

INTEGRATION OF CUSTOMARY MARRIAGE LAW INTO POSITIVE LAW AS JUSTICE IN SOCIAL AND LEGAL CONTEXT

Yenny Febrianty^{1*}, Fauzan Azima Faturachman², Maudy Anjani³, Asmida Ahmad⁴,
Viorizza Suciani Putri⁵

^{1,2,3} Faculty of Law, Universitas Pakuan, Bogor, Indonesia.

⁴ Faculty of Law, MMU University, Selangor, Malaysia

⁵ Faculty of Law, Universitas Padjadjaran, Bandung, Indonesia

Correspondence email : yenny.febrianty@unpak.ac.id

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Abstract

Indigenous societies' social interactions are governed by customary law, which has a major impact on cultural identity. Conflicts between local customs and the standardized elements of positive law make it difficult to integrate customary marriage rules into Indonesia's national legal system. Indonesia acknowledges the importance of customary law, yet there is still inconsistency when it comes to marital customs and other areas where it is included in national laws. The goals of this research are twofold: first, to understand how positive law in Indonesia interacts with customary marital law, and second, to find ways to bring these two systems together in a way that promotes inclusivity, justice, and cultural diversity. This study utilizes a normative juridical method by conducting qualitative and comparative analyses of pertinent literature, legal concepts, and legislation. The article looks at marriage legislation from both a positive and traditional perspective, comparing and contrasting the two. In particular, the results show that there are substantial obstacles to bringing traditional marriage regulations into line with modern legal norms in the areas of marriage registration, gender equality, and the age of consent. The research suggests a mechanism for incorporating Indonesia's traditional marriage rules into the country's formal legal framework, with the goals of protecting cultural values and promoting social justice and human rights. Insights from this study may help academics, legal professionals, and legislators make national law more welcoming and sensitive to other cultures.

I. Introduction

Philosophically speaking, marriage is more than just a binding contract between two people; it is also a symbol of the social and spiritual unity, continuity, and harmony that characterizes human existence. Love, commitment, responsibility, and reverence for sharing one's life with another are universal principles that are reflected in marriage (Jenkins, 2017). There is a transcendental component to marriage in many faiths since it is a symbol of devotion to the Almighty and a holy event that unites the individual with the larger community (Munawaroh et al., 2023).

Equal weight given to each partner's responsibilities and rights is a fundamental tenet of marital philosophy, which applies not just to interactions between spouses but also to those between families and communities at large. Marriage, therefore, is crucial for many reasons beyond just raising a family; it helps keep society stable and reinforces cultural values that are handed down through the ages (Saleh et al., 2022). According to this point of view, marriage is fundamental to human existence because it is both personal and communal, including the values, traditions, and conventions that form the foundation of a community's sense of self.

The customary marriage law of a community reflects the beliefs and worldview of that group and is therefore a valuable cultural artifact. Traditional marriage laws in Indonesia are based on hundreds of local customary groupings, each with its own set of norms for marriage ceremonies, dowries, and the dynamics of extended families (Saiin et al., 2023). On the other hand, positive law – founded on broad legal concepts that may not always account for customary diversity – often runs counter to or even disregards these regulations in the national legal system. Because of the special ways in which customary law may improve and enhance national law, its incorporation into positive law is a pressing concern; this will allow positive law to better accommodate societal variety.

Maintaining legal clarity, rigidly regulating connections between people, and creating a unified legal system are all goals of centrally formulated positive law. Traditional customs, which are more malleable and specific to each indigenous community, typically give better answers (Suryani et al., 2023). Particularly in situations when positive legal requirements and customary standards diverge significantly, this disparity makes prioritizing the rules to be applied in marriage instances difficult. The social context of indigenous groups, which have unique regulations based on local knowledge, is often disregarded when the national legal system strives to implement positive law rigidly. Therefore, it is crucial to take an

integrative approach if we want to establish a fair system that can be upheld by all stakeholders in both the social and legal spheres.

Customary law is acknowledged in several laws and regulations, including the Marriage Law and the 1945 Constitution of the Republic of Indonesia, although there are still many hurdles to its application in positive law. The fact that customary law is essentially oral, unwritten, and often dynamic is one of these things that contemporary legal cultures don't fully grasp. We can find more fair solutions that honor indigenous peoples' rights if we recognize customary marriage law as a component of our nation's cultural heritage and use that knowledge to inform our policy. As a result, indigenous Indonesians' cultural diversity is valued and national legal policy is strengthened by the incorporation of customary marriage law into positive legislation (Rosmidah, 2010).

Taking into account the unique features of customary law in each area, this integration process surely needs meticulous planning. When deciding whether or not to establish a rule based on customary practice as positive law, it is important to weigh the rule's legitimacy and public interest against any potential negative effects on individual rights, particularly those of married women (Blair, 2006). Furthermore, one must be aware that customary law is more grounded in a specific community with particular norms derived from local culture, as opposed to national legal systems, which are more likely to be based on universal principles that are applied consistently. That is to say, for this integration to work, there has to be compromise and harmony so that acceptable parts of customary law may be incorporated into positive legislation without watering down the custom itself. Additionally, Indigenous communities might anticipate more equitable access to traditional legal recognition and protections as a result of this integration (Anggoro, 2006).

Studies examining the possible beneficial legal incorporation of customary marriage laws must furthermore account for relevant sociocultural factors (Munir, 2023). Marriage law in many indigenous societies serves to govern not just the couple's relationship but also the community and their extended family as direct stakeholders. In contrast to the individualistic positivism of modern law, customary law emphasizes the importance of community. Thus, to provide justice that is consistent with social ideals in Indigenous communities, an integrative approach to customary marriage law must strike a balance between individual and communal interests.

The government and lawyers also need to acknowledge that traditional leaders play a crucial role in settling issues related to customary law marriages.

Indigenous societies hold traditional leaders in great esteem because of their extensive knowledge of the unwritten but deeply held local rules and values. When it comes to integration initiatives, these traditional leaders may help unite Indigenous groups with varied traditions by bridging the gap between beneficial law requirements and their needs. Traditional leaders' participation in the development and rollout of more inclusive marriage laws should ensure the smooth operation of this integration and its positive reception by Indigenous communities.

Legal problems involving indigenous populations may be better resolved by the incorporation of customary marriage law into positive law. This is particularly true in instances of marital disputes about inheritance and child custody. When opposed to the often-rigid positive legal rules, the more adaptable and in line with indigenous societies' kinship-based customary law provisions may provide better alternatives. Thus, the goal is to achieve social fairness while still adhering to the law by incorporating customary norms into rules on national marriage laws (Yulia, 2016).

The government's involvement in drafting regulations that may provide legal clarity and safeguard the rights of all parties is essential to the integration of customary marriage law into its execution. One way the government may help is by establishing a meeting place for indigenous peoples, scholars, and other interested parties. As more and more people are involved in the conversation, we can only hope that the outcomes of the efforts to include customary marriage law will be more thorough and adequate to meet society's more complicated demands (Anggoro, 2006).

Accordingly, achieving comprehensive justice and meeting societal demands both need the incorporation of customary marriage law into positive legislation. As a component of national identity, indigenous tribes' traditional values are reinforced via this integration, which also acknowledges the presence of customary law. It is believed that positive law may evolve with Indonesian society's socio-cultural changes throughout time, allowing our national legislation to more accurately represent the diversity and fairness that are shared aspirations.

In light of the importance of understanding both positive law and customary marital law, as well as their respective roles and relationships, the current research set out to address both questions. It also offers suggestions for how to be positively integrated into Indonesia's positive legal system to promote equality and justice, while preserving the distinctiveness of traditional values and upholding the positive law principles of social justice and human rights.

In light of the above, this essay will make an effort to address the following questions: (1) How does positive law relate to customary marriage law in Indonesia? and (2) What does the idea of customary marriage law mean in Indonesia? Thirdly, how difficult is it to incorporate traditional marital laws into statutes?

2. Research Methods

This study used the normative legal method of research, an approach to law that is predicated on the examination of applicable legal theories, statutes, and regulations. Studying the best ways to incorporate Indonesian customary marriage law into the country's positive legal system while upholding human rights and social justice ideals is the goal of this sort of study. The methods used to delve into this matter include qualitative analysis and a comparative approach. The method of comparison involves examining the concordance between society's customary marital law and the affirmative legal norms outlined in Law Number 1 of 1974 concerning marriage. In this qualitative study, we look at customary marriage law from a philosophical, sociological, and legal perspective, tracing its origins back to local beliefs and how they shaped national legislation.

Primary legal documents, including applicable statutes and regulations like Law Number 1 of 1974 regulating Marriage and the 1945 Constitution, are used in this research. Indonesian customary law and marital law are also covered in secondary legal sources such as books, academic journals, and other scholarly works. To gather information, researchers conduct literature reviews, which include perusing a variety of pertinent books, articles, and legal documents. To address the research questions, the collected data is evaluated using descriptive and analytical methods.

Three primary stages of analysis provide answers to the study issue formulation. First, this research demonstrates that positive law is founded on the principles of equality and protection of individual rights, but customary marriage law is based on local knowledge values that stress community bonds. The second part of the question is the connection between positive law and customary marital law. While national rules do acknowledge customary law, variations in legal ideas and paradigms sometimes make its application difficult. Third, the essay examines the difficulties of combining positive law with customary marriage law by naming specific issues, such as divergent opinions on the legal age of marriage, issues with marriage registration, and gender value discrepancies between the two systems of law. To accommodate customary marriage law in positive law without erasing its

essential values, this analysis lays the groundwork for suggesting effective integration strategies through fostering dialogue among customary leaders, policymakers, and the larger community.

3. Results and Discussion

The Concept of Customary Marriage Law and Positive Law

Customary marriage law in Indonesia is deeply ingrained in the country's and region's diverse cultural history, reflecting the beliefs and ideals of certain ethnic and religious groups (Febrianty et al., 2023). Things like marriage rituals, dowries, familial ties, and the responsibilities of the husband and wife are all governed by traditional marital law. Indonesian indigenous tribes have developed their own set of marriage regulations in response to long-standing cultural norms, social mores, and moral principles.

Married couples aren't the only ones this legislation applies to; it encompasses the whole community. Marriage is seen as more than simply a private affair; it is a social event that forms strong bonds between two extended families, which is why traditional marriage laws often stress the significance of social harmony and familial respect. The philosophical significance of the rituals performed at each step of this marital custom—including the giving and receiving of gifts and the reunification of the family—is typically emphasized. All of this points to the fact that indigenous groups rely on customary marriage laws to keep the peace and preserve their cultural identity (Hayati, 2016).

Customary marriage law serves as both a social tool and a mechanism for maintaining social equilibrium. Its purpose is to keep the peace, foster closer bonds among family members, and ensure that traditions will be passed down through generations. Community and solidarity are fundamental to the social structure of Indigenous peoples, and this idea is strongly tied to their way of life. So, traditional marriage law isn't just a set of rules for getting hitched; it's also a mechanism for maintaining societal order and establishing proper personal responsibility. Looking at customary marriage law through a more holistic lens reveals a philosophical component based on restorative and distributive justice ideals. Dispute resolution methods that emphasize cooperation and peace rather than conflict, dowries, and gift-giving all represent these ideals.

Conversely, positive law is the national legal system of Indonesia. Legal certainty that applies to all people without exception is created when the state

drafts and ratifies a regulation, which is known as positive law (Suwito et al., 2023). There is a minimum age for marriage, some administrative conditions that must be fulfilled both before and after the wedding, and the equal rights of the husband and wife are emphasized in Law Number 1 of 1974 concerning Marriage, which regulates positive law as it pertains to marriage.

The values of fairness and equal rights for all citizens are emphasized in this legislation, which is implemented universally across Indonesia. One example is the Marriage Law, which establishes a minimum age for marriage to safeguard children and women from legal harm and to ensure that husbands and wives have equal rights inside the home. The ideals of individuality and human rights, which have been more prominent in recent social and cultural movements, form the basis of these positive legal concepts. Thus, customary law is more communal and stresses the need for unity, while positive law is more individualistic and focused on individual rights.

There are advantages and disadvantages to both legal systems. The demands of indigenous groups are often better met by customary law since it is communal and adaptable. It may be challenging to incorporate customary law into a formal and inflexible national legal system due to its unwritten character and regional variances (Manullang, 2021). Traditional value-based customary law may clash with positive law's recognition of human rights in certain situations (Dewi et al., 2022). To illustrate the point, the idea of gender equality acknowledged in positive law may be at odds with the traditional roles of men and women in marriage in some indigenous societies. Positive legislation that is developed at the federal level has benefits like consistent application and legal clarity, but it doesn't always take into account the local social and cultural context, which means it doesn't always cover Indigenous people's requirements. For this reason, creating a just system that takes cultural variation into account requires resolving the tensions that exist between positive law and customary marital law (Tahali, 2018).

Several Indonesian laws and regulations, including the Constitution of 1945 and Law Number 1 of 1974 on Marriage, govern the recognition of customary law. One of the numerous problems with incorporating customary law into positive law is that contemporary lawyers don't fully grasp the nature of customary law – that it is oral, unwritten, and ever-changing. Conversely, positive law isn't always able to adapt to changes in customary culture since its formal and written norms aren't easily changed. When it comes to building a more equitable legal system that recognizes and protects the rights of indigenous peoples, the preservation of customary marriage law is crucial (Syamsudin, 2017). Researchers interested in

finding ways to incorporate traditional marital laws into positive legislation should also consider traditional dispute-resolution practices and the function of traditional leaders. Traditional elders know and comprehend the unspoken yet highly esteemed social mores and practices of their communities. To help bring together positive law and customary law, traditional authorities may mediate this situation.

Resolving marital issues that include the rights of people and extended families might greatly benefit from the integration of customary marriage law into positive legislation. Whereas positive legal laws are sometimes inflexible, customary law offers alternatives that are often more accommodating and in line with Indigenous groups' familial values. As a result of this integration, Indigenous communities' social needs will be better met while national legislation is upheld. The unique features of regional customary law and its effects on individual rights, particularly those of women in marriage, must be carefully considered throughout this integration process. The government must guarantee that human rights and gender equality are not violated in the process of incorporating customary law (Santoso, 2016).

One way to add local features that represent Indonesian cultural values to the national legal system is to incorporate customary marriage law into positive legislation. Here, customary law may provide ideas for policies that better accommodate different groups' demands and promote inclusion. For example: customary marriage law's emphasis on community might inform new forms of legislation that prioritize social peace without sacrificing protections for individuals (Djawas et al., 2023). A thorough comprehension of the core principles of customary law is necessary, however, for perfect integration. Every community's customary law evolves in response to its own social and cultural milieu. This necessitates preserving the foundational structure of positive law that offers justice and clarity while also honoring the malleability of customary law. For customary law to be both acknowledged and evolved in line with contemporary norms that uphold human dignity, it is imperative that this integration also include traditional principles that uphold human rights, such as the rights of children and women.

However, this integration process needs robust institutional backing, which may be achieved, for example, by enhancing the awareness and adherence to customary law by law enforcement. As a fundamental component of Indonesian law, customary law must be taught to law enforcers, attorneys, judges, and government officials as part of their legal education. This must be done to make sure that customary law is not seen as an independent system, but rather as an integral and complementary component of the whole legal system.

To further the cause of creating more inclusive legal laws, the government must establish a forum for discussion among community members, scholars, and attorneys. By working together, Indigenous communities and the government may perhaps reach a mutual understanding that will lead to the official recognition of customary marriage law. When enforcing customary marriage laws, the government should also consider the cultural and social context. It is believed that this merger if handled properly, would lead to more equitable legal recognition of Indigenous peoples and a greater respect for Javanese cultural variety. It is believed that inclusive justice will be created and that society's increasingly complicated requirements will be met via endeavors to integrate positive law with customary law.

By putting it into action, the government may help Indigenous communities resolve marital conflicts in a way that is consistent with their traditional practices, while also making sure that the laws that are established can guarantee everyone's rights and offer legal clarity. Consequently, Indonesian marriage law has the potential to mirror the community's aspirations for social fairness and cultural diversity. It is believed that positive law in Indonesia may vary with the times and adapt to new socio-cultural norms so that the country's legal system can accurately represent the ideals held by its citizens.

The Relationship between Customary Marriage Law and Positive Law

There is a strong foundation for customary marriage law in Indonesia, which is well-known and respected by the local community, and it plays a significant part in people's daily lives. Because different communities have different worldviews, cultural practices, and social mores, customary marriage law varies greatly from one area to another (Jannah et al., 2021). Typically, traditions govern many facets of marriage within the framework of marriage legislation, including but not limited to the premarital phases, requirements, processes, rituals, and societal effects of the union. However, positive law in Indonesia aims to regulate marriage in a more formal and universal framework to ensure legal certainty and the rights and obligations of the parties involved. This includes the Civil Code (KUHPerdota), Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, and various derivative regulations (Otto, 2009).

The literature explains that there is a dynamic interaction between Indonesia's positive legislation and customary marital law. According to Anggoro, customary law is fundamental to Indigenous people's sense of self and social structure; in Indigenous cultures, marriage serves to connect families rather than just bring them

closer together (Haryowardani, 2024). Traditional legal norms in this area tend to place more weight on group dynamics than on personal agency. To ensure the legal protection of all parties involved, particularly women and children, the state acknowledges customary law as long as it satisfies the registration requirements, as stated in Article 2 Paragraph 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

Positive law, as Hayati pointed out, emphasizes equality and legal clarity, particularly about marriage registration. Legal complications, such as disagreements over child custody or the distribution of marital assets, are more likely to emerge in marriages that are not registered (Rahman et al., 2023). Contrarily, Kurniawan pointed out that many indigenous tribes still regard a legal marriage according to customary law to be adequate, which might lead to conflicts with positive legislative measures that emphasize legal formality (Kusumo, 2023). In addition, Maladi emphasized that the state's attempts to accept cultural diversity within the national legal framework are shown by the acknowledgment of customary law in the post-amendment constitution. Disagreements over the fundamental concepts of positive law, which is frequently static and regimented, and more malleable customary law might make it difficult to put this integration into practice (Jamillah, 2024).

There are several facets to the interaction between Indonesia's positive law and customary marital law. When it comes to marriage, for instance, customary law often gives more weight to agreements between families and communities. The fundamental problems revolve around social relations and family ties since marriage is seen as more than simply the joining of two people; it is also seen as the joining of two extended families. On the other hand, positive law is more concerned with the parties' intentions and the legal requirements for a marriage to be legitimate, such as having it registered at a civil registration or religious affairs office (Judiasih & Fakhriah, 2018). The purpose of this registration requirement is to safeguard all parties involved, particularly women and children, from the potential harm that might result from an unregistered marriage.

Despite their differences, positive law in Indonesia acknowledges the significance of customary law in marriage. Any marriage that complies with the regulations of both faiths is legally binding, according to Article 2 Paragraph 1 of Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage. Thus, a marriage that is legitimate in the eyes of one's faith community or cultural norms is also legitimate in the eyes of the state, provided that the marriage is duly recorded. This demonstrates an attempt to harmonize customary standards with formal laws that apply nationwide and a kind of governmental acknowledgment of customary law.

However, there are still obstacles to this synchronization due to traditions that do not completely conform to positive law. For example, some traditions permit polygamy without strict regulations or traditions that prohibit underage marriage, as stated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Asnawi et al., 2024).

In addition, customary marriage rules may have an impact on marriage customs in certain regions, particularly when it comes to deciding on dowries, bride prices, or other presents that are governed by tradition. The dowry is a significant token of gratitude to the woman's family in some societies. Positive law does not interfere with this practice so long as the quantity and value are agreed upon freely and without discrimination. There is room for customary law to adapt to local norms since Law Number 16 of 2019 about Amendments to Law Number 1 of 1974 concerning Marriage does not regulate the dowry or mahar in detail. On the other hand, dowry values that put an undue financial strain on one spouse may cause friction in marriages, particularly among lower-class couples. In this case, positive law plays a significant role in protecting one spouse from having their rights violated by these customary restrictions.

Furthermore, there are certain rules in customary law concerning punishments for marital infractions like adultery or divorce. Violators of marital vows may face social or even monetary punishments under some local customs. Here, customary law serves as a social control system to uphold moral standards and the integrity of families. But in positive law, the civil law component is more prominent in dealing with adultery and divorce, with processes that must be pursued via the courts. They take distinct tactics, but they both aim to preserve justice and protect individual rights in marriage. Customary law is more geared toward consensus-based solutions and societal peace, while positive law is more concerned with the affirmation and safeguarding of human rights and formal processes (Asutay, 2013).

However, there are some traditions that permit weddings between minors, even if this goes against positive legislation, since the minimum age for marriage is set down in Law Number 16 of 2019 about Amendments to Law Number 1 of 1974 concerning Marriage. The purpose of setting this age restriction is to prevent potentially harmful marriages between minors and to safeguard children's rights. To safeguard the emotional and physical well-being of children, positive legislation has enacted stringent regulations to prevent the marriage of minors. On the other hand, child weddings are still permitted in certain areas due to cultural or religious reasons; as a result, many underage marriages go unrecorded, putting young girls at

danger of having their legal rights taken away in the case of a divorce or other marital issues. At this crossroads, the government is attempting to educate the people about the dangers of weddings between minors and the need of marriage registration, both of which go counter to positive law.

The difficulties in attaining concord between positive law and customary law are highlighted by their contrasts. As long as it does not contradict the fundamental principles established by the state, positive law continues to acknowledge customary law. Legal stability and the avoidance of harmful legal ambiguity are achieved when the state adapts customary law, subject to specific circumstances. Family conflicts, such as those involving marriage, inheritance, or property ownership, may also be resolved by traditional courts in some regions. This demonstrates the acknowledgement that national law does not always adequately account for local socio-cultural factors, and that customary law offers an advantage in this regard.

Challenges in Integrating Customary Marriage Law with Positive Law

Soetandyo Wignjosebroto explains that customary law evolves throughout time in response to societal demands, which is why it is often linked with the idea of living law in theoretical studies. This demonstrates that customary law serves as a practical reflection of a community's social and cultural norms in addition to being normative (Elaies, 2023). According to Satjipto Rahardjo, who defines law as a system that places an emphasis on legal certainty, positive law is laws that are legally established by the state and have an inherent universal character.

The fact that the state acknowledges the presence of customary law inside the national legal framework demonstrates the link between positive law and customary law. For instance, marriages recognized by local church and customary law, subject to official registration, are legitimate under Article 2 Paragraph 1 of Law Number 1 of 1974 Governing Marriage. But there are obstacles to putting this recognition into practice; as Kurniawan explains, for example, when it comes to women's and children's rights, customary law often clashes with the universal concept used in positive law. Furthermore, Otto brought attention to the fact that power dynamics in society often impact the presence of customary law, with custom serving as a tool to preserve social peace. In contrast, positive law – which is central to Roscoe Pound's theory of law as a social engineering tool – tends to place more emphasis on the universally applicable legality component (Apriani & Hanafiah, 2022).

Considering the basic differences in methodology, sources of law, and purposes that both systems seek to accomplish, integrating customary marital law and positive law in Indonesia presents quite a challenging problem. To begin with,

many societal norms, such as those pertaining to marriage, are based on long-established customary law. More in keeping with local beliefs and customs, customary values prioritize communal agreements and familial bonds. Positive law, on the other hand, is an attempt to create uniform rules that all Indonesians must follow in order to ensure fair treatment of all citizens, preservation of personal freedoms, and clarity of law. The fundamentally different guiding principles of the two systems presents a significant obstacle to their integration. Positive law is codified and officially applies throughout Indonesia, irrespective of the cultural or traditional basis of any given community, whereas customary law is more malleable, adapts to the changing needs of individual communities, and places a premium on social peace (Maladi, 2010).

The divergent opinions on the legal marriage age provide a significant obstacle to harmonizing positive legislation with customary marriage law. Many societies still uphold the practice of child marriage or underage marriage according to customary law, citing tradition or family interests as justifications. This goes against positive legislation that establishes a minimum marriage age to safeguard children's rights and well-being, as stated in Law 16 of 2019 amending Law 1 of 1974 on marriage and its modifications. Even though there is a legal minimum age for marriage, certain communities' traditions let underage brides—those who are deemed "mature enough" according to local standards—to tie the knot. As a result, many underage weddings go unrecorded, which might lead to complications for the girls involved in a divorce or disputes over marital rights (such as those about children and wives) (Adha, 2023).

Dissimilarities in marriage registration can provide a problem. Since a lawful marriage in custom has been seen by family or traditional authority, registration is not usually considered a crucial factor in the legitimacy of a marriage according to customary law. Registration of marriage with either the civil registry or the religious affairs office is mandated by positive law as a means of state-recognized legitimacy. The parties concerned are seeking legal protection via this registration, which will allow for the acknowledgment of their marriage status, inheritance rights, and other civil law-related rights. Many indigenous people still see marriage registration as a frivolous or even costly procedure, hence many traditional weddings go unregistered, even though it helps preserve individual rights. Children born out of unrecorded weddings are also affected by this, and it causes legal ambiguity for married couples (Soemiyati, 1982).

One significant feature of traditional marriage in Indonesia that reflects the social and cultural norms of the local community is the application of customary

presents such as dowry or “*panai*” money. The cultural significance of the dowry – a sign of respect and seriousness in constructing a home – runs deep (Alimuiddin et al., 2023). Depending on the culture, the dowry serves as more than just a financial present; it also symbolizes the groom's dedication to the bride's family and their long-standing traditions. Nevertheless, problems emerge when the dowry value is very large, placing an undue strain on one side, particularly those from poorer socioeconomic backgrounds. The large dowry value may lead to unfair treatment in some situations, such as putting undue financial strain on the future husband or even canceling the wedding. Since not every family can afford the same level of living expenses, this might lead to societal tensions (Salenda, 2016). As a result, traditional dowry laws often encounter a conundrum when trying to balance the needs of current society with those of the past.

Conversely, positive law in Indonesia does not dictate a particular dowry amount or type but rather allows the couples to negotiate a reasonable deal. The emphasis on marriage's formality and legitimacy is further emphasized in Law Number 1 of 1974 concerning Marriage, which requires registration at the Office of Religious Affairs (KUA) or the Civil Registry Office, among other places (Saputra & Busyro, 2018). The practice of dowry is acknowledged by positive law as an honorable custom, but it is not subject to any explicit legal regulation. As long as it doesn't go against fundamental concepts of fairness and human rights, this method demonstrates how positive legislation may adapt to local customs.

However, the positive law principle of equality may be at odds with traditional practices that produce a large dowry. Within the context of positive law, the social fairness concept protects individual liberty, including the right to marry without being unduly burdened financially. Some may believe that an exorbitant dowry breaches the principle of social fairness, especially if it disproportionately impacts one husband. People may value money resources more highly than marital commitment and sincerity when the dowry is too substantial, which may lead to discrimination and social isolation.

Divorce and other marital infractions sometimes carry additional penalties under customary law. Violators of marriage contracts may face social stigma or monetary penalties in certain traditional societies. This method is said to be good for upholding moral principles and keeping families together. In positive law, on the other hand, matters of this like are dealt with in a more official and civilized manner, with the possibility of taking a spouse's adultery or breach of marriage to court for a judge to determine. The issue of incorporating customary norms into formal law arises from the fact that positive law often shuns community-based punishments or

monetary fines that violate the idea of equal rights. This becomes more problematic when members of the customary community have the belief that traditional punishments are more effective and legally binding than judicial rulings (Sihombing, 2023).

The second obstacle is that Indigenous communities often do not fully understand the significance of the protections provided by positive law. Some indigenous communities continue to hold the outdated belief that positive law is irrelevant to them because they lack local knowledge or live in cities. Obstacles to this integration include a lack of education on the significance of marriage registration, a minimum marriage age, and the legal protections afforded to women and children in marriage (van, 2014). Indigenous communities need more comprehensive legal and social education programs to raise awareness about the significance of marriage registration and the potential legal consequences of recognizing weddings only based on tradition rather than formal registration.

Not only that, but customary marriage laws also vary across regions, making integration challenges even more complex. Marriage is a very personal matter for the hundreds of indigenous communities that call Indonesia home. Without going against the ideals of justice outlined in the Constitution, the government must balance good legal rules with policies that honor cultural diversity. To ensure that all relevant provisions are acceptable to the community and do not lead to a conflict between positive law and customary law, the government must maintain its cultural approach and open conversation with local indigenous leaders considering these very different variances (Hoadley, 2006).

The administration must confront the enormous issue of bringing positive legislation into harmony with customary law. In addition to being a cultural treasure trove, Indonesia's many traditions make it difficult to implement a single national legal system. Respect for local customs and adherence to the principles of universal justice mandated by positive law must be carefully considered in this circumstance. An awareness of the social and cultural processes at work in any given community is essential for the proper recognition of customary law, which is more than just a formality. Consequently, achieving equitable and inclusive integration requires deliberate measures involving several partners.

Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states: "The state recognizes and respects customary law communities and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law." This emphasizes the need for the government to establish a regulatory framework

that is both flexible and welcoming of varied perspectives. As long as it doesn't clash with universal norms governed by national law, this article provides a constitutional foundation for tolerating customary law.

Recognizing customary villages is also mandated by Law Number 13 of 2023, which amends Law Number 6 of 2014 regarding villages. This law was last modified in 2014 and underlines the significance of villages. According to Article 103, residents of customary villages may "organize the life of customary law communities based on ancestral rights and customs." Local arrangements that do not clash with national legislation might include customary law, such as the practice of dowry or other customary gifts, thanks to this clause. Also, the same Village Law states in Article 111 Paragraph (3) that "in the formation of Village Regulations, attention must be paid to the socio-cultural conditions of the local community, customs, and community developments." So, when making village regulations, it's important to keep customs in mind. This article guarantees that national law and social justice principles will not be violated by local restrictions regarding dowry or other customary customs.

For the sake of this discussion, it is very pertinent to cite Law No. 13 of 2022, which adds the Second Amendment to Law No. 12 of 2011 on the Formation of Legislation. Section 96(1) of the Constitution reads as follows: "The community has the right to provide input verbally and/or in writing in the formation of legislation." To create policies that are sensitive to cultural diversity, this follows the participatory method that involves community members, academics, and legal practitioners alongside conventional leaders. Article 26, Paragraph (1) Letter b of Law Number 6 of 2014 concerning Villages states that the village head is tasked with "preserving the customs, traditions, and culture of the village community." This means that the regional government can facilitate official forums where the government and indigenous communities can engage in open dialogue. Here we may find a space where good legal ideas and customary values can come together in harmony.

A systematic and culture-based strategy is necessary to consistently improve indigenous groups' legal education and socialization. The purpose of this education is to increase public knowledge of positive law and its many significant facets, including marriage registration requirements, marriage age requirements, and the legal protections afforded to children and women. Indigenous cultures need socialization that is readily understandable by them, which may be done via village-based programs that use traditional communication means, training with traditional leaders, community discourse, or local media. To make sure the information is relevant and acceptable, the government should create programs that include

indigenous groups in talks in addition to providing information.

Furthermore, indigenous communities should have easier and cheaper access to government-run marriage registration services. This involves streamlining registration processes without compromising their core legitimacy, providing mobile marriage registration services to underserved locations, and decreasing or eliminating administrative expenditures for certain community groups. One way may be by digitizing a marriage registration system that can be accessible via an app in indigenous communities. This system could be bolstered by technical assistance from village authorities or specially trained field personnel. As a result, indigenous communities will face less financial and bureaucratic hurdles when trying to record their weddings.

Also, the government should figure out how to settle marital problems in a way that makes positive law and customary law complement one other. Traditional forums may be strengthened to serve as the first step in resolving disputes. The involvement of traditional leaders is crucial in this system, since they promote discussion and work towards answers via the use of customary principles like consensus and debate. The positive legal system then uses the decisions reached in customary forums to formally implement them, for instance by engaging district courts or religious courts as per jurisdiction. By taking this tack, we honor traditional leaders' roles while also making sure that decision-making processes adhere to national law's foundational ideals, such social fairness, human rights protection, and gender equality.

Further investigation into the customary law practices of different areas in Indonesia is necessary to guarantee efficient integration. Comprehensive study is required, including both empirical investigations into the application of customary law to marriage and normative analyses of its consistency with positive law principles. To fully grasp the cultural and social factors at work in indigenous peoples' customary practices and their reactions to national legal legislation, this study has to include sociological studies. Policymakers might use this research's findings as a springboard to create policies that are more accommodating, flexible, and fair.

In this regard, the state may assemble a task force consisting of scholars, lawyers, traditional leaders, and representatives from civil society to determine whether existing customs can be incorporated into the country's legal framework. Implementation guidelines, including processes for resolving disputes based on customary law, standards for acknowledging customary law in the national system, and methods for monitoring and evaluating the efficacy of policies, might also be

assigned to this team. This means that robust, open, and participatory data may be used to incorporate customary law into positive legislation. To preserve the cultural character that is the nation's asset, this endeavor must be executed meticulously and thoroughly to deepen the harmony between positive law and customary law. Furthermore, this integration will also help create social justice that is dispersed fairly across Indonesia and contribute to a national legal system that is inclusive and sensitive to community needs. Both the creation of policies and the dedication of all stakeholders to maintain cultural diversity within a contemporary and equitable national legal framework are crucial to the achievement of this goal.

4. Conclusion

This research demonstrates that positive law and customary marital law are distinct in their effects on Indonesia's current legal framework, but that both are significant. Local wisdom-based customary marriage law frequently conflicts with positive law principles that emphasize equality and protection of human rights, particularly those of women and children. Positive law principles include respect for social norms and cooperation amongst members of a community as well as the importance of family. Although there are several obstacles that must be overcome, such as disparities in the manner in which gender equality and individual rights are acknowledged in customary marriage, the connection between positive law and customary marriage law demonstrates that there is potential for integration. The fundamental difficulty here is striking a balance between the two competing goals of upholding cultural values in customary law and complying with more universal legal requirements in positive law.

Due process, respect for cultural diversity, and adherence to social justice and human rights values are all essential in Indonesia's process of incorporating customary marriage law into positive legislation. Protecting the rights of women and children, in particular, requires policies that are culturally aware and rules that allow for traditional activities that are not at odds with positive legislation. As a result, both legislative shifts and more pragmatic strategies that account for the preexisting social and cultural milieu are necessary for this integration. The findings of this research highlight the need of a community-wide effort that includes government officials, traditional leaders, legal professionals, and others. For the purpose of discussing ways in which positive legislation might accommodate customary values, the government can have an open discussion with indigenous community leaders. As an example, customary law processes for resolving marital problems may be accommodated by the government, so long as

they adhere to the principles of justice and human rights outlined in positive law. In order to discover ways that might help traditional marriage laws be more fairly and inclusively incorporated into the modern legal system.

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