
Legal Pluralism in the Institution of Marriage: The Intersection of National Law, Islamic Law, and Customary Law in Regulating Marriage and Common Property in North Toraja

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Abstrak

This research aims to explore how the two legal systems interact, experience tension, and are negotiated in the social practices of society. Legal pluralism in Indonesia shows the existence of various systems of state norms, Islamic law, and customary law that coexist in one social space. In North Toraja, the Muslim community faces the intersecting dynamics between Islamic norms and Torajan customs in regulating marriage institutions and wealth management. This research uses a socio-legal approach with a descriptive qualitative method. Data were collected through field observations, in-depth interviews with religious leaders, traditional leaders, married couples, and legal practitioners, and documentation studies of customary texts and marriage documents. The analysis was carried out thematically to identify patterns of integration, compromise, and conflict between Islamic norms and customs. The results of the study show that Islamic law forms a formal framework in the implementation of marriage contracts and dowry arrangements, while customary law remains dominant in determining social legitimacy, customary rituals, and distribution of family wealth. In conflict resolution, the community prioritizes informal customary mechanisms, while the principles of Islamic law are applied selectively, especially when dealing with state legal institutions. This study confirms the existence of adaptive strategies used by the community in responding to the plurality of laws. The intersection between Islamic law and customary law is not confrontational, but rather forms a functional and contextual hybrid legal culture. The novelty of this research lies in the documentation of the practice of legal syncretism in the context of Muslim marriage in the Toraja customary environment, as well as its relevance in formulating legal policies that are more inclusive of local social and cultural realities.

Kata Kunci: Pluralisme Hukum; Hukum Islam; Hukum Adat; Hukum Perkawinan.

Abstract

Penelitian ini bertujuan untuk mengeksplorasi bagaimana kedua sistem hukum tersebut berinteraksi, mengalami ketegangan, dan dinegosiasikan dalam praktik sosial masyarakat. Pluralisme hukum di Indonesia menampilkan keberadaan berbagai sistem norma-hukum negara, hukum Islam, dan hukum adat yang hidup berdampingan dalam satu ruang sosial. Di Toraja Utara, komunitas Muslim menghadapi dinamika persinggungan antara norma-norma Islam dan adat Toraja dalam mengatur lembaga perkawinan dan pengelolaan harta kekayaan. Penelitian ini menggunakan pendekatan sosio-legal dengan metode kualitatif deskriptif. Data dikumpulkan melalui observasi lapangan, wawancara mendalam dengan tokoh agama, pemuka adat, pasangan suami-istri, serta praktisi hukum, dan studi dokumentasi terhadap naskah adat dan dokumen perkawinan. Analisis dilakukan secara tematik untuk mengidentifikasi pola-pola integrasi, kompromi, dan konflik antara norma Islam dan adat. Hasil penelitian menunjukkan bahwa hukum Islam membentuk kerangka formal dalam pelaksanaan akad nikah dan pengaturan mahar, sementara hukum adat tetap dominan dalam penentuan legitimasi sosial, ritual adat, dan distribusi harta kekayaan keluarga. Dalam penyelesaian konflik, masyarakat lebih mengutamakan mekanisme adat secara informal, sedangkan prinsip-prinsip hukum Islam diterapkan secara selektif terutama saat berhadapan dengan institusi hukum negara. Studi ini menegaskan adanya strategi adaptif yang digunakan masyarakat dalam menyikapi pluralitas hukum. Persinggungan antara hukum Islam dan adat tidak bersifat konfrontatif, melainkan membentuk budaya hukum hibrida yang fungsional dan kontekstual. Kebaruan penelitian ini terletak pada dokumentasi praktik sinkretisme hukum dalam konteks perkawinan Muslim di lingkungan adat Toraja, serta relevansinya dalam merumuskan kebijakan hukum yang lebih inklusif terhadap realitas sosial dan budaya lokal.

Keywords: Legal Pluralism; Islamic Law; Customary Law; Marriage Law.

Introduction

Indonesia is a country with diverse cultures, religions, and legal systems recognized in the constitution. This diversity creates a unique condition of legal pluralism, where national law, Islamic law, and customary law coexist and influence each other in the practice of community life.¹ In the context of marriage law, Law Number 1 of 1974 concerning Marriage and its amendments to Law Number 16 of 2019 and the Compilation of Islamic Law is present as a national legal umbrella to provide legal certainty and protection of the rights of husband and wife.² This national law regulates the validity of marriage, the rights and obligations of husband and wife, and the distribution of joint property.³ However, in various regions with strong indigenous communities, the implementation of national law cannot be separated from the role of customary law that is still alive from generation to generation. One of the areas representing

¹ Zainudin Hasan et al., "Konstitusi Sebagai Dasar Hukum Dalam Pembangunan Sistem Hukum Nasional," *Jurnal Ilmiah Mahasiswa 2*, no. 1 (2024): 44–54, <https://doi.org/10.31539/jima.v2i1.745>.

² Juri Adrianto, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia," *Jurnal Syntax Admiration 5*, no. 8 (2024): 3254–59, <https://doi.org/10.46799/jsa.v5i8.1556>.

³ Fierda Sinaga et al., "Akibat Hukum Perkawinan Beda Agama Dalam Pandangan Gereja Katolik Dihubungkan Dengan Undang- Undang Tentang Perkawinan," *Locus Journal of Academic Literature Review 2*, no. 12 (2023): 945–57, <https://doi.org/10.56128/ljoalr.v2i12.257>.

this dynamic is North Toraja Regency, South Sulawesi. In this area, especially Kesu' District, customary law plays an important role in regulating the institution of marriage and the distribution of family properties, which often run side by side or intersect with Islamic law and national law.

The phenomenon of legal plurality in marriage practices in North Toraja can be seen in the implementation of customary marriages that are full of traditional symbols, such as the provision of customary dowries that have not only cultural value but also legal implications related to the economic rights of women and their families. On the other hand, the Muslim Toraja community also applies Islamic law, which has its own rules regarding dowries (*sadaq*), the rights and obligations of husband and wife, and the division of property in divorce.⁴ However, the application of national laws regulated by the state sometimes clashes with customary provisions and Islamic law, especially in resolving marital disputes and managing joint property.⁵ Differences in perception regarding the status of pre-marital property, joint property, and women's rights after divorce are some crucial points that often give rise to problems in the field.⁶ This phenomenon shows that legal pluralism in the North Toraja community is not only a social reality but also creates complex dynamics in its practice.

The problem raised in this study is the occurrence of intersections between national law, Islamic law, and customary law in the practice of marriage and the management of wealth in North Toraja. This intersection often gives rise to overlapping rules and differences in principles, especially in determining the legal status of marriage, the position of husband-and-wife rights, and the distribution of joint property in the event of a divorce. On the one hand, Toraja customary law views marriage as a communal affair involving the extended family and the community, while national law and Islamic law emphasize the contractual aspect between the bride and groom. This situation requires an in-depth analysis of how society navigates the diversity of laws in everyday practice.

⁴ Buhari Pamilangan, "Implikasi Perkawinan Beda Agama Dalam Perspektif Hukum Islam Di Kecamatan Sangalla Selatan Kabupaten Tana Toraja" (Institut Agama Islam Negeri (IAIN) Palopo, 2022), <https://repository.iainpalopo.ac.id/id/eprint/5710/>.

⁵ Dwi Dasa Suryantoro Dwi, "Implementasi Hukum Waris Islam Di Indonesia Prespektif Kajian Normatif Dan Realitas Sosial," *SAMAWA: Jurnal Hukum Keluarga Islam* 5, no. 1 (2025): 15–28, <https://doi.org/10.53948/samawa.v5i1.160>.

⁶ Ihsan Zainuddin, "Dinamika Perceraian & Dampaknya Terhadap Anak Di Kelurahan Pekkabata Kecamatan Duampanua Kabupaten Pinrang Perspektif Hukum Islam" (IAIN Parepare, 2024), <https://repository.iainpare.ac.id/id/eprint/7905/>.

This study examines the pluralism of marriage law in North Toraja by placing national law, Islamic law, and customary law on an equal footing as an analytical framework. Previous studies, such as by Rahman (2017), only discussed the relationship between customary law and formal law normatively without describing practices in the field. Likewise, a study by Nurdin (2020) only highlighted Islamic law and state law without considering the strong role of custom in the Toraja community. This study attempts to comprehensively explore how the North Toraja community practices legal pluralism in marriage and the division of wealth and offers an integrative perspective to respond to potential conflicts between existing laws.

The purpose of this study is to analyze the practice of legal pluralism in the institution of marriage in North Toraja and to identify its legal implications for the regulation of the wealth of married couples. This study also aims to provide a deeper understanding of how national law, Islamic law, and customary law can be harmonized to provide fair legal protection for all parties, especially women and children, who are often vulnerable groups in marital conflicts. The urgency of this study lies in the importance of formulating legal policies that are responsive to the socio-cultural realities of indigenous communities so that formal law can run in harmony with local traditions without ignoring the principles of justice and gender equality upheld in national law and Islamic law.

Research Methods

This study employed qualitative research with a sociological-normative approach. This approach was chosen to examine legal pluralism in the practice of marriage and management of the wealth of the North Toraja community, especially looking at the interaction between national law, Islamic law, and customary law in the social life of the community. This study also aimed to comprehensively describe the socio-legal phenomena that occur in the field while analyzing them from the perspective of the theory of legal pluralism.

The data sources in this study consisted of primary data and secondary data. Primary data was obtained directly through observation and in-depth interviews with traditional figures, religious leaders, village government officials, and married couples involved in customary marriage practices in Kesu' District, North Toraja. Meanwhile, secondary data was obtained from primary and secondary legal materials, such as Law Number 1 of 1974 concerning Marriage, Law

Number 16 of 2019, Compilation of Islamic Law, literature related to Toraja customary law, and previous research results relevant to this topic.

Data collection methods were carried out through several techniques, including in-depth interviews to gather information from key informants regarding marriage practices and property management, participatory observation to directly observe the implementation of traditional marriage ceremonies and applicable customary law practices, and documentation studies of laws and regulations, customary documents, and village administrative records related to marriage.

Data processing was done by data reduction (filtering data relevant to the research objectives) and then presenting the data systematically for analysis. Data analysis was done descriptively-analytically by describing the phenomena found in the field, and then analyzing them with the theory of legal pluralism and the principles of Islamic law and national law. The analysis was done by looking at the intersections, points of harmonization, and potential conflicts between the three legal systems in the practice of marriage and management of wealth in North Toraja. The results of the analysis were then used to formulate research findings and provide theoretical and practical recommendations.

Results and Discussion

Results

1. Marriage Law

The customary marriage requirements in Ba'tan Village, Kesu District, North Toraja Regency reflect the strong traditions and cultural values of the community. The results of the observation show that one of the main requirements is the agreement of both parties, the prospective bride and groom. Marriage can only take place if the prospective groom and bride agree to marry. This shows respect for the individual's right to choose their life partner, although in the past, families had a great influence in determining marriage, especially among the nobility. Another requirement is the suitability of the social status of the prospective bride and groom. Toraja community recognizes a social stratification system, such as the nobility (*arung*), commoners, and workers.⁷ This tradition emphasizes that marriage should ideally occur within the same class to maintain customary harmony and respect lineage. However, currently, these

⁷ Fitri Utami, "Implementasi Kafa'ah Dalam Pernikahan Perspektif Masyarakat Desa Negeri Galih Rejo Kecamatan Sungkai Tengah Lampung Utara" (IAIN Metro, 2019), <https://repository.metrouniv.ac.id/id/eprint/1149/>.

boundaries are starting to diminish along with the changing times and the influence of modernization. In line with the results of the observation above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

"There are requirements in Toraja traditional marriage. Toraja traditional marriage often considers the equality of social status (Tana'). The nobility (tana' bulaan) is encouraged to marry fellow nobility to maintain family status. The middle class (Tana' karurung) and the lower class (tana' kua kua) are someone free to marry but still requires family approval (Gidion Saweri Gading; 2024)"

Marriage in Toraja traditional community is very strictly regulated. Usually, marriage involves traditional rituals carried out with full respect for ancestors.⁸ The proposal process, known as *Mappasiarek Lolo*, is also an important requirement in Toraja traditional marriage. In this process, the prospective groom's family will come to the prospective bride's house to convey their intention to propose. This event is usually accompanied by symbolic gifts in the form of dowries or gifts, which reflect respect for the prospective bride's family. In line with the results of the observations above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

"In the past, when Torajan people wanted to propose, there were three kinds of customs: starting in the afternoon or the morning, the sun had set at 7 o'clock, and we took 1 day, namely the reception for one day and in the afternoon, a buffalo could be slaughtered, and they carried out the marriage according to the customs and culture of Toraja as a whole (Gidion Saweri Gading; 2024)"

In addition, a dowry in the form of a buffalo or pig is a requirement that must be met by the prospective groom. The dowry, called *Ballo Tana*, symbolizes the seriousness and responsibility of building a household. The amount of the dowry is usually determined by the social status of the prospective bride and the results of deliberations between the two families. Buffalo also has an important meaning in Toraja culture as a symbol of prosperity and blessings.

Finally, traditional rituals and family blessings become an inseparable part of the marriage requirements. The blessing of parents and extended family is very important because marriage is considered to unite not only two individuals but also two extended families. Traditional ceremonies such as *Rambu Tuka'* are carried out as a symbol of unification, happiness, and respect for ancestors. By involving the entire community, marriage in Toraja customs reflects the harmony and solidarity of the community.

⁸ Yunus Yunus and Mukoyyaroh Mukoyyaroh, "Pluralitas Dalam Menjaga Toleransi Di Tana Toraja," *DINAMIKA: Jurnal Kajian Pendidikan Dan Keislaman* 7, no. 1 (2022): 49–74, <https://doi.org/10.32764/dinamika.v7i1.2488>.

Divorce is the breaking of the bond in a husband-and-wife relationship. This means the legal termination of the marriage of both and no longer have the status of husband and wife and no longer live together in a household.⁹ In Tana Toraja, divorce is considered a violation based on customary law, where one of them commits an act that causes divorce. In line with the results of the observations above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

"In Tana Toraja itself, the implementation of customary divorce is called Songkan Dapo'. Songkan Dapo itself has two meanings. Songkan means collapsed, and Dapo' means kitchen. The meaning is, the kitchen in question is likened to the household relationship of a divorced husband and wife who cannot be repaired again and cannot re-establish a bond as husband and wife in the future (Gidion Saweri Gading; 2024)."

The process of implementing Tana Toraja customary divorce (*Songkan Dapo'*) is different from the usual divorce procedures that occur in District Courts and Religious Courts, where divorce can only be carried out in front of a court hearing after the Religious Court or District Court concerned can no longer reconcile or mediate the two parties.

The Tana Toraja customary divorce procedure (*Songkan Dapo'*) can be carried out through two mechanisms, namely:

- a. There is a party who files for divorce to the customary judge, either the woman or the man, and then the customary judge summons both parties in the case with their families, sits together, and deliberates;
- b. The customary judge (*ada'*), or the government can also take the initiative to directly summon the parties and families to sit together to deliberate even though no party has filed for divorce. This is done if the customary judge or local government sees a family whose household is starting to be disharmonious because that is also the responsibility of the customary judge and the local government in order to create peace in the customary community.

In Tana Toraja, those found guilty of violating marriage agreements will be subject to sanctions in the form of having to pay customary divorce sanctions (*kapa'*) in accordance with the agreement made during the proposal procession (*Unranpanan Kapa'*) and in accordance with the *Tana'* (caste) structure. The punishment is given based on the established marriage law; the

⁹ Mutia Sakiyah Aziza, Mardalena Hanifah, and Meriza Elpha Darnia, "Kedudukan Perceraian Karena Peralihan Agama (Murtad) Dalam Perspektif Hukum Islam Dan Undang-Undang Perkawinan," *Innovative: Journal Of Social Science Research* 4, no. 5 (2024): 5973–85, <https://doi.org/10.31004/innovative.v4i5.15708>.

guilty party must pay the innocent party the agreed value of the *Tana'* Law, and the punishment imposed is called *Kapa'*, where the amount of *Kapa'* is the same as the value of *Tana'* to be paid.

The following are *Tana'* values based on the Customary Law of Tana Toraja:

- a. *Tana' Bulaan* is worth 12 to 24 buffaloes (*tedong sangpala'*) intended for the High Noble Caste;
- b. *Tana Bassi'* is worth 6 buffaloes (*tedong sangpala'*) intended for the Middle Noble Caste;
- c. *Tana' Karurung* is worth 2 buffaloes (*tedong sangpala'*) intended for the Free People Caste. Marriage has a unique dimension because it combines the customs, religion, and beliefs of each prospective bride and groom.

In principle, marriage does not always have to be carried out according to the religious and belief procedures of each prospective bride and groom.¹⁰ Customary traditions are actually the main element that must be carried out to maintain social and cultural harmony in the Torajan community. Religious or belief procedures usually play a complementary role that is adjusted to the conditions of the couple. Torajan customs have strict rules in the wedding procession, such as the proposal (*ma'parapa'*), giving a dowry (*belis*), and the wedding celebration (*Rambu Tuka'*). This customary procession is considered mandatory as a form of respect for ancestors and the community. Even if the couple has different religions or beliefs, customs remain the basis that unites the marriage process. Therefore, customs are often considered more important than the procedures of a particular religion.

For couples who are Christian or Catholic, marriage is often carried out through a blessing in church. However, this religious blessing is usually continued with traditional rituals as a form of respect for ancestral traditions. On the other hand, for couples who still adhere to the *Aluk Todolo* belief, the entire series of marriages can be carried out completely in accordance with ancestral customs and beliefs, such as offerings to ancestral spirits to obtain blessings. In line with the results of the observations above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

"If the couple comes from different religious or belief backgrounds, the marriage tends to adjust to the procedures agreed upon by both families. In this case, the customary procession is often a neutral meeting point and is accepted by all parties. The religion or

¹⁰ Andi Syamsulbahri and Adama, "Akibat Hukum Perkawinan Beda Agama Menurut Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan," *AL-SYAKHSHIYAH; Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 2, no. 1 (2020): 75–85.

belief of each bride and groom can be accommodated as needed, but custom remains a core element to validate the marriage socially" (Gidion Saweri Gading; 2024)

In the traditional community in Ba'tan Village, Kesu District, North Toraja Regency, marriage does not have to fully follow the procedures of the religion and beliefs of each bride and groom. Toraja customs have a very important role as the foundation of marriage, while religion or beliefs provide added value. This reflects the flexibility of the Toraja people in maintaining ancestral traditions while still respecting the beliefs of the couple.

In Toraja customs, marriage is ideally based on the free will of both prospective bride and groom without any coercion from anyone. This principle reflects humanitarian values that respect individual rights in choosing a life partner. Marriages that are carried out based on love and mutual consent are considered more harmonious so that they can create strong relationships not only between the couple but also between the extended families of both parties. However, the implementation of this principle is often influenced by local customs and cultural values. In line with the results of the observations above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

"In the Toraja traditional community, marriage must be based on the agreement of both prospective bride and groom. There must be no element of coercion from any party. The marriage process begins with an agreement between both parties, including the family, and must be carried out voluntarily" (Gidion Saweri Gading; 2024)

Although the customs in Ba'tan Village, Kesu District, and North Toraja Regency respect individual freedom, the influence of the extended family remains an important factor in the marriage process. In Toraja tradition, marriage not only unites two individuals but also two extended families. Therefore, families are often involved in providing considerations or advice to prospective brides and grooms, especially in terms of social status, family background, and cultural suitability. In some cases, pressure from families to choose a partner who is considered "worthy" can reduce the freedom of prospective brides and grooms.

Customs in Ba'tan Village, Kesu District, North Toraja Regency also consider social stratification factors that still influence marriage decisions, especially in traditional society. The Toraja social system divides society into three strata: the nobility (*puang*), ordinary people (*tana' bulaan*), and servants (*kaunan*). Marriages involving couples from different social strata were previously considered to violate customary norms, thus causing social pressure on the couple. Although this norm has begun to fade in modern society, its influence is still felt, especially in

rural areas. In line with the observation results above, the results of an interview by Mr. Gidion Saweri Gading (55 years old) stated that:

"The custom in Ba'tan Village, Kesu District, North Toraja Regency rejects coercion in marriage. Forced marriages, whether by family or other parties, not only conflict with individual rights but are also considered to have the potential to damage household harmony." (Gidion Saweri Gading; 2024)

As time goes by, the Toraja community is now increasingly open to the concept of marriage based on individual freedom. The younger generation of Toraja is freer in choosing a life partner, although they still respect customs and input from the family. This reflects a blend of traditional and modern values, where freedom to choose a partner is recognized, but family values and customs are still maintained. Thus, although Toraja customs have a big influence, the ideal marriage is still based on the free will of both prospective brides and grooms without any coercion.

In Toraja traditional community, marriage is basically monogamous, where a man may only have one wife, and a woman may only have one husband. This principle reflects customary values that emphasize loyalty and harmony in the household. Monogamy is considered the main rule that maintains family stability and social relations in Toraja community. However, under certain conditions and in the past, there were exceptions to this principle, although this was not the general norm. In line with the results of the observations above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

"Monogamous marriages are more often found among indigenous people in Ba'tan Village, Kesu District, North Toraja Regency, both among ordinary people and the nobility. Fidelity in marriage is considered a form of respect for one's partner, extended family, and prevailing customs. In addition, the teachings of Christianity and Catholicism, which are currently practiced by the majority of Toraja people, also strengthen the practice of monogamy by emphasizing the sanctity and integrity of husband-and-wife relationships (Gidion Saweri Gading; 2024)"

However, in some situations in the past, polygamy could occur, especially among nobles or traditional leaders. Polygamy at that time was often done for the sake of strengthening political, social, or economic relations between extended families. For example, a nobleman could marry more than one woman to strengthen alliances with other families. However, this practice was rare and could only be done if approved by the extended family and the traditional community.

The practice of polygamy in the Toraja traditional community tends to pose challenges, especially in the division of responsibilities, inheritance, and relationships between family

members. The conflicts that may arise make polygamy less favored in Toraja customs. In addition, strict social norms and customary views that prioritize balance and harmony make polygamy considered less than ideal. In line with the results of the observations above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

“Although there is room for this practice under certain conditions, custom encourages people to practice monogamous marriages” (Gidion Saweri Gading; 2024)”

In the indigenous community in Ba'tan Village, Kesu District, North Toraja Regency, a man is basically only allowed to have one wife, and a woman is only allowed to have one husband. Although polygamy was possible in certain contexts in the past, this practice was very rare and was not the main norm. In the modern Toraja community, monogamy is increasingly emphasized by the influence of religion and national law, making it a dominant principle in married life. Thus, Toraja customs tend to support monogamy as an ideal and harmonious form of marriage.

2. Matrimonial Property Law

In the traditional community in Ba'tan Village, Kesu District, North Toraja Regency, the concept of joint property and pre-marital property plays an important role in regulating the ownership and management of wealth in a household. Both types of property are regulated by custom to ensure justice and maintain family harmony. Joint property refers to properties acquired during marriage by a husband, wife, or both, while pre-marital property is property owned by each partner before marriage. This difference is an important basis for resolving problems related to property in the life of a Toraja traditional family. In line with the results of the observations above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

"Joint property, often called mixed property, includes all wealth generated during the marriage. These properties include land, crops, houses, livestock, or other valuables obtained through joint efforts. In Toraja customs, joint property is seen as a symbol of togetherness and cooperation between husband and wife in building a family. Therefore, this property is owned collectively by the couple and is considered the result of a joint struggle" (Gidion Saweri Gading; 2024)"

In the customs of Ba'tan Village, Kesu District, North Toraja Regency, both husband and wife have the same rights to joint property, regardless of who makes a greater contribution. This principle reflects the values of justice and equality that are upheld in Toraja customs. If there is a conflict or divorce, the division of joint property is carried out fairly, involving traditional figures or the extended family to ensure that no party is harmed. Joint property is also a shared

responsibility to be used for the welfare of the family. In line with the results of the observations above, the results of the interview by Mr. Gidion Saweri Gading (55 years old) stated that:

“Pre-marital property is property owned by each partner before marriage, whether in the form of inheritance from the family, land, or other properties. This property remains the pre-marital property of each partner even though they are married. In Toraja customs, bring-on property is not considered part of joint property and is usually not divided in cases of divorce. Pre-marital property is respected as individual property that cannot be disturbed by the couple” (Gidion Saweri Gading, 2024)

The separation between pre-marital property and joint property is done to avoid conflict and maintain justice in the household. In some cases, the results of managing pre-marital property during marriage, such as profits from inherited land, can be considered part of joint properties. However, this recognition usually requires mutual agreement between the couple or extended family.

In Toraja custom, joint property and pre-marital property are regulated by the principle of justice and respect for the rights of each party. The joint property reflects the cooperation of husband and wife in building a family, while the pre-marital property remains the personal property of each partner. Toraja custom provides clear guidelines on how these two types of property are managed, thus maintaining harmony in the family and respecting the prevailing customary values.

Discussion

1. Requirements for Marriage in Toraja Custom

In the Toraja customary marriage law in Ba'tan Village, Kesu District, North Toraja Regency, there are requirements for the Toraja customary marriage. Toraja customary marriage often considers the same social status (*Tana'*). The nobility (*tana' bulaan*) is encouraged to marry fellow nobility to maintain family status. The middle class (*Tana' karurung*) and the lower class (*tana' kua kua*) are someone free to marry. However, it still requires family approval involving the extended family of both parties, especially at the proposal stage. Toraja customary society, when the proposal procession occurs, both parties of the prospective bride and groom may not cancel. If one cancels the proposal, they will be fined 12 buffaloes (for women) and 24 buffaloes for men.

2. Toraja Customary Law Regulates Marriage to Divorce in the Customary Community

The results of observations and interviews show that customary law in Ba'tan Village, Kesu District, North Toraja Regency, regulates all stages of marriage, starting from the matchmaking process, proposal, and marriage to divorce if a conflict occurs that cannot be resolved. In Toraja custom, marriage is considered a sacred agreement involving both extended families so that the marriage relationship is expected to run harmoniously.¹¹ However, if a divorce occurs, customary law will regulate the division of responsibilities, property, and child care. Divorce in Toraja custom usually requires the involvement of a traditional figure or tribal chief as a mediator to ensure that the decision is in accordance with customary norms and does not harm either party.

3. Relationship between Customary Law and Religious Norms

The results of observations and interviews show that the indigenous community in Ba'tan Village, Kesu District, North Toraja Regency, in carrying out marriages, often integrates customary and religious procedures practiced by both prospective brides and grooms. Although Toraja customs have their own traditions, such as traditional marriage ceremonies involving the extended family, religious procedures are still respected. Most Toraja community who are Christian or Catholic hold their wedding blessings in church, then continue with traditional rituals.¹² This shows the existence of syncretism between customary traditions and religious beliefs to create harmony between customs and spiritual beliefs.

4. Freedom of Prospective Bride and Groom in Toraja Traditional Marriage

In the customs of Ba'tan Village, Kesu District, North Toraja Regency, and many other traditional communities, although the blessing of the extended family is very important, the final decision to marry must be based on the free will of both prospective bride and groom. Forced marriage is not in accordance with the principles of Toraja customs, which emphasize harmony and agreement.¹³ However, in the past, arranged marriages often occurred to strengthen relationships between families or maintain social status. Over time, this custom has adapted to

¹¹ Novi Novi, "Tinjauan Teologis-Antropologis Terhadap Perkawinan Adat Suku Kaili Da'a Dan Sumbangsihnya Bagi Masyarakat Kaili Di Desa Lumbulama Sulawesi Tengah" (Institut Agama Kristen Negeri (IAKN) Toraja, 2024), <http://digilib-iaкторaja.ac.id/2227/>.

¹² Ulfa Muthmainna T, "Tinjauan Sosiologi Hukum Terhadap Pernikahan Beda Agama Di Kabupaten Tana Toraja" (IAIN Palopo, 2025), <https://repository.iainpalopo.ac.id/id/eprint/10258/>.

¹³ Ellyne Dwi Poespasari, *Hukum Adat Suku Toraja* (Surabaya: Jakad Media Publishing, 2019).

modern values, where prospective brides and grooms have the freedom to determine their life partners.

5. Customary Law Regulations Regarding Monogamy and Polygamy

Customary law in Ba'tan Village, Kesu District, North Toraja Regency, basically adheres to the principle of monogamy, namely that a man may only have one wife and a woman may only have one husband. Monogamy is considered the ideal form for maintaining household harmony.¹⁴ However, in the past, polygamy has occurred among nobles or traditional leaders for political or economic reasons, although this is not a common practice. In modern Torajan society, the influence of Christianity and Catholicism has increasingly emphasized the norm of monogamy as the standard in marriage.

6. Equality of Rights and Obligations of Husband and Wife in the Household

In the community of Ba'tan Village, Kesu District, North Toraja Regency, husband and wife have complementary rights and obligations. The husband is usually responsible as the main breadwinner, while the wife is responsible for managing the household and caring for the children. However, Toraja customs also value the role of the wife in helping the family economy, for example, through agriculture or trade. The relationship between husband and wife in Toraja customs is based on cooperation, mutual respect, and balance of roles. With the influence of religion, the concept of equality in marriage is increasingly emphasized in modern society.

7. Joint Property and Pre-Marital Property in Toraja Customary Society

Customary law in Ba'tan Village, Kesu District, North Toraja Regency, distinguishes between joint property and pre-marital property. Joint property is wealth obtained during marriage by a husband and wife, such as land, livestock, or crops. This property is jointly owned by the couple and is a collective responsibility. In contrast, pre-marital property is a property owned by each partner before marriage or an inheritance from the family, which remains private property.¹⁵ In the event of a divorce, the division of joint properties is carried out by involving traditional figures to ensure justice, while the pre-marital property remains the property of the individual concerned.

¹⁴ Milda Kurnia Herawati and Tajul Arifin, "Poligami Dalam Perspektif Hadits Bukhari Dan Pasal 3 Ayat (1) UU No. 1 Tahun 1974 Tentang Perkawinan," *Al Fuadiy: Journal of Islamic Family Law* 6, no. 1 (2024): 59–74, <https://doi.org/10.55606/af.v6i1.913>.

¹⁵ Dede Mirza et al., *Hukum Perdata: Perspektif Hukum Perdata Di Indonesia* (Jambi: PT. Sonpedia Publishing Indonesia, 2024).

Table 1. Results of Observation of Marriage Law and Matrimonial Property in the Indigenous People of Batan, Kesu District

No	Observation	Assessment	Information
1	Certain conditions in marriage	Good	Customary law in Batan set a special conditions such as family consent, social status, and customary rituals that must be carried out before marriage.
2	Customary law regulates divorce in indigenous peoples	Good	Divorce is only allowed for certain reasons according to the custom, carried out through the customary mechanism that applies in Batan, Kesu District.
3	Marriage must be carried out according to the religious procedures and beliefs of each prospective bride	Good	Marriage required to follow the customary procedures in Batan, Kesu District and also pay attention to the religion/the trust of the bride and the groom.
4	The marriage must be based on the free will of the two prospective brides without coercion of any party	Good	Customary principles support the freedom to choose a partner, but the family's blessing remains an important condition in the implementation of marriage.
5	Basically, a man just having one wife and a woman just having one husband	Good	Customary in Batan generally applies the principle of monogamy, although under certain conditions the custom open polygamy spaces with strict conditions.
6	Rights and obligations of husband and wife in the household	Good	Husband and wife have complementary rights and obligations, regulated according to the customary roles that apply in society.
7	Shared property in indigenous peoples	Good	Joint property is recognized, but the management is adjusted to customary rules and the role of each husband and wife.

8	Inherited property between husband and wife	Good	Inherited property remains the property of each spouse unless there is a certain agreement before the marriage.
9	Prenuptial agreement on property	Less	Prenuptial agreements are rare, but in Batan, there are agreements regarding property that can be made orally before marriage.
10	The division of property in a divorce is carried out fairly and takes into account the contribution of each party	Good	division property is arranged by custom with looking into the contribution and balanced between husband and wife.

Table 2. Comparison of Customary Law, National Law, and Islamic Law in Marriage and Matrimonial Property

Aspects	Customary Law (Batan)	National Law (Marriage Law)	Islamic Law
Marital Requirements	Family consent, social status, and customary rituals must be fulfilled.	Valid conditions: consent of the bride and groom, guardians, two witnesses, and ijab qabul.	Legal conditions: guardian, two witnesses, ijab qabul, and dowry must be given.
Marriage Ordinances	It is done according to local customs and the beliefs of the bride.	Marriage is legal if it is carried out according to the law of each religion and is registered in the KUA/Dukcapil.	It must be in accordance with Islamic law, with a valid marriage contract and meet the pillars and conditions of marriage.
Freedom of Choice of Partner	Freely choose a partner but still need the blessing of the family.	Based on the free will of the bride and groom without coercion from any party.	The principle of pleasure for the bride and groom without any coercion.
Polygamy	Generally monogamous; Polygamy is possible with special	It is allowed with strict conditions: wives must be treated fairly and there must be	A maximum of 4 wives is allowed, but it is mandatory to be fair (QS. An-Nisa: 3).

	customary conditions.	permission from the Religious Court.	
Joint Property	It is recognized and managed according to the customary agreement between husband and wife.	Recognized as joint property, divided in half in the event of divorce unless there is a prenuptial agreement.	It is recognized as shirkah (joint ownership), divided by contribution if divorced.
Inheritance	It remains the property of each pair unless there is an agreement to merge.	Recognized as private property, unless otherwise agreed before the marriage.	It remains the property of each partner (al-amwal al-khassah).
Prenuptial Agreement	Rarely found; The agreement is made orally before the wedding.	Regulated in Article 29 of Law No.1/1974, agreements are made in writing and recorded in the KUA.	It is allowed on the condition that it does not contradict Islamic law.
Division of Property in Divorce	It is divided according to custom by considering the contribution of husband and wife.	It must be done fairly, taking into account the contribution of each party to the common property.	Divided according to contributions or previous agreements; In sharia, it is recommended for justice without harming one of the parties.

Based on the results of observations, there are customary provisions that regulate marriage law and marital property in the Batan indigenous community, Kesu District, North Toraja Regency. In the aspect of marriage law, custom stipulates certain requirements such as family approval, social status, and customary rituals that must be carried out as part of the marriage procession. The principle of freedom to choose a partner is recognized but still requires family blessing as customary legitimacy. Marriage in this area generally adheres to a monogamous system, although under certain conditions, custom allows polygamy with special provisions.

In terms of divorce, the Batan indigenous community has customary procedures that must be followed, where divorce can only be carried out if there are reasons that are considered

valid according to custom. The rights and obligations of husband and wife are regulated in such a way as to complement each other according to the roles that have been determined by custom.

Meanwhile, in terms of marital property, joint property is recognized and managed based on an agreement in accordance with customary rules and the roles of each partner. The pre-marital property in the marriage remains the personal property of the husband or wife unless there is an agreement to combine it. Pre-nuptial agreements regarding property are rare, but in some cases, custom allows for an agreement regarding property before marriage verbally. In cases of divorce, the division of property is carried out based on consideration of each party's contribution to the joint property so that justice is expected to be created in line with customary norms.

The practice of marriage law and management of marital property in the Batan indigenous community, Kesu District, has similarities and differences when compared to national law and Islamic law. In some aspects, local customs support the principles of justice as reflected in Islamic law, such as the recognition of the freedom to choose a partner and the management of pre-marital property as the property of each. However, in other aspects, such as pre-nuptial agreements, customary law is more oral in nature compared to national and Islamic law, which recommend written records to avoid disputes.

Conclusion

Customary marriage law and marital property law are important parts of the lives of indigenous peoples that reflect cultural, spiritual, and social values. Marriage in Toraja custom is not only a bond between two individuals but also a relationship between extended families that strengthens social solidarity. Marriage procedures, such as proposals, dowry giving, and traditional ceremonies, show respect for ancestral traditions. In addition, customary law also stipulates certain prohibitions, such as the prohibition of marrying close relatives, to maintain harmony in society. The management of marital property in Toraja custom regulates the division of property into pre-marital property and joint property. Pre-marital property remains the property of the individual, while joint property is managed for the benefit of the family. In cases of divorce, the division of property is carried out fairly by involving the extended family as a

mediator. Customary property, such as ancestral land, is treated specially because it is considered a collective family heritage that must be maintained. All of these rules reflect the values of justice, togetherness, and preservation of customs that are at the heart of Toraja society.

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