

---

# Jurnal Dinamika Hukum

Vol. 19 Issue 2, Mei 2019

E-ISSN 2407-6562 P-ISSN 1410-0797

National Accredited Journal, Decree No. 21/E/KPT/2018

DOI: 10.20884/1.jdh.2019.19.2.2429

This work is licensed under a Creative Commons Attribution 4.0 International License (cc-by)

---

## The Legality of Marriage According to Customary, Religion and State Laws: Impacts on Married Couples and Children in Manggarai

Yohanes S. Lon

Katolik Indonesia Santu Paulus Ruteng University, Manggarai - Indonesia

---

### Abstract

This study explores the complexity of marriage for people in Manggarai. Since they are citizens of the cultural community of Manggarai, Indonesian citizens, and members of a Catholic community, their marriage is required to follow the provisions of customary law, religious law, and state law. Using a library and ethnographic approaches, the study compares these law on the legality of marriage and analysis their differences and the impacts on the rights and obligations of married couples and children born to the couple. The study discovered that the differences in the provisions regarding the validity of a marriage between the three laws have provided space for the emergence of legal uncertainty and discriminatory treatment of customary marriages which are not legalized by religious law and state law as well as marriages that are divorced civilly but are still valid according to Catholic rules. Such a phenomenon is certainly a portrait of failure or incompetence in the attempt to unify marriage law in Indonesia through Law No. 1 of 1974 concerning Marriage. So it is urgent to have a more comprehensive new law that accommodates the wisdom of local customary law and provides protection for every citizen.

**Keywords:** state law; marriage law; canon law; adat law; catholic law.

### Abstrak

Studi ini mengeksplorasi kompleksitas perkawinan orang Manggarai. Sejak mereka adalah warga komunitas budaya Manggarai, warga negara Indonesia, dan anggota komunitas Gereja Katolik, maka perkawinan mereka dituntut untuk mengikuti aturan hukum adat, hukum agama, dan hukum negara. Dengan menggunakan pendekatan kepustakaan dan lapangan, studi ini membandingkan keabsahan perkawinan menurut ketiga hukum tersebut dan menganalisa perbedaan dan dampaknya pada hak dan kewajiban pasangan yang menikah dan anak yang lahir dari pasangan tersebut. Studi ini menemukan bahwa perbedaan tentang aturan keabsahan perkawinan antara ketiga hukum tersebut telah memberi ruang untuk munculnya ketidakpastian hukum dan perlakuan diskriminatif terhadap perkawinan adat yang tidak disahkan sesuai dengan hukum agama dan hukum negara. Hal yang sama terjadi pada perkawinan yang diceraikan menurut hukum negara namun tetap diakui keabsahannya menurut hukum agama. Fenomena ini tentunya menjadi potret kegagalan atau ketidakmampuan Undang-undang No 1 Tahun 1974 tentang Perkawinan dalam usahanya menyeragamkan aturan perkawinan di Indonesia. Oleh karena itu sangatlah urgen untuk memiliki hukum baru yang lebih komprehensif yang mengakomodir kearifan lokal dari hukum adat dan memberi perlindungan kepada setiap warga negara.

**Kata Kunci:** hukum negara; hukum perkawinan; hukum kanonik; hukum adat; hukum katolik.

Copyright©2019 Jurnal Dinamika Hukum. All rights reserved.

---

## Introduction

Marrying and forming a family is one of the characteristics of humans. This is also an individual right. However, in many communities marriage is not just a private affair of two people who love each other and want to form a marriage institution but also part of

social, cultural, religious and even state activities. Marriage is not only determined by the love of two individuals who want to live together, but also by the rule of law that applies to religion, country, and culture adopted by couples who are married (Judiasih, Naz-mina, and Luh, 2019). The problem arises when the legal rules regarding marriage from these institutions are not the same, not in line and contradictory.

This paper compares and elaborates on the differences in the law and the legality of a marriage of traditional marriage, religion and state law and its impact on the rights and obligations of married couples and children born to the couple. The customary law studied here is the Manggarai custom in Flores, East Nusa Tenggara Province. The Manggarai people are among the communities that still practice culture and run various traditions faithfully. Although it has been included in the modern era, tradition, rituals, rules and customary law remain a daily concrete life guide for its people (Lon and Widyawati, 2017a; Erb and Widyawati, 2018). Especially concerning marriage, it is an affair of two large families and part of an important traditional ritual. The rituals around marriage are the most detailed and widely practiced in the Manggarai culture. From various rituals and customary rules that apply in Manggarai, the rules and rituals related to marriage are very complex and large (Lon, 2019). This is because marriage is a way that determines the permanence and existence of a community, clan or tribe. So, marriage always involves large families in official numbers and rules.

The religious law examined in this paper is the Law of Marriage according to the Catholic Church. Catholicism is the majority religion in Manggarai, West Flores. Even though Catholicism was only introduced in the early 20th century to the Manggarai people, this religion has become an integral part of the life and identity of the Manggarai people. The studies of Widyawati and Purwatma (2013) and Widyawati (2018) show that identity as a Catholic and as a Manggarai person is inseparable. Both are like double-sided coins. Webb (1990), writes that Flores people live on the island where, "even trees, rocks, and birds are Catholic". This expression confirms the strong Catholic identity for Flores people, including Manggarai.

Furthermore, state law here is, of course, a law concerning marriage that applies to the Republic of Indonesia. Such law is Law No. 1 of 1974 concerning Marriage. This law applies absolutely to all citizens regardless of ethnic or religious origin. This law has a special long history with the question of whether it is necessary to have a uniform marriage regulation for all religions and tribes in Indonesia which, before this country exist, actually had its own rules (Lukito, 2008).

## Research Problems

These laws are compared and analyzed in this study explicitly by questioning how is the difference in the legality of marriage according to these three laws (*adat* Manggarai, Catholic religion and the Republic of Indonesia)? How are the impacts of these differences on married couples and children born from the marriage? The answer to these question would be a good input in revising the marriage law No. 1 of 1974 concerning marriage and in finding a more comprehensive new law that accommodates the wisdom of local

customary law and provides protection for every citizen. So, this study challenges the critical scientific study especially in response to the contextual problems faced by those who are directly dealing with marital laws.

## Research Methods

This study uses library and field approaches. The literature study focuses on the comparison of the provisions of state law, the law of the Catholic Church and the customary law of Manggarai. In this section, this paper will explain the legality of marriage according to the provisions that apply to each institution. Furthermore, these aspects are compared with each other. Comparisons are made mainly on the essential aspects and principles of each marriage law, the form of the celebration of marriage, rights, and obligations and follow-up implications of each law. By comparison, there will be found similarities, differences, strengths, and weaknesses of each law. It is then useful to find out what aspects need to be reviewed to ensure the rights and realization of human dignity fairly and intact.

For the field studies, researcher used a qualitative approach by conducting in-depth interviews with 14 purposively selected families. There were 7 families whose marriages were legal according to customary law but were not valid according to religious law and state, and 7 families whose marriages were legal according to church law but were not valid under state law and customary law. They were asked what the legality of marriage was, what they had, how their status was and how it affected them and their children and their perception of the marriage laws.

Particularly in the study of marriage in Manggarai culture, this study used ethnographic studies, a way to understand a cultural reality by deeply entering it. The advantage is that the researcher himself is a Manggarai and therefore his their understanding of local culture is broader and easier. The point of view used "from within" certainly does not reduce the reasonable interpretation and distance from what is studied. Thus the validity of the research can still be maintained.

## Discussion

### Comparison of Marriage Legality

The following describes how the concept of marriage as well as the legality of marriage, rights, and obligations relating to marriage according to the customary law of Manggarai, according to the Catholic Church and according to the State of the Republic of Indonesia. In principle, marriage to the Manggarai people in Flores is a way to perpetuate the existence of a tribe or clan. Through marriage, a clan will not become extinct or die (*mempo*). Marriage is also a way to expand family relations. The bigger and more relationships are established, the more a clan is considered successful. So the aspect of fertility and family expansion is very important for one marriage. So no wonder, the symbol of fertility, virility, and femininity is very thick into language and marriage rituals. The implication is that a husband may seek a new wife so he can get offspring. In this case,

because the Manggarai community is patriarchal, the lineage is based on the descendants of the father (Series of interview with Tjangkung, Nenok, Jelalu, Ngebo, Sudi, Tatul).

Marriage is not merely the business of two individuals, men, and women who are married only but are a big family affair and the affairs of the entire clan. The social and family aspects of the marriage dimension being greater than the choices and free will of married couples. It can be said that, marriage is the interests of clans and occurs between two large families, namely the large family of the bridegroom called *anak-wina* (wife receiver - recipient of the wife) and the large family of the bride who is called *anak-rona* (wife giver-giver of the wife) (Lon and Widyawati, 2018: 271). The legality of marriage is even more predominantly determined by these two extended families than by the individual itself.

Large family interventions in male and female love relationships have taken place from the start (beginning). Before two people who love each other decide to get married, in the tradition of the Manggarai culture, both have to go through the pre-marriage stages involving the two extended families. In general, the stages passed by married couples in the Manggarai custom are as follows: *rekak* (notification of courtship status to the family), *tukémbaru* (ceremony for proposing a woman), *pongo* (opening ceremony for engagement period), and *wagal* (inauguration of traditional marriage) (Lon, 2012).

For each stage, large families of women and men meet to express agreement or disagreement over the relations of their daughters or sons. Forms of agreement and disagreement are expressed in rituals, indigenous languages and symbols used to communicate between the two parties. Thus the whole family can find out the status of their child who is heading to the stage of marriage. At this level, the family has begun to intervene in the relationship of two people, whether in a positive form that is supporting and giving approval, or in a negative form that is not supporting, not approving, or not giving consent. So, it is clear that the relationship between men and women to marry is very dependent on the families of both parties and is always associated with ceremonial rules and customary law.

In terms of the form of the celebration of marriage, the agreement and traditional wedding ceremony were carried out by the two extended families through a spokesman agreement (*tongka*). In the agreement, the *woé-nelu* bond (relations between two families due to marital relations) was decided and legalized (Verheijen, 1967: 762). The big family of the man is referred to as the *anak-wina* and the woman's extended family is called the *anak-rona*. If the *anak-rona* and the *anak-wina* have reached an agreement, then marriage is declared legal. Thus the agreement between the bride and groom is only assumed to exist. It is said "assumed to exist" because during the prayer for the inauguration of the marriage agreement, both are present and sit side by side. Their presence can be interpreted that the bride and groom agree to become husband and wife, even though both are not explicitly asked about their willingness to marry each other. They also are not given the space to declare the exchange of marriage agreements between the two of them,

as is customary in certain religious marriage agreements. The act of agreement between the two extended families represents and gives birth to a marriage between the two brides.

The wedding ceremony, where the legality of marriage takes place in the Manggarai culture, is marked by a *wagal* ceremony. The form of the celebration of marriage in Manggarai custom is carried out in the event of *tudakelawagal* (pig offering) or *sikatsai kina/cikat kina wagak/wagalkaba* (the buffalo slaughter event). The ceremony is led by traditional elders. In this event, the ratification of the marriage agreement is witnessed by both large families, the dead and the living (Lon and Widyawati, 2018: 274).

At the ceremony there are prayers for slaughtering sacrificial animals, examining the hearts of animals and offering food to ancestors and God (*Mori Kraēng*). The contents of prayer include: a) the blessing request of all the spirits of the ancestors and the dead (*wuraagueceki*) on the marriage; b) a request for help from the ancestors to ask for the blessing of the Almighty God for new family; c) a statement that the two big families had agreed and together with the villagers all witness and confirm the marriage of the two brides; d) petition for blessings for new family so that they will be descendants, prosperous, healthy people, survive until death; e) a statement about the bride who has to leave the family or clan and all her habits and fall into the habit of her husband's clan (*nekawedisceki, nékalagésaké*) (series of interview with Sudi, Basilius, and Tatul).

The following is an example of traditional prayer forms:

Listen to you, ancestors, at this time we gather together in one heart and one voice as a large family to celebrate the ceremony of animal slaughter to bind all agreements. For the bride, she is expected to abandon her family habits and follow the habits of the husband's family. Hopefully, this new family is successful, long-lived, will develop and produce many children and a lot of fortune. Hopefully, all envy and jealousy aimed at destroying this family have driven away. You, the ancestors, be their guards and protectors. Hopefully, they will not face challenges and difficulties in their family life.

With the completion of this customary prayer, marriage is considered legal. Thus both partners can get several rights as well as new obligations as family members, clan members or extended families following the new customary law. If later this marriage experiences a problem, it will immediately face customary law in solving the problem. It is noteworthy that in the indigenous traditions of the Manggarai people polygamy and divorce have space and the possibilities as far as they are legalized by *adat*. This will also be a problem when there is an encounter with the law of the Catholic Church.

*Wagal* ceremony or inauguration of the marriage is carried out in the house of *anak-rona* or bride. In certain cases, it can be done at the home of a male family. In older times, the *wagal* was carried out in the traditional communal house of the *anak-rona* or the family of the bride. This ceremony can also be done if all the rights and obligations of *anak-rona* and *anak-wina* are settled. One of the obligations of *anak-wina* is to pay bride-wealth (*paca*) in the form of animals, money and other items to *anak-rona*. The amount is very dependent on demand. Today, from previous studies, bride-wealth or *paca* in the

form of money ranges from Rp. 50,000,000 up to Rp. 500,000,000. While the animals are in the form of buffalo, horses, pigs, and cows.

*Wagalas* a traditional wedding ceremony is attended by the families of both parties and other invitations. Those who lead customary prayers are parents who are entrusted, appropriate and able to do so. The prayer and inauguration were carried out in the Manggarai language. After the inauguration of the couple, the family can carry out a party by eating and drinking or festive traditional festivities for example by doing a show of *caci* (colossal dance hit each other with whip) which can be done for days according to the ability of the two extended families.

For the Catholic Church, marriage is a matrimonial covenant by which a man and a woman establish between themselves a partnership of the whole life (Code of Canon Law, canon 1055). It is a sacrament that functions as a means by which God saves a couple. Through the relation of husband and wife, God is present to humans. Therefore, Catholic marriage is monogamous and inseparable (Lon and Widyawati, 2018: 113-137; Lon and Widyawati, 2017: 122-142) because it symbolizes God's love and fidelity. A legitimate Catholic marriage requires three conditions: first, there is a matrimonial consent between a man and a woman before Church officials (Code of Canon Law, canons 1095-1103); second, there is no diriment impediment (s) (Code of Canon Law, canons 1083-1092); third, there is the form of the celebration of marriage (Code of Canon Law, canons 1108-1112).

Unlike the Manggarai customary law which emphasizes the role of a large family in the confirmation and legalization of marriage, Catholic Church Law emphasizes the role of individuals or personnel of those who are married. The matrimonial consent is made not by large families but by a man and a woman who are married. The Code of Canon Law, that contains various legal rules within the Catholic Church, states in canon 1057 paragraph 2: "Matrimonial consent is an act of the will by which a man and a woman, through an irrevocable covenant, mutually give and accept each other to establish marriage". This rule stipulates the exchange of marriage agreements between a man and a woman. An agreement must be made by both candidates because the agreement is a free will. Only by meeting the will of the two brides does it give birth to a Catholic marriage. Sheehy, etc. (1995: 514) wrote: "There must be a real act of consent by both parties. This is necessary and no human power, parents, family, state or church can supply this consent". Legitimate marriages require concrete action from an agreement made by the two prospective brides. Exchange of marriage promises is a real form of agreement between the two prospective brides. Therefore the act of exchanging marriage promises is an absolute necessity for the bride and groom. This action cannot be carried out by another party because there is no human power, whether parents, family, state or church can replace it.

Canons 1095-1103 of The Code of Canon Law explain that in order to have a legitimate matrimonial consent, two prospective brides are 1) to have sufficient use of reasons, 2) not suffer from lack of discretion of judgment, 3) able to enjoy the essential obligations of matrimony, 4) able to know the essential nature of Catholic marriage, 5) to have an honest

motivation, and 6) not suffering from grave fear. Besides, the matrimonial consent is valid if the prospective brides do not suffer diriment impediments mentioned in canons 1083-1093. Some of the obstacles that can make a person unable to receive the Sacrament of Marriage include young age, antecedent, and permanent impotence, the bond of a prior marriage, different religion, bond of the holy order, bond of a public perpetual vow, consanguinity, etc. These impediments are usually investigated before marriage is taken place. The canonical investigation is made by Church officials such as pastor of the parish.

According to canon 1108 of The Code of Canon Law, the form of the celebration of marriage must be carried out in the presence of an official church representative such as a bishop, pastor, priest or deacon. It has to take place in a church official ceremony (such as Mass) and witnessed by at least two witnesses to marriage as a representative of people. In this celebration, the two partners must make each other's marriage vows as follows:

I ... (name) chose you ... (name) to be my wife/husband. I promise to be loyal to you in profit and misfortune, and I want to love and respect you for life. Such is my promise for the sake of God and this holy gospel.

The legal regulations regarding marriage in Indonesia are regulated in Marriage Law No. 1 of 1974. This law, which came into effect since January 2, 1974, consists of XIV chapters which regulate the principal provisions regarding: the basis of marriage (Chapter 1), Marriage Requirements (Chapter 2), Prevention of Marriage (Chapter 3), Cancellation of Marriage (Chapter 4), Marriage Agreements (Chapter 5), Rights and Obligations of Husband and Wives (Chapter 6), Property in Marriage (Chapter 7), Marriage Breakups (Chapter 8), Childhood Position (Chapter 9), Parents' Rights and Obligations and Children (chapter 10), Representatives (Chapter 11), Other Provisions (Chapter 12) and Closing Provisions (Chapter 13). With the passage of this law, the Civil Code (*BurgelijkWetboek*), Ordination of Christian Indonesian Marriage and other regulations governing marriage are declared invalid.

Article 1 of Marriage Law No. 1 of 1974 defines marriage as an inner and outer bond between a man and a woman who aims to form a happy and eternal family based on a divine Godhead. Marriage ties a man and a woman together by covering physical and spiritual aspects. Only through marriage can a man and woman form a happy and eternal family or family based on faith in the Supreme Lord. Marriage must be based on the agreement of the two prospective brides who have fulfilled the requirements mandated by law (article 6). The Marriage Law No. 1 of 1974 principally supports monogamy but opens up space for polygamy (Article 3,4,5,6) and allows for divorce, cancellation of marriage and remarriage. This law also confirms the prohibition of marriage between those who have close blood relations (article 8).

A marriage can be valid if carried out according to the laws of each religion and its beliefs (Article 2 paragraph 1 of the Marriage Law). There is no legal marriage outside the law of each religion and that belief (explanation of Article 2 paragraph 1 of Law No. 1 of 1974 concerning Marriage). And according to the Explanation of article 1 of the Presidential Decree No. 1/PNPS/1965 the religions recognized in Indonesia are Islam, Christianity,

Catholicism, Hinduism, Buddhism, and Confucianism. This means that every Indonesian citizen, who is going to marry, should have passed their respective religious institutions and are subject to the rules of their religious marriage. Marriage is necessary according to the laws of each religion and its beliefs. Concretely, for Muslims, a legitimate marriage must be carried out according to Islamic religious law; while the marriage of people who are Protestants or Catholics or Buddhists or Hindus must follow the provisions of their respective religions. If this cannot be fulfilled, then the marriage is invalid.

Furthermore, a legal marriage must be recorded before the authorized marriage registrar employee following applicable regulations. Provisions regarding marital records are further regulated by Government Regulation No. 9 of 1975 concerning Implementation of Law No. 1 of 1974. For Muslim marriages, a recording is carried out by recording employees as referred to in Law No. 32 of 1954, whereas the marriage of non-Muslim people is done at the Civil Registry (Article 2 PP No. 9/1975). So, with this regulation, the legalization of marriage itself depends on the religion adopted by the couple.

### **Problems and Impact of Differences in Marriage Legality**

From the foregoing description, it is clear that there are several significant differences between the three laws above concerning the terms, principles, legality, rights, and obligations relating to marriage and family. These differences have an impact on couples and children. Some of their differences and their impacts on couples and their children are as follows.

The most common problems are related to issues of agreement, legality and marriage registration. As explained earlier, for the Catholic Church, the validity of a marriage is determined by the agreement of the married couple. If they are ready, agree, and are not exposed to obstacles then they can get married even though their family may not approve it. On the contrary, according to the Manggarai custom, the agreement is the business of the two big families. If the two families do not agree, the marriage inauguration does not occur even though both partners are ready. The results of the field study show that one of the major difficulties in reaching an agreement is the issue of repaying bride-wealth or *paca* in the Manggarai custom. As a result, some couples only hold marriages by the Catholic Church and ignore traditional marriages.

Several couples such as MN, US, BB, TA, BS, NJ and TI (2017-2018) shared that they chose to get marriage in a religious way (the Catholic Church) because their target was to obtain the legalization of religion which made it easier for them to arrange marriage certificates in the civil registry office. Their constraints to customary affairs were disagreement between the family of the bride (*anak-rona*) and the family of the groom (*anak-wina*) about the amount of bride-wealth or *paca*, and *anak-wina* who had not been able to collect money and animals to pay the bride-wealth to *anak-rona*.

Besides, they felt that religious marriage was more urgent because they did not need to "live in sin", namely living together in the form of cohabiting which is considered a sin of adultery. Furthermore, if they had married in the Church and had registered the



marriage at the Civil Registry office, they would have an official marriage certificate. So their status on the Identity Card (KTP) was also clear. Thus children born from their marriages would easily take care of other administrations as if they were going to school.

Nevertheless, these couples psychologically and socially claimed to experience anxiety, discomfort, and traditional burdens. The A-S and N-J couples even said that the biggest fear was the curse of the ancestors (*itangagunangki*). They claimed that some of the pains they had experienced recently in the family were perceived to have occurred because they had not married traditionally, their ancestors were angry and gave them illness. The M-N pair said the same thing, and also assumed that their fortune was still minimal because they did not fulfill customary law.

The most obvious impact for all the partners that were offered was that they had not traditionally been regarded as an official part of new independent families who were, therefore, unable to obtain customary inheritance rights, the right to participate in other traditional rituals, the right to obtain financial support (from *sida* and *bantang*) at the time of death, marriage or the cost of education, the right to hold the title of clan/tribe (*uku*), the right to formally enter the traditional village, the right to be traditionally ritualized for children and families. She hoped that her husband B could go to his family village and visit his mother's grave. But because B had not cleared the customary marriage, then B felt insecure to go to the village. This is very sad for the B-S couple. All these rights have been fully granted to them if the *wagal* as an official marriage has been carried out. The seven couples claimed that they would still have to be married traditionally, only they were waiting for a good time.

Moreover, this study reveals that some couples who have been married according to the *adat* (customary law) have not gained legitimacy according to Catholic law. According to respondents, A-A, B-I, R-D, M-M, S-N, R-G, and M-I, they have not been married in the Church because they have been barred from getting religious marriages. The R-D partner is exposed to a close blood connection obstacle. R (husband) is a cousin of D (wife). The mother of R and D's father are siblings. Their (R-D) marriage is called *tungku-cu* (cross-cousin marriage in the collateral line) in Manggarai culture. According to the Catholic Church, a marriage that is attempted between those who are closely related to blood cannot be justified. The Code of Canon Law in canon 1091 paragraph 1-2 states:

1. In the direct line of consanguinity, marriage is invalid between all ancestors and descendants, whether they are related legitimately or naturally.
2. In the collateral line of consanguinity, marriage is invalid up to and including the fourth degree.

This Church ban is based on consideration of the health quality of the offspring or children of the marriage. This prohibition is, however, exactly contradictory to the Manggarai culture. The Manggarai people strongly advocate cross-cousin marriage, which is a marriage between the daughter of a brother and a son of a sister. This marriage is considered ideal according to custom. As a result, since childhood, these children have usually been introduced to who are their *anak-rona* and *anak-wina*. With this, since

childhood, *adat* has encouraged children to fall in love and marry their "real partner" and do not choose a mate from outside their clan.

The R-D pair said that since they were young they played together and every time there was a big family celebration, they had been made fun of as a couple from childhood. This made them secretly since childhood had put their hearts to each other and continued to carry until they were teenagers and adults. They dated and decided to get married. Their marriages were blessed by custom but unfortunately, the Catholic Church does not approve of it. According to them, there were indeed some family members who warned that the Catholic Church did not allow the blessing of their marriage. They hope that the Catholic Church can provide forgiveness and dispensation to them so they can get married according to the Catholic law.

In responding to the problems faced by the couples, the Catholic Church of the Ruteng Diocese could consider granting forgiveness and dispensation for *tungku cu* couples in Manggarai. But the gift of dispensation is difficult and is not given every year, but once in a few years. A dispensation is usually given in general for many couples and is considered as a "mercy". The church also provides special conditions for couples who are dispensed, that is, they are not allowed to carry out festive weddings. Their wedding celebration is quite simply and together with other couples (mass marriages) who also get the same dispensation. Many people often consider "mass marriage" to be less prestigious than the marriage of a single partner. "Mass marriage" is also often identified with "marriage from a troubled partner".

In terms of state law, this kind of blood relationship and the type of cross-cousin or *tungku cu* marriage in Manggarai tradition are also prohibited by Law No. 1 of 1974 especially article 8. It is said that marriage is prohibited between two people who are: a. having blood in a straight line down or up; b. having blood relations in the sideline which is between siblings, between one person and the parents and between one and the grandmother's siblings; c. related to fine, namely in-laws, step-daughter-in-law and mother/stepfather; d. related to breastfeeding, namely breastfeeding parents, breastfeeding children, breast milk siblings and aunt/uncle; e. having a relationship with your wife or as aunt or niece of a wife, in the case of a husband having more than one wife; f. having a relationship which by religion or other applicable regulations is prohibited from marrying.

In addition to marital barriers due to blood relations, other couples who were respondents to this study were unable to legalize marriage within the Catholic Church because of differences in the principle of divorce and remarriage. According to Catholic Church law, a legal marriage between a person who is baptized is of a sacrament and eternal nature. Therefore, such marriage cannot be divorced by anyone except death (Code of Canon Law article 1141). Only illegitimate marriages can be canceled or annulled (Articles 1671-1673). In other words, the law of the Catholic Church prohibits divorce from a legal marriage.

This provision is different from the provisions of customary law and civil law which give space for legal divorce from a marriage. Marriage Law No. 1 of 1974 in article 39 states that divorce can be carried out before a court (Judicial Assembly) with sufficient reason. According to Manggarai customary law, legal marital divorce may still be allowed for cases of infidelity (committed by the wife), violence, slavery, and neglect (experienced by the wife) and related to the quality of the wife who is not good (Lon, 2012). A divorce between husband and wife in the Manggarai community is known by the expression *kole okangn mokang, kole ramin laki*. This expression means that the female returns to the field, the male returns to the wild-flake. That is, the woman returns to her parents (family) and the man also returns to his parents (Lon, 2012).

Besides, divorce can also occur in the following cases: first, a previous marriage is not blessed with children. *Adat* Manggarai allows a husband to take a second or third wife if the previous wife is unable to give her child (*ata-poné*); second, the previous wife is often sick or has severe physical illness or disability such as suffering a stroke so she is unable to serve her husband; third, the parents only have sons or daughter. In that case, a husband who wants to have a son or daughter can take a new wife.

The R-D pair, in this study, could not marry according to the Catholic law because D was the second wife of R. R himself had been married before with M, but from that marriage, they did not get offspring. R then decided to take D as his second wife and divorced M. Now they have been married for almost 9 years. Their second marriage was ratified by custom (*adat*) because when there was a divorce between R and M, their separation was carried out by custom. Here the family of R has carried out all customary obligations by carrying out rituals for the separation and has paid customary fines for divorce. However, the Catholic Church does not allow them to receive the sacrament of marriage. From a legal standpoint, the status of R is still the husband of M. Even the marriage certificate is still in marital status with M. As a result, R and D cannot register their marriage in the Office of Civil Registration. R and D expressed sadness because their marriage which had been done by custom was not legal according to religion. Aside from not being able to have a legal marriage certificate, children produced from marriage are also often considered illegal. They often face difficulties in managing various state administrations.

Another case was from the M-M pair. The wife (M) was originally married to another man (B) in a customary manner and the Catholic Church. But several years later, Ms. M claimed that she was not compatible with her husband. They often fought and her husband often committed violence (domestic violence) against her. So her family brought this matter to the *adat* elders. As a result, M was allowed to part with her husband. After this separation, M remarried a widower. But their marriage cannot be legalized by the Catholic Church because M is still bound by the previous marriage; M is still bound to her first husband, B. The impact on them is the same as that experienced by other couples, that they cannot get the legality of religion and the state. Another impact which is also told by other partners in the matter of religious burden, they continue to be considered

sinners. They could not fully participate in many spiritual services offered by the Church. This is also a social and religious stigma for them.

Another impact of the differences in the rule and marriage laws directly experienced by our respondents relates to the legalization of divorce. Pair B-I told of their marriage case. B is a man who originally had been married according to the Catholic law with S and had also registered their marriage civilly (state). However, after several years both of them decided to separate because they could not maintain the marriage. Both of them then did a civil divorce. The court has granted their divorce request. So B then met with M, who was now his wife. However, B and I could not get married in the Catholic Church, because the Catholic Church does not allow divorce. As a result, until now B-I can only live together without a legal marriage. They also cannot register civil marriage because civil registration can only be done if there is a legal marriage certificate from religion. Both of them feel very sad about this situation. Of course, there are many negative effects that they feel such as the legal status of their marriage and its implications for various matters of state administration.

Indonesia is a plural country that consists of various religions, ethnicities, races, and cultures. Every religion, tribe, and culture has its own principle rules regarding marriage. On the other hand, Law No. 1 of 1974 concerning marriage applies to all citizens regardless of their uniqueness and differences in religion, ethnicity, race and cultural traditions. In fact, for many Indonesians not only are citizens. Their identity and life guidelines are not only based on mere state rules. The daily identity and guidelines are based largely on religious and customary law. It is very difficult for someone to separate himself from religious and cultural beliefs. In many cases, religion and culture have even been present in certain societies and cultures, before the state and the rules of the country they know.

In this paper, it is also very clear, for the Manggarai people, culture and *adat* were far before they came to know Catholicism (Widyawati, 2019). This religion was only present in on Manggarai in the early 20th century. The culture had existed for centuries before. Similarly in the presence of the state, the Manggarai people only became part of Indonesia at the time of independence (in fact it was only a few years later specifically for Eastern Indonesia) and the Marriage Law was also ratified in 1974. Manggarai culture came to exist far before the Republic of Indonesia and the state Marriage Law. Their customary marriage laws are not only important for those who are still alive but also for the spirits and spirits of their ancestors or ancestors.

Interestingly, the Marriage Law No. 1 of 1974 does not accommodate ethnic, cultural and customary interests at all. In this law, the words "custom", "culture", "tribe" are completely absent. This means that marriage references according to traditional, ethnic and cultural traditions are not at all in the space of thought of this law. If studied more deeply, marriage in Indonesian society is generally still very thick with cultural nuances and traditions. No aspect can be compromised from the provisions of marriage to the customs and cultural traditions of the Indonesian people. This is a problem and difficulty for many tribes and traditions.

It is quite different from religion. In Marriage Law Number 1 of 1974, the word "religion" is used 9 (nine) times. Article 9 regulates that marriage becomes legal if according to religious law (verse 2). Religious law is also a reference for the requirements of a marriage (article 6 paragraph 6). Rules regarding marital barriers due to blood relations also refer to the religious rules of the couple (article 8, f). Likewise, the matter of divorce, remarrying also refers to religious law (article 10) or the illegality of a marriage if it violates religious law (article 29). This law also refers to religious law in matters concerning guardianship (article 51).

It is interesting that even though this law considered as all of the religious laws in Indonesia, however, some articles of this Marriage Law do not also fit the rules of Catholicism as previously explained. The impact has also been felt as described in this case. So the most basic question of the presence of this Marriage Law is whether it is necessary to uniformly enforce this rule for all Indonesian citizens who have differences in religion, ethnicity, and rules regarding their marriage. As a concrete example, with the opening of space for polygamy and including divorce, this will specifically be "problematic" for tribes or religions, such as Catholicism, which prohibits divorce and polygamy. Likewise, couples with different religions will experience difficulties in managing mixed marriages.

The dynamics of interaction between religious law (Catholic Church), state law, and customary law can be paradoxical, differential, or integral and lead to conflict or integration. The interconnection of these three laws can result in integration between the three, or incorporations where each of these legal systems adopts certain parts of the norms from other laws or conflicts where each legal system rejects the validity of a legal system other than itself. Problems arise when the provisions of the three laws are not in line and are not harmonious; often the provisions are different and contradict each other

So far, in Indonesia, the role of customary law is still marginal, weak and not adequately accommodated by state law (Soekanto, 1986: 40-50; Abubakar, 2013: 319-333; Mahfud, 2017: 63-80) on the other hand customary law has the potential to enrich the national legal treasury (Ellyne, 2019). Therefore, many studies (Sulaiman, 2017: 3377 - 3426; Soekanto, 1986: 40-50) concerning the interaction between state law and customary law recommend the need for openness of state law and local law to interact in the context of complementing each other. Benda-Beckmann and Benda-Beckmann (2011: 167-195) argue that revitalization of customary law is often hampered due to mistakes in viewing *adat* but also conflicts with religious and state law.

In the case of differences in marital law between the Catholic religion, *adat* Manggarai and State Law, it is clear that there are parties who bear losses. The findings of this study raise new anxiety that is a rethinking of how the state and religion think and are concerned about the interests of their citizens/followers concerning the principles of marriage continue to be urgent. The uniqueness of values should not be marginalized because of the monopoly and dominance of one party. Radbruch (Rahardjo, 1986: 21) says

that the law must provide a sense of justice, usefulness, and certainty for people's lives. Law is a controller to prevent bad things and try good things.

According to Socrates (Huijbers, 1995: 196) every law must be crowned with justice. In this context, every modern law should be accepted by all layers of society and treat them equally. Law must reflect the role of the state in bridging all the different interests of citizens and providing protection and security for every citizen. Law is a picture of values received based on mutual agreement in society. Good law should be able to translate values in society and protect their interests.

## **Conclusion**

For the Manggarai people, marriage is required to follow the provisions of customary law, (Catholic) religious law, and state law. It is not only expensive but also complex and risky for married couples and their children. According to customary law, the legality of marriage depends much on the agreement of the extended family and is marked by a *wagal* ceremony. Meanwhile, the validity of a marriage in catholic law is determined by the agreement of the married couple and performed in an official religious ceremony led by official church leaders. Article 1 of Marriage Law No. 1 of 1974 of The Indonesian Republic describes the legality of marriage based on the agreement of the two prospective brides who have fulfilled the requirements mandated by law (article 6) and carried out according to the laws of each religion and its beliefs (Article 2 paragraph 1 of the Marriage Law).

## **Suggestion**

The differences in the provisions regarding the validity of a marriage between the three laws have provided space for the emergence of legal uncertainty and discriminatory treatment of customary marriages which are not legalized by religious law and state law as well as marriages that are divorced civilly but are still valid according to Catholic rules. Such a phenomenon is certainly a portrait of failure or incompetence in the attempt to unify marriage law in Indonesia through Law No. 1 of 1974 concerning Marriage. So the demand to revise the marriage law No. 1 of 1974 concerning marriage is a necessity. A more comprehensive new law should be needed that accommodates the wisdom of local customary law and provides protection for every citizen.

## **References**

- Abubakar, Lastuti. (2013). Revitalisasi Hukum Adat sebagai Sumber Hukum dalam Sistem Hukum Indonesia. *Jurnal Dinamika Hukum*, 13(2), 319-331. DOI 10.20884/1.jdh.2013.13.2.213.
- Benda-Beckmann, Frans von., and Benda-Beckmann, Keebet von. (2011). Myths and stereotypes about adat law: A reassessment of Van Vollenhoven in the light of current struggles over adat law in Indonesia. *Journal of the Humanities and Social Sciences of Southeast Asia and Oceania*. 167 (2,3), 167-195. DOI 10.2307/41288760.
- Boylon, Yohanes S. (2002). Perkawinan menurut Adat Manggarai dalam Perspektif Hukum Gereja Katolik. In Chen (ed.), *Iman, Budaya dan Pergumulan Sosial*, Jakarta: Obor.

- Ellyne, Dwi Poespasari. (2019). The Position of Mamak Kepala Waris in High Ancestral Inheritance in Minangkabau Indigenous Community. *Jurnal Dinamika Hukum*, 19 (1), 1-18. DOI 10.20884/1.jdh.2019.19.1.2214.
- Erb, M., & Widyawati, F. (2018). Missionaries and Mining: Conflicts over Development in Easter Indonesia. In C. Scheer, P. Fountain, & M. R. Feener, *The Mission of Development, Religion and Recho-Politics in Asia* (pp. 82-106). Netherland and Boston: Brill. DOI: [https://doi.org/10.1163/9789004363106\\_005](https://doi.org/10.1163/9789004363106_005).
- Gordon, J.H. (1975). *The Manggarai: Economic and Social transformation in an Eastern Indonesia Society*. Cambridge: Massachusetts.
- Huijbers, Theo. (1995). *Filsafat Hukum dalam Lintas Sejarah*. Yogyakarta: Kanisius.
- Judiasih, Sonny Dewi., Nugraha, Nazmina Asrimayasha., and Sudini, Luh Putu. (2019). Prohibition of Intera Religion Marriage in Indonesia. *Jurnal Dinamika Hukum*, 19(1). DOI: 186-203. 10.20884/1.jdh.2019.19.1.2462.
- Lon, Yohanes S. & Widyawati, Fransiska. (2017). Cultural Aspects on Child's Development and Parenting in Manggarai. *Guidena, Jurnal Ilmu Pendidikan, Psikologi, Bimbingan dan Konseling*, 7(1), 130-139. DOI 10.24127/gdn.v7i1.959.
- \_\_\_\_\_. (2017). Lingkaran Kekerasan Terhadap Anak Dalam masyarakat Manggarai. *Jurnal Pendidikan dan Kebudayaan Missio*, 9(1), 14-24.
- \_\_\_\_\_. (2018). Bride-Wealth: Is There Respect for Women in Manggarai?. *Humaniora*, 30(3), 271-278. DOI: <https://doi.org/10.22146/jh.v30i3.29216>:
- Lon, Yohanes S. (2019). Meningkatkan Pengetahuan dan Kesadaran Akan Hukum Kanonik Gereja Katolik Bagi Umat di Keuskupan Ruteng-Manggarai (Increasing The Knowledge and Awareness of the People of Ruteng Diocese In Canon Law). *Jurnal Randang Tana*, 2 (1), 1-9.
- Lukito, Ratno. (2008). The Enigma of Legal Pluralism in Indonesian Islam: The Case of Interfaith Marriage. *Journal Islamic Law & Culture*. 10(2), 179-191. DOI 10.1080/15288170802236457.
- Mahfud, Muh. Afif. (2017). Hak Menguasai Negara dan Perlindungan Hukum terhadap Hak Ulayat Masyarakat Hukum Ada: Kajian Teoritits dan Implementasinya. *Kanun Jurnal Ilmu Hukum*, 19(1), 63-80,
- Rahardjo, Satjipto. (1986). *Ilmu Hukum*. Bandung: Alumni:
- Soekanto, Soerjono.(1986). *Kedudukan Kepala Desa Sebagai Hakim Perdamaian Desa*. Jakarta, Rajawali:
- Sukirno. (2012). Sistematisasi Peraturan Perundang-undangan yang berkaitan dengan Ulayat sebagai Upaya mencegah Konflik. *Jurnal Masalah-Masalah*, 41(4). 557-563. DOI 10.14710/mmh.41.4.2012.557-563.
- Sulaiman. (2017). Mereposisi Cara Pandang Hukum Negara terhadap Hukum Adat di Indonesia. *Petita*, 2(1), 37-46.
- Webb, Paul. (1990). *Rural Development and Tradition: The Churches in Bali and Flores*. Michigan: Centre of Southeast Asia Studies.
- Widyawati, Fransiska. (2018). *Catholics in Manggarai, Eastern Indonesia*. Geneva: Globethics:

\_\_\_\_\_. (2019). Revitalisasi Tradisi *Tombo Turuk* di Desa Perang Kabupaten Manggarai, Provinsi Nusa Tenggara Timur. *Jurnal Randang Tana*, 2(1), 30-38.

Widyawati, Fransiska., and Purwatma, M. (2013). *The Development of Catholicism in Manggarai Eastern Indonesia: Religion, Identity, and Politics*. Dissertation. Yogyakarta: Gadjah Mada University.