

## REVIEW OF CUSTOMARY DIVORCE IN MANIPI VILLAGE, PANA DISTRICT, MAMASA DISTRICT

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Received 21 Sept 2023 • Revised 20 Oct 2023 • Accepted 29 Nov 2023

### Abstract

Customary Law is the original Law that grows and develops from the habits of society, which significantly influences the enactment of Law in Indonesia, and this customary Law is very diverse in Indonesia. Particularly in the Mamasa Regency area, this customary Law is more important and used by the people there. One area that still implements or applies customary Law in the divorce process in its territory is the Mamasa district. Therefore, the authors researched to examine the process of carrying out customary divorce based on Mamasa customary law in Mamasa Regency and how to impose sanctions on implementing customary divorce based on Mamasa customary law in Mamasa Regency. Divorce in Manipi Village, Pana District, Mamasa Regency still uses customary Law. Mamasa is where there is no need to bring a divorce suit to court, but it can be carried out according to custom; apart from that, there are also customary sanctions for perpetrators of divorce. This writing uses nonmatof research with a statutory and conceptual approach. Divorce according to custom in Manipi Village, Pana Subdistrict, Mamasa Regency, namely through customary judges and the local government, and giving Mamasa customary divorce sanctions (Kapaa) based on Tana' (caste) where the customary sanctions are in the form of buffalo and pigs, but due to developments the times, the payment of Kapaa at this time is by the agreement of the family in a case in the form of money or anything that costs a pig or buffalo.

**Keywords:** divorce; custom; mamasa

## INTRODUCTION

According to nature, humans are social beings who will need an eternal relationship with other humans of different sexes at a particular time. The eternal relationship will be united through the bond of marriage. The definition of marriage, according to Article 1 of Law Number 1 the Year 1974, is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on Belief in the One Supreme God.

As formulated in Article 1 of Law No. 1 of 1974 concerning marriage, this marriage has a very close relationship with Religion, so this marriage does not only have a physical/physical element but has a vital role. Marriage is an activity that aims to form a happy and eternal family (household). Determining the age limit for marriage is very important because marriage requires biological and psychological maturity as well as physical and mental maturity. At first, marriage was intended to achieve eternal happiness for the husband and wife. Still, in reality, many causal factors trigger problems in married life, so the couple decides the last and best way is by way of divorce. As a constitutional and archipelagic state, Indonesia is inhabited by people from Sabang to Merauke, with various ethnicities, cultures, religions, and languages. This diversity also affects the laws in each area, known as Customary Law. The customary Law that applies to each tribe or region in Indonesia varies. The State of Indonesia recognizes the existence of customary Law as stated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states: "The state recognizes and respects customary law community units along with their traditional rights throughout their lifetime and by the development of society. The Law regulates the Unitary State of the Republic of Indonesia's principles.

Customary Law is the original Law that grows and develops from the habits of society, which significantly influences the enactment of Law in Indonesia, and this customary Law is very diverse in Indonesia. Thus, there will be obstacles in general, but it is efficient enough for the local community to implement it. When calculated, more people obey and obey customary Law rather than state law.

Particularly in the Mamasa Regency area, this customary Law is more important and used by the people there. All the things that happen in society, both positive and negative, are mainly done to carry out the customs or customary laws that have been regulated in the area.

Customary Law is a rule of human habits in community life; in addition, customary Law is defined as a habit, which in general must apply in unwritten society, but customary Law applies in their respective areas. Many areas in Indonesia still adhere to customary Law, one of which is Mamasa Regency, West Sulawesi.

Mamasa is a very thick area with its customs and culture, although not all regions still adhere to these laws because of the influence of Religion and the times. Marriage is a bond between a man and a woman to live together, to build a new household, to live to procreate, which is 'conducted/formalized according to the provisions or by the beliefs of each Religion, which humans cannot dissolve. According to Islamic Law, what is meant by marriage is worship and a contract that justifies association and limits rights and obligations as well as mutual assistance between a man and a woman who are not mahram.

One area that still implements or applies customary Law in the divorce process in its territory is the Mamasa district. Based on the language Ada', namely habits or norms, and also in the form of Tuo's words, namely life. So, it can be concluded that Ada' Tuo is a rule of life that regulates the life of the people in the Mamasa district. Regarding the form, Ada' Tuo deliberated until there was a result because there were no written rules. Divorce is according to the Mamasa custom where there is no need to bring a divorce suit to court but can be carried out according to custom; this divorce can also only be attended by the perpetrator, Community Traditional Leaders, head of government (Village), and Religious Figures. This divorce is done by saying, "Mother. Where the Mak'bisara event is carried out to get the desired result, namely divorce, the perpetrators and usually the plaintiffs also get customary sanctions.

Therefore, the authors researched to examine the process of carrying out customary divorce based on Mamasa customary law in Mamasa Regency and how to impose sanctions on implementing customary divorce based on Mamasa customary law in Mamasa Regency.

## RESEARCH METHOD

The research used in this paper uses normative legal research. Normative legal research includes legal principles, legal systematics, level of legal synchronization, legal history, and comparative Law. This type of research is often referred to as research on library materials or secondary data because this research focuses on library materials, which lead to normative research.

This is often also referred to as doctrinal research or library research. This research uses the Statute Approach and conceptual approach.

## RESULTS AND DISCUSSION

Divorce is undesirable and considered disgraceful for Religion, custom, and society in general. However, sometimes it cannot be denied that there is a problem in the household that causes a divorce, which is sometimes seen as a solution/way out. In the Mamasa district itself, divorce is still known and carried out according to custom which is called *sisarak*. From the origin, he said *Sisarak* means to separate. So if someone decides to divorce according to the Mamasa custom, they can no longer live together as husband and wife in the future.

**Table 1.** Data Perceraian Secara Adat Di Desa Manipi' Kecamatan Pana' Kabupaten Mamasa

No	Nama		Pekerjaan		Tana'		Yang Bersalah	Kapa'		Tahun
	Suami	Istri	Suami	Istri	Suami	Istri		Yang Seharusnya	Yang Dibayar	
1	S	B	Buru	IRT	Karurung	Bassi	suami	1ekor Kerbau	Uang seharga (Rp.10.000.000)	2008
2	P	T	Tani	IRT	Kua-Kua	Kua-kua	Suami	1-2ekor kerbau	1ekor kerbau dan 1 Rumah	2018
3	K	B	Buru	IRT	Kua-kua	Kua-kua	Suami	1ekor Kerbau	Uang seharga (Rp.15.000,000)	2016
4	S	N	Tani	IRT	Karurung	Kua-Kua	Suami	2 Ekor Kerbau	1 ekor Kerbau	2022

Sumber Data: Data Primer diolah tahun 2023.

In the Manipi lembang, the head of the lembang emphasized that he would maintain one of these customary laws because it was considered that the community was more obedient to the customary Law. The process was clear and not complicated, and it was considered more accessible if something happened in the household that cause divorce because waiting to go to court will slow down the time/time to be handled. Looking at the cases that have occurred, there has been a divorce in court and the process was too long, so the case was not resolved, and the child was abandoned, The head of Lembang says that:

"innang manassa madommi' yes, you know how to respond to ada' mot u ma'kada, tae' sorrow ma'sule-sule tu know saba' madommi' dira'tai', na madommi' grief is in dakaran anakna lalan."

This means that indigenous peoples are more afraid of their customary Law and the process is faster and also anticipates that these children are not abandoned. This customary Law is emphasized so that the community is not arbitrary in their household. If something happens, the local government and the customary judge will move quickly to resolve the problem.

Perceraian tidak jarang berakibat pada terlantarnya pengasuhan anak, dewasa ini cerai dianggap sebagai jalan keluar untuk rumah tangga yang tidak bisa lagi diselamatkan. Setiap pasangan menikah tentu tidak mengharapkan terjadinya perceraian, akan tetapi jika hubungan rumah tangga tetap dilakukan selalu memunculkan konflik antara suami istire yang sudah berbeda pandangan hidup. Hingga jalan tengahnya pasangan suami isteri menempuh jalur hukum melalui perceraian.

Penyelesaian perselisihan pada masyarakat adat lebih mengedepankan musyawarah mufakat untuk damai, menjunjung tinggi nilai kebersamaan secara lahir-batin, dan menjaga kepentingan komunal dibanding individual.

The customary judge in Manipi Village said that "as a community with adat, we must study and understand that the background of Customary Law exists and is still passed down by our parents, not for things that are aggravating, but there are indeed things that must be punished or given sanctions if it is done for the sake of maintaining harmony in customary society and Customary Law also guarantees that people who are in dispute can resolve their problems and the decision will be well received.

Whereas in customary divorce, especially in the Manipi village, there is a gap between the settlement of cases at the rukun level, the village level, and the lembang level. At the rukun and kampung levels, it will be resolved by the head of the rukun and elder community leaders, but if it cannot be resolved, it will move up to the lembang level by three customary judges who are chosen by the lembang. Several procedures are carried out through 2 mechanisms, namely:

- a. some parties apply for a divorce to the adat judge, both the female and male parties, then the adat judge summons the two parties who are in a case together with their families, sit down together, and deliberate.
- b. The customary judge (Ada') or the government takes the initiative to directly summon the parties and the family to sit together for deliberation even though neither party is filing for divorce, this is done by the customary judge or the local government by observing that there is a household that is no longer harmonious, this it is also a responsibility for customary judges or local governments to create peace in these indigenous peoples.

The customary judge or the head of the Manipi Village Lembang sometimes takes the initiative to summon the party concerned without waiting for one of the parties to report the matter to be resolved quickly by ada' because the judge said that:

"Buda, you know, Masarak is male, bang, na tampe tae', my son's problem is that Kamai Mi is his son"

This means that often many people leave their wives or husbands without thinking that they already have children, they have a religion. So, from that the customary judge emphasized and decided that if someone wants to have a religious marriage they must also have a traditional marriage, then from here the custom will immediately go down to resolve if there is a problem in the future.

There are various reasons for a divorce in Manipi Village, namely adultery and leaving a partner without a proper/legal reason. Then the one who is found guilty, it is he who will pay the customary sanctions for the divorce which is undoubtedly based on the agreement when making an application where deliberation is held or determines the amount of punishment which is dropped according to Tana' if someone destroys his household later on. However, the agreement at the time of application may change according to the considerations and agreements in the deliberations. There are several caste arrangements (Tana'), namely:

Utama thinks that customary law communities are a semi-autonomous social area because they can produce regulations, habits, symbols for the internal; can make laws and encourage and enforce obedience on its members, Divorce in the community in Manipi Village applies customary sanctions, in which those who carry out divorces are those who are considered guilty and have committed violations in traditional society and must be given sanctions. Several sanctions are due to a violation that causes a customary divorce and sanctions have been enforced in the form of fines based on the Tana' value of those who violate them, namely:

- a.) Tana' Bulawan Tana' value is 12 to 24 buffaloes (tedong sangpala)
- b.) Tana' Bassi's Tana' value is 6 buffaloes (tedong sangpala)
- c.) Tana' Karurung's Tana' value is 2 buffaloes (tedong sangpala)
- d.) Tana' Kua-Kua's Tana' value is not assessed, but only as a condition where 1 female pig has given birth, her name is bai doko

The reason for the traditional leaders saying that sanctions could be in the form of buffalo or pigs was because in ancient times, not all people owned pigs, let alone buffalo, so that was used as a sanction so that people thought it was not okay to commit violations in a traditional society, especially with the Tana' value, which is the number different.

Fungsi hukum adalah, sebagai Fungsi Perlindungan, yaitu hukum melindungi masyarakat dari ancaman bahaya; Fungsi Keadilan, yaitu hukum sebagai penjaga, pelindung dan memberikan keadilan bagi manusia; dan fungsi dalam Pembangunan, yaitu hukum dipergunakan sebagai acuan tujuan negara. Sedangkan tugas Hukum adalah menjamin adanya kepastian hukum, menjamin keadilan, kebenaran, ketentraman dan perdamaian; dan menjaga jangan sampai terjadi perbuatan main hakim sendiri dalam pergaulan masyarakat Asas hukum menjadikan hukum lebih dari sekedar peraturan yang dibuat dengan sengaja dan rasional, tetapi juga suatu dokumen moral-etis

In terms of research in the field, some defend it, some people have been influenced by today's developments, for example, like Tana' Bulawan, they are not allowed to marry Tana' Karurung, and vice versa, there are already several people who can marry according to custom and are legalized by custom (Ada'). And this is a dilemma in a society because there are already couples who already have partners who do not match their Tana', which sometimes results in payments of kapa' which are different from the rules. And the adat judge in Manipi' Village also confirmed this. According to the times, they did not understand the previous customs because they knew everyone was different. However, still most of the payments for kapa' were made by the Tana'nya, who carried out the divorce from the perform traditional marriages. In this customary divorce, the sanctions given are by the mistakes that have been made, then the sanctions are payments in the form of pigs, buffaloes, land, and can also be in the form of money worth buffaloes. Regarding assets, if they do not have children, then they may share their wealth (joint property), but it is more dominant to those who are innocent, then those who are considered guilty are fewer than those who are innocent, and if they have children, the property is given to the children and those who manage them is the one who is with/caring for the child.

There have been several cases of divorce that have occurred in Manipi' Village (Table 1), one of which was experienced by S and B, who are indigenous people with the Tana' Bassi, namely the middle aristocratic caste who have carried out traditional marriages and are also married in the middle of their household. , S (husband) left his wife and children so B (wife) decided to bring the case to adat and it was resolved according to custom. The one who was found guilty was an S (husband). Still, this husband did not pay anything because of his existence there is no and has also entered into an interfaith marriage each adhering to Protestant Christianity and Islam. In the end this S (husband) is not required to pay according to custom because there is no Tana' which regulates it in Islam. So this case is only resolved according to custom that it is legal to divorce. In contrast to what was experienced by K (husband) and (wife) who both had the same Tana', namely Tana' Kua-Kua who had entered into a traditional marriage with the same Tana' who was found guilty, namely K (husband) who committed adultery and having the status of having children so that the case was brought in and resolved according to custom, then it was decided that Kapa' must be paid, namely 1 buffalo and 15 million rupiah. This confirms that indigenous peoples are indeed more obedient to Customary Law, even though this Law is not written. Still, these rules must be obeyed, and are obliged to pay for violations committed according to their respective Tana' and Kapa.'

## CONCLUSION

Divorce according to custom in Manipi Village, Kec. Pana' Kab. Mamasa, namely through customary judges and the local government, through 2 procedures,: first, one of the parties who filed for divorce to the customary judge, both from the male and female parties, and then the customary judge summoned both parties the parties together with their respective families sat together and deliberated, the two customary judges (Ada') or the local government could also take their initiative to summon the two parties to sit together for deliberation to resolve the issue, even though no one filed for the divorce , with this being done by the authorities because it is a responsibility to reconcile anything that is not harmonious in society, especially in the household. Giving divorce sanctions (kapa') according to Mamasa's custom in the old days or according to rules based on Tana' (caste) where the customary sanctions are in the form of buffalo and pigs. Still, due to the times, the payment of kapa' at this time is by the agreement of the family in the dispute in the form of money or anything that costs a pig or buffalo.

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