

Widows' Rights and Customary Law: Addressing Responsive Law to Divorce Cases of Tolaki Community in Indonesia

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Abstract

This article discusses the tendency to ignore women's rights in customary law practices in the Tolaki tradition, Southeast Sulawesi, Indonesia. Women often become a victim of deprivation of rights by customary legal tradition, such as ex-wife rights in post-divorce and the right to make choices. This article aims to discuss how widows are protected by custom by offering responsive law as a process for resolving marriage and divorce through customary decisions. Normatively, legal divorce settlements can only be processed through religious court institutions. Using a normative-empirical approach, this study has three significant findings. First, the process of resolving family conflicts involves complying with applicable customary provisions that must be obeyed by the Tolaki community. Second, tradition is not the only basis for consideration in the elements for making customary decisions. Third, responsive law can theoretically direct the lives of the people of the Tolaki traditional community by providing recommendations for considerations that are in accordance with the social structure and community relations related to the application of customary law. However, according to custom, widows who are not resolved before a court hearing can be followed up again to immediately register their case in a religious court in order to minimize neglect of the right to terminate a unilateral divorce and the rights of the widow and children after divorce. Under these conditions, offering responsive law is a strategy to balance rights in divorce cases bound by state legal norms.

Keywords: Protection of rights, widows according to custom, responsive law, Tolaki traditional community.

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Introduction

Responsive theory of law is a legal theory that offers something more than procedural justice in the law realm. This theory also responds to some cases about people's needs and social aspirations.¹ This study discusses how legal theory could respond to the widow's rights of Tolaki (one of a hundred tribes in Indonesia) people in South East Sulawesi, Indonesia. A law can be called responsively conducted when it responds to injustice, which considers rapid social changes.

Social changes are collective behavior that can influence character and response to every applicable rule.² Therefore, a state must be responsible for implementing laws that do not respond to injustices that occur in legal cases in Indonesia.³ Responsive law, theoretically, can accommodate and bind every citizen and make state law the highest law in society, in this case, including how to respond to the status of widows in the Tolaki tribal community. The rights inherent in the status of a widow, for example, the right to make choices, can be responded to and accommodated by responsive law theory. Therefore, responsive law must function as a means of control in social and community life, so creating a legal system that originates from state power based on responsive law theory is necessary.

¹ P. Nonet and P Selznick, *Law and Society in Transition: Toward Responsive Law*. (New Brunswick., 2001).

² Nancy Perrin et al., "Social Norms and Beliefs about Gender Based Violence Scale: A Measure for Use with Gender Based Violence Prevention Programs in Low-Resource and Humanitarian Settings," *Conflict and Health* 13, no. 1 (2019): 1–12, <https://doi.org/10.1186/s13031-019-0189-x>.

³ Agata Kleczkowska, "Searching for Armed Non-State Actors' Role in the Process of Formation of Customary Law," *International and Comparative Law Review* 19, no. 2 (2019): 97–115, <https://doi.org/10.2478/iclr-2019-0016>.

The state has the authority to direct the operation of an excellent legal system, including positive, religious, and customary law. One of the regulations that the state must make is related to preventing violence against women in marriage and divorce.⁴ Therefore, the law must be utilized as a comprehensive instrument to avoid misinterpreting regulations. Both positive law, religious law, and customary law are forms of law that coexist harmoniously over the long term within society. All these conditions require the state's attention to maintain and hold an excellent legal system accountable.⁵ The state must also facilitate and regulate religious interests in a balanced manner so as not to give rise to discrimination against religious groups.⁶ In particular, the state has an obligation to institutionalize customary law and customary institutions in fulfilling group rights without ignoring the positive law that applies in a country.⁷

Positive law is a type of law that has the power to regulate all aspects of life. Positive law contains the values of responsive, repressive, and autonomous law.⁸ Good

⁴ Om Prakash Mahela et al., "Comprehensive Overview of Low Voltage Ride through Methods of Grid Integrated Wind Generator," *IEEE Access* 7 (2019): 99299–326, <https://doi.org/10.1109/ACCESS.2019.2930413>.

⁵ Hanna Mac Innes, Kieran Walsh, and Torun Österberg, "The Inverse Care Law and the Significance of Income for Utilization of Longterm Care Services in a Nordic Welfare State," *Social Science and Medicine* 282, no. September 2020 (2021), <https://doi.org/10.1016/j.socscimed.2021.114125>.

⁶ J. Godley, "Everyday Discrimination in Canada," *The Canadian Journal of Sociology/Cahiers Canadiens de Sociologie* 43, no. 2 (2018): 111–42.

⁷ Kate Baldwin and Katharina Holzinger, "Traditional Political Institutions and Democracy: Reassessing Their Compatibility and Accountability," *Comparative Political Studies* 52, no. 12 (2019): 1747–74, <https://doi.org/10.1177/0010414019852686>.

⁸ Irfan Iryadi et al., "The Role of Jurisprudence as Form of Legal Prescriptions: A Case Study of Notaries in Indonesia," *WSEAS Transactions on Environment and Development* 17 (2021): 75–80, <https://doi.org/10.37394/232015.2021.17.8>.

citizens must comply with positive law because it aims to regulate the rights of citizens and regulate relations with each other,⁹ including the rights of the Tolaki tribe's traditional communities.

The Tolaki tribe is one of the tribes in Indonesia that still maintains and maintains its traditions and applies its customary laws from generation to generation in regulating all aspects of life, including marriage and divorce. The decision-making process in the customary law in the Tolaki tribe tends to be contrary to positive law and can harm other parties, especially widows, according to Tolaki's custom.

Therefore, this research aims to offer a solution to widow cases in the Tolaki community through the role of responsive law. This effort was carried out as a form of accommodation for the interests of women whose husbands divorced them, as well as to protect widows in the context of customary law decisions, especially in the Tolaki tribe of Southeast Sulawesi. Even though responsive law is not an official flow of state law, responsive law can offer solutions and fulfill the rights of all parties. This research is extremely important because responsive law enforcement can anticipate customary laws that damage a social order.

There are real problems that occur in traditional communities, especially related to marriage and divorce laws. In the context of marriage, customary law has an essential role in dealing with marriage and divorce. Customary law has an authority regarding divorce that is determined. Another problem that arises after the divorce

⁹ Luísa Netto, "Criteria to Scrutinize New Rights: Protecting Rights against Artificial Proliferation," *Revista de Investigações Constitucionais* 8, no. 1 (2021): 11-75, <https://doi.org/10.5380/RINC.V8I1.82654>.

process is the lack of rights of widows to sue regarding their lives, both material and non-material. This condition is undoubtedly a problem that arises regarding positive state law.

However, the Indonesian positive legal system recognizes responsive, repressive, and autonomous laws. In the last few decades, responsive and public policy-based legal arrangements have become a driving force to increase the response of regulators in determining applicable laws. Meanwhile, repressive law is a law that has a strong character and institutional interests that regulate all issues, especially those related to politics and social issues.

Responsive law is a law that overcomes rigidity in responding to changes and social developments in society. Responsive law is a law with a “high risk” strategy; if it is not used carefully, it can distort or deviate laws and policies in an undemocratic way.¹⁰ Further, responsive law is an ideal type of law because it is able to answer people's aspirations and align them to meet various interests in society.¹¹ Responsive law is a theory of norms that emerged based on a reaction to the rigidity of the legal system in the community.

The decision-making process in the customary law that applies in the Tolaki tribe tends to be contrary to positive law. It also potentially harms other parties, especially widows in custom. In this case, the divorce

¹⁰ Fonchingong, “Optimizing Community Based Development Through Sage Tradition in Cameroon,” *Global Social Welfare* 5, no. 3 (2018): 145–53, <https://doi.org/https://doi.org/10.1007/s40609-016-0052-6>.

¹¹ Netta Barak-Corren and Yael Kariv-Teitelbaum, “Behavioral Responsive Regulation: Bringing Together Responsive Regulation and Behavioral Public Policy,” *Regulation and Governance* 15, no. S1 (2021): S163–82, <https://doi.org/10.1111/regg.12429>.

process through customary law risks becoming a justice problem, especially for widows. The application of responsive law is an alternative effort to reduce the application of customary law in the marriage and divorce process in order to provide justice for widows in traditional Tolaki society.

This article brings up an important topic because responsive law enforcement can anticipate the application of customary law, which is considered not in line with national law in a harmonious way. This research uses normative legal and empirical legal methods with a case approach. The normative law used as the fundamental basis is Law of the Republic of Indonesia no. 1 of 1974 jo. UU no. 16 of 2019 concerning marriage (article 39).¹² Normative legal research is research carried out to try to find the law for a particular object in resolving a case. Empirical legal research is research to analyze the process of how law works in society using a case approach.

There are 162 respondents in this study. Nine people were selected and represented based on their distribution in 26 villages around Konawe Regency, Southeast Sulawesi, Indonesia. The respondents comprised traditional leaders, figures, religious leaders, government representatives, and widows. From those respondents, this research collected information regarding the experiences of widows dealing with customary law. In addition, there is some information regarding their assessment of customary rules and the consequences of these decisions on their lives. This widow case usually occurs due to infidelity, economic, and work problems.

¹² Mardalena Hanifah, "Perkawinan Beda Agama Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *SUMATERA LAW REVIEW* 2, no. 2 (2019): 297–308,

This important study was conducted through several methodological works such as observation, interviews, and documentation. Observations were carried out to get a glimpse of the lives of the widows. Interviews were conducted to find out in-depth about customary involvement in the divorce process, consideration factors, and customary decisions that ignore women's rights. Documentation was carried out by collecting documents related to widows in the Tolaki community. From them, this research can provide information about customary involvement in the divorce process, custom-based decision-making factors, and customary law decisions that ignore women's rights.

The Customary Law in the Marriage and Divorce Process of the Tolaki Community

This study, firstly, would describe the conditions regarding customary arrangements in marriage and divorce of the Tolaki tradition to find out about the protection of customary rights of widows through responsive law. These objective conditions will be explained in several aspects related to involvement in the divorce process. This condition has three considerations: customs in pre-divorce decision-making, divorce decision, and customs in post-divorce treatment.

The practice of the divorce process can take place in three stages: First, customary norms are used in the divorce process (normative tradition-based). The traditional norm used in the divorce process of the Tolaki community is *Kalosara*. Tolaki people believe that *Kalosara* is a symbol of peace and unity. *Kalosara* is the highest source of law in deciding various cases, including marriage disputes in the Tolaki traditional community. When a problem occurs in the Tolaki community, *Kalosara* becomes an instrument for solving the problem. Likewise, *Kalosara* is the most

valuable traditional approach to solving divorce problems in divorce cases. As expressed by one of the Tolaki traditional leaders (Lukman) who stated that:

“Kalosara merupakan pedoman tertinggi bagi masyarakat Tolaki untuk dijadikan sebagai sumber hukum dalam berbagai permasalahan yang terjadi di masyarakat Tolaki sebagai landasan normatif dalam kehidupan sehari-hari. Kalosara atau yang biasa disebut juga dengan kalo merupakan sebuah simbol hukum adat pada kebudayaan Tolaki di Sulawesi Tenggara yang telah diwariskan secara turun-temurun. Kalosara untuk menyelesaikan berbagai aturan hukum adat seperti hukum dalam bidang pemerintahan, pertanahan, perkawinan, pewarisan, utang-piutang, konflik dan lainnya.”

“Kalosara is the highest guideline for the Tolaki community to serve as a source of law in various problems that occur as a normative basis in everyday life. Kalosara, or what is also commonly called 'kalo', is a symbol of the traditional law of the Tolaki people in Southeast Sulawesi, which has been inherited from generation to generation. Kalosara is useful for resolving various customary law rules, such as laws in the fields of government, land, marriage, inheritance, debts, conflicts, and divorce.”

The second is customary processions and mechanisms for customary decision-making. The Tolaki community is accustomed to holding meetings with stakeholders attended by related parties before deciding several options on problem solutions. The interview was taken with Darwis (2020), Head of *Kantor Urusan Agama* (Religious Affair Office, KUA) Wanggeduku District. Darwis pointed out that in resolving the divorce issue, *Putobu* (Traditional Head) received complaints from the parties to the dispute. This complaint reached the traditional

institution. Then, such complaints about marital disputes, divorce, or other marital problems are followed by discussions between traditional leaders. Discussion of marital disputes is carried out by presenting the disputing parties or parties representing both parties (spokesperson).

Further, together with Pabitara, listened to complaints and provided evidence for both parties or representing parties. Pabitara became the spokesperson for each conflicting party represented. Next, Putobu determines whether a divorce will occur whether or not, starting with drafting a mutual agreement signed on a stamp to avoid violation of the agreement. Based on the results of deliberation and consensus, the statement letter is then ratified and signed by the Head of the Village where the person in dispute lives. At this stage, a woman or wife has no authority right to defend herself.

The Third is a process of divorce through the involvement of traditional-customary figures of Tolaki people in customary decision-making. In the customary decision-making process, there are five traditional-customary figures involved. They are *Sara Wonua*, *Sara Mbedulu*, *Sara Mbe' Ombu*, *Sara Mandaraia*, and *Sara Mondau*. *Sara Wonua* is a traditional figure who handles the government sector. *Sara Mbedulu* is a traditional figure who deals with family relations and unity issues. *Sara Mbe'Ombu* is a traditional figure in charge of religious activities and beliefs. *Sara Mandaraia* is a traditional figure who handles work related to expertise and skills. *Sara Monda'u*, *Mombopaho*, *Mommbakani*, *Melambu*, *Dumahu*, *Meoti-oti* are traditional figures associated with fields, gardens, animal husbandry, hunting, and fishing.

In the decision-making process for marriage and divorce disputes, *Sara Mbedulu* has an important role. They can be involved in various conflicts, not only in

marriage and divorce matters but also in criminal and civil matters.

Darwis (Wanggeduku Induk and Wanggeduku Barat Religious Affairs Office), said that:

“Terkait keterlibatan tokoh-tokoh tersebut, Sara Wonua yang akan duduk untuk membahas semua permasalahan yang akan diputuskan, serta Sara Mandara yang bisa memberikan masukan terkait permasalahan yang terjadi.”

“Regarding the involvement of these figures, Sara Wonua will discuss all the issues that will be decided to other parties, as well as Sara Mandara, who can suggest carefully regarding the problems that occur.”

The three descriptions of customary law involvement in the divorce process among the Tolaki people in Southeast Sulawesi show that there is an influence of the use of Kalosara customary law as a legal source even though it has not been included in the Indonesian legal compilation. At the highest level, customary processions and mechanisms are carried out through customary decision-making deliberations. In addition, traditional leaders are involved in the decision-making process as the main consideration in making customary decisions, including in divorce cases. In other words, the Tolaki people still firmly believe in customary law in solving the social problems of their community.

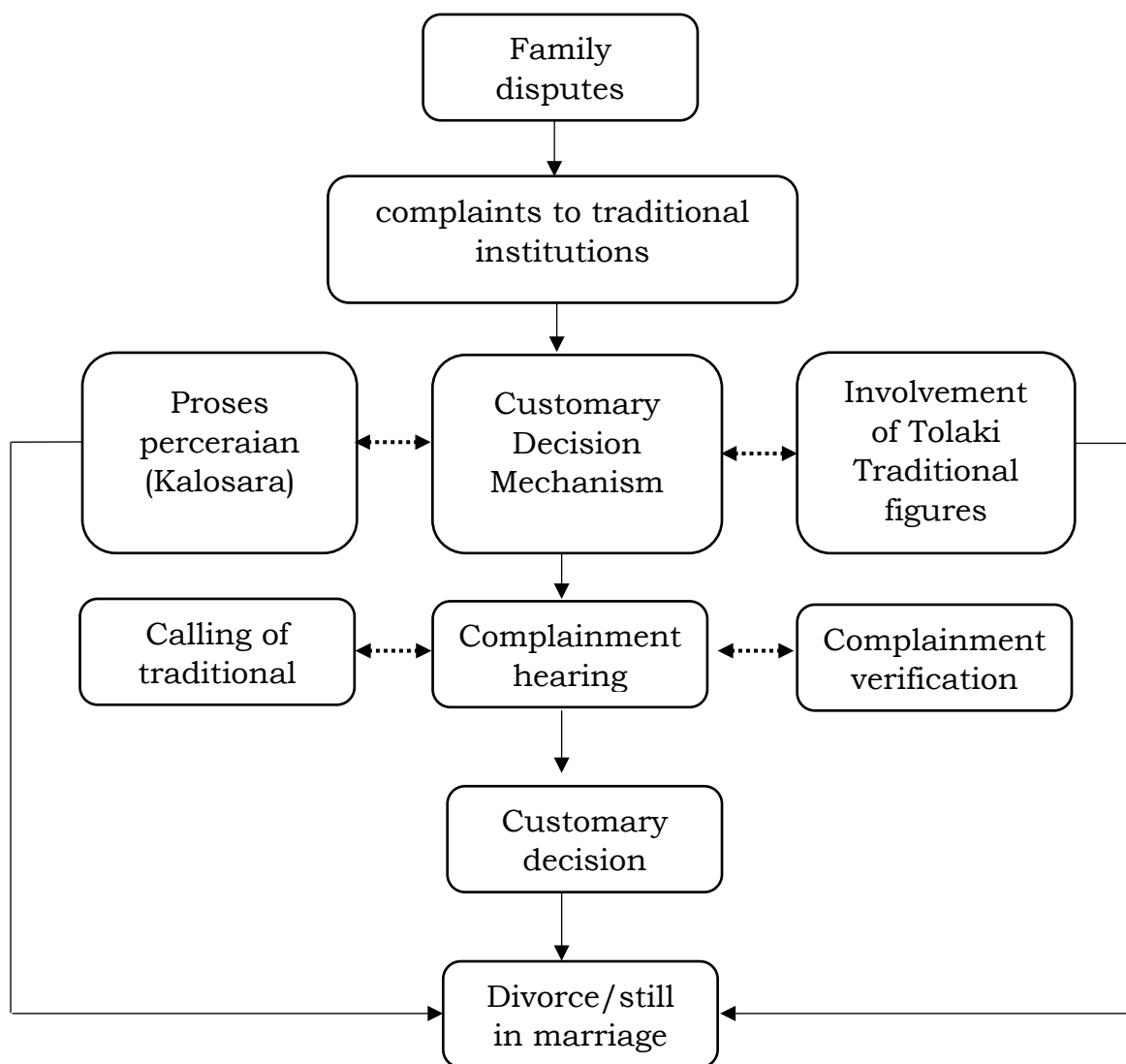


Diagram 1. Tolaki traditional divorce process
(Source: interview with Tolaki traditional figures)

Legal decisions that have been determined through customary decisions in divorce cases that do not directly involve women have deconstructed the role of women from

a traditional perspective.¹³ Marriage and divorce laws in Tolaki society depend on Kalosara's decisions as the highest law. As the highest law, every decision made in it must be accepted gracefully by the parties to the dispute. Especially for Tolaki widows, they must accept whatever decision *Potubu* takes as traditional head. In other words, they have absolutely no bargaining power to negotiate decisions from the traditional head. If these widows go against custom, they believe that they will suffer harm or disaster. However, in the current situation, it is necessary to provide understanding to all parties that women also have the right to a good life after divorce. This understanding means that a response needs to be made to follow up on post-divorce conditions so that the woman also gets her rights in accordance with applicable positive law.

Beliefs related to customary law are firmly ingrained in the minds of the Tolaki people. This customary law is undoubtedly different from the Batak community. In Batak society, which is classified as a purely patrilineal society, if the marriage is caused by divorce, a deliberation is first held, namely the *Hasirangan* deliberation, which aims to determine who is at fault and will report joint assets.¹⁴ Generally, there are few similar traditions in the Tolaki community to the Batak tradition, where customary decisions determine joint property, child financing, etc.

¹³ A. J. Cuddy et al., "Men as Cultural Ideals: Cultural Values Moderate Gender Stereotype Content," *Journal of Personality and Social Psychology* 109, no. 4 (2015): 622, <https://doi.org/https://psycnet.apa.org/doi/10.1037/pspi0000027>.

¹⁴ Alan Christian Lolaroh, "Tinjauan Hukum Kedudukan Janda Dan Duda Menurut Hukum Waris Adat," *Lex Privatum Vi*, No. 9 (2018): 52-63.

However, the one who has full authority is the traditional head.

Unlike others, traditional widows in Minangkabau society have the freedom to determine all matters relating to family life.¹⁵ There are no customary issues that limit themselves to determining world life. This condition is because their tradition is a matrilineal tradition.

Based on research findings, several important aspects of the Kalosara tradition, which is closely adhered to by the Tolaki community, have resistance related to matters of individual freedom, especially for women. This issue means that the Kalosara system can provide shackles to divorced women. Widows do not get their rights, either material or non-material, likewise, with the involvement of Tolaki tribal leaders in decision-making. The involvement of traditional leaders in decision-making is fundamental in the culture of the Tolaki tribe. The traditional head is considered the judge who determines divorce and marriage decisions. *Pabitara* or spokespersons for both parties can be compared to prosecutors or lawyers. This is because each party to the dispute has its own spokesperson.

Thus, traditional leaders play an important and main role in customary decision-making matters. He is the highest policymaker. Some Tolaki people believe that traditional leaders are able to make decisions reasonably. This decision is based on considerations and suggestions from each traditional spokesperson for the parties to the dispute. The absence of a traditional leader meant that reconciliation between the two parties did not go well. Customary decisions should not dominate every decision,

¹⁵ Ellyne Dwi Poespasari, "Dispute Settlement Norm Of Estate Distribution On Adat People Of Minangkabau (West Sumatra)," *Jurnal Dinamika Hukum* 17, No. 3 (2017): 308-13, <https://doi.org/10.20884/1.Jdh.2017.17.3.1284>.

but protect widows' customary rights through laws that are responsive to customary involvement in the divorce process in the Tolaki customary law.

Three Customary Considerations in Divorce Decision Making

There are three basic considerations in making customary decisions in the Tolaki community. First, religious considerations (Islamic law). For example, in the distribution of joint-owned property in the post-divorce. In accordance with religious law, an ex-wife has the right to receive the basic necessities of life for a certain time from her ex-husband. She also has the right to acquire some property obtained during the marriage. Religion in Tolaki society is one of the main considerations in deciding all violations, including in terms of policy decision-making, regardless of the synchronization of existing customs. Abdul Kahar Liambo, as one of the traditional leaders, said that in the Tolaki custom, there is a motto which emphasizes that "*Inae konasara iye pinesara, inae liasara iye pinesara*" (who respects custom will also be rewarded and whoever does not respect custom will not be appreciated). It means that, philosophically, the Tolaki values uphold traditions in the context of respecting humanity.

Second is the consideration of tradition. Historically, this consideration is a habit passed down from generation to generation. It has become a tradition in the Tolaki tribal community that Kalosara is the highest source of law that resolves matters relating to family disputes (marriage and divorce), land disputes, criminal, and environmental disputes. Such conditions have been resolved through traditional institutions for generations. Bisman Saranani, a traditional leader in Konawe, explained traditional considerations regarding divorce due to infidelity.

Moreover, if the wife commits an affair, the resolution is regulated according to custom and family. The wife's boyfriend, who is having affairs, is given sanctions in the form of fines (*peohala*). These sanctions are part of customary law. However, if the husband wants to accept his wife back, "wife's boyfriend" then has to pay a fine in the form of a shroud, a buffalo, or an amount of money that must be determined by the male friend of the wife's affair according to customary decisions.

The third is economic and practical consideration. This consideration means that economically, women have the right to earn a living. However, if the husband does not have a job and sufficient income, there will be conflict from an economic aspect, which can lead to divorce. This consideration is very contextual. It means that these considerations depend on the case. Amrin Doriya, as a traditional figure, emphasized that most divorce cases were due to economic problems that were detrimental to both parties. This condition became a consideration for the Tolaki tribe to terminate relations. Once a decision is made, both parties must submit to the customary decision. As community leaders, Salim P, Hamrin, and Hasdin also said the same thing. They stated:

"Pekerjaan juga menjadi salah satu alasan mengapa perempuan lebih memilih menjadi janda secara adat. Ini karena pada awalnya, wanita yang sudah menikah diperbolehkan mencari pekerjaan kantoran. Namun setelah mendapatkan pekerjaan, istri pesta malah meninggalkan suaminya karena terjerat kasus asmara dengan rekan kerjanya."

"Work is also one of the reasons why women prefer to become widows according to custom. This condition occurred because, initially, married women were allowed to look for office jobs. However, after getting a

job, the wife left her husband because he was involved in an affair with his colleague.”

In this regard, the reasons for cheating, economics, and work carried out by men must refer to the types of violations contained in customary rules before being decided by the *Puutobu* (Traditional Leader).

Besides these three traditional considerations in deciding to divorce, it turns out that religious considerations are still a concern in implementing traditional rules in the Tolaki community. One indication is the involvement of religious figures in determining customary law. However, in the final result, all decisions remain within customary authority. Apart from that, historical considerations that have been practiced for generations are still used as a reference in solving problems. This consideration depends on the case that occurs. Likewise, traditional holders and traditional leaders have an important role in determining what happens in the Tolaki tribal Community.

Through the conditions of widows based on the results of traditional decisions, traditional decisions tend to ignore women's rights. This can be seen from the process of implementing customary law determinations where the appointed family is represented in submitting complaints. Representatives from this side of the family tend to accommodate the interests of the family's good name, thereby overriding the interests of the woman or widow. The family sees that the interests and continuity of the family take priority, so whatever the family decides is more concerned with the results of traditional decisions than accommodating the interests of women's rights.

This condition will become a problem. The family is considered to have no power to reject customary law. On the other hand, the family chooses to maintain family

honor in society rather than impose opinions to defend women's rights. Imposing an opinion after a customary decision can be considered as disobedience to a customary law. Disobedience to customary law can be ostracized by society or even receive heavier sanctions.

This customary law case in the Tolaki community has actually become a trigger for women's rights observers to be able to protect the rights of widows according to custom through responsive law that involves custom in the divorce process of the Tolaki tribe. Indigenous communities, and traditional leaders in particular, need to be given the understanding that there are women's rights that widows can fight for, even in the post-divorce period.

How should Responsive of Law Deal with Tolaki Customary Law?

Referring to the legal phenomenon above, it is obvious that the Tolaki people still strictly maintain traditions through customary laws and decisions. This condition also illustrates that the Tolaki people are interconnected with each other through customary legal instruments. The existence of Tolaki tribe widows cannot be separated from and separated from applicable customs, both marriage and divorce processes. The basis of society's existence is the family. At the same time, customary law is the basis of all social actions and legal decisions. Tolaki tribe widows, whatever their condition, will still be cared for by their original families. Widows who have legally divorced their husbands will be returned to their original families.

These findings also confirm that the decision-making process in divorce is not based on formal legal principles or positive law. Religious law is the law that is widely used and is the main law. They have become one unit between religious teachings and customs in Tolaki society. The

factor that is taken into consideration by customs in making divorce decisions is the religious factor. This factor means that in religious teachings, although divorce is permissible, God does not like divorce, and it should not be done. However, religion is the dominant factor in harmony with custom. This argument is based on the historical notes that the arrival of Islam at the beginning of the 20th century in Konawe has been assimilated into the life of the Tolaki community both in terms of outlook on life, social structure, as well as community relations with other communities and customs.¹⁶

One of the customs that has also assimilated with Islam is the marriage and divorce system. This condition emphasizes that religion and customs in the Tolaki tradition cannot be separated. Like the Tolaki tradition, another tradition that maintains customary law and Islamic law is the Bugis tradition, especially the Bugis in West Papua. Islam and customs are not at all contradictory. The two go hand in hand and in harmony in everyday life, such as marriage traditions, divorce, and so forth.¹⁷ Religious, traditional, and practical-economic considerations are factors in customary decision-making. Religion has a significant role in influencing customary law and making customary decisions. Thus, religious considerations are part of the decision-making process in divorce cases of the Tolaki community.

¹⁶ Joko Tri Haryanto, "Relasi Agama Dan Budaya Dalam Hubungan Intern Umat Islam," *Smart* 1, No. 1 (2015): 41-54, <https://doi.org/10.18784/Smart.V1i1.228>.

¹⁷ Faizah Binti Awad, "Muslim Cultural Identity And Attitude Change Among Tolakinese Community In Kendari," *Journal Of Indonesian Islam* 10, No. 2 (2016): 355-73, <https://doi.org/10.15642/Jiis.2016.10.2.355-374>.

The involvement of customs in the divorce process will risk ignoring women's rights. This neglect of women's rights can be seen in three forms: First, women's interests or rights are not accommodated in decision-making. An interview with Darwis (Head of the Wanggeduku Main and West Wanggeduku Religious Affairs Office) illustrates that after the customary divorce decree was issued, the ex-husband's rights and obligations to accommodate the ex-wife's rights no longer exist. It means that the ex-husband no longer has responsibility regarding daily living needs or responsibility for the safety and comfort of his ex-wife and children. This responsibility is taken by each party and their families. According to Aminuddin, Head of the Amonggedo Religious Affairs Office, traditional decisions do not strictly regulate women's rights as ex-wives. Customary decisions are only in the divorce process without considering other aspects.

Second, decisions about the status of women and gender justice play out. The status of women and gender justice in customary decisions must provide freedom in accordance with their rights. Fulfillment of women's rights in customary decisions is often neglected. This condition is indicated by the absence of income earned and the absence of sharing of joint assets. After a divorce, the woman or widow does not receive maintenance rights for herself and her children. This kind of decision is what makes it legally unfair. Then, the concept of gender justice is not discussed at all in customary decisions. Customary decisions regarding the status of women and gender justice must provide freedom to make choices and the rights they should have, for example, the right to choose their life partner. Widows almost do not have a slight potential to challenge the results determined by customary law. The reluctance of widows to criticize customary decisions is due to the

understanding that if they ignore the results of customary law provisions, they will be in trouble in their lives.

Third, women's perceptions and responses to traditional decisions. Traditional widows accept traditional decisions because they uphold customs on the one hand, but they have a sense of compulsion on the other hand. They are afraid or weak if they go against tradition. Aminuddin, Head of *Kantor Urusan Agama* (KUA, Religious Affairs Office) Amonggedo, an academic figure in this research, revealed that women who have been handed down traditional decisions sometimes experience disappointment with these decisions. This disappointment is because the customary decisions that have been made are contrary to reality. He added that traditional widowed women were promised to get large cows as customary fines, but sometimes, the cows they brought were too small and unexpected. Another case is that they are promised to get some money, but the reality is different. They get little of what has been proven to them. Even though they were disappointed, they still accepted the traditional leader's decision gracefully. Apart from these three descriptions of forms of neglect of women's rights, women's perceptions and responses to adjudication in society show that the position of women is slightly different from that of men.

Responsive law offers the provision of equal rights without discrimination between men and women in customary decisions that ignore women's rights. One of the critical points in implementing responsive law is the aspect of social sensitivity. The provision of law is not only formulated based on legal rules but also on other essential logical minds related to social sensitivity and social effects. Law has two important elements: rules and logic, so the application of rules will be excellent if logic is also taken into account. Law formation and enforcement cannot work

alone. It must be enriched with social sciences, religion, and culture. Responsive law will ultimately play an important role and be firmly integrated into law enforcement in Indonesia. The concept of responsive law can be a fairer guide in strengthening positive law.

Conclusion

The findings of this paper emphasize that protection for widows requires responsive law. One of the reasons is that the involvement of customs in the marriage and divorce process has given rise to the neglect of women's rights and gender inequality. The participation of customs in the marriage and divorce process tends to neglect women's and gender rights. Widows who live in the Tolaki tribe also cannot be separated from the applicable customs regarding marriage and divorce. In this condition, government involvement has not provided many solutions. Why? Because the application of customary law is still strong and is considered a law agreed upon by the local community over a long period of time. The decision-making process in divorce is not based on formal legal principles or positive law but uses customary law. The risk of involving Tolaki tribal customs in the divorce process is ignoring gender justice for women. The inclusion of responsive law can formulate equal rights without discrimination between men and women in customary decisions.

This study is helpful for increasing the role of responsive law in complementing the customary law that develops in the Tolaki tribe. Thus, the rights of widows as a woman, such as inheritance rights, the right to the future, and the right to argue, need serious reform to achieve justice for widows for the Tolaki people. In this way, gender bias in customary law cases can be prevented through harmonizing a responsive legal approach, positive

law, law enforcement, and Tolaki customary law contextualization.

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