

Harmonization of Customary Law and Positive Law: A Study of Forced Marriages and Semarga Marriages in Indonesia

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DOI: [http:](http://)

Received: 07 Mei 2025

Revised: 15 Juni 2025

Accepted: 07 Juli 2025

Abstract:

The existence of customary law and positive law in Indonesia often causes conflicts in its implementation, especially in terms of marriage. One concrete example is the practice of forced marriage and the prohibition of inbreeding which is still maintained by some indigenous peoples in Indonesia. These practices contradict positive law regulations that prioritize freedom of choice and equality of rights in marriage. This study aims to elaborate on the conflict between customary law and positive law in the context of these two practices and offer a model of legal harmonization that allows both to run synergistically-simultaneously. This research is library research with a case approach. Data were obtained through document studies and analyzed qualitatively. The results show that the practice of forced marriage, at least, contradicts the principle of freedom in the Marriage Law and human rights conventions, while the prohibition of in-law marriage often hampers the right of individuals to marry. Legal harmonization is needed that considers cultural values without ignoring the principles of positive law. This study recommends a form of legal harmonization in the form of internalizing the ideology of Pancasila as a basic guideline in the formation of rules/norms enforced during Indonesian society.

Keywords: *Customary Law; Positive Law; Forced Marriage; Semarga Marriage.*

Abstrak:

Eksistensi hukum adat dan hukum positif di Indonesia sering kali menimbulkan pertentangan dalam implementasinya, terutama dalam hal perkawinan. Salah satu contoh nyata adalah praktik kawin paksa dan larangan kawin semarga yang masih dipertahankan oleh sebagian masyarakat adat di Indonesia. Praktik-praktik ini bertentangan dengan regulasi hukum positif yang mengedepankan kebebasan memilih pasangan serta kesetaraan hak dalam perkawinan. Penelitian ini bertujuan untuk mengelaborasi konflik antara hukum adat dan hukum positif dalam konteks kedua praktik tersebut serta menawarkan model harmonisasi hukum yang memungkinkan keduanya berjalan secara sinergis-simultan. Penelitian ini merupakan penelitian kepustakaan (*library research*) dengan pendekatan kasus (*case approach*). Data diperoleh melalui studi dokumen dan dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa praktik kawin paksa, sedikitnya, bertentangan dengan prinsip kebebasan dalam Undang-Undang Perkawinan dan konvensi hak asasi manusia (HAM), sementara larangan kawin semarga sering kali menghambat hak individu untuk menikah. Diperlukan harmonisasi hukum yang mempertimbangkan nilai-nilai budaya tanpa mengabaikan prinsip-prinsip hukum positif. Studi ini merekomendasikan bentuk

harmonisasi hukum berupa internalisasi ideologi Pancasila sebagai pedoman dasar dalam pembentukan aturan/norma yang diberlakukan di tengah-tengah masyarakat Indonesia.

Kata Kunci: *Hukum Adat; Hukum Positif; Kawin Paksa; Kawin Semarga.*

INTRODUCTION

Customary law and positive law in Indonesia are often in a conflicting position, especially in issues related to social norms and community culture. In many indigenous communities, marriage rules rooted in hereditary traditions still have a strong influence, sometimes even contradicting the provisions of national law. Two phenomena that reflect this conflict are the practice of forced marriage and the prohibition of inbreeding. Forced marriages, which still occur in some indigenous communities, place individuals - especially women - in a vulnerable position to human rights violations. Meanwhile, the prohibition of intermarriage in some indigenous communities, such as the Karo, is based on a patrilineal kinship system that emphasizes that individuals from the same clan are not allowed to marry.

In positive law, marriage is regulated based on the principles of individual freedom and the consent of both parties as stated in Law Number 1 Year 1974 on Marriage. This law aims to protect the rights of individuals in building a harmonious and prosperous household. However, the implementation of this law is not always easy, given the existence of customary law that is still alive in the community. Article 18B paragraph (2) of the 1945 Constitution does recognize the existence of customary law, but with the condition that its application must not conflict with the principles of national law. This creates a dilemma in the regulation and implementation of laws in regions that are still thick with customary rules.

Previous research has examined how customary law affects the dynamics of marriage in Indonesia. A study conducted by Rayani Saragih, Gio Fani Sembiring, and Gabriel Nickodemus in an article entitled "Juridical Analysis of the Application of Karo Customary Law on Semarga Marriage", highlighted how the prohibition of semarga marriages in Karo society has become a customary law that is passed down from generation to generation. Individuals who violate this prohibition not only face social sanctions in the form of ostracism but also lose inheritance rights in their community. This prohibition is based on the strong concept of patrilineal kinship, where a person's clan is inherited from the father's side, and surname marriage is considered a violation of the social structure that has long been maintained by the Karo indigenous people (Saragih, Sembiring and Ginting 2023).

On the other hand, research conducted by Grendhard Djaga Mesa and Mardian Putra Frans in "Conflict Between Customary Law and National Law: The Case of Capture Marriages in Sumba" revealed that the practice of forced marriage in the form of capture marriages still takes place in Southwest Sumba. This tradition initially developed to match couples, but in its development, it often involves elements of violence and coercion against women. Although the government has attempted to abolish this practice through national law enforcement, the gap between customary law and positive law remains an obstacle

in effectively resolving this issue (Djaga Mesa and Putra Frans 2024).

The cases of forced and consanguineous marriages reflect a broader tension between customary and positive law in Indonesia. Customary law, which is shaped by the values and norms of local communities, has the flexibility to adapt to the social and cultural conditions of a particular community. However, customary law can also be exclusionary and discriminatory, especially if it contradicts the principles of justice and human rights upheld in national law. Meanwhile, positive law, which is universal and nationally binding, often faces resistance when applied in communities that still uphold customary rules.

The debate between customary law and positive law also reflects the broader problem of legal pluralism in Indonesia. The diversity of laws that apply in various regions shows that the national legal system cannot ignore customary laws that have long been part of people's identity. However, on the other hand, the national legal system must also ensure that customary law does not conflict with the basic principles upheld in a modern legal state, such as the protection of individual rights and social justice (Rika and Yanti 2023). Therefore, a more harmonious and inclusive approach is needed in integrating customary law and national law in Indonesia's legal system.

This study aims to examine the problematics of customary law and positive law in Indonesia in the context of the practice of forced marriage and inbreeding. The results of this study are expected to provide a more comprehensive insight into the interaction between the two legal systems and offer policy recommendations that can bridge the conflict between customary law and positive law. In the long term, this research also aims to contribute to academics, legal practitioners, and policy makers in formulating regulations that are more adaptive and responsive to the diversity of laws that exist in Indonesia. Thus, this research not only contributes to understanding the dynamics of customary law and positive law in the domestic context but also opens opportunities to adopt better approaches in managing legal pluralism in Indonesia. Harmonious integration between customary law and positive law will create a legal system that is more inclusive, fair, and able to respond to the needs of diverse communities in Indonesia.

RESEARCH METHOD

The research methodology used in this article is library research with a case approach, which allows researchers to thoroughly examine various legal documents, academic literature, and regulations related to the topic being studied. Research data was obtained through document study methods, which included analysis of relevant sources such as legislation, fatwas, court decisions, and relevant scientific works. All collected data were analyzed qualitatively, with the aim of understanding the context, meaning, and normative implications of the legal phenomena under study. This approach allows researchers to explore issues comprehensively and present in-depth and argumentative analysis within the framework of Adat law and the positive legal system in Indonesia.

RESULTS AND DISCUSSION

Customary law and positive law are two legal systems that continue to interact in various aspects of Indonesian life, one of which is in marriage practices. The diversity of cultures and traditions scattered throughout the archipelago gave birth to different norms and customary rules, including in terms of marriage. On the other hand, positive law attempts to homogenize the rules of marriage through national regulations such as Law Number 1 of 1974 concerning Marriage. However, in practice, there is tension between customary law and positive law, especially when customary rules conflict with the principles upheld in national law, such as the protection of human rights and individual freedom in determining life partners.

One tangible form of such tension is the practice of forced marriage and the prohibition of inbreeding that is still applied in some indigenous communities. Forced marriage, which occurs in various regions including in the form of capture marriage in Sumba, is a practice where individuals, especially women, are forced to marry without their consent. This practice is often rooted in customary values that prioritize family honor or certain customary obligations. Meanwhile, the prohibition of surname marriage, as found in Karo society, is a customary rule that prohibits marriage between individuals who share the same clan. This prohibition is based on a strong patrilineal kinship system, which considers surname marriage as a violation of long-held social structures and customs.

In the perspective of positive law, both forced marriage and the prohibition of surname marriage pose their own dilemmas. Article 6 paragraph (1) of the 1974 Marriage Law emphasizes that marriage must be based on the consent of both parties, so forced marriage clearly contradicts the principle of individual freedom. On the other hand, positive law does not explicitly prohibit surname marriages, so customary rules that restrict marriage based on clan can be considered a form of discrimination against the individual's right to choose a life partner. This issue shows the disharmony between customary law and positive law, which in turn can lead to legal disputes and uncertainty in the application of marriage rules at the local level.

The discussion section in this research will be divided into several subsections to provide a more in-depth analysis. First, it will discuss the existence of customary law in marriage in Indonesia, including the recognition of customary law in the constitution and national regulations. Secondly, this research will discuss the practice of forced marriage and its implications in customary law and positive law. Thirdly, it will examine the prohibition of consanguineous marriages in certain indigenous communities and how these rules deal with the principles of national law. Finally, this research will offer harmonization between the two legal systems.

The Existence of Customary Law in Indonesia

Customary law is a legal system that developed in Indonesian society and still has a strong influence in various aspects of life, including in marriage practices. Although national law has regulated marriage through Law Number 1 Year 1974 on Marriage and updated with various other regulations, customary law

remains the main reference in many indigenous communities in Indonesia. The existence of customary law reflects the diversity of cultures and traditional values passed down from generation to generation.

One example of the existence of customary law in marriage is the Karo customary marriage practice. In Karo society, there is a rule that prohibits marriage between individuals who come from the same clan. This prohibition is absolute and if violated, the married couple can be expelled from their community. In addition, the marriage process in Karo custom has stages that must be followed, such as the procession of family introduction, *mbaba belo selemba*, and *nereh empowork*. This shows that customary law is still a binding rule in the community (Saragih, Sembiring, and Ginting 2023).

In West Sumatra, customary law also plays an important role in marriage through the traditions of Uang Japuik and Uang Hilang. Uang Japuik is a practice where the woman gives a sum of money to the prospective husband as a form of respect and a symbol of acceptance in the family. Meanwhile, Uang Hilang is a form of dowry given by the woman to the man in the form of money or goods and the gift does not require the man to return it. This tradition is still widely applied in the Minangkabau community, although in some cases it has been modified to align with national law (Asmelinda et al. 2023).

In addition to customary rules governing marriage procedures, customary law also relates to equality in the household. In the To Kulawi custom in Central Sulawesi, equality between husband and wife is a principle that is upheld. Women in this custom are given equal rights with men in various aspects of household life, including in economic, social and legal aspects. This is in line with *The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), which emphasizes the importance of gender justice in marriage law (Lasatu et al. 2023).

However, the existence of customary law in marriage also faces challenges due to the development of national law. One major change came with the Law on Sexual Violence (UU TPKS), which prohibits and criminalizes forced child marriage. In some customary communities, *mujbir* guardians (guardians who have the authority to marry off a child without consent) are still considered valid. However, with the enactment of the Anti-Sexual Violence Law, this practice began to be categorized as a criminal offense, which can be subject to legal sanctions (Fauziati, Abbas and Zainuddin 2024).

Based on historical analysis, customary law has a significant role in the development of the legal system in Indonesia. Its existence cannot be separated from the long history of interaction between customary law, Islamic law, and colonial law. Based on theories of Islamic law enforcement, customary law has an influence in determining the extent to which Islamic law can be applied in Indonesia. One theory that directly places customary law as a major factor in the enforcement of Islamic law is the *Receptie Theory* developed by Snouck Hurgronje and Van Vollenhoven. This theory states that Islamic law does not automatically apply to Muslims but must first be accepted or *recepted* by customary law. In other words, customary law has a higher position in determining the applicable law for the community, so that Islamic law can only be enforced if it is in accordance with the prevailing customary norms (Alamsyah et al. 2021; Aprilianti, Kasmawati, and

Hum 2022).

In contrast, the *Receptie in Complexu Theory* shows that prior to the arrival of the Dutch, Islamic law had been fully accepted by the Muslim communities of the archipelago and applied simultaneously with customary law. In this context, customary law does not become a filter or obstacle to the enactment of Islamic law but goes hand in hand as part of the legal system adopted by the community. However, the existence of customary law as part of the Indonesian legal system was challenged when the Dutch implemented the *Receptie Theory*. Since then, Islamic law can only apply if it is in accordance with customary law, which ultimately weakened the position of Islamic law and strengthened the dominance of customary law in the practice of law in Indonesia. Although after independence the *Receptie Exit* and *Receptie a Contrario* theories attempted to restore the supremacy of Islamic law without having to submit to customary law, the reality on the ground shows that customary law still has a strong existence in the national legal system (Sultan 2023; Rosdalina 2017; Sahid 2016).

From the various theories that have been described, it can be concluded that customary law has a strong position and continues to exist in the Indonesian legal system. Its role is not only limited as a social norm that develops in the community but is also formally recognized in various national legal regulations (Sigit Sapto Nugroho 2016). Despite shifts and changes in the dominance of the prevailing law, customary law remains one of the important elements in shaping Indonesia's unique legal identity, where traditional values are maintained in the context of modern law.

Forced Marriage in the Perspective of Customary Law and Positive Law

In the study of customary law and positive law in Indonesia, the practice of forced marriage in the form of "kawin tangkap" in Southwest Sumba is a clear example of conflict between traditional norms and state legal regulations. The customary law that developed in the Sumbanese community allows capture marriage as part of the cultural heritage, where the male party captures the woman as a symbol of marriage. However, in its development, this practice has been distorted, often carried out without women's consent, thus contradicting the principles of human rights and positive law in Indonesia (Ratulia Toriq 2023; Djaga Mesa and Putra Frans 2024).

In the perspective of customary law, capture marriage is considered a long-accepted social mechanism in the Sumba community. This tradition is often associated with the concept of high belis or dowry, which causes male families to choose the capture marriage route as an alternative solution (Djaga Mesa and Putra Frans 2024). Nonetheless, customary law is supposed to be flexible and adaptive to social change, especially when it comes to the protection of more vulnerable individuals, such as women (Cotterrel 2016).

In contrast, Indonesian positive law explicitly opposes the practice of forced marriage, as stipulated in Law No. 1/1974 on Marriage, which states that marriage is only valid if it is based on the consent of both parties. And it is only natural that the marriage bond is a right owned by everyone regardless of the intervention behind it (Mutrofin, Millatul, and Syarifah 2024). In addition, Law Number 12 of

2022 concerning Criminal Acts of Sexual Violence (TPKS) also regulates sanctions for parties who force someone to marry, including in the context of capture marriage.

From a human rights perspective, arranged marriage violates a woman's right to choose her life partner freely. This right is guaranteed in Article 28B of the 1945 Constitution and in various international conventions that have been ratified by Indonesia, such as *The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). Thus, the practice of capture marriage in a form that involves coercion cannot be justified from an international or national legal perspective.

The conflict between customary law and positive law in the case of capture marriage also shows the challenges in harmonizing the legal system in Indonesia. The legal pluralism adopted in Indonesia should allow customary law to be recognized, but with a note that customary law should not conflict with national legal norms, especially those related to the protection of human rights (Rika and Yanti 2023).

In the context of conflict resolution, the government has a strategic role in establishing dialogue between indigenous communities and law enforcement. This effort can be realized in the form of regional regulations that accommodate cultural elements while still ensuring the protection of women. Several regions in Indonesia have successfully implemented this approach by updating customary laws to align with national legal values (Fadli et al. 2024).

In conclusion, while customary law has an important role in shaping a community's cultural identity, practices that conflict with national law and human rights should be reviewed. Harmonization between customary law and positive law can be achieved through an approach that prioritizes dialogue, education, and strict law enforcement. Thus, the protection of women's rights can be strengthened without eliminating local cultural values that are still relevant to the principles of justice and equality.

Semarga Marriage in the Perspective of Customary Law and Positive Law

Customary law in various Batak indigenous communities explicitly prohibits consanguineous marriages. The Karo indigenous community, for example, strongly rejects marriage between individuals from the same clan because it is considered a form of violation of their patrilineal kinship system (Saragih, Sembiring and Ginting 2023). Likewise, in the Toba and Mandailing Batak indigenous communities, inbreeding is considered a form of incest that goes against customary norms (Oksavina 2023; Pohan 2017).

In customary law, this prohibition has strict social sanctions, ranging from ostracism to expulsion from the community (Saragih, Sembiring and Ginting 2023). This shows that customary law has a very strong influence on the social life of indigenous peoples, especially in shaping the values and norms that community members must obey.

However, it should be noted that not all indigenous communities have a uniform view of this prohibition. In the Batak Mandailing migrant community in Yogyakarta, for example, there has been a shift in meaning where this prohibition

has begun to be ignored due to economic factors, education, and cultural changes (Pohan 2017). People in overseas communities tend to be more flexible in interpreting customary rules because they are exposed to more universal legal norms.

To elaborate on the problem of inbreeding, there are at least a few cases that can be examined. These are as follows:

1. Karo Indigenous People, in Karo customary law, marrying within the same family is considered a serious form of customary violation. Couples who marry within the same family will face social sanctions, such as ostracization and expulsion from the community (Saragih, Sembiring, and Ginting 2023).
2. In the Toba Batak Indigenous Community, in the Toba Batak community, inbreeding is considered incest and is prohibited based on the rules of Dalihan Na Tolu. However, from a positive legal perspective, this marriage remains administratively valid (Oksavina 2023).
3. Migrant Mandailing Batak communities, Mandailing Batak communities who migrated to big cities, such as Yogyakarta, began to ignore this customary prohibition due to changes in the social and cultural environment (Pohan 2017). This phenomenon shows that customary law can change according to the needs of the community.

In Indonesian positive law, marriage is regulated by Law Number 1 Year 1974 on Marriage. In Article 1, it is stated that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on God Almighty.

Article 2 Paragraph (1) of the Marriage Law emphasizes that a marriage is valid if it is conducted according to the laws of each religion and belief. However, in Article 8 of the Marriage Law, only blood relations in the straight line of descent up and down are prohibited from marrying. This means that national law does not explicitly prohibit consanguineous marriages.

On the other hand, Article 18B paragraph (2) of the 1945 Constitution confirms the recognition of customary law communities and their rights if they are in accordance with the principles of the Unitary State of the Republic of Indonesia (NKRI). This means that customary law can still be applied in certain communities if it does not conflict with the values of national law. However, the indecisiveness of national law in dealing with cases of consanguineous marriage has created legal ambiguity for indigenous communities.

There is a fundamental difference between customary law and positive law in how they view inbreeding. In customary law, the prohibition of inbreeding has a strong cultural and historical basis, while in positive law, there is no provision that explicitly prohibits it. This legal conflict creates legal dualism for indigenous people who want to maintain their traditions, but at the same time also want to access legal rights guaranteed by the state. In some cases, couples who marry within the same family often experience administrative obstacles in registering their marriage due to opposition from the customary community (Pohan 2017).

In addition, it is necessary to analyze whether the prevailing customary law is still relevant to the current social conditions of society. In the context of

globalization and high social mobility, many couples are no longer bound by static customary norms. Inflexible customary law can be an obstacle in adjusting to the times.

A further problem is the impact of this legal conflict, which can create legal uncertainty for couples who want to marry but are rejected by their customary community. On the other hand, for indigenous communities that still uphold tradition, recognition of customary law provides legitimacy for their cultural values. Therefore, there needs to be a mechanism that bridges between customary law and positive law, for example through more flexible regulations or mediation between customary parties and the government.

In the context of legal pluralism in Indonesia, recognition of customary law must be done with a more dynamic approach. The state must ensure that individual rights are protected without ignoring local cultural values that are still upheld by indigenous communities. Although there is a legal adage that reads *ubi societas ibi ius* (where there is society, there is law), however, the reality of modern law has brought people's thinking to a more progressive paradigm by more critically assessing the traditionalities that exist in local communities. If then the existing norms in society are contrary to the reasoning of humanism in general, then it should be reviewed for relevance.

From the above analysis, it can be concluded that the conflict between customary law and positive law regarding inbreeding in Indonesia is still a matter of debate. Customary law strictly prohibits it with social sanctions, while positive law does not explicitly prohibit it. Therefore, harmonization between customary law and positive law is important to avoid imbalances in the implementation of law in society. More adaptive regulations and continuous dialogue between stakeholders can be a solution to balance the preservation of customary values with the protection of individual rights in the national legal system.

Harmonization of Customary Law and Positive Law in Indonesia

Customary law is one of the legal systems that has long developed in Indonesia and has an important role in regulating the lives of local communities. As a legal system that lives and develops along with social dynamics, customary law has values that are upheld by indigenous peoples. On the other hand, positive law as a legal system codified by the state serves to create legal certainty and equal justice for all citizens. However, in practice, there is often a gap between these two legal systems, which can lead to conflicts in their application.

The gap between customary law and positive law often arises when customary norms conflict with state legal rules. For example, in the case of customary marriage, some practices that are still practiced in indigenous communities are considered contrary to the principles of national law and human rights. A clear example is the practice of forced marriage or in-law marriage that still occurs in several regions in Indonesia. This practice in customary law is considered part of the tradition that must be preserved, but in the perspective of positive law it can be categorized as a violation of individual rights.

In Indonesia, customary law is recognized in the national legal system as stipulated in Article 18B paragraph (2) of the 1945 Constitution, which states that

the state recognizes and respects the unity of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. However, this recognition does not mean that customary law can be applied absolutely without regard to the principles of national law and the public interest.

The importance of harmonization between customary law and positive law is a must to strike a balance between respect for local values and broader legal protection. Legal harmonization aims to avoid norm clashes and ensure that customary law can continue to exist within the broader framework of national law. This requires a comprehensive approach and dialogue between stakeholders, from indigenous communities, academics and the government.

One of the efforts to harmonize existing laws in Indonesia is the concept of legal pluralism which allows various legal systems to continue to exist side by side by adjusting to each other. In this context, customary law is still recognized, but in its implementation, customary law must be adjusted to the norms of national law and human rights principles (Disantara 2021).

One example of the success of legal pluralism can be found in the regulation of agrarian law in Indonesia. The Basic Agrarian Law (UUPA) No. 5 of 1960 recognizes customary law in regulating land rights but still refers to national laws that regulate legal certainty for all parties. This shows that customary law can still exist without having to ignore the broader aspects of legality.

In the aspect of criminal law, several regions in Indonesia still apply customary law as a mechanism for resolving disputes in the community, such as the Aceh Qanun Jinayah which until now still applies Islamic sharia rules as the basis for resolving criminal matters. However, in some cases, the application of customary law creates a dilemma because it can conflict with the principles of national law, such as the right to a fair trial and protection from inhumane treatment. Therefore, there needs to be a mechanism that ensures that customary law can work in line with the positive legal system without harming individual rights.

In addition to the legal pluralism that has been enacted in Indonesia as an effort to realize legal harmonization, the most effective offer to bridge the gap between these two legal systems is the internalization of the Pancasila ideology as a basic guideline in the formation of rules / norms during society. Pancasila as a basic reference for the formation of regulations will certainly minimize deviations that occur both in the realm of organic and mechanical society (Ahmad Muhamad Mustain Nasoha et al. 2024). In this case, policies based on the same paradigm will produce more uniformity and understanding.

Going forward, more specific regulations are needed to accommodate the interests of indigenous peoples in various aspects of law, including in the civil, criminal and state administration fields. With more comprehensive regulations, there will be harmony between customary law and positive law without having to sacrifice either party.

In conclusion, harmonization of customary law and positive law is a necessity in the Indonesian legal system. With the right approach, both through

legal pluralism and the internalization of the Pancasila paradigm, it is hoped that an inclusive and equitable legal system can be created as stated in the 5th principle, namely, "Social justice for all Indonesian people." The government, academics, and indigenous peoples must work together to find the best solution so that customary law continues to live and develop without having to conflict with national law. Thus, Indonesian law can become more relevant and adaptive to the times without losing its own legal identity.

CONCLUSION

This research highlights the conflict between customary law and positive law in the practice of forced marriage and the prohibition of inbreeding that still occurs in several indigenous communities in Indonesia. The results show that forced marriage contradicts the principle of freedom in marriage guaranteed by positive law, especially the Marriage Law and the principle of human rights which emphasizes the free consent of both parties. Meanwhile, the prohibition of consanguineous marriages in customary law, although aimed at preserving the sacredness of kinship relations, often inhibits the right of individuals to choose their life partners, which may conflict with the principles of freedom and non-discrimination in positive law in Indonesia.

The imbalance between customary law and positive law in these two practices emphasizes the need for harmonization efforts so that the two can run synergistically-simultaneously without negating each other. This harmonization must be carried out with an approach that respects the cultural values of indigenous peoples without overriding the principles of national law and human rights, as well as efforts to internalize the Pancasila ideology as a basic guideline in the formation of rules/norms in Indonesian society. The government, academics, and customary law stakeholders need to work together to find common ground that allows customary law practices to continue to exist without contradicting broader regulations. Thus, the sustainability of customary law can be maintained, but in a corridor that is more in line with the development of modern law that emphasizes the protection of individual rights and the principle of justice.

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