

ANALYSIS OF CUSTOMARY LAW SANCTIONS IN CUSTOMARY MARRIAGE (HUMAN RIGHTS PERSPECTIVE FOR WOMEN)

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Abstract

This study analyzes customary law sanctions in traditional marriages, often contrary to human rights principles, especially for women. This study aims to evaluate the impact of customary law sanctions on women's rights and provide recommendations for improvement. The method used is a qualitative approach with case studies, which involves interviews with traditional leaders and women involved in customary marriages. The results of the study show that customary law sanctions tend to burden women, creating gender injustice and human rights violations.

Keywords: Customary Law; Human Rights; Woman; Penalty; Gender Equality.

Abstrak

Penelitian ini menganalisis sanksi hukum adat dalam perkawinan adat yang seringkali bertentangan dengan prinsip hak asasi manusia, terutama bagi perempuan. Tujuan penelitian ini adalah untuk mengevaluasi dampak sanksi hukum adat terhadap hak-hak perempuan dan memberikan rekomendasi perbaikan. Metode yang digunakan adalah pendekatan kualitatif dengan studi kasus, yang melibatkan wawancara dengan pemimpin adat dan perempuan yang terlibat dalam perkawinan adat. Hasil penelitian menunjukkan bahwa sanksi hukum adat cenderung memberatkan perempuan, menciptakan ketidakadilan gender dan pelanggaran hak asasi manusia.

Kata Kunci: Hukum Adat; Hak Asasi Manusia; Perempuan; Sanksi; Kesetaraan Gender.

I. INTRODUCTION

Customary law plays a crucial role in Indigenous peoples. It regulates social and cultural aspects and is a guideline for implementing customary marriage. In society, customary law reflects values and norms inherited from generation to generation,

maintaining harmony and balance in social life. Customary law regulates various aspects of life, including marriage, one of the most fundamental social institutions. People can maintain their cultural identity through customary law while adapting to the times.¹

¹ Raden Ajeng Diah Puspa Sari, "Perlindungan Dan Kesejahteraan Masyarakat Adat Dalam Memenuhi Hak-Haknya Berdasarkan Pasal 18B UUD 1945,"

Jurnal Hukum Dan Ham Wara Sains 2, no. 11 (2023): 1006–16, <https://doi.org/10.58812/jhhws.v2i11.730>.

As an integral part of culture, customary marriage in Indonesia often faces various problems that affect its implementation and sustainability. Some issues often arise include the prohibition of inter-tribal marriage, child marriage, and the difference between customary norms and state laws.

First, the prohibition of inter-tribal marriage is one of the main challenges in indigenous communities. In Minangkabau, inter-tribal marriage is prohibited and if violated, the person involved can be punished, such as being expelled from the village.² This prohibition is based on the principle of separation which emphasizes the importance of maintaining harmonious social and family relationships, so that violations of this prohibition can have a significant social impact on the individual.

Furthermore, underage marriage is also a crucial problem. Several studies show that out-of-wedlock pregnancies, poverty, and social pressure to maintain traditions often encourage parents to marry their children before reaching the age of legal adulthood.³ In this context,

child marriage not only violates children's rights, but can also result in serious mental and physical health impacts for the adolescents involved.

In addition, there is a shift between customary values and law. In Baduy society, marriage is regulated by local regulations that aim to protect their customary law while still striving to follow the provisions of national law.⁴ The process of reaching a compromise between tradition and law is often complex, with customary practices that may be at odds with national law faced with rejection from those who hold fast to tradition.

This issue highlights the tension between tradition and modernity and illustrates the need to develop a more inclusive perspective in understanding and facilitating marriage in Indonesia's diverse cultural context. Through pre-marital guidance and values education, communities must overcome these challenges while respecting existing cultural heritage.⁵

Lastly, problems related to customary marriage require serious attention so that

² Aulia Fitri, "Penerimaan Diri Dengan Konseling Realita Terhadap Larangan Perkawinan Sesuku Di Minangkabau," *Ristekdik Jurnal Bimbingan Dan Konseling* 6, no. 1 (2021): 102, <https://doi.org/10.31604/ristekdik.2021.v6i1.102-108>.

³ Desi P Sari, "Pendapat Mahasiswa Universitas Negeri Medan Mengenai Umur Awal Pernikahan Remaja Perempuan Kurang Dari 20 Tahun," *Tunas Geografi* 7, no. 2 (2019): 83, <https://doi.org/10.24114/tgeo.v7i2.11646>; Flavia A Sahwa and Tharshini Sivabalan, "Meneroka Isu Perkahwinan Bawah Umur Dari Perspektif Undang-Undang Perkahwinan Adat Di Sarawak," *Malaysian Journal of Social Sciences and Humanities (Mjssh)* 8, no. 4 (2023): e002279, <https://doi.org/10.47405/mjssh.v8i4.2279>.

⁴ Muhamad Muslih, "Perbandingan Prosedur Perkawinan Adat Baduy Dengan Kompilasi Hukum Islam," *Kanun Jurnal Ilmu Hukum* 21, no. 3 (2020): 437–58, <https://doi.org/10.24815/kanun.v21i3.14302>.

⁵ Fitri Yanti and Darmayanti Darmayanti, "Adat Pernikahan Suku Bugis Di Kelurahan Tagaraja Kecamatan Kateman Sungai Guntung Provinsi Riau," *Historia Jurnal Program Studi Pendidikan Sejarah* 3, no. 2 (2019), <https://doi.org/10.33373/j-his.v3i2.1688>; Witrin N Justiatini and Muhammad Z Mustofa, "Bimbingan Pra Nikah Dalam Mbenentukan Keluarga Sakinah," *Iktisyaf Jurnal Ilmu Dakwah Dan Tasawuf* 2, no. 1 (2020): 13–23, <https://doi.org/10.53401/iktsf.v2i1.9>.

traditions can occur properly and relevant during changing times and existing lawsuits.

However, in implementing customary law, sanctions can often have implications for human rights, especially for women. Customary law sanctions applied in customary marriages often contradict human rights principles, guaranteeing equality and protection for all individuals, including women. In many cases, women are victims of rigid norms and unfair sanctions, which can result in violations of their rights.⁶ Therefore, this study aims to analyze customary law sanctions in customary marriage from the perspective of human rights for women.

This research is relevant to human rights, especially to understanding how customary law can function as an instrument of protection or a tool of oppression against women. Many indigenous peoples experience gender injustice that is internalized in their practices. This research will answer key questions: What customary law sanctions are applied in customary marriages? How do these sanctions affect women's human rights? And what steps can be taken to ensure customary law aligns with human rights principles?

This study aims to better understand the interaction between customary law and human

rights, especially in customary marriage. It also aims to identify and analyze existing sanctions and their impact on women. Thus, this research is expected to provide constructive recommendations for improving a more equitable and gender-just customary law system.⁷

The contribution of this research to law and society is very significant. Academically, this research will add to the treasure trove of knowledge about customary law and human rights and open up discussions on the need to reform discriminatory customary law practices. In addition, this research is expected to provide insight for policymakers and stakeholders in formulating more inclusive and equitable policies for women in the context of customary law. Thus, this research will benefit the academic world and the wider community, especially women often marginalized in the existing legal system.⁸

This study will use a qualitative approach with a case study method to achieve this goal. This method allows researchers to gather in-depth information about customary law practices and their impact on women. Data will be collected through interviews with traditional leaders, women involved in customary marriages, and other relevant

⁶ Imam Sukadi and Mila R Ningsih, "Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga," *Egalita Jurnal Kesetaraan Dan Keadilan Gender* 16, no. 1 (2021), <https://doi.org/10.18860/egalita.v16i1.12125>.

⁷ Damara Wibowo, "Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga Menurut Hak Asasi Manusia Selama Proses

Penyidikan," *Jurnal Usm Law Review* 4, no. 2 (2021): 818, <https://doi.org/10.26623/julr.v4i2.4187>.

⁸ Maryam Salampeppy, "Peran Hukum Dalam Mewujudkan Perlindungan Hak Asasi Manusia: Analisis Bibliometrik Atas Kontribusi Penelitian (Protection of Human Rights)," *Jurnal Hukum Dan Ham Wara Sains* 2, no. 08 (2023): 680–89, <https://doi.org/10.58812/jhhws.v2i08.600>.

parties. The data analysis will consider the perspective of human rights so that the research results can provide a comprehensive picture of the issues women face in customary law.⁹

Thus, this research is expected to protect women's human rights meaningfully and encourage positive changes in customary law practices that are more fair and gender-just. Through a better understanding of customary law sanctions and their impacts, it is hoped that the community can develop a more inclusive legal system and respect the rights of every individual, especially women.¹⁰

II. RESEARCH METHOD

This study uses doctrinal or normative legal study, which uses law as a fundamental norm. The norm system concerns principles, norms, and legislation regarding the case quo. This study also uses a conceptual approach that involves the analysis of legal concepts and theories related to the issues raised. It uses primary legal materials that are authoritative and binding, such as laws and regulations, and secondary legal materials. This study uses legal interpretation techniques as analysis techniques.

⁹ Suartini Suartini, "Pendekatan Restorative Justice Dalam Rangka Perlindungan Hukum Bagi Perempuan Dan Anak Sebagai Korban KDRT," *Binamulia Hukum* 12, no. 1 (2023): 161–75, <https://doi.org/10.37893/jbh.v12i1.598>.

¹⁰ Syahla A Pramana, "Perlindungan Hukum Terhadap Perempuan Pada Kasus 698/Pid.Sus/2023/PN BLB Berdasarkan Perspektif Judicial Pardon," *Keadilan* 2, no. 1 (2024): 12–19, <https://doi.org/10.62565/keadilan.v2i1.38>.

III. RESULT AND DISCUSSION

1. Customary Law Sanctions in Marriage

Customary law is integral to people's lives, located in Southeast Sulawesi. In the context of marriage, customary law regulates several aspects, including sanctions for violations of applicable norms. These sanctions serve as a form of punishment and a mechanism to maintain social harmony and preserve cultural values. However, applying customary law sanctions often raises questions about justice and equality, especially in the context of human rights for women. Therefore, it is important to analyze customary law sanctions in marriage and how their application can affect society, especially women.

Customary law sanctions in marriage can be divided into several categories, depending on the type of violation committed. Violations of customary marriage norms can include adultery, violation of the marriage agreement, or acts deemed to damage the family's honor. The sanctions imposed are usually collective and involve indigenous communities, thus creating social pressure for violators.¹¹

In society, adultery is considered a serious violation of customary norms. The

¹¹ Nova T D Syafitri, "Efektivitas Sanksi Adat Sebagai Alternatif Hukum Bagi Pelaku Perzinaan Menurut Hukum Islam," *JCL* 1, no. 2 (2024): 10, <https://doi.org/10.47134/jcl.v1i2.2360>; Tri A Handayani, "Analisis Hukum Pidana Adat Dalam Hukum Pidana Nasional," *Jurnal Hukum Ius Publicum* 5, no. 1 (2024): 89–105, <https://doi.org/10.55551/jip.v5i1.95>.

sanctions imposed can be fines, ostracism, or even restoration rituals involving all community members. This sanction aims to restore the honor of the family tainted by the act.¹²

Customary law also protects agreements before marriage, such as dowries and other commitments. Violating these agreements may result in sanctions, such as fines or the obligation to perform certain rituals as a form of accountability.¹³

Actions deemed damaging to family honor, such as a high-profile dispute in public, may be subject to heavier social sanctions. These include exclusion from social activities or customary rituals, which can significantly impact an individual's social status.¹⁴

Customary law sanctions are applied in the community through customary institutions with the authority to enforce these norms. The

process usually involves several stages, including evidence collection, mediation, and final decisions by traditional leaders. It is often informal and not bound by formal legal procedures, leading to uncertainty in law enforcement.¹⁵

Traditional leaders collect information from the parties involved and witnesses in cases of violations. The violator and the aggrieved party then mediate to reach an agreement. This process aims to restore social relations and prevent further conflicts.¹⁶

After the mediation process, traditional leaders will determine the sanctions to be imposed. These decisions are typically based on prevailing customary norms and consider the social context of the violation that occurred. The community must accept the sanctions applied, creating legitimacy in their enforcement.¹⁷

¹² Syafitri, "Efektivitas Sanksi Adat Sebagai Alternatif Hukum Bagi Pelaku Perzinaan Menurut Hukum Islam"; Muhammad R Nasution, "Analisis Hukum Pidana Adat Melayu Jambi Terhadap Pelaku Tindak Pidana Pelecehan Seksual (Studi Di Lembaga Adat Melayu Jambi Tanah Pilih Pusako Batuah)," *Ranah Research Journal of Multidisciplinary Research and Development* 6, no. 5 (2024): 2201–9, <https://doi.org/10.38035/rrj.v6i5.1107>.

¹³ Yohanes W Dasor, "Revitalisasi Peran Lembaga Adat Dalam Penanganan Konflik Sosial: Studi Di Manggarai Nusa Tenggara Timur," *Sosio Konsepsia* 9, no. 3 (2020), <https://doi.org/10.33007/ska.v9i3.1859>.

¹⁴ Laila M Rasyid, "Penerapan Norma Adat Terang Dan Tunai Dalam Praktek Pe-Radilan Perdata (Kajian Putusan Pengadilan Nomor: 23/Pdt.g/2013/Pn.Bj)," *Reusam Jurnal Ilmu Hukum* 7, no. 2 (2019): 1, <https://doi.org/10.29103/reusam.v7i2.2244>; Achmad Surya and Hasan Basri, "Eksistensi Sanksi Adat Jeret Naru Dalam Masyarakat Gayo Di Kabupaten Aceh Tengah," *Masalah-Masalah Hukum* 49, no. 4 (2020): 359–68, <https://doi.org/10.14710/mmh.49.4.2020.359-368>.

¹⁵ Nur S Ulfiyati and Akh. S Muniri, "Perbedaan Sanksi Bagi Pelaku Zina Dalam Hukum Pidana Islam Dan Hukum Pidana Positif," *Usrah Jurnal Hukum Keluarga Islam* 3, no. 2 (2022): 80–94, <https://doi.org/10.46773/usrah.v3i1.482>; Kristian V Griapon and Samsul Ma'rif, "Pola Penerapan Hukum Adat Dalam Penyelenggaraan Pembangunan Di Wilayah Pembangunan III Grime Kabupaten Jayapura-Papua," *Jurnal Wilayah Dan Lingkungan* 4, no. 1 (2016): 13, <https://doi.org/10.14710/jwl.4.1.13-28>.

¹⁶ Yohanes W Dasor, "Nilai-Nilai Good Governance Dalam Tata Kelola Lembaga Adat Masyarakat Manggarai Nusa Tenggara Timur," *Jurnal Adat Dan Budaya Indonesia* 5, no. 2 (2023): 98–108, <https://doi.org/10.23887/jabi.v5i2.59400>; Gede R S Wiweka, "Settlement of Sexual Violence Against Children Based on Balinese Customary Law," *Policy Law Notary and Regulatory Issues (Polri)* 3, no. 2 (2024): 240–51, <https://doi.org/10.55047/polri.v3i2.1120>.

¹⁷ Maria E Bupu, "Pemberian Sanksi Dalam Perceraian Adat Di Desa Inerie, Kecamatan Inerie, Kabupaten Ngada," *Comserva Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 02 (2023): 476–85, <https://doi.org/10.59141/comserva.v3i02.784>; Erikson

Customary law sanctions often have a disproportionate impact on women. In many cases, women are the main targets of social sanctions, especially in cases of adultery. This creates gender injustices that need to be considered in the analysis of customary law.¹⁸

2. Impact of Sanctions on Women

Customary law sanctions in society, as in many other Indigenous communities, significantly impact women. These sanctions are often rooted in social and cultural norms that govern individual behavior in the context of marriage. Although these sanctions aim to maintain social harmony and integrity, their application is often unbalanced and can harm women. This analysis will discuss how customary law sanctions affect women's rights, focusing on justice, equality, and human rights protection.

Customary law sanctions in marriage can be fines, exclusion, or restoration rituals involving the entire community. In many cases, women are the main targets of these

sanctions, especially in the context of violations that are considered to damage family honor. For example, in cases of adultery, women are often seen as more responsible and can be subject to heavier sanctions than men.¹⁹ This creates deep gender injustices, where women are not only socially punished but also deprived of their rights as individuals.

Sanctions applied in cases of violation of customary norms often do not take into account the context and gender role. In many Indigenous communities, including, women are often seen as weaker and more vulnerable to social sanctions. For example, in cases of adultery, women may be subject to hefty fines or even exclusion from the community. At the same time, men may only be subject to light sanctions or even forgiven.²⁰ This creates a prolonged stigma against women and reduces their rights to participate in social life.

Severe customary law sanctions can have significant social and psychological

Sihotang, "SANKSI ADAT DAN PIDANA YANG BERBARENGAN DALAM TINDAK PIDANA PENCABULAN ANAK KAITANNYA DENGAN ASAS NEBIS IN IDEM (Studi Di Desa Adat Tanglad, Kecamatan Nusa Penida, Kabupaten Klungkung)," *Mimbar Keadilan* 12, no. 2 (2019): 211, <https://doi.org/10.30996/mk.v12i2.2477>.

¹⁸ Irischa A Pancarani, "Perlindungan Hak Kepemilikan Tanah Masyarakat Desa Pakel: Penelusuran Legal Standing Akta 1929 Dalam Sengketa Tanah Dengan PT. Bumi Sari," *Tunas Agraria* 6, no. 2 (2023): 110–24, <https://doi.org/10.31292/jta.v6i2.225>; Gede A P Putra, Anak Agung Sagung Laksmi Dewi, and Luh P Suryani, "Eksistensi Sanksi Adat Kasepekan Di Desa Adat Banjar Cukcukan Desa Medahan Kecamatan Blahbatuh Kabupaten Gianyar," *Jurnal Preferensi Hukum* 3, no. 3 (2022): 508–16, <https://doi.org/10.55637/jph.3.3.5595.508-516>.

¹⁹ Sihotang, "SANKSI ADAT DAN PIDANA YANG BERBARENGAN DALAM TINDAK

PIDANA PENCABULAN ANAK KAITANNYA DENGAN ASAS NEBIS IN IDEM (Studi Di Desa Adat Tanglad, Kecamatan Nusa Penida, Kabupaten Klungkung)"; Dede S D Suryanto, "Dinamika Pelaksanaan Hukum Adat Dayak Ngaju Dalam Penyelesaian Sengketa Tanah Di Kalimantan Tengah," *Vyavahara Duta* 19, no. 1 (2024): 68–76, <https://doi.org/10.25078/vyavaharaduta.v19i1.3174>.

²⁰ Lidya I Rachmat, "Sistem Hukum Adat Dayak Mualang Butang Dalam Kajian Aspek Hukum Dan Budaya," *Jurnal Hukum Dan Ham Wara Sains* 2, no. 11 (2023): 1017–23, <https://doi.org/10.58812/jhhws.v2i11.734>; Halil Khusairi and I M P Mandala, "Perkawinan Adat: Analisis Hukum Dan Sistem Perkawinan Di Kerinci Dalam Perspektif Hukum Islam," *Istinbath* 21, no. 2 (2023): 227–42, <https://doi.org/10.20414/ijhi.v21i2.565>.

impacts on women. Exclusion from the community or social stigma can result in isolation, loss of social support, and even mental health issues. Women who are sanctioned often feel pressured and marginalized, which can affect their overall quality of life.²¹ In this context, women's rights to social protection and support are neglected.

3. Human Rights and Protection of Women

In the context of human rights, applying unfair customary law sanctions against women violates the principles of equality and the protection of human rights. Discriminatory and unbalanced sanctions can be considered a violation of women's rights to fair and equal treatment under the law. This highlights the need for reforms in applying customary law to be more inclusive and respect all individuals' rights, especially women.²²

Reforms that consider human rights perspectives are needed to address the injustices experienced by women due to customary law sanctions. These reforms could

include reviewing discriminatory customary norms and applying fairer and more equitable sanctions. For example, in the case of adultery, sanctions must be applied proportionately and consider the role of both parties, not just women.²³

In addition to legal reform, education and social awareness play important roles in changing people's views of women and customary law sanctions. The community must be empowered to understand the importance of gender equality and human rights so that the sanctions are no longer discriminatory. Educational programs emphasizing gender equality and protecting women's rights can help reduce stigma and support women in the face of customary law sanctions.²⁴

4. Comparison between Customary Law and Positive Law Regarding the Protection of Women

Customary and positive laws in Indonesia significantly regulate people's lives, including safeguarding women's rights. Customary law, shaped by a society's culture and traditions, often embodies enduring local

²¹ Yohanes Sali, "Tradisi Belis Menurut Pandangan Gereja Katolik (Studi Kritis Terhadap Perkawinan Adat Ende-Lio Berdasarkan KHK No.1057)," *Br* 2, no. 1 (2023): 52–61, <https://doi.org/10.52075/br.v2i1.128>; Syafitri, "Efektivitas Sanksi Adat Sebagai Alternatif Hukum Bagi Pelaku Perzinaan Menurut Hukum Islam."

²² Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170–96, <https://doi.org/10.14710/jphi.v4i2.170-196>; Bupu, "Pemberian Sanksi Dalam Perceraian Adat Di Desa Inerie, Kecamatan Inerie, Kabupaten Ngada."

²³ Sali, "Tradisi Belis Menurut Pandangan Gereja Katolik (Studi Kritis Terhadap Perkawinan Adat Ende-

Lio Berdasarkan KHK No.1057)"; Afifah T Miladya, "Perlindungan Hukum Bagi Korban Perkawinan Siri Sesama Jenis Yang Terjadi Karena Pemalsuan Identitas Salah Satu Pihak," *Comserva Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 06 (2023): 2342–51, <https://doi.org/10.59141/comserva.v3i06.991>.

²⁴ Fredrikus Nono, "Belis: Sebuah Tradisi Perkawinan Suku Dawan," *Jurnal Teologi Dan Pelayanan Kerusso* 7, no. 1 (2022): 39–50, <https://doi.org/10.33856/kerusso.v7i1.182>; Marce Diana, "Nilai – Nilai Sosial Di Dalam Perkawinan Adat Dayak Maanyan Di Kota Banjarmasin," *Jurnal Socius* 8, no. 1 (2019), <https://doi.org/10.20527/jurnalsocius.v8i1.6444>.

values and social norms. In contrast, positive law, created by the state, aims to provide legal certainty and uphold individual rights based on universal principles. When considering women's protection, examining how these two legal systems interact and contribute to safeguarding women's rights is crucial.

As in many other indigenous communities, customary law in society often has norms and sanctions that can affect women's rights. In many cases, sanctions applied in the context of violations of customary norms can be discriminatory against women. For example, in cases of adultery, women are often subjected to harsher sanctions than men, creating deep gender injustices.²⁵ This shows that although customary law serves to maintain social harmony, its application is often not in line with human rights principles.

In many Indigenous communities, they are often seen as weaker and more vulnerable. Sanctions imposed on women in cases of violation of customary norms are often more severe, creating significant stigma and social impact. This shows that customary law, while having important local values, often does not provide adequate protection for women.²⁶

Customary law also has limitations regarding the enforcement of women's rights. The dispute resolution process is often informal and not bound by formal legal procedures, resulting in uncertainty and injustice in protecting women's rights.²⁷ In many cases, women do not have equal access to the customary institutions authorized to resolve disputes, so their rights are often neglected.

Positive law, established by the state, provides clearer and more structured legal protection for women. Various laws have been passed in the Indonesian context to protect women's rights, including the Law on the Elimination of Domestic Violence (PKDRT) and the Law on Child Protection. Positive law provides a clearer framework for upholding women's rights and providing sanctions for violators.²⁸

Positive law offers better protection for women against violence and discrimination. For instance, the PKDRT Law provides legal safeguards for women who are victims of domestic violence by imposing sanctions on perpetrators and ensuring access to protection and rehabilitation for victims. This indicates that positive law can act as a tool for

²⁵ Zaka F Aditya, "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 37, <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

²⁶ Abdurrahman S Usman, "Lingkungan Hidup Sebagai Subjek Hukum: Redefinisi Relasi Hak Asasi Manusia Dan Hak Asasi Lingkungan Hidup Dalam Perspektif Negara Hukum," *Jurnal Ilmiah Hukum*

Legality 26, no. 1 (2018): 1, <https://doi.org/10.22219/jihl.v26i1.6610>.

²⁷ Raffi Alfiansyah, "Hukum Dan Hak Asasi Manusia Dalam Lingkungan Masyarakat," *DeCive* 2, no. 3 (2022): 88–95, <https://doi.org/10.56393/decive.v2i3.1500>.

²⁸ Hermanus W Hapsoro, "Perlindungan Hukum Bagi Perempuan Dan Anak Sebagai Korban Perdagangan Manusia," *Ristek Jurnal Riset Inovasi Dan Teknologi Kabupaten Batang* 8, no. 1 (2023): 26–34, <https://doi.org/10.55686/ristek.v8i1.153>.

safeguarding women's rights and delivering justice.

Positive law also provides women with better access to justice. A formal and structured legal process allows women to file lawsuits and obtain protection from the state. This differs from customary law, where women are often marginalized in dispute resolution.²⁹ With positive law, women have the right to be protected and get justice, which is part of their human rights.

A comparison between customary law and positive law in the context of women's protection shows that although they share the same goal of protecting individual rights, their approaches and implementations are very different. Customary law often reflects patriarchal norms that can be detrimental to women, while positive law provides a clearer and more structured framework for protecting women's rights.

Although customary law has important cultural values, it must be reformed to ensure it does not violate human rights, especially women's. On the other hand, positive law must continue to be strengthened and implemented effectively to ensure that women's rights are protected and recognized in society. Thus, collaboration between customary law and positive law can create a fairer and more inclusive legal system for women in Indonesia.

IV. CONCLUSION

This study demonstrates that customary law sanctions within customary marriages significantly affect women, often leading to serious gender injustices. The sanctions imposed, especially in cases of norm violations like adultery, are typically harsher for women than for men, highlighting disparities in the enforcement of customary law. This leads to a breach of human rights principles, particularly women's right to fair and equal treatment.

From a human rights perspective, reforms in customary law practices are needed to reduce discrimination and ensure better protection for women. Reform measures should involve reviewing discriminatory customary norms, applying more proportionate sanctions, and increasing social awareness of the importance of gender equality. Thus, customary law is hoped to function as an instrument of fair protection for women, not as a tool of oppression.

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²⁹ Dwi H Prasetyo and Ratna Herawati, "Tinjauan Sistem Peradilan Pidana Dalam Konteks Penegakan Hukum Dan Perlindungan Hak Asasi

- Masyarakat.” *DeCive* 2, no. 3 (2022): 88–95.
<https://doi.org/10.56393/decive.v2i3.1500>.
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