

Ramifications of Divorce by Dayak Customary Law: Exploring Legal Consequences in Indonesian Legal System

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Abstract

This research explains the consequences of divorce according to the laws of the Dayak traditional community in Central Kalimantan province. The research method used is normative using primary and secondary legal materials. Customary law is one of the laws recognized in Indonesia. Customary law in Central Kalimantan is implemented by the existence of Dayak traditional institutions in Central Kalimantan which have been outlined in Central Kalimantan Province Regional Regulation No. 16 of 2008 and Central Kalimantan Governor Regulation no. 13 of 2009 concerning Dayak Traditional Institutions in Central Kalimantan.

It is clear that customary law is a separate legal system so that it is different from other legal systems. The results of this research show that the consequences of divorce carried out by the Dayak traditional community are not only regulated by positive law in force in Indonesia, namely Law Number 1 of 1974 concerning Marriage, but are also regulated by Dayak customary law based on Regional Regulations. Kalimantan Province Regional Regulations. 16 of 2008 concerning Dayak Traditional Institutions in Central Kalimantan, there are Dayak customary punishments and marriage agreements carried out by parties from the Dayak traditional community

Keywords: *Central Kalimantan, Dayak Customary Law, Divorce*

Introduction

Indonesia adheres to plurality in the legal field which recognizes western law, Islamic law and customary law. This indicates that Indonesia has various customary laws that reflect the identity of each region and their respective laws. The term customary law was first introduced scientifically by Snouck Hurgronje, in his book entitled "De Atjehers" mentioning the term customary law as "*adat recht*" (Dutch), namely to give a name to a system of social control that lives in Indonesian society. According to Van Vollenhoven, customary law is an unwritten rule and is a guideline for the majority of Indonesian people and is maintained in daily life in both cities and villages. Soekanto said that customary law is a complex of customs, most of which are not recorded/not codified and are coercive in nature and have legal sanctions or consequences.¹ The Indonesian nation also consists of various tribes, cultures and a diversity of indigenous peoples spread

¹ Muhamamd Dlaifurrahman, Akhmad Fauzi Aseri, and Mujiburohman Mujiburohman, "Hukum Hadat Dayak Ngaju: Tahu Janji Pangawin Di Kalimantan Tengah," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 1 (2023): 414.

throughout Indonesia. Each region has the authority to regulate and manage its own government affairs based on the principle of autonomy and assistance duties, including in the legal sector.²

Customary law is the embodiment of social and cultural values that live in society in a region which shows its existence with various characteristics contained in social and legal norms as a product of cultural guidelines for behavior, social relations and the desire to obtain legal certainty that is still valid by the community.

Indigenous communities are a community unit whose members are not only tied to their residence in a particular area, both in worldly relations as a place of life and in spiritual relations as a place of worship for ancestral spirits (territorial), but are also bound to their existence. by hereditary blood ties. and/or the same kinship from one ancestor, whether externally or indirectly due to marriage ties or customary ties (genealogy). According to Van Vollenhoven is something created by indigenous people in the Malay Archipelago, especially Indonesia. This law was given by God. As a gift from God, this customary law needs to be respected.

The state has recognized the existence of indigenous peoples who are still alive and whose existence is still recognized. This can be seen in the formulation of Article 18 B paragraph (2) and 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia). Customary law communities are also regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA), Law Number 41 of 1999 concerning Forestry, Law Number 39 of 20014 concerning Plantations and other statutory regulations which is equated with *rechtsgemeenschap* or at least the literature calls it *adatrechtsgemeenschap*. The term indigenous people were born and used by traditional law experts more for academic theoretical purposes.

² Puteri Hikmawati, "Relevansi Pelaksanaan Hukum Pidana Adat Dayak Di Kalimantan Barat Dengan Hukum Pidana Nasional," *Kajian* 15, no. 4 (2016): 725–50.

Dayak itself is the name for the native people of Kalimantan Island. The island of Kalimantan is divided based on administrative regions that regulate their respective territories, consisting of East Kalimantan with the capital Samarinda, South Kalimantan with the capital Banjarmasin, Central Kalimantan with the capital Palangka Raya, and West Kalimantan with the capital Palangka Raya. the capital city of Pontianak, and North Kalimantan with the capital city of Tanjung Selor. The Dayak tribe is divided into 405 sub-tribes. Each Dayak sub-tribe has the same customs and culture, in accordance with the social, customs, culture and language that are characteristic of each sub-tribe.³

There are several customs and customary laws of the Dayak tribe that are still preserved today, and the traditional life of the Dayak tribe in ancient times is still strong today. This custom is one of Indonesia's cultural riches. The existence of customary law in positive legal regulations includes Regional Regulation Number 14 of 1998 concerning Peace in Central Kalimantan Province, however, this Regional Regulation is considered no longer in accordance with current developments. and demands for the need for an autonomous region, on December 18 2008. This Regional Regulation was revoked and replaced with Central Kalimantan Province Regional Regulation Number 16 of 2008 concerning "Dayak Traditional Institutions in Central Kalimantan". in Central Kalimantan)" which regulates Dayak Traditional Institutions, Position, Duties and Functions of Damang Traditional Heads, including Authority, Term of Office and Dismissal, as well as Election of Dayak Customary Rights and Customary Law.⁴

The definition of marriage as regulated in Article 1 of Law Number 1 of 1974 concerning marriage is not only seen as a legal

³ J.U Lontaan, *Sejarah, Hukum Adat, Dan Adat Istiadat Kalimantan-Barat*. (Jakarta: Pemda Tingkat I Kalbar, 1974).

⁴ Abdurrahman, *Penegakkan Hukum Adat Atau Revitalisasi Hukum Adat, Makalah Pada Pertemuan Damang Kepala Adat Se-Kalimantan Tengah Di Palangka Raya* (Palangkaraya, 2005).

act but is seen as a religious act. Article 1 of Law Number 1 of 1974 states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the belief in the Almighty God. Based on this understanding, it can be explained that in a marriage it is hoped that husband and wife can live happily and eternally. However, there are marriages that do not go according to expectations. If this unhappy situation continues, it will deny the meaning of marriage itself.

The dissolution of a marriage is regulated in Article 38 of Law Number 1 of 1974 due to death, divorce and court decisions. The decision to legally divorce must be based on the reasons outlined in Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law.⁵ Meanwhile, in the Dayak indigenous community of Central Kalimantan, there is a provision that divorce can be carried out at the Kedamangan Institution. This institution is protected by the regional government through Central Kalimantan Province Regional Regulation Number 16 of 2008 concerning Institutions. In the case of marriage and divorce, the Kedamangan Institute can issue a marriage certificate or divorce certificate signed by the damang or traditional leader.

In carrying out a divorce through a court that has the authority to hear divorce cases or through a settlement institution, there are differences in the process and decisions issued. Previously, Defitri Maulani had carried out similar research regarding the consequences of divorce in the traditional law community of the Domo tribe, Kampar district,⁶ Imayah researched the divorce process of the Towani Tolotang customary law community in

⁵ *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam* (Bandung: Citra Umbara, 2007).

⁶ Defitri Maulani, "Akibat Hukum Putusnya Perkawinan Dalam Masyarakat Hukum Adat Suku Domo Di Kenegerian Rumbio Kabupaten Kampar," *Rabit: Jurnal Teknologi Dan Sistem Informasi Univrab* (2019).

Buae village, Watang Pulu sub-district, Sidrap district,⁷ I Kadek Sukadana Putra, et al researched related matters Legal Consequences of Divorce from Nyentana Marriages in the Perspective of Balinese Customary Law (Case Study in Kerambitan Tabanan),⁸ and similar research was also carried out by related I Gusti Ngurah Anom The Existence of Traditional Divorce in Pemempatan Village, Rendang District, Karangasem Regency After the Enactment of Law Number 1 of 1974 concerning Marriage.⁹ What are the consequences of divorce according to the customary law of the Dayak indigenous community in Central Kalimantan province which will be discussed further in this research.

To facilitate the carrying out of this research, a research method, data collection techniques and relevant approach methods are needed. In this case, a descriptive analytical research method with a normative juridical approach is used. Where the data and information that will be collected both in terms of study and in terms of management will be carried out in an interdisciplinary, multidisciplinary and cross-sectoral manner. Secondary data is in the form of primary, secondary and tertiary legal materials and this information is then analyzed qualitatively in depth in order to obtain an overview of customary law.

The data collection technique used is library research. The results of the literature study are then analyzed using qualitative data analysis methods, meaning that conclusions are not based on statistical figures but are concluded based on the relationship between legal principles, legal rules and legal theory and

⁷ Imayah, "Proses Perceraian Masyarakat Hukum Adat Towani" (Institut Ilmu Sosial dan Bisnis Andi Sapada, 2021).

⁸ I Kadek Sukadana Putra, Ketut Sudiarmaka, and Dewa Bagus Sanjaya, "Akibat Hukum Perceraian Dari Perkawinan Nyentana Dalam Perspektif Hukum Adat Bali (Studi Kasus Di Kerambitan Tabanan)," *Jurnal Komunitas Yustisia* 5, no. 2 (2022): 629–43, <https://doi.org/10.23887/jatayu.v5i2.51691>.

⁹ I Gusti Ngurah Anom, "Eksistensi Perceraian Adat Di Desa Pempatan Kecamatan Rendang Kabupaten Karangasem Setelah Berlakunya Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Sosiologi Pedesaan*, 2012, 239–50.

phenomena that occur in society (through juridical interpretation).

Scope of Customary Law in Dayak Tribe Communities in Central Kalimantan Province

Von Savigny emphasized the core of his teachings, that law is not made, but grows and develops with society. Savigny stated that in this world there are many nations, and each nation has a '*volksgeist*' of the soul of the people.¹⁰ Look at the legal system in Indonesia. It is clear that the effectiveness of a national legal product is not only based on the substance of the law and its law enforcement, but must also be supported by legal values that live and exist in the local community (living law), which in this case includes customary law.¹¹ Customs are a reflection of the personality of a nation.¹² Sacred customs originate from the traditions of the Indonesian people which have been passed down from generation to generation. The term customary law is a translation of *adatrecht* which was first introduced by Christiaan Snouck Hurgronje in his work entitled *De Atjehers*.

What differentiates between custom and law is the existence or absence of certain bodies which are given the task by the state to determine, implement, treat and maintain these rules of behavior in a certain way. These bodies include legislators, judges and others whose decisions have binding legal force. This is what differentiates between custom and law. If the law is not written, it

¹⁰ Ridwan, Khudzaifah Dimyati, and Aidul Fitriciada Azhari, "Perkembangan Dan Eksistensi Hukum Adat: Dari Sintesis, Transplantasi, Integrasi Hingga Konservasi," *Jurnal Jurisprudence* 6, no. 2 (2017): 106, <https://doi.org/10.23917/jurisprudence.v6i2.3008>.

¹¹ Putu Edgar Tanaya Anak Agung Istri Ari Atu Dewi, I Gede Pasek Pramana, "Hukum Adat Dan Hukum Nasional: Elaborasi Dalam Penyelenggaraan Pemerintah Daerah Mewujudkan Kesejahteraan Masyarakat," *Jurnal Majelis* 02 (2020): 115–45.

¹² Rahmad Fahreza Setiawan and Lisnawati, "Jipen : Menilik Hukum Adat Dayak Perspektif Kaidah Fikih Jinayah," *Jisyaku: Jurnal Syariah Dan Hukum* 2, no. 1 (2023): 59–70.

is called customary law.¹³

Dayak is the term for indigenous people on the island of Kalimantan. The island of Kalimantan itself is divided into administrative regions that regulate its territory, including East Kalimantan, the capital city of Samarinda, South Kalimantan, the capital city of Banjarmasin, Central Kalimantan, the capital city of Palangka Raya, and West Kalimantan, the capital city of Pontianak, North Kalimantan. the capital of Tanjung Selor. The Dayak tribe is divided into 405 sub-tribes. Each Dayak sub-tribe has similar customs and culture, in accordance with the social, customs, culture and language that characterize each sub-tribe, both Dayak in Indonesia and Dayak in Sabah and Sarawak Malaysia.¹⁴

The Dayak tribe of Kalimantan consists of 6 large tribes and 405 small sub-tribes spread across the interior of Kalimantan. They call themselves a group that comes from an area based on the name of a river, the name of a hero, the name of nature and so on. For example, the Iban tribe comes from the word ivan (in the Kayan language, ivan means wanderer). Likewise, according to other sources, they call themselves the Batang Lupar tribe, because they come from the Batang Lupar river, the border area of West Kalimantan and Sarawak, Malaysia. The Mualang tribe was taken from the name of a respected figure (Manok Sabung/executioner) in Tampun Juah and this name was immortalized as the name of a tributary of the Ketungau river in the Sintang Regency area which was later used as the name of the Mualang tribe. Mualang Dayak Tribe. The Bukit Dayak (Kanayatn/Ahe) originate from Mount Bukit/Bawang. Likewise, the origins of the Dayak tribes Kayan, Kantuk, Tamambaloh, Kenyah, Benuag, Ngaju, and others, which have their own historical background. The Dayak tribe lives spread throughout the interior of Kalimantan, both

¹³ Mahdi Syahbandir, "Kedudukan Hukum Adat Dalam Sistem Hukum (The Structure of Customary Law In Indonesia's Legal System)," *Jurnal Kanun* 4, no. 50 (2010): 1–13, <https://jurnal.usk.ac.id/kanun/article/view/6285/5176>.

¹⁴ Syahbandir, p.15

those living in Indonesia and those living in Sabah, Sarak, Malaysia. They live spread along the river downstream and then inhabit the coast of Kalimantan Island.¹⁵

In Central Kalimantan itself there are several large groups of Dayak indigenous people living. These include the Dayak Ngaju and Siang tribes. The Ngaju tribe is part of the Dayak tribe. Its distribution is quite wide in Central Kalimantan. The Ngaju tribe's distribution area includes South and North Barito Regencies, Kapuas Regency, East and West Kotawaringin, Katingan, Gunung Mas, and Palangkaraya City. The Ngaju tribe still has other subgroups consisting of five main subgroups, namely Ngaju, Maanyan, Lawangan and Dusun. The Ngaju community is the largest community group in Central Kalimantan. The Siang tribe is also part of the Dayak sub-tribe. Most of them live in the Murung Raya Regency area. The Siang tribe is also called the Siang-Murung tribe because basically the people of this tribe are a combination of the Siang and Murung people. The name of this tribe comes from a combination of the words sang and hyang, then called Sangiang, over time it changed again to day. Like other Dayak tribes, the majority of their work is farming, some are tapping rubber.¹⁶

There are several customs and customary laws of the Dayak tribe that are still preserved today, and the traditional life of the Dayak tribe in ancient times is still strong today. This custom is one of Indonesia's cultural riches. Customary law is local wisdom in Indonesia that grows and develops in a cultural society. The term local wisdom is defined as a way of life held by indigenous peoples which is formed to overcome problems that occur in communities in a customary area. Indigenous people will feel guilty if they violate customary law even if the law is not written or changed. The existence of indigenous communities as a framework

¹⁵ Syahbandir, p.20

¹⁶ Susanto Jumaidi, "Suku Bangsa Di Kalimantan Tengah," Kompas.com, March 17, 2023, <https://www.kompas.com/stori/read/2023/03/17/210000679/suku-bangsa-di-kalimantan-tengah?page=all>.

for customary law has also been recognized by the Indonesian government as an official state institution through statutory regulations.

The existence of Dayak customary law and its application in the interactions of indigenous peoples in social life. Local communities really need customary law as an umbrella and guideline as well as a way of life to avoid conflicts/disputes in society. Some forms of customary law are written and some are unwritten, but their existence is truly recognized by the community.¹⁷ Customary law is a complex of norms that originates from the people's ever-evolving sense of justice and includes regulations for human behavior in everyday life in society.¹⁸ Customary law actually reflects the feelings of the community.¹⁹

In the Ngaju Dayak divorce case, it was found that there was a combination of legal systems existing in the Ngaju Dayak community, so that it became a rational reflection and implementation that both Customary Law and Positive Law functioned within their respective corridors. The Ngaju Dayak Customary Law System functions to achieve the legal goal of personal peace (inner state), while the National Law system is oriented towards achieving legal goals in terms of order (outer state).²⁰ Therefore, efforts to study the Koran and explore customary laws and values that live in communities spread across

¹⁷ Putri Fransiska Purnama Pratiwi and Aji Pratama, "Sanksi Adat Bagi Panyapa Dalam Hukum Adat Dayak Ngaju," *Jurnal Hukum Agama Hindu* 19, no. 2 (2022): 65–82.

¹⁸ Natacha Ribeiro et al., "Eksistensi Hukum Pidana Adat Dalam Menangani Delik Adat Pada Masyarakat Hukum Adat Dayak Pangkoda Di Desa Lape Kecamatan Sanggau Kapuas Kabupaten Sanggau Provinsi Kalimantan Barat," *Revista CENIC. Ciencias Biológicas* 17, no. 3 (2014): 1–26,

¹⁹ Muhammad Yusuf Ibrahim, "Hukum Adat Di Indonesia Indonesian Adat Law," *Jurnal Pengabdian* 1, no. 2 (2022): 250–59.

²⁰ Ibnu Pelu et al., "The Combination of Legal System: Reconciliation of Divorce in Dayak Ngaju Customary Law and Positive Law," *Jurnal Akta* 9, no. 1 (March 24, 2022): 433–70, <https://doi.org/10.22437/ujh.2.2.433-470>.

the archipelago feel very important.²¹

Marriage in the Indonesian Legal System: Contemporary Developments

Marriage is a sacred thing for humans to undertake, the purpose of marriage is to create a happy atmosphere leading to peace and comfort for husband and wife and family members.²² In positive law in Indonesia, namely Law Number 1 of 1974 concerning Marriage, it is explained that a marriage can be dissolved because one of them dies, a party files for divorce against the marriage, or because a court decision can result in the termination of the marriage. However, according to Subekti, divorce is defined as the severance of the marital relationship because of a judge's decision, or because of the demands of one of the parties to the marriage.²³ For traditional communities, marriage is an issue that concerns the entire community of indigenous communities.²⁴

Divorce according to the Marriage Law and Government Regulation Number 9 of 1975 is only legal if it goes through a trial process in court. Even though the marriage certificate is valid, the divorce must be carried out in court to be valid. If a divorce is carried out without a court hearing but is only carried out with a divorce statement, then the divorce is invalid.²⁵

²¹ Rahmat Hi. Abdullah, "Urgensi Hukum Adat Dalam Pembaharuan Hukum Pidana Nasional," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 9, no. 2 (2016): 168–81, <https://doi.org/10.25041/fiatjustisia.v9no2.595>.

²² Husnul Yaqin, "Keabsahan Perceraian Yang Dilakukan Dengan Pesan Melalui Media Telepon," *Mimbar Keadilan* 12, no. 2 (2020): 155–66.

²³ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermassa, 1985).

²⁴ Lastuti Abubakar, "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319–31.

²⁵ Nafiatul Munawaroh, "Sahkah Perceraian Tanpa Sidang Pengadilan?," *Hukumonline*, February 24, 2023, <https://www.hukumonline.com/klinik/a/perceraian-tanpa-sidang-lt5288d5715f76a/#:~:text=Jika Perceraian Tidak Dilakukan Melalui>

A husband or wife who wants to file for divorce can choose a court that has the authority to hear divorce cases. In accordance with the religion of the husband and wife, if they adhere to Islam, divorce can be submitted to a religious court. However, if you follow a religion other than Islam (non-Muslim), you can file for divorce in district court. For non-Muslims, a lawsuit for divorce, known in the Marriage Law and Government Regulation Number 9 of 1975, is a lawsuit filed by the husband or wife or their proxies to a court whose jurisdiction includes the defendant's residence, which is regulated in Article 40 Marriage. Jo's law. Article 20 paragraph (1) Government Regulation Number 9 16 of 1975.

The role of customary law in marital property law, in this case customary law plays a role in conveying how to divide joint property if a husband and wife separate due to divorce, in article 35 of the Marriage Law states that property acquired during marriage becomes joint property, in article 37 it is emphasized that if a marriage breaks up due to divorce, joint assets are regulated according to their respective laws. What is meant in each law is customary law.²⁶

In the life of the Dayak Indigenous community in Central Kalimantan there is a provision that divorce can be carried out at the Kedamangan Institution. This institution is protected by the regional government through Central Kalimantan Province Regional Regulation Number 16 of 2008 concerning Dayak Traditional Institutions in Central Kalimantan. Divorce at the Kedamangan Institute is a traditional divorce that must be carried out by the Dayak indigenous community. Divorce trials at the Kedamangan Institution are regulated in Central Kalimantan Province Regional Regulation Number 16 of 2008 concerning

Pengadilan&text=Jadi%2C menjawab pertanyaan Anda%2C jika,pernyataan cerai adalah tidak sah.

²⁶ Allya Putri Yuliyani, "Peran Hukum Adat Dan Perlindungan Hukum Adat Di Indonesia," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 09 (2023): 860–65, <https://doi.org/10.58812/jhhws.v2i09.648>.

Dayak Traditional Institutions in Central Kalimantan.²⁷The Regional Regulation explains that the Kedamangan institution can issue a divorce certificate.

The Kedamangan Institution in Central Kalimantan Province develops, grows and lives, playing an important role in the life and existence of the Dayak Indigenous Community as part of the national commitment to *Bhinneka Tunggal Ika*, therefore it needs to be preserved, developed and empowered by being given roles, authority, functions, duties and positions. sufficient assistance and support from other Dayak traditional institutions, thereby adapting to the demands of the needs and development of the autonomous region within the framework of the Unitary State of the Republic of Indonesia.²⁸

Issues relating to the existence of customary law are recognized constitutionally, regulated in the 1945 Constitution of the Republic of Indonesia which has been amended, in article 18 B paragraph (2), "The State recognizes and respects the unity of the Indigenous Peoples and their rights. its traditional. as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law. The provisions in article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia above, according to Jimly Ashiddiqie, the existence of Customary Law needs to be taken into account by the state, namely the recognition given by country in the form of:²⁹

1. Regarding the existence of Customary Law communities and their traditional rights:
2. The existence that is recognized is the existence of a

²⁷ "Peraturan Daerah Provinsi Kalimantan Tengah Nomor 16 Tahun 2008 Tentang Kelembagaan Adat Dayak Di Kalimantan Tengah" (2008).

²⁸ Gery Gea Grappelly, "Penegakan Hukum Terhadap Pelanggaran Norma Adat Dayak Ngaju, Atas Tindakan Kekerasan Dalam Rumah Tangga (Studi Di Kecamatan Tewah, Kabupaten Gunung Mas, Kalimantan Tengah)," *Bhirawa Law Journal* 3, no. 2 (2022): 110–19, <https://doi.org/10.26905/blj.v3i2.8902>.

²⁹ Gusti Muzainah, *Azas Kemanfaatan Tentang Kependudukan Dalam Hukum Waris Masyarakat Banjar* (Yogyakarta: Pustaka Akademika, 2016).

customary law community unit, meaning that recognition is given to one of these units, therefore the customary law community must have a certain character.

3. Traditional law communities are still alive (still alive).
4. Anyway, in a certain environment.
5. This recognition and respect is given without ignoring the criteria of human worthiness in accordance with the level of development of the nation's existence.
6. This recognition and respect must not reduce the meaning of Indonesia as a country in the form of the Unitary State of the Republic of Indonesia.

There are several reasons that cause Dayak Indigenous people to divorce at the Kedamangan Institution, including:³⁰

1. Because it is an obligation in customary law. The existence of a customary marriage requires a customary divorce. Even though the marriage is carried out through the KUA and according to Islamic law, a traditional marriage must also be carried out in order for a traditional divorce to apply in a divorce.
2. The party who feels aggrieved can demand the rights of the guilty party in the form of payment of a fine.
3. The process is fast and hassle-free with low costs.

The stages of the divorce process that husband and wife must go through as stated in the provisions of the Dayak Ngaju Customary Law of Central Kalimantan Chapter VII concerning Stages of Dispute Resolution in the Dayak Customary Court of Palangka Raya City, are stated as follows:³¹

1. The first stage, the party wishing to divorce reports to the Mantir/Allow Adat in their sub-district. Or write a letter of complaint addressed to the Mantir/Let Adat in the sub-district.

³⁰ Rezky Maulana, "Penyelesaian Perkara Perceraian Masyarakat Dayak Melalui Lembaga Kedamangan Di Kota Palangka Raya" (Universitas Islam Negeri Antasari, 2018).

³¹ Maulana, p.36

2. The second stage, Mantir/Let custom investigate whether the statement is the same as the complaint letter.
3. The third stage, notification to the parties that a customary court will be held, the Kedamangan Institute will issue summons to parties who wish to divorce but the respondent and applicant cannot meet.
4. The fourth stage, the first summons is to the party who filed the complaint first, before going into the main case, the Mantir/Let adat offers peace first, if the applicant accepts the offer to make peace then the Kedamangan Institution will revoke the applicant's letter of complaint.
5. The fifth stage, if the applicant does not want to reconcile, then the Customary Judge opens a trial which begins by listening to information, evidence and asking questions to the applicant, the Mantir/Let Adat Dentist summons the respondent and asks the same questions as the applicant then the Mantir/Let Adat Density examine the truth of the information applicant and respondent with a complaint letter.
6. The sixth stage, Mantir Density/Let customs ask the applicant what is desired in the applicant's complaint and statement. And Mantir Density/Let the Customs hold deliberations. the party found guilty is subject to singer. As part of efforts to strengthen the role of customary courts, case settlement decisions are recorded and archived in the customary case registration master book.
7. For customary divorce carried out by people who have a religion and belief, the divorce must be reported to the religious court or civil registry and the Kedamangan office issues a divorce certificate.

The legal consequences of divorce in terms of the responsibilities of divorced parents based on Law Number 1 of 1974 concerning Marriage are related to child support, joint assets

and support/expenses for wives and children.³² Husband and wife who divorce live separately and are free to remarry other people, but children will lose a safe and comfortable "home" which can result in stunted growth in life, both directly and indirectly. Another consequence is that the child's soul becomes very shaken even though his life is guaranteed by the chosen relative, and the assets must be divided into two parts, namely for the ex-husband and ex-wife.³³

Meanwhile, in the Dayak traditional community, the consequences of divorce are based on the marriage agreement. The marriage certificate states that the marriage agreement contains several provisions regarding mutual agreement, one of which regulates divorce, namely as follows:

1. The party guilty of causing the divorce is subject to customary sanctions by paying the innocent party the agreed amount (in cash or pure gold).
2. The perpetrator (dowry) remains the right of the wife.
3. Assets acquired during marriage (handmade objects) become the rights of children and the rights of innocent people.

Based on the marriage agreement, the party causing the divorce will be subject to sanctions. Provisions regarding divorce for Dayak Indigenous Peoples are regulated in Article 3 of the Dayak Customary Law concerning Singer Hatulang belom (one-sided divorce fines) and Article 4 Singer Hatulang Palekak sama willak (fines for divorce based on mutual will).

Singer is a punishment imposed on perpetrators who violate a regulation, causing environmental damage or harm to other people. Singer, which is applied to divorce cases of the Dayak indigenous community, is a step taken in order to restore the

³² Nunung Rodliyah, "Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Keadilan Progresif* 5, no. 1 (2004): 313.

³³ Usman Abidin and Lukman S Tharir, "Analysis of Judges' Decision on Witness Divorce Evidence in Donggala Religious Court," *International Journal Of Contemporary Islamic Law and Society* 4, no. 2 (December 12, 2022): 44.

balance that was disturbed due to violations that occurred in marriage which led to divorce. This punishment is considered fair and effective in restoring balance (harmony) which is disturbed by disputes.³⁴ Unilateral divorce fines based on a marriage agreement include:

1. In accordance with the marriage agreement.
2. The Customary Mantir can increase or impose a fine of up to 30 catties (Rp. 3,000,000) on the guilty party if deemed necessary.
3. If there are children, then joint assets are divided between the innocent party and the child.

Meanwhile, the crime of divorce based on mutual wishes is dividing joint assets according to the marriage agreement. If there are children, then the property belongs to all the children. If there are no children, then the assets are divided equally. This resolution using Customary Law can provide satisfaction with a sense of justice, as well as a return to balance in the lives of indigenous peoples due to the spiritual shock that occurred due to the enactment of these customs.³⁵

Conclusion

Divorce is the termination of the marital relationship due to a judge's decision, or due to the demands of one of the parties to the marriage. In positive law in Indonesia, the consequences of divorce are divorce, living apart, division of joint property, and the obligation to support one's wife and care for children. Divorce at the Kedamangan Institution is a customary divorce that must be carried out by the Dayak traditional community. According to Dayak customary law in Central Kalimantan province, there are

³⁴ Asliani Harahap, "Pembaharuan Hukum Pidana Berbasis Hukum Adat," *Jurnal EduTech* 4, no. 2 (2018): 5.

³⁵ Hikmawati, "Relevansi Pelaksanaan Hukum Pidana Adat Dayak Di Kalimantan Barat Dengan Hukum Pidana Nasional."

also customary sanctions given by the Kedamangan Institution to the party who causes the divorce, namely singers or customary fines which pay the innocent party the amount of the agreement (in the form of money or in pure form). gold) and if there are children then the joint assets are divided between the innocent party and the child. Resolving cases using Customary Law can provide satisfaction with a sense of justice, as well as a return to balance in the lives of indigenous peoples due to the spiritual shock that occurred due to the enactment of these customs.

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*Equum et Bonum est
Lex Legum*

what is just and good is the law