

## Unification of Law in the Marriage and Divorce Processes of the *Dayak Ngaju* Muslim Communities in Central Kalimantan

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### Abstract

This research is a reflection of thoughts on the practice of marriage, and It examines the practices of marriage and divorce in the Dayak Ngaju tradition in Central Kalimantan. In practice, researchers found unification to be carried out autonomously in the legal system. This unification reflects a communal belief that integrates the customary law system, the positive law system, and Islamic law, particularly for Muslim communities. This study uses a non-doctrinal, empirical approach. The origin of the idea of unification of the legal system was motivated by a reflection of legal thought, which found the existence of a unification of three legal systems that work respectively and have a compatibility between the legal culture of living law, formal law, and *maṣlahah*. The essence of the thought of unification of the legal system is evidence of new insights or a new paradigm of factual elaboration and elaboration of norms in Dayak Ngaju customary marriage and divorce. However, the implementation of Dayak Ngaju's traditional marriage and divorce, in practice, has become a living law in the society. It means that the modern legal-positivist paradigm is unable to replace the naturalist paradigm, but both are believed by the community to be able to bring the parties towards the philosophical goal of law, namely peace (*maṣlahah*).

**Keywords:** Legal Unification, Marriage and Divorce, Dayak Ngaju

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## Introduction

The pluralism of marriage law ended with the presence of the national marriage law system through Law Number 1 of 1974. This regulation is intended to avoid legal uncertainty. In the Dayak Muslim community, the practice of legal unification in the marriage process occurs, as in the traditional Dayak marriage that took place in Palangka Raya City.<sup>1</sup> In marriage, not only is the *ijab qabul* (marriage consent) carried out in the marriage contract and recorded at the Religious Registry Office, but a Dayak Ngaju traditional wedding is also carried out according to the prevailing customs and traditions.<sup>2</sup> Thus, the marriage of the indigenous Dayak Muslim community, in addition to carrying out according to applicable customs, also continues to follow the rules according to law, such as implementing the Ijab Qabul in the marriage contract and registering it at the Office of Religious Affairs.

The study of marriage and divorce process in society has been studied partially, namely a juridical study as written by Rena Megawati concerning the Juridical Review of the Legitimacy of Pariban Marriage in Toba Batak Customary Law in Connection with Law Number 1 of 1974 concerning Marriage says that Referring to Law Number 1 of 1974 concerning Marriage, State Gazette of the Republic of Indonesia of 1974 Number 1, in Article 2 Paragraph (1) and Paragraph (2) there are provisions regarding the legal requirements of a person who will enter into a marriage, that is, marriage is valid if it is carried out according to the laws of each religion and belief. So indigenous peoples can

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<sup>1</sup> Nurulia Shalehatun Nisa, "Tinjauan Fiqh 'Urf Terhadap Praktik Perjanjian Perkawinan (Studi Empiris Adat Dayak Ngajudi Kota Palangka Raya)," *Asasi: Journal of Islamic Family Law* 2, no. 2 (2022): 221, <https://doi.org/10.36420/Asasi>.

<sup>2</sup> Nisa, "Tinjauan Fiqh 'Urf Terhadap Praktik Perjanjian Perkawinan (Studi Empiris Adat Dayak Ngajudi Kota Palangka Raya)."

be considered valid if they are in accordance with their respective religions and beliefs and the marriage is recorded according to the applicable laws and regulations<sup>3</sup>, empirically<sup>4</sup> as written by Abby, et al. Regarding the Meratus Dayak Tribe Traditional Marriage in South Kalimantan, it is stated that there are two concepts of marriage relations in the Dayak customary tribe. First is traditional marriage, which is based on the sacred bond of marriage (legal marriage). Second is "palas," namely a relationship that arises without a legal marriage bond and even could be considered adultery. According to Sanjaya and Kunjana's article on Metaphorical Ecolinguistic Studies of Local Wisdom Values of Wedding Ceremonies, the principles of customary law—namely, the principles of harmony, decency, and conformity—and philosophy are the foundations of Dayak customary marriage law. The study's findings demonstrate that devices or philosophical elements in traditional marriages are local wisdom for the people who own them. Existing local pearls of wisdom contain meanings and values that serve as guidelines for the community that owns them.<sup>5</sup> Meanwhile, a more comprehensive study examining the unification (unification) of various marriage laws in the process of

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<sup>3</sup> Rena Megawati, "Tinjauan Yuridis Mengenai Keabsahan Perkawinan Pariban Dalam Hukum Adat Batak Toba Dihubungkan Dengan Undang- Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Wawasan Yuridika* 28, no. 1 (2013): 74.

<sup>4</sup> Fathul Achmadi Abby, Ifrani Ifrani, and Muhammad Topan, "Perkawinan Adat Suku Dayak Meratus Di Kalimantan Selatan," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 27, <https://doi.org/10.51749/jphi.v2i1.17>.

<sup>5</sup> Fransiskus O. Sanjaya and R. Kunjana Rahardi, "Kajian Ekolinguistik Metaforis Nilai-Nilai Kearifan Lokal Upacara Pernikahan," *Deiksis: Jurnal Pendidikan Bahasa Dan Sastra Indonesia* 7, no. 2 (2020): 12–28, <https://doi.org/10.33603/deiksis.v7i2.3283>.

marriage and divorce is still limited, so a more comprehensive study is needed.<sup>6</sup>

This study aims to complement the deficiencies of existing studies on marriage, which tend to view the study of the marriage process as limited to certain aspects (juridical, empirical, philosophical), as stated by Ratna D.E. Sirait in her research on the Legality of Traditional Marriage According to Law No. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The results of the study found that the legality of marriages that are only carried out according to custom according to Law No. 16 of 2019 is invalid. This condition is in accordance with Article 2 Paragraph (1), where marriage is legal if it is carried out according to the laws of each religion and its beliefs. Furthermore, Paragraph (2) states, "Every marriage must be registered according to the applicable laws and regulations". Traditional marriages do not have a marriage certificate. As a result, the marriage does not have proof of being valid by law. The study of the marriage and divorce process is a complex issue, so a comprehensive study is needed on the legal unification of the marriage and divorce process in the Dayak Ngaju Muslim community, especially in Central Kalimantan. Accordingly, there are three research questions: Why should the implementation of the marriage and divorce process be regulated through legal unification? What are the forms and models of legal unification in the marriage and divorce process? What are the benefits of legal unification in the marriage and divorce process? The results of this study are expected to provide a complete understanding of the legal unification that still occurs in

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<sup>6</sup> Sanjaya and Rahardi.

the process of marriage and divorce in the Dayak community of Central Kalimantan.

This study suggests that the unification of law in the marriage process has shown the existence of living law, which is more respected than positive law, because of its nature of growing and living together in community life. Mochtar Kusumaatmadja's statement in Sugiantari highlighted that Indonesian law should be partial unification and codification, in the sense that only areas of law that are not sensitive, such as contract law, banking law, and criminal law, are codified. In other words, the implementation of legal codification cannot be carried out thoroughly.<sup>7</sup> In another study conducted by Merdiansa, the unification of procedural law for reviewing all laws and regulations is a relatively quick solution to address issues such as legal obesity. Such unification is already regulated in the Law, allowing for a faster means of resolving potential conflicts, particularly between decisions made by the Constitutional Court and the Supreme Court through procedural arrangements. Additionally, the development of Indonesian civil law is directed toward a partial and open codification, which is more suitable for Indonesia's unique, diverse legal system. Similarly, the unification of law in the marriage process illustrates the concept of a living law that holds greater respect than mere positive law because it evolves alongside community life.<sup>8</sup>

Additionally, the openness and diversity of public trust across various legal systems reflect the philosophical

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<sup>7</sup> Anak Agung Putu Wiwik Sugiantari, "Perkembangan Hukum Indonesia Dalam Menciptakan Unifikasi Dan Kodifikasi Hukum," *Paper Knowledge . Toward a Media History of Documents* 5, no. 2 (2015): 109–22.

<sup>8</sup> Muhammad Noor, "Unifikasi Hukum Perdata Dalam Pluralitas Sistem Hukum Indonesia," *Mazahib* 8, no. 2 (2014): 123.

goal of law: achieving peace<sup>9</sup>, which encompasses harmony between external order and inner tranquility. Bobby Briando then reminded, "The law always serves the interests of justice, order, order, and peace to support the realization of a physically and mentally prosperous society".<sup>10</sup> People dealing with legal issues work to bring about peace through the orderly unification of the legal system to bring about peace that is focused on order and calm. This is evident in how traditional Dayak Ngaju divorce settlements are thought of and carried out in Central Kalimantan. Aligned with H.L.A. Hart stated that the law belonging to the primary rules, limited by Roger Cotterrell's primary rule, is "In a simple society it might be possible to maintain social order solely through duty-imposing rules such as restricting violence, protecting property, or punishing deceit."<sup>11</sup> From this understanding what is meant by primary rules is a kind of obligation to apply the rules. The main rules of concern are the behaviors that individuals should or should not perform. That is, the basic rules are the norms adopted by society.<sup>12</sup> This study uses legal research methods with an empirical legal approach by collecting data through qualitative<sup>13</sup>

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<sup>9</sup> Bobby Briando, "Prophetical Law: Membangun Hukum Berkeadilan Dengan Kedamaian," *Jurnal Legislasi Indonesia* 14, no. 3 (2017): 1–12, <https://ejurnal.peraturan.go.id/index.php/jli/article/download/123/pdf>. h. 313.

<sup>10</sup> Briando. h. 313.

<sup>11</sup> Roger Cotterrell, *The Politic of Jurisprudence* (Philadelphia: University or Pennsylvania Press, 1989). h. 96.

<sup>12</sup> I Nyoman Putu Budiarta Atmadja, I Dewa Gede, *Teori-Teori Hukum* (Malang: Setara Press, 2018). h. 42.

<sup>13</sup> Ramdani Wahyu Sururie, Mohammad Athoillah, and Muhammad Iqbal Zia Ulhaq, "Strategies to Prevent Increasing Divorce Rates for Muslim Families in Indonesia," *Samarah* 7, no. 2 (2023): 738, <https://doi.org/10.22373/sjhk.v7i2.14819>.

interviews<sup>14</sup> and observation techniques by carrying out a synthesis<sup>15</sup> from observation to understand, describe, and analyze a legal phenomenon in society.<sup>16</sup> This research is interpreted as juridical-sociological or non-doctrinal research on how the work of law in society is related to these norms or rules<sup>17</sup> based on natural facts that occurred in the divorce of the Ngaju Dayak Adat in Central Kalimantan.<sup>18</sup> The relevant theories in the discussion of this study are the theory of the legal system and the theory of secondary and primary rules.

### **Marriage and Divorce in Ngaju Dayak Customs in Central Kalimantan**

Pre-marriage, marriage, and post-marriage to divorce phases comprise the Dayak Ngaju customary marriage and divorce processes in Palangka Raya City, Central Kalimantan Province. These arrangements are divided into the following factual phases:

*First*, The traditional marriage procession within the community includes three stages: the preliminary stage

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<sup>14</sup> Ramdani Wahyu Sururie and Yoghi Arief Susanto, "Legal Aid Post Services at the Indonesian Religious Courts during the COVID-19 Pandemic," *Ahkam Jurnal Ilmu Syariah* 20, no. 2 (2020): 210, <https://doi.org/10.15408/ajis.v20i2.17469>.

<sup>15</sup> James Gordley, "The Functional Method of Comparative Law," *Methods of Comparative Law*, 2012, 107–19, <https://doi.org/10.4337/9781781005118.00012>. h. 360.

<sup>16</sup> Jaap Hage, "Comparative Law as Method and the Method of Comparative Law," *SSRN Electronic Journal*, 2014, <https://doi.org/10.2139/ssrn.2441090>.

<sup>17</sup> Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 3, no. 2 (2019): 145–60.

<sup>18</sup> Lisa Webley, "Qualitative Approaches to Empirical Legal Research," *The Oxford Handbook of Empirical Legal Research*, no. December (2012), <https://doi.org/10.1093/oxfordhb/9780199542475.013.0039>. h. 3.

(pre-wedding), known by various terms such as Manyaluang, Maja Misek, and Mamanggul; the implementation stage (wedding day); and the post-wedding stage (after the wedding). The pre-marital stage begins with the application process, which can be said to be the fiancé or *mamangul* in Dayak Ngaju. The *mamangul* process took place and was agreed upon in front of the Adat Peace Mantir at the sub-district level with a customary marriage agreement, and the state officially recorded the marriage through the Office of Religious Affairs in which the contents of the *mamangul* agreement were stated concretely in the form of a Panggul's Agreement signed by the parties. Consensus held a pelvic bond in the procession of carrying out the marriage as a strong bond and having the legality of Dayak Ngaju customs in a harmonious household.

Second, the stage of implementing the Dayak Ngaju traditional marriage process between the families of the two parties was carried out with the birth of the Traditional Marriage Certificate According to Ngaju Dayak Customs, which three Village Traditional Peace Mantirs confirmed—followed by the implementation of marriages officially registered by the state through the Office of Religious Affairs.

If there is a family conflict, the third step is to submit the issue for mediation by a traditional peace mediator. Each family carried out peace, but the differences in understanding and opinion between the two couples were brought to customary mediation through the Adat Peace Mantir, which was based on a Statement of Handing Over Problems from the husband and wife to the sub district Traditional Peace Mantir Density, made by the parties really without there is encouragement, coercion from any party but based on the conscience of each party. The



customary mediation was carried out after mediation at the family level had reached an impasse.

Fourth, the stages of the mediation event and customary agreement, carried out at the Adat Peace Mantir house, were attended by the families of both parties, community leaders, and traditional institutions in sub district. The customary mediation process of the husband and wife received input, suggestions, and views from community leaders and the Customary Mantir so that their household would last and return to normal, but these efforts were unsuccessful. Then, they agreed to make a peaceful divorce agreement.

The Divorce agreement, according to Dayak Ngaju Customs of Central Kalimantan, was produced by the husband and wife and the family based on the outcomes of the customary mediation. The Mantir Head of Indigenous Level signed it. It contains the following provisions: first, from the time this divorce agreement was made and signed by the parties, then our household is over, and there is no longer any bond as husband and wife, one party marries another man and woman, so we will not make any demands. Second, in this divorce agreement, I am the first party (1) who has violated the agreement in our Customary Marriage Certificate stipulated in the sub district, so we are both parties. The First party (husband or wife) pays customary sanctions in the amount agreed in the customary marriage certificate for payment of customary sanctions in the Customary Marriage Agreement to the second party (wife). *Palaku*/dowry remains the right of the second party (husband or wife). Third, the first party pays the Adat sanction (singer divorce alive) 60 *Kati ramu* in cash (approximately Rp. 6,000,000.00.) Fourth, as a result of this Divorce agreement letter being made and signed by each of us, the Marriage Certificate Our customs that were

stipulated in the sub district were declared no longer valid. Fifth, if there is a mistake in making this Divorce Agreement, it will be corrected accordingly.

The customary mantir from sub district was present, along with witnesses and parents. According to the agreement in the Customary Marriage Certificate, the party (husband or wife) submits a Statement of Grant to (husband or wife) a piece of land as the delegation of *palaku* (dowry), which becomes the property of (husband or wife). The existence of the Divorce Certificate is a sign that the marriage between the husband and wife has been dissolved according to the customs in Central Kalimantan or has fulfilled the requirements for divorce according to the Ngaju Dayak Custom. The Mantir Adat further stated that if a traditional marriage had ended, an official divorce would be granted in accordance with the same applicable laws as a registered marriage.<sup>19</sup>

As part of establishing the rule of adjudication, the legitimacy of the Ngaju Dayak Indigenous divorce agreement is utilized as the foundation for proof that traditional mediation has been conducted.<sup>20</sup> As the trial went on, the panel of judges tried to settle the disputes between the parties. The applicant's or plaintiff's argument and supporting evidence were key factors in the Judge's decision to accept that peaceful mediation had been attempted but failed to produce the desired results, followed by an amicable divorce agreement per Adat Peace Mantir custom. The panel of judges granted the petition of the petitioner or plaintiff with a Verstek decision. Verstek

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<sup>19</sup> Johni Najwan, "Implikasi Aliran Positivisme Terhadap Pemikiran Hukum," *Jurnal Law Positivism, Implication, Analytical Jurisprudence* Vol. 2 No. (2010). h. 23.

<sup>20</sup> F C Susila Adiyanta, "Hukum Dan Proses Pengambilan Putusan Oleh Hakim : Menelusuri Khasanah Diskursus Tentang Teori-Teori Adjudikasi [ Theories of Adjudication ]" 4, no. 2 (2021): 252-64.

decision is part of the Civil Procedure Law in Indonesia. Verstek decision is inseparable from this with the trial and the issuance of a decision on a disputed case, which permits the Judge to decide without the defendant being present.<sup>21</sup> The Verteks decision allows the applicant or plaintiff to issue one *raj'i* divorce against the respondent or defendant before the Religious Court. The Judge believed the reconciliation efforts had been carried out with the Adat Mantir. Following the religious court's decision to grant the applicant a divorce permit, the divorce vow was carried out in line with that ruling, and a certificate of divorce was then issued.

### **Portrait of Legal Unification in Marriage and Divorce of the Ngaju Dayak Muslim Community in Central Kalimantan**

Researchers propose a unified legal system as a fresh perspective or new paradigm to understand how the Dayak Ngaju Indigenous people address customary divorce cases alongside the national legal system. This approach, embraced by the community, is seen as a path to achieving legal objectives, particularly peace (*maṣlahah*).<sup>22</sup> Bobby Briandostated

"So, in order to support a society that is both physically and mentally prosperous, the law always serves the interests of justice, order, and peace."<sup>23</sup>

Indonesian law, which forms a single law, is still difficult to enforce because of the nature of a pluralistic

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<sup>21</sup> Maswandi, "Putusan Verstek Dalam Hukum Acara Perdata," *Jurnal Mercatoria* 10, no. 2 (2017): 61, <https://doi.org/10.31289/mercatoria.v10i2.1153>.

<sup>22</sup> Briando, "Prophetical Law: Membangun Hukum Berkeadilan Dengan Kedamaian." h. 325.

<sup>23</sup> Briando. h. 325.

society and existing laws.<sup>24</sup> This condition is challenging since it is difficult for the community to react to the uniformity of national laws, particularly rules that disagree with customary law. Soetandyo in Ditta Chandra went on to say that the strategy of codification and unification of law is no more than a challenging proposition in the Indonesian setting since it conflicts with social realities that have existed for millennia.<sup>25</sup> The facts show that the Dayak Ngaju customary law system is still evolving and is used in conjunction with the national legal system to settle disputes in accordance with legal goals, namely peace.<sup>26</sup> Law should serve as a means in encouraging social change, helping to control and maintain social order while directing social life.

The legal system of the Dayak Ngaju indigenous community has achieved unification, reflecting a structured approach to resolving divorce cases. In this system, Customary Law and Positive Law operate independently within their respective frameworks. The Ngaju Dayak Customary Law System processes dispute resolution to achieve legal objectives, namely peace in the sense of personal tranquility (inner state) that is compatible with the National Legal System, namely Positive Law oriented towards achieving legal objectives, namely

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<sup>24</sup> Endri, "Pluralisme Hukum Indonesia Bagi Hakim Tata Usaha Negara: Antara Tantangan Dan Peluang," *Jurnal Hukum Peratun* 3, no. 1 (2020): 19–34. h. 23.

<sup>25</sup> Ditta Chandra Putri Ahmad Ulil Aedi, Sakti Lazuardi, "ARSITEKTUR PENERAPAN OMNIBUS LAW MELALUI TRANSPLANTASI HUKUM NASIONAL PEMBENTUKAN UNDANG-UNDANG (Architecture of the Application of Omnibus Law Through National Legal Transplantation Formation of Law)," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 1–18.

<sup>26</sup> Nazaruddin Lathif, "Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat," *Palar | Pakuan Law Review* 3, no. 1 (2017): 73–94, <https://doi.org/10.33751/palar.v3i1.402>. h. 76.

peace in the perspective of order (outward state). The natural facts of the Ngaju Dayak Indigenous divorce case settlement process in the aforementioned case study were examined utilizing Lawrence M. Friedman's legal system theory. According to the theory, every legal system comprises three elements: structure, substance, and legal culture. These elements interact to create a complete picture of how a legal system functions in a given nation.<sup>27</sup> Additionally, the way the legal system operates in resolving Dayak Ngaju Indigenous divorce cases is portrayed as a conceptual approach and a line of reasoning toward integrating the legal system, which is systematically organized as follows:

First, a legal structure is an organization established by a legal system with the purpose of assisting the system's operation. This part of the legal system enables consistent service delivery and enforcement.<sup>28</sup> The Kademangan Institute, which serves as the Dayak Ngaju Customary's legal framework and the Customary Mantri, performs the Ngaju Dayak Traditional Wedding as specified in the Customary Marriage Certificate According to Ngaju Dayak Customs. In this case, some institutions are involved in the marriage procedure. The marriage registration at the Office of Religious Affairs confirms the legitimacy of the Ngaju Dayak traditional union. An amicable customary divorce agreement that was recorded in the Divorce Agreement, according to the Indigenous Dayak Ngaju of Central Kalimantan, was reached during the resolution of a divorce

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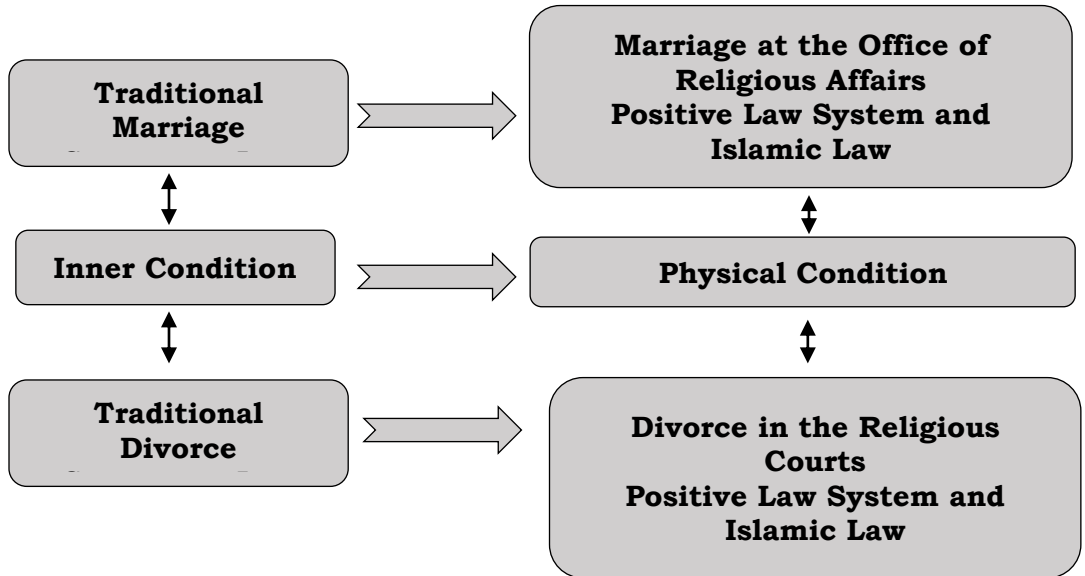
<sup>27</sup> Sudjana, "Penerapan Sistem Hukum Menurut Lawrence W Friedman Terhadap Efektivitas Perlindungan Desain Tata Letak Sirkuit Terpadu Berdasarkan Undang-Undang Nomor 32 Tahun 2000," *Al Amwal (Hukum Ekonomi Syariah)* 2, no. 1 (2019): 78-94, <http://literaturbook.blogspot.co.id/2014/12/pengertian-efektivitas-dan-landasan>.

<sup>28</sup> Sudjana.

case involving the Adat Peace Mantir, which the families of both parties attended. The Mantir Adat highlighted that if a traditional marriage had ended, an official divorce would be granted in accordance with the relevant national law as if the marriage had been legally registered. As a result, the parties went through the legal process in court and established the legal validity of the religious court's decision to give the applicant divorce permission, as well as the implementation of the divorce vow based on that decision, which resulted in the issuance of a divorce certificate.

As an illustration of the unity of the legal system in the practice of marriage and divorce in the Muslim Dayak Ngaju community in Central Kalimantan. The author presents the following figure:

Figure 1. Unification of the Legal System in Marriage and Divorce of the Ngaju Dayak Muslim Community in Central Kalimantan



**Insights on the Unification of the Legal System as Reflected in Marriage and Divorce Laws within the Dayak Ngaju Muslim Community in Central Kalimantan**

The Ngaju Dayak Adat institutional system, the Office of Religious Affairs, and the Religious Courts' joint performance in promoting marriages and handling divorce cases are examples of how the legal system is being seen as being unified. The main rules that cover social order are related to the applicable rules and regulations. Therefore, most members of the related social group must view these rules as obligations. The basic theory regarding Dayak Ngaju customary marriage, customary peace, and Dayak Ngaju customary divorce agreements are relevant and have become the basis that supports them. When specifically described, Ngaju Dayak Adat's institutional procedures and the institutions of Religious Courts adhere to the

secondary rule theory. First, the recognition rule establishes precisely about the validity of rules. Second, stating how and who can change (the change rule). Third, stating how and by whom can it (the norm of adjudication) be enhanced, coerced, or enforced.<sup>29</sup> To achieve legal goals, namely peace that is felt internally by the parties, the judgments of the Ngaju Dayak Adat institutions and the judicial institution have weight.

Second, the substance of law, according to Friedman, in Sudjana's work stated:

"The substance is composed of substantive rules and rules about how institutions should behave. By this is meant the actual rules, norms, and behavioral patterns of people inside the system the stress here is on living law, not just rules in law books."<sup>30</sup>

This concept emphasizes a rule or regulation in its true sense, namely the norms and patterns of behavior of the people in the system. Then Achmad Ali in Sudjana, emphasized that substance also includes living laws, not just the rules contained in statutes or law books.<sup>31</sup> If process of settlement to the divorce of the Ngaju Dayak Adat is examined, including mediation efforts for peace from the family, this is in line with Hilman Hadikusuma's opinion in Aristoni that according to customary law generally in Indonesia, marriage is not only a "civil contract" but also a "traditional contract" and at the same

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<sup>29</sup> Adiyanta, "Hukum Dan Proses Pengambilan Putusan Oleh Hakim : Menelusuri Khasanah Diskursus Tentang Teori-Teori Adjudikasi [ Theories of Adjudication ]."

<sup>30</sup> Sudjana, "Penerapan Sistem Hukum Menurut Lawrence W Friedman Terhadap Efektivitas Perlindungan Desain Tata Letak Sirkuit Terpadu Berdasarkan Undang-Undang Nomor 32 Tahun 2000."

<sup>31</sup> Sudjana.



time is a “kinship and neighborly ties”.<sup>32</sup> The Ngaju Dayak Adat Mantir Density's mediation efforts and the mediation process between parties and families are based on the nature of this kinship. Family mediation is the initial step in settling disagreements, and then the divorce procedure is used to resolve disagreements at the individual level. Dayak Ngaju Customs asserts that the terms of the divorce agreement have legal significance in relation to the certificate of customary marriage. When the terms of an amicable divorce agreement are met, the couple's relationship terminates, and the traditional institution states that the traditional marriage certificate is no longer valid, pays customary sanctions and *palaku*/dowry, pays customary sanctions (Customary sanctions for divorce).

Third, legal culture becomes one of the paradigms in exploring and underlying reflections on resolving the Ngaju Dayak Indigenous divorce case. This case is occurred due to the fact that every society, nation, and community has a legal culture.<sup>33</sup> The Dayak Ngaju tribe's traditional wedding procession is known as marrying *hisek* by requesting and proposing. *Hisek* Marriage is a marriage that is in accordance with the Dayak Ngaju customs. This marriage is a common system and according to custom. The community's customary marriage procession consists of three stages, namely, the preliminary stage (pre-wedding) is known by several terms, namely *Manyaluang*, *Maja Misek*, *Mamanggul*, the implementation stage (wedding

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<sup>32</sup> Aristoni and Junaidi Abdullah, “4 Dekade Hukum Perkawinan Di Indonesia : Menelisik Problematika Hukum Dalam Perkawinan Di Era Modernisasi,” *Yudisia* 7, no. 1 (2016). h. 79.

<sup>33</sup> Sudjana, “Penerapan Sistem Hukum Menurut Lawrence W Friedman Terhadap Efektivitas Perlindungan Desain Tata Letak Sirkuit Terpadu Berdasarkan Undang-Undang Nomor 32 Tahun 2000.”

day), and the post-wedding stage (after the wedding).<sup>34</sup> It is a scene filled with ideas that represent the nature of kinship for the parties' families and the surrounding neighborhood. These phases show that a legal culture exists. According to Friedman's theory, legal culture is about the system-its beliefs, values, ideas, and expectations. Legal culture refers to people's attitudes toward the law and the legal system, including their values, beliefs, and ways of thinking.<sup>35</sup> Rusma Noortyani explains about *Manyaluang* (initial application/assessment). This process is carried out if there is an agreement between the parents and the child to propose to a girl, then the male family tries to find out more about the girl's origin, family history, situation, and condition. *Mamanggul*, this stage is a continuation of *manyaluang*, namely asking the woman formally after the men know that the women have accepted their heart's desire. The *Mamanggul* event is a meeting that does not only involve the families of both parties but also the surrounding community. *Maja misek*, *maja* in the Dayak Ngaju language, means visiting, while *misek* means asking.<sup>36</sup> Therefore, the Maja Misek event refers to a step in the Dayak Ngaju tribe's traditional marriage arrangement where the male party approaches the female party to inquire about the continuation of the agreement that was established during the *Mamanggul* event.

The experiences and beliefs in the Dayak Ngaju customary law system regarding marriage and divorce, which maintain distinct boundaries between their

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<sup>34</sup> N Rusma, *Struktur Narasi Perkawinan Dayak Maanyan*, 2020, <http://eprints.ulm.ac.id/1492/1/1>. Struktur Narasi Perkawinan Dayak Maanyan.pdf. h. 14.

<sup>35</sup> Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2018): 148, <https://doi.org/10.35586/.v4i2.244>. h. 150.

<sup>36</sup> Rusma, *Struktur Narasi Perkawinan Dayak Maanyan*. h. 14.

traditional marriage law and Positive Marriage Law, demonstrate a unified legal system developed through scholarly insight. For instance, a Dayak Ngaju customary marriage that aligns with Islamic law is subsequently formalized and registered at the Office of Religious Affairs. Similarly, the Dayak Ngaju Customs Divorce Agreement is carried out in accordance with the marriage registered at the Office of Religious Affairs prior to the trial at the Religious Court. When deciding divorce cases, the secondary rule's application through the adjudication rule is reflected to reach the philosophical aspect of the purpose of law, namely peace, which means harmony between carrying out positive law<sup>37</sup> for order (outward state) and carrying out the process of Ngaju Dayak Customary Law for personal peace (inner state) as a unification of the legal system. In the legal culture, formal law is defined as a collection of standards or guidelines found in legislation or the resolution of a legal matter.

Meanwhile, law in action is defined as the law that is implemented or carried out by the parties, attorneys, and judges.<sup>38</sup> The unification of the legal system above is a reflection of legal thought, which finds the existence of two legal systems that operate separately. Peace, defined as harmony between order (outer state) and individual peace

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<sup>37</sup> Zaka Firma Aditya and Rizkisyabana Yulistyaputri, "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 37–54, <https://doi.org/10.33331/rechtsvinding.v8i1.305>. h. 53.

<sup>38</sup> A Antoni, "Menuju Budaya Hukum (Legal Culture) Penegak Hukum Yang Progresif," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 2019, 237–50, <http://jurnal.radenfatah.ac.id/index.php/Nurani/article/view/4613>.

(inner state), results from conformance between the legal culture of living law and formal law.<sup>39</sup>

According to its form, positive law in Indonesia is split into written law (statutory law) and unwritten law (customary law). In Indonesia, there are two types of sources for positive law: formal sources and material sources. Legal knowledge of society, or legal knowledge of life in a society that ought to exist, is the source of legal information. Consequently, the idea of a unified legal system meshes perfectly with the application of Dayak Ngaju customary marriage and divorce law. As per Wiwik Sugiantari, various legal systems in Indonesia have given rise to a number of legal conflicts between written law and unwritten law (*adat*).<sup>40</sup> The unification of the legal system becomes an autonomous order for the implementation of family law that can be applied by the Dayak Ngaju Muslim community in Central Kalimantan.

### **Conclusion**

The Dayak Ngaju Muslim community in Central Kalimantan, Indonesia, is known for its unique cultural practices and traditions. One aspect that has become the subject of discussion and debate is the unification of the legal system that maintains marriage and divorce in this community. Indonesia recognizes several legal systems, including civil law, customary law, and Islamic law. The legal systems used for marriage and divorce vary depending on the individuals involved' religious affiliation and cultural background. Muslim marriages, for example, are regulated

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<sup>39</sup> Loresta Cahyaning Lintang, Adriano Martufi, and J W Ouwerker, "The Alternative Concepts of Blasphemy Law in Indonesia: Legal Comparison with Ireland and Canada," *Bestuur* 9, no. 1 (2021): 13–25.

<sup>40</sup> Sugiantari, "Perkembangan Hukum Indonesia Dalam Menciptakan Unifikasi Dan Kodifikasi Hukum."

by Islamic law, while marriages in the Dayak Ngaju community may be regulated by customary law. The call for unification of legal systems in marriage and divorce is an ongoing debate in Indonesia, seeking to harmonize diverse legal frameworks and ensure equal treatment for all citizens. Proponents argue that a unified legal system will increase legal certainty, simplify legal processes, and avoid conflicts arising from different interpretations of the law. However, implementing a unified legal system in this context is complicated due to cultural and religious diversity in Indonesia. Balancing the rights and interests of various communities, including the Ngaju Dayak Muslim community, is very important. Any changes to the legal system must respect the cultural norms and values of the communities involved. Discussions and initiatives have been underway to develop a comprehensive legal framework that takes into account Islamic legal principles and local customs to address this issue. This effort aims to create a system that recognizes and respects the unique characteristics of different communities while providing a unified and just legal framework for marriage and divorce.

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