.

<sup>31</sup> Abdul Mutholib Ilyas, Abdul Ghofur Imam, *Aliran Kepercayaan dan Kebatinan di Indonesia*. (Beliefs and Mysticism in Indonesia) Bandung. Amin 1998. Hal. 12.

<sup>32</sup> *Ibid.* Hal. 13.

At that time, there were still many regions that applied customary law and had customary law enforcers such as tribal chiefs, takers, rulers, priests or people with other traditional positions. The advantages of maintaining the customary law system and customary courts at that time were clear: legal certainty was guaranteed because customary law was rooted in the norms and sense of justice and appropriateness of local communities.<sup>33</sup> Another advantage is that by maintaining customary law, peace and order (*rust en orde*) is more secure. The Adat Law School (Adatrechtsschool) approach which was initiated by Prof. Cornelis van Vollenhoven and his students who produced a number of monographs and other written works, supported this policy.<sup>34</sup> After the issuance of the Marriage Law, a study of customary law is still necessary, especially to determine the status of customary law in the new legal constellation.<sup>35</sup>

In the context of implementing the Marriage Law, inevitably it will clash with previous social values that are accustomed to customary law and religious influence, so it can be said that the obstacle affecting the course of social change is the too strong of community members adhering to the norms of customary norms. , tend to reject the entry of norms originating from modern civilization. This rejection is based more on the fear of a shaky cultural integration and an excessive prejudice against new things.

The entry of new norms such as marriage registration, the existence of the principle of monogamy (which is not absolute), divorce that must be carried out before a court and so on, results in the norms that have been resolved by members of the traditional community to no longer have binding power. As a result, the old traditional patterns of behavior of the people of the community, which at first were considered in accordance with the norms of their customs and religions, ended up being considered deviant behavior.

#### 4. Conclusion

The majority of the Dayak Bakumpai are Muslim because of assimilation through marriage with the Banjar tribe, which has long been Muslim. At the bakery ceremony, there are bawayang activities with scenes of Kakawin Arjuna Wiwaha and bausung activities (the bride and groom are seated on their shoulders and paraded around the village or on certain paths). Traditional marriage still exists today even though

<sup>33</sup>Maintaining birth customary law is a pragmatic policy: the government's difficulty in overcoming the number of cases brought to court by people in areas that recently entered the colonial state is accompanied by a shortage of formally educated judges and a lack of budget., Sita van Bemmelen, 2018, *Christianity, Colonization, and Gender Relations in North Sumatra. A Patrilineal Society in Flux*, Brill, Leiden/Boston, Hal. 247-366.

<sup>34</sup>HarkoSonius, "Introduction", in Johan Frederik Holleman, 1981, *Van Vollenhoven on Indonesian Adat Law*, MartinusNijhoff, The Hague, Hal. LVIII.

<sup>35</sup>SoerjonoSoekanto, 1982, *KedudukanPerananHukumAdat di Indonesia*, (Position and Role of Customary Law in Indonesia) PenerbitKurniaEsa, Jakarta, Hal. 19. lihat juga SurojoWignjodipuro, 1982, *KedudukansertaPerekembanganHukumAdatSetelahKemerdekaan*, (Position and Development of Customary Laws After Independence) PT GunungAgung, Jakarta.Hal. 27

religious values influence the tradition of marriage. The Bakumpai Dayak people carry out their weddings according to the customary tradition that has been adjusted to their religion. Marriage according to customs and religion is sacred and must be passed by the bride and her family. Meanwhile, the administration of marriage as stipulated in the Marriage Law is only considered as a complement, where some of the indigenous Dayak Bakumpai people consider it not too important to be implemented. It can be seen that registering marriages to the relevant government agencies is carried out after a series of traditional and religious events have ended. The indigenous Dayak Bakumpai people do not have the obligation to report their marriage to government agencies.

The marriage law is still unable to accommodate traditional marriages for the Dayak Bakumpai Indigenous Peoples. Marriage restrictions and arrangements that discuss the registration of marriage, Marriage Under the Hand. The legality of marriage is the limit of the age of marriage for interreligious mixed marriages and recognition and legalization of children outside of marriage. For this problem, customary law, especially the custom of the Dayak Bakumpai, has rules and conflict resolution based on kinship which contains the principles of balance and peace. Meanwhile, national law prioritizes positive law so that the existence of population and marriage administration becomes the foundation for resolving these problems.

The government needs to reform the existing marriage administration so that indigenous peoples who are not included in the official government religion can still be registered in the marriage registration. The government also needs to accommodate the procedures and habits of indigenous peoples in carrying out their customary marriage.

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