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Study Regarding the Implementation of Traditional Law That Violates Women's Human Rights in Indonesian National Law

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Abstract

Indonesia is a country that has a higher population level, especially for women, where based on the Central Statistics Agency, as many as 137,521,557 people are men and 134,707,815 people are women or 49% of the total population in Indonesia. Equality and the elimination of discrimination against women are often the centers of attention and a shared commitment to implement them. However, in social life, the achievement of equality in the dignity of women has not shown significant progress. The issue of human rights and women has not been taken seriously by the state. The research method used is descriptive-analytical. This study indicates that the dominant factors of sexual violence against women are patriarchal culture, male privileges, and permissiveness. The main reason women victims of sexual violence do not report is the public's bad stigma about victims of sexual violence. Assertive training can help women and victims of sexual violence to have the courage to refuse and express their feelings in the right way. The suggestion from this research is that there must be mutual respect and care between men and women

Keywords: Indonesia, Customary Law, Gender Equality, Sexual Harassment, Protection

A. Introduction

Indonesia is one of the most populous countries in Southeast Asia, endowed with abundant and preserved natural resources. Indonesia is proud of natural resources, and ethnic and cultural diversity is very diverse. The total population in Indonesia in 2021 based on the Central Statistics Agency is 272,229,372 people, of which 137,521,557 people are men and 134,707,815 people are women. Of the total 272 million, 56.01% are in Java, where West Java Province (Jabar) is the province with the largest population in Indonesia with 47,586,943 people. Meanwhile, the province with the least population is North Kalimantan (Kaltara), with 692,239 inhabitants.¹

Indonesia is a country that has various ethnic groups. According to the Central Statistics Agency's population census, Indonesia has more than 300 ethnic groupings, which, when detailed, totals roughly 1340 ethnic groups. Customary law is a social norm that governs daily actions and resolves a problem. Each region in Indonesia has its own system of customary law to regulate varied social activities, the majority of which are not governed by written regulations.

¹ <https://www.bps.go.id/pressrelease/2021/01/21/1854/hasil-sensus-penduduk-2020.html>

Indigenous peoples in Indonesia have factually existed since their ancestors' time. Customary law communities are territorial or genealogical community entities that have distinct citizens from other legal community members and act internally or externally as a self-governing legal body (legal subject).²

Every province in Indonesia has customary law community units with their characteristics for hundreds of years. There are many customary laws in Indonesia, and the following are areas in Indonesia that apply established law, consisting of:

1. Customary law in Aceh forbids men and women who are not husband and wife or family to be alone in the same room. If violated, both will receive the punishment of whipping.
2. Balinese customary law adheres to patrilinealism, namely customs that regulate the line of descent from the father's side. The community there has a family inheritance law given to men completely. In contrast, women can only use it.
3. Customary law in Aceh forbids men and women who are not husband and wife or family to be alone in the same room. If violated, both will receive the punishment of whipping.
4. Javanese people hold special rituals before carrying out activities not to experience bad events.
5. Residents in the Halmahera mountains have a customary law of cutting off their fingers every time a family member leaves. The goal is to remember the departure of the family member.
6. Customary law in Minangkabau states that marriage is considered valid if a community member carries out a wedding based on the terms and pillars of Islamic marriage.

Customary law that is still in effect in several areas in Indonesia is considered contrary to the law and other applicable laws and ignores human rights. Some so many women are powerless when faced with customary law. The traditional law that applies in a society must be respected as long as the customary law does not violate human rights, especially women's rights often violated.

For instance, he continued, Amole Papua's customary law mandates the bride to have sex with the groom's brother on the first night. Another example is that there is a Belis custom in which a man who is about to marry must give some buffalo or horses to the bride's family in the Sumbawa region. The issue is that the more animals a woman's household receives, the more freely her husband can abuse her, and vice versa. Furthermore,³ Another case, namely the reinterpretation carried out by members of the indigenous peoples in East Nusa Tenggara towards 'belis.' In East Nusa Tenggara, the belis system is known for asking for a hand. Belis likened to a dowry. The form of belis that was determined consisted of coins (made of gold, silver, or copper), livestock (buffaloes and pigs), woven cloth. In later practice, due to developments that occur in society, this belis system is then given a different meaning. Belis places women

² Husein Alteng, *Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat atas Tanah*, Yogyakarta, 2010, hal.31

³ <https://money.kompas.com/read/2009/08/18/1519598/~Oase~Cakrawala>

like trading commodities. The woman will be married as if given a specific price by her family. The men must pay this price.⁴

The term customary law when it first existed can be factually stated by Snouck Hurgronje, in a book he wrote entitled "De Atjehers" by explaining the meaning of customary law as "Adat Recht" in Dutch. Indonesian society is a collection of different communities in a systematic legal society. Customs include various ideal rules that manage the relationships that exist in a society.

Customary law is a hereditary habit that is usually from long-standing ancestors even hundreds of years ago, then grows in a community and develops so that somewhere it becomes a law that must be obeyed unwritten. Customary law exists until now because of humans as the maker. As time goes by, people still consider customary law a form of discrimination, namely a form of attitude that deliberately distinguishes groups related to each other in particular interests. Usually, what often happens is to discriminate between religion, ethnicity, race, and ethnicity. In ancient Greece, around 427-347 BC (BC), men underestimated the dignity of women. Not only are they considered trivial, but women are also still considered as objects of succession to descendants, housemaids, and places to vent their passions.⁵

God created two living creatures by giving them a sound mind and reasonable mind, namely male and female. As a social being, you cannot avoid community groups because humans have the instinct to live together with other people and interact with other human beings. Especially for women, not a few say that adults and children are often labeled as weak creatures and prone to problems such as violence security, and often become victims of sexuality.⁶

The primitive forms of violence we all know exist in every society. Rape is a crime that must be taken seriously. Cases of violence and harassment in Indonesia according to Komnas Perempuan's 2017 annual data. Komnas Perempuan compiled a list of 2016 incidents of violence against women. As a result, 259,150 incidences of violence against women were reported. 275,548 cases were obtained from 358 Religious Courts, and 13,602 cases were processed by 233 service procurement partner organizations located in 34 provinces.⁷

Injustice against women continues to be an invisible occurrence. This motivated them to establish a set of women's rights to safeguard women against various sorts of concealed violence, discrimination, and degradation. By advocating for human rights, women bring to the forefront the principles and demands for justice necessary for humanity's survival as a whole. Women's rights seem to be a question and debate until now.⁸

⁴ Tien Handayani Nafi, Peran Hukum Adat Dalam Penyelesaian Kasus Kasus Kekerasan Terhadap Perempuan Di Kupang, Atambua, Dan Waingapu, *Jurnal Hukum & Pembangunan* 46 No. 2 (2016): 233-22, ISSN: 0125-9687 (Cetak) E-ISSN: 2503-1465 (Online)

⁵ Asmanidar, Kedudukan Perempuan Dalam Sejarah (The Women's Position in Ancient Greece, Athens) (Sekitar Tahun 1050-700 SM)

⁶ John Dirk Pasalbessy, Dampak Tindak Kekerasan Terhadap Perempuan Dan Anak Serta Solusinya. *Jurnal Sasi* Vol.16. No.3

⁷ Utami Zahirah Noviani, Mengatasi Dan Mencegah Tindak Kekerasan Seksual Pada Perempuan Dengan Pelatihan Asertif, *Jurnal Penelitian & PPM*, ISSN: 2442-448X, Vol 5, No: 1, April 2018 Hal 49

⁸ Louisa Yesami Krisnalita, Perempuan, Ham Dan Permasalahannya Di Indonesia, *Jurnal Binamulia Hukum* Vol. 7 No. 1, Juli 2018

From the past until now, rape is not only a sexual assault but also an act under the influence of a particular power system. Thus, when evaluating the crime of rape, public opinion reflects social values, religion, customs, and major institutions such as the State.⁹

We can learn a lot about the crime of rape in the media. There are far more crimes of rape than are reported in the media and reported to the police. Most cases are discovered after the victim experiences severe physical symptoms, such as vaginal bleeding. More often than not, they cause no physical harm but can have a severe psychological impact on the victim. Rape is a violation of women's rights.

Indonesia already has an institution that has the authority to protect the rights of women and children so that if an inappropriate action occurs, the victims can immediately report the perpetrators to the authorized institution. Often the victims do not dare to say the activities or violence they have experienced because they are afraid that they will be under more severe pressure or action than what they are experiencing now besides the lack of support from those behind them can be a factor the victims did not report the violence they experienced to the authorities.¹⁰

On the other hand, it is not uncommon for customary sanctions imposed by traditional elders to ignore the interests of women who are victims. For example, in cases of sexual violence in rape, women who are rape victims are often married off to the perpetrators. The consideration is solely to make amends, maintain cosmic balance, and cover the disgrace to women's families. Of course, this creates new problems for women victims.

Based on the above background, in this study, I formulate the following problems: 1) What are the dimensions of the human rights regulation for women? and 2) What is the role of customary law in efforts to resolve cases of violence against women in Indonesia?

The objectives of this paper are as follows: first, to determine the dimensions of the regulation of human rights against women. Second, to find out the role of customary law in resolving cases of violence against women in Indonesia.

B. Research Methods

This research is normative legal law research carried out by examining library materials and is also called library law research. In this paper, the research method used is descriptive-analytical, based on the existing conditions according to the data obtained in the study, linked and compared with current theories following this writing.

Source and Type of Data. The types of data required in legal research focus on secondary data research consisting of primary legal materials and secondary legal materials. Data analysis technique. Data analysis was carried out in a normative qualitative way.

⁹ Kadek Dwi Novitasari, Ida Ayu Putu Widiati dan I Nengah Laba, "Tinjauan Yuridis terhadap Tindak Pidana Perkosaan dalam Perspektif Hak Asasi Manusia," *Jurnal Analogi Hukum* vol 2 no 3 tahun 2020, halaman 388-392

¹⁰ Ridwan Arifin, Melani Diah Sekar Puri, Pengaruh Adat dalam Hukum Keluarga terhadap Pembaruan Hukum Nasional, *Jurnal Vol. 2 No. 1 Juni 2019* DOI 10.24090/volkgeist.v2i1.2491

C. Results and Discussion

1. Dimensions of the Regulation of Human Rights Against Women

The theoretical understanding of human rights is a right related to human dignity as a creature of God Almighty, or a fundamental right based on God's gift. In other words, because human rights are human rights at their core and cannot be separated from their essence, they are noble and sacred and guarantee the opportunity for people to uphold their dignity and worth. On the other hand, human rights are the most fundamental. The term "human rights" itself comes from "droits l'home" (French), "menslijkerechten" (Netherlands), "fitrah" (Arabic) and "human rights" (English) then changed the term "Human Rights" to mean more neutral and universal. Therefore, human rights are the most basic rights inherent in human beings. Their presence cannot be ignored; it is a gift that the state must respect, promote, and defend.¹¹

Human rights aim to guarantee the dignity of every person. Human rights provide moral power to ensure and protect human dignity based on the law, not based on specific wills, circumstances, or political tendencies. These rights and freedoms have the characteristics of being inalienable or nullable, universal, interrelated with each other and cannot be separated. In simple terms, it can be said that every human being has the right to freedom, security, and a decent standard of living. As a result, every nation and jurisdiction on our planet must commit to implementing it. In actuality, however, issues of race, class, gender, and others have eroded the very nature of human rights.

For the creation of honor and human dignity. For example, the right to life, when neither of these people has the right to take the life of another.

Human Rights Law no. 39 of 1999 states that the Government and all citizens have decided to protect individuals' honor, dignity, and worth. According to Article 1 which states that "All people who are born and have the same dignity and rights. They are endowed with reason and conscience and should associate with one another in a spirit of brotherhood."

Meanwhile, Article 2 specifies that "Everyone is entitled to all of the rights and freedoms enumerated in this statement, including freedom of race, color, sex, language, religion, politics, national or social origin, property rights, and birth or other position."

Human Rights Everyone has individual rights, without which we cannot live as individuals. For example, the right to life is a condition for accepting and doing whatever can save one's life. Without this right, our existence as human beings is lost. The General Principles of Human Rights, adopted by the United Nations General Assembly in 1948, are regarded as basic recommendations for states, particularly those that have been members of the world's highest body, in implementing human rights. The Universal Declaration of Human Rights is the name given to this overarching notion (UDHR). Declarations are not legally enforceable documents, and several aspects contradict established and widely accepted standards. However, several provisions govern these principles. It describes general principles of law or basic human views. More importantly, its status as a reliable guide prepared by the General Assembly on interpreting apocalyptic truths is entirely valid and recognized by law

¹¹ Dede Kania, "Hak Asasi Perempuan dalam Peraturan Perundang-Undangan di Indonesia," *Jurnal Konstitusi* vol 12 no 4 tahun 2015, halaman 716-734

several times as part of the law by the General Assembly of United Nations Law. Therefore, this declaration is a standard code of practice for all people and countries. With this in mind, all persons and organizations strive to promote respect for these rights through training and education and freedoms.¹²

Based on the provisions of Article 39(1) of the 1999 Law,¹³ it has been emphasized that human rights are the most important rights that a person has and cannot be challenged by anyone. Human Rights (HAM) are considered valuable and universal. Universal values mean that we protect and support the universal values of humankind by translating these universal values into the product of various domestic laws regardless of the boundaries of space and time. Indeed, these universal values have been reaffirmed in international instruments, including international agencies. Human Rights because the implementation of the International Covenant on Human Rights will be related to specific characteristics, it is hoped that the state's human rights as protectors of society can consider the interests and rights of its citizens because the concept of human rights is a world order concept, it will be challenging to define achieve what people call or try to realize without paying attention to the idea of human rights. Likewise, it will not be easy to achieve that the goals of law and other scientific disciplines are jointly striving to improve the standard of human life that is more just, prosperous, prosperous, safe, orderly and peaceful to develop and protect. Given the diversity of historical, cultural, social and political traditions, religions and levels of economic growth of countries, human rights for all people and around the world are not easy.

According to Article 1 of the Convention on the Elimination of Discrimination Against Women, the term "Discrimination Against Women" refers to any distinction, exclusion, or restriction made on the basis of sex with the effect or purpose of reducing or eliminating women's recognition, enjoyment, or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other fields based on equality.

The emergence of numerous national and international human rights instruments demonstrates progress and concerted attempts to enforce and protect human rights. The Universal Declaration of Human Rights affirms a person's right to life and dignity, regardless of gender. Women's rights are codified in the Republic of Indonesia's Law No. 39 of 1999, specifically in the ninth section, which is separated into seven articles (Articles 45-51). Women's rights include representation in politics, the right to education and teaching, the right to vote and election in all professions, and their rights towards marriage.

The concept of women's fundamental rights has at least two hidden meanings. The first meaning, women's rights, is just an understanding built entirely based on mere common sense. The second meaning, human rights, is understood in its connotation as a more revolutionary concept, which contains the vision and purpose of transforming social relations through changes in power relations based on gender.

¹² Dede Kania, "Hak Asasi Perempuan dalam Peraturan Perundang-Undangan di Indonesia," *Jurnal Konstitusi* vol 12 no 4 tahun 2015, halaman 716-734

¹³ Pasal 39 Ayat 1 Tahun 1999

Internationally regulated and agreed-upon human rights conventions include treaties on articles on the abolition of all forms of discrimination against women, specifically:

- a) Regarding the rejection of all types of discrimination against women and efforts to enforce such discrimination against women, as well as efforts to defend human rights, equal rights, and obligations guaranteed by the national constitution.
- b) Regarding the obligation of participating countries to make regulations to eliminate discrimination against women in their country's political and social life.
- c) Regarding the obligation of participating countries to make regulations to eliminate discrimination against women in education, work, health, and socio-economic life.
- d) Regarding the obligations of participating countries to provide equal rights for women before the law, eliminating discrimination related to marriage and family relations.
- e) Regarding establishing an International committee to assess implementation progress, based on appropriate geographical considerations and elements of the various forms of human civilization of the central legal systems, the committee is elected for four years.
- f) The convention will not affect the relationship between women and men, which may exist under a country's legislation. In addition, this convention is not rigid. Every country has the right to raise its objections.

Discrimination is not limited to differences in treatment based only on gender but also discrimination that originates from negative socio-cultural assumptions attached to the situation because she is a woman or gender ideology. The ideological construction of women's roles and abilities affects women's access to various opportunities at various levels, individuals, institutions, and systems. For example, the fact that women's work is specific mainly jobs. On the other hand, the absence of women in other types of work results from ideological assumptions that women are only suitable for particular jobs. Women do more care work, services based on choice, and opportunities given to women in the scope of work and not because women are unable or not interested in other jobs. Gender assumptions like this have limited equal opportunity for women in the workplace. Violence against women is a form of gender inequality.

2. The Role of Customary Law in Efforts to Resolve Cases of Violence Against Women in Indonesia

The pre-amendment constitution does not require the acceptance and use of common law words specifically. However, it may be deduced from studies that its language embodies the spirit of noble values and common law. The 1945 Constitution's preamble, which outlines the Pancasila way of life, depicts the nature of a nation that lives according to its ideals, methods of thinking, and common law. The State is founded on the One Godhead, as stated in Article 29 Paragraph 1. Law on Organization, Authority, and Administration of Civil Court of 1951 Law Number 1 (State Gazette Number 9) was promulgated on January 14, 1951.

Recognizing the existence of customary law communities expressly and recognizing them as human rights, as stated in Article 6 of the Universal Declaration of Human Rights, paragraphs (1) and (2) of 1999. The article discusses how, in the

framework of human rights, indigenous and tribal peoples' diversity and needs must be respected and protected by law, society, and government. The common law community's cultural identity incorporates shared rights and evolves with the times.

Criminal law reform, in general, must be undertaken politically, as it is inextricably linked to a policy or political movement, encompassing policy/law enforcement, criminal law policy, criminal policy, and social policy. This makes criminal law reform must also be value-oriented.¹⁴

Both Bronislaw Malinowski's writings on 'Crime and Custom in Savage Society' and Ishaac Schapera's writings on 'A Handbook of Tswana Law and Custom' describe the existence of criminal law in the context of a society that has a distinctive government structure. The rules of criminal law are constructed based on the values upheld in the customs of each community group that is the subject of research by both Malinowski and Schapera. These two articles explain that the method for tracing customary criminal law in indigenous peoples can be done, among others, by tracing dispute cases or expanded disputes. For the record, crimes in the context of customary law in these two communities, the sanctions in addition to containing punishment for the perpetrator, also provide a kind of compensation for the victim/family as a means to fulfill the local community's sense of justice and to recover the damage caused by the crime committed by the perpetrator.

It is instructive to learn how a society handles situations of violence against women because the manner in which they are handled, which is through the application of community-constructed legal laws, reveals the status of women in society. It will also examine how society views women and men; not just in terms of gender, but also in terms of other factors, such as the procedure for settling domestic abuse charges against women.

The United Nations Declaration on the Elimination of Violence against Women specifically describes that violence against women is:

A manifestation of historically unequal power relations between men and women has led to domination over and discrimination against women by men and the prevention of the full advancement of women and as one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

Violence against women and children, according to some of the literature quotes above, refers to the occurrence of acts of violence that are carried out more because of gender and age status, which creates an unequal relationship between perpetrators and victims. In some cases, the inequality in this relationship is reinforced by the social and economic status gap between the perpetrator and the victim. So it is essential to understand that gender-based violence, including sexual violence in it, occurs not only because of the problem of sexual desire but is a statement of the power of a person or group over another person or group.

To see how state law products provide a mechanism for handling cases of gender-based violence in Indonesia, it is important to discuss several regulatory products in this paper, including the Criminal Code, the Domestic Violence Law, the CEDAW

¹⁴ Muhammad Amin, Osgar S. Matompo, Ida Lestiawati, "*Tinjauan Yuridis Terhadap Kedudukan Hukum Adat Kaili dalam Proses Penyelesaian Tindak Pidana di Sulawesi Tengah*", Universitas Muhammadiyah Palu tahun 2013

Convention, which was ratified by Law No. 7 of 1984. It can be mentioned here that several articles in the Criminal Code have become significant concerns related to research issues:

First, the articles that regulate sexual crimes. These include articles on rape (Articles 285, 286, 287, and 288 of the Criminal Code), obscene acts (Articles 289, 290, 291, 292 and 294 of the Criminal Code) and the act of running away girls (332 of the Criminal Code).

Article 285

Whoever, by force or threat of violence, forces a woman to have sex with him outside of marriage is threatened with rape with a maximum imprisonment of twelve years.

Article 286

Anyone who has intercourse with a woman outside of marriage, even though it is known that the woman is in a state of unconsciousness or helplessness, is threatened with a maximum imprisonment of nine years.

Article 287

(1) Anyone who has sexual intercourse with a woman outside of marriage, even though she knows or should reasonably suspect that she is not yet fifteen years old, or if her age is not clear, that it is not yet time for marriage, shall be punished by a maximum imprisonment of nine years.

(2) Prosecution shall only be made on a complaint, except if the woman has not yet reached the age of twelve or if one of the things is based on articles 291 and 294.

Article 288

(1) Any person in a marriage has intercourse with a woman whom he knows or should reasonably suspect that it is not yet time for him to marry. If the act results in injury, he shall be punished by a maximum imprisonment of four years.

(2) If the act results in serious injury, a maximum of eight years imprisonment is imposed.

(3) If it results in death, maximum imprisonment of twelve years is imposed.

Article 289

Any person who by force or threat of violence forces a person to commit or allow an obscene act to be carried out is threatened for committing an act that attacks the honor of morality, with a maximum imprisonment of nine years.

Article 290

Threatened with a maximum imprisonment of seven years

(1) Whoever commits an obscene act with a person, knowing that that person is unconscious or incapacitated.

(2) Whoever commits an obscene act with a person, even though he knows or should have guessed, that he is not yet fifteen years old or if his age is not clear, it is not yet time for him to marry.

(3) Whoever persuades someone whom he knows or should reasonably suspect that he is not yet fifteen years old or if his age is not clear, it is not yet time for him to marry, to commit or allow obscene acts to be carried out or to have intercourse outside of marriage with another person.

Article 291

(1) If one of the crimes under articles 286, 287, 289 and 290 results in serious injury, a maximum of twelve years imprisonment shall be imposed.

(2) If one of the crimes according to articles 286, 287, 289 and 290 results in death, a maximum of fifteen years imprisonment is imposed.

Article 292

An adult who commits an obscene act with another person of the same sex, which he knows or should reasonably suspect is a minor, is threatened with a maximum imprisonment of five years.

Article 294

(1) Any person who commits an obscene act with his child, stepson, adopted child, a child under his supervision who is not yet an adult, or with a minor whose care, education or care is given to him or by his bachelor or subordinate who is not yet an adult, is threatened with imprisonment for a maximum of seven years.

(2) Threatened with the same punishment:

1. An official who commits an obscene act with a person who is his subordinate or with a person whose care is entrusted or handed over to him because of his position.
2. Administrators, doctors, teachers, employees, supervisors, or errands in prisons, state places of work, places of education, orphanages, hospitals, mental hospitals, or social institutions who commit obscene acts with people who are admitted to them.

Article 332 of the Criminal Code, which regulates the criminal act of escaping women, is held in the Criminal Code in Article 332:

(1) Guilty of escaping, a woman is threatened with imprisonment:

1. A maximum of seven years, whoever takes away a woman who is not yet an adult, without the will of her parents or guardians with their consent, to ensure control over the woman, both inside and outside of marriage;
2. A maximum of nine years, whoever takes away a woman utilizing deceit, violence or threats of violence to ensure his control over that woman, both inside and outside of marriage.

(2) prosecution is only carried out on complaints

(3) complaints are made:

- a. if the woman, when she is taken away, is not yet an adult, by herself or someone else who must permit if she marries;
- b. if the woman, when taken away, is an adult, by herself or by her husband.

(4) If the person carrying away then marries a woman taken away and the rules of Burgerlijk Wetboek apply to that marriage, then no punishment can be imposed before the wedding is declared null and void.

In addition to the Criminal Code, this paper also raises several articles in the Domestic Violence Law. Three articles in this law are referred to. To begin, article 1 defines domestic violence. Second, article 5 addresses physical violence in various forms. Thirdly, Article 8 pertains to the definition of sexual violence as defined in Article 5 letter c of the Law.

Article 1 Domestic Violence Law

In this Law, what is meant by:

1. Domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering and neglect of the household, including threats to commit acts, coercion, or deprivation of liberty.

This article describes the violence that occurs in the family. Article 1 of this Law is then explained in more detail in Article 5 of the PKDRT Law.

Article 5

Everyone is prohibited from committing domestic violence against people within the scope of his household by:

- a. physical abuse;
- b. psychological violence
- c. sexual violence; or
- d. household neglect.

Physical violence refers to acts of violence that cause temporary or permanent damage or impairment, or even death. Psychological violence is any form of violence committed by threats, intimidation, or insults that results in trauma, dread, feelings of inferiority, or a loss of sense of security for the victim. Sexual violence – referred to in this paper as sexual crimes – is an attack on the sexuality of women and children. It might take the form of rape, sexual bullying, sodomy, or verbal sexual harassment. Domestic neglect, as discussed in this article, is a type of economic violence. This moment is said to occur when the husband, as the family's head, abandons his wife and children by failing to provide for their needs. Additional information about the types of sexual violence mentioned in Article 5 of the PKDRT Law is contained in Article 8 of this Law.

Article 8

Sexual violence, as referred to in Article 5 letter c, includes:

- a. coercion of sexual intercourse carried out against people who live within the scope of the household;
- b. Coercion of sexual intercourse against one person within the scope of his household with another person for commercial purposes and specific purposes.

Article 18B of the Second Amendment to the 1945 Constitution contains the legal constitution established by the 1945 Constitution of the Republic of Indonesia regarding the Common Law Community Unit requirements. The regulation explains that the common law community is recognized. The provisions regarding the unity of the customary law community are contained in Article 28i (3), which states that the identity of a culture and the community's rights can be respected side by side with the development of the times and civilization. In these regulations, it can be said that there is recognition and protection of the common law community, which can be updated with the times and events of civilization. The meaning of the article is that all laws and regulations not following the rules are null and void. This revocation can be carried out utilizing a request for revocation mechanism, and the legal community has submitted a request for cancellation to the Constitutional Court.

The common law community is registered as a recognized community group in many legislative acts. This provision must serve as a legal foundation for indigenous peoples' rights protection. For example, see UUPA Law No. 5 of 1960, Regional

Government Law No. 32 of 2004, Forestry Law No. 41 of 1999, and Human Rights Law No. 39 of 1999. However, the regulation still requires further clarification on the boundaries of the common law community itself and the legal consequences of the restrictions.

The existing agreement is conditional as long as there is social development regulated by the law based on the legal principles of the unitary state of the Republic of Indonesia. These conditions are interrelated and adapted to the customary law community in a difficult position. On the other hand, the existence of customary law communities that have followed the determination with the state's recognition of a decision in a statement whether or not the existence is in the hands of the state in determining these conditions. In addition, there is no evidence that community recognition still exists and an attempt to prove it has been carried out in the state. The problem is the problem of proving the existence of the common law community. From a legal point of view, indigenous peoples will still not exist unless there is a law that recognizes their existence. Sociologically they do.¹⁵

There is a need for further explanation, referring to the regulation of the Ministry of Education of the State of Agrarian Affairs/Head of the National Defense Agency Number 5 of 1999 concerning the directive of the Customary Rights Agreement of Indigenous Peoples in the provisions of Article 2 which stipulates that:¹⁶

1. As long as they exist, the implementation of customary rights can be carried out with the relevant common law community following local customary law. The customary rights of indigenous peoples still exist if;
 - a. A group of people who usually feel connected by their ordinary legal order are citizens of certain legal unions who have recognized and applied union provisions in their daily lives.
 - b. Certain lands in the ulayat are used as legal residences for union members, and there are places where they collect their daily necessities.
 - c. The existence of legal order, customary administration, and ulayat land in practice obeying members of the legal union.

Meanwhile, Indonesia has ratified several international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Racial Discrimination Against Women, the Universal Declaration of Human and Union Rights, and the National Joint Decree on Human and Union Rights. Numerous international human rights can be used as a legal basis to defend indigenous peoples' rights.

The 1945 Constitution and laws have enacted regulations on recognizing customary law communities that provide a legal framework and can promote recognition, respect, and respect for the fundamental rights and freedoms of indigenous peoples. On the other hand, the customary prerogatives of the community government system and the automated system that includes the judicial system and

¹⁵ Lalu Subardi, "Konstruksi Makna Yuridis Masyarakat Hukum Adat dalam Pasal 18B UUDN RI Tahun 1945 untuk Identifikasi Adanya Masyarakat Hukum Adat," *Jurnal Hukum dan Pembangunan* no 2 tahun (2013), halaman 170-196

¹⁶ Pasal 2 Peraturan Kementerian Pendidikan Agraria/Kepala Badan Pertahanan Nasional Nomor 5 Tahun 1999

regulations governing the management of land and natural resources can be used for this country to achieve national goals. This means that there are many divisions of space in Government between countries and indigenous peoples.¹⁷ Here the state gives autonomy to manage the system of Government that belongs to all people but is still within the Indonesian national system. Recognition and protection of indigenous peoples are regulated in Presidential Decree (PenPres) No. 6 of 1959 concerning local Government.¹⁸

This Presidential Regulation does not mention or regulate common law units in the Government. This Presidential Decree No. was subsequently revoked and replaced by Law No. 18/1965 on the main points of regional Government.¹⁹ Although the law reuses Article 18 of the 1945 Constitution as its legal basis, it does not rule out the possibility of no regulation in common law units such as clans, Nagari and gampong debts in the state structure.²⁰

In some recent cases, we can see that the regular justice system is recovering. In addition to 18B, the 2nd Amendment to Article 28i (3) of the 1945 Constitution and the IV Amendment to Article 32 of the 1945 Constitution provides a legal basis for believing a customary law community and a customary justice system.²¹ The 2nd amendment in Article 28i(3) of the 1945 Constitution emphasizes respect for the cultural identity of the people's rights for the state. Amendment IV to Article 32 of the 1945 Constitution explains that there is something to do with the state's task in guaranteeing a society's freedom for its maintenance and the development of cultural values for state solutions in advancing national culture amid world civilization. Without such acknowledgment, life intertwined with the law will lose our cultural identity. This situation is seen in the demands of the common law community, including the cosmic aspect of religion, for the recognition and respect for their traditional rights. They enforce the law following legitimate needs full of provisions. Their legal activities are also conditioned by religious connotations related to their beliefs.

Interestingly, apart from the provisions of the Common Law Society, the language regulated in the constitution consists of binding legal language and is not responsible for the nature of customary law communities. More specifically, according to the 1945 Constitution of the Republic of Indonesia, it refers to the provisions on control over the state up to Article 33 Paragraph 3, as amended.²² This article continues the colonial legacy of legal politics originating from the "Royal Doctrine and State Legal Policy and Succession Claims." The things discussed contain conceptions of the definition, interpretation and determination of the existence and rights of the community and their implementation. On the other hand, it tends to express the idea that communities

¹⁷ Lalu Subardi, "Konstruksi Makna Yuridis Masyarakat Hukum Adat dalam Pasal 18B UUDN RI Tahun 1945 untuk Identifikasi Adanya Masyarakat Hukum Adat," *Jurnal Hukum dan Pembangunan* no 2 tahun 2013, halaman 170-196

¹⁸ Keputusan Presiden (PenPres) No. 6 tahun 1959 tentang pemerintah daerah

¹⁹ Undang-Undang Nomor 18 Tahun 1965 tentang pokok-pokok pemerintah daerah

²⁰ A. Latif Fariqun, "Pengakuan hak masyarakat hukum adat atas sumber daya alam dalam politik hukum nasional," Fakultas Hukum Universitas Brawijaya, Malang tahun 2007, halaman 1-128

²¹ Amandemen ke-2 pada pasal 28i(3) UUD 1945 dan Amandemen IV pasal ke-32 UUD 1945

²² Pasal 33 Ayat 3 UUD 1945

should be recognized for the active application of their common law and that indigenous peoples need to prove themselves that they still exist.²³

The Official Commission to End Violence Against Women (Komnas Perempuan) is Indonesia's national women's human rights organization. Komnas Perempuan grew out of the Indonesian Women's Strike Movement and is the Indonesian Government's answer to the women's movement's call for the state to be held accountable for violence against women during the May 1998 conflict and riots. President Habibie issued Presidential Decree no. 181/1998, the establishment of Komnas Perempuan began, followed by Presidential Decree no. 65/2005.²⁴ The establishment of Komnas Perempuan is based on Article 1 of Presidential Decree No. 65 of 2005, "in the context of preventing and overcoming the problem of violence against women and eliminating acts of violence in all its forms against women." The purpose of Komnas Perempuan based on Article 1 is for all. Putting an end to a variety of types of violence against women and fostering an environment conducive to women's rights in Indonesia. Efforts to prevent and eradicate all types of violence against women and to preserve women's human rights must be stepped up. Komnas Perempuan is a self-governing national body. Komnas Perempuan's work based on Article 4 of Presidential Regulation No. 65 of 2005, Indonesia carried out socialization of all forms of violence against women and efforts to prevent and eradicate all forms of violence against women. Then has researched various related laws and various international organizations related to protecting women's rights. All forms of violence against women and violations of their rights.

Public monitoring and action to ensure accountability and response. Encourage the development and adoption of policies and legal frameworks that contribute to efforts to prevent and combat all forms of violence against women in Indonesia by advising and guiding the government, legislature, judiciary, and civil society organizations on how to protect, uphold, and promote women's human rights. Enhance regional and international collaboration in order to prevent and eradicate all types of violence against women in Indonesia, as well as to bolster measures to safeguard, guarantee, and promote women's rights. We are researching various relevant laws and various international organizations related to protecting women's rights.

The struggle of women to eradicate injustice (gender injustice) is not a woman's struggle against men. Still, the battle against social injustice systems and regulations with gender injustice agendas must be completed to end this unfair system.²⁵

1. Opposing hegemonism that insults women through ideological deconstruction. Breaking up means questioning everything about the fate of women around the world.
2. Contrary to the development paradigm, women are left behind because they do not participate in development.

²³ A. Latif Fariqun, "Pengakuan hak masyarakat hukum adat atas sumber daya alam dalam politik hukum nasional," Fakultas Hukum Universitas Brawijaya, Malang tahun 2007, halaman 1-128

²⁴ Keputusan Presiden nomor 181 tahun 1998

²⁵ Anggun Lestari Suryamizon, "Perlindungan Hukum Preventif terhadap Kekerasan Perempuan dan Anak dalam Perspektif Hukum Hak Asasi Manusia," *Jurnal Perempuan, Agama dan Jender* vol 16 no 2 tahun 2017, halaman 112-126

It is appropriate to fight against hegemony that demeans women because hegemony is a social engineering component. One way is to pass laws that provide women with a framework to fight against the illicit hegemony guaranteed by various legal actions, including international and domestic ones. One strategy for achieving gender equality is to increase the number of women who serve as women's agents, as lawmakers have a say in the drafting of laws. Therefore, efforts to increase the number of female parliamentarians must continue to be carried out. The number of female MPs in the Democratic People's Republic of Korea has never reached 30 people. In the case of persons, it is vital to develop a system for future increases in female participation in the public sector. Along with legislative measures that favor women or were drafted with a gender equality perspective, there are nevertheless gender-sensitive laws and regulations that are considered as discriminatory against women. Additionally, some parts of the rules and regulations created during the Dutch colonial period remain in force. For instance, the Russian Federation's Criminal Code does not recognize gender-based violence. This is evident in the distribution of articles discussing or defining violence against women. The provisions regarding sexual crimes are not crimes against the female body but crimes of dignity.²⁶

The official regulation contains provisions governing the procedure for applying offenses in litigation, starting with correspondence, investigations, trials, decisions and enforcement as regulated in the Criminal Code. Women's rights as victims of violence and women as "perpetrators." In addition to the nature of the rule of law, the problems we face are also related to the structure of law enforcement and legal culture. As victims or witnesses in law enforcement agencies, women need certain conditions to testify freely and without pressure. For this reason, it is necessary to consider the situation faced by women in the process of completing an investigation, investigation, prosecution, and trial. Women victims of violence, for example, clearly need personal space, especially if violence is sexual violence that cannot be expressed openly by all women. The same applies to tests that must ensure physical and mental safety, showing that what law enforcement officers do does not prioritize the interests of the victims. Therefore, it is difficult for victims to access justice, even victims lose their rights to be protected.²⁷

This situation shows that law enforcement officers do not fully understand victims' rights, especially victims of violence against women. Legal culture surrounds the public's view of violence against women, now created to care for women. However, the majority of society continues to emphasize the interests of women victims of abuse over larger values such as family and community honor. In terms of domestic violence, such as violence in marriage, the general public sees it as a private matter that other parties, especially law enforcement, cannot intervene. This results in the neglect of the rights of victims.²⁸

²⁶ Rifa' Rosyaadah dan Rahayu, "Perlindungan Hak Asasi Manusia Perempuan terhadap Kasus Kekerasan dalam Rumah Tangga di Indonesia dalam Perspektif Hukum Internasional," *Jurnal HAM* vol 12 no 2 tahun 2021, halaman 261-272

²⁷ Alexander Samuel, "Tinjauan Yuridis terhadap Tindak Pidana Kesusilaan terhadap Perempuan," *Lec Crimen* vol 11 no 1 tahun 2022, halaman 128-137

²⁸ Anggun Lestari Suryamizon, "Perlindungan Hukum Preventif terhadap Kekerasan Perempuan dan Anak dalam Perspektif Hukum Hak Asasi Manusia," *Jurnal Perempuan, Agama dan Jender* vol 16 no 2 tahun 2017, halaman 112-126

The state is responsible for being a legal instrument for fulfilling obligations for realizing human rights and protecting all elements of society, including women. This can be seen from the state's obligation (*erga omnes* obligation). International human rights instruments are generally characterized by emphasizing the state as a critical element and placing the state as a party to the content of international human rights instruments. Therefore, international obligations are mandatory for every state because states cannot avoid these obligations unless they say that they violate international law. Thus, the implementation of all public policies must be based on human rights.²⁹

One form of policy based on human rights and gender equality guarantees at least 30% of women in elections. Law No. 17 of 2017 The State's obligation concerning the 2017 general election is stated in the preamble of the primary responsibilities in the field of human rights, in particular, the ICCPR and ICESCR "to promote universal respect and observance of human rights and freedoms of the state...". Indonesia has established an obligation to protect the human rights of every citizen by protecting human rights in the Constitution, especially Article 28I of the 1945 Constitution of the Republic of Indonesia. Human Rights Law no. 39 related to Article 71 and Paragraph (4) Article 28I reads "...the protection, promotion, observance and realization of human rights is the duty of the State, especially the government." and Article 71 of the Human Rights Law stipulates that the State is obliged to protect, respect, guarantee and promote human rights. To date, Indonesia has ratified approximately ten international human rights treaties and of the 25 international human rights treaties that have been authorized.

Several conventions protecting women's rights have been ratified, including the 1952 International Convention on the Political Rights of Women and the 1979 International Convention on the Elimination of All Forms of Discrimination Against Women (International Convention on the Elimination of All Forms of Discrimination Against Women: CEDAW). References include policies in the public and judicial fields. In this article, the word "law" is normative law, namely in the form of statutory regulations (empirical law) provided as a way of reform. The bill's content selected for the research is limited to an account to protect women's fundamental rights. Women's long-standing struggle for equality and justice has failed to elevate women's dignity to the level of men.

Gender inequality and underdevelopment of women have not been erased. Even though women once held the highest power in this country, under President Megawati Sukarno Putri, women in strategic positions in Government are still marginalized and left behind in all aspects of life, including the legal field. This is a big problem for women and the Government. Legislative Law to protect women's human rights: Human Rights Law no. 39 of 1999, No. 23 of 2004 concerning the Eradication of Domestic Violence, Law no. 12 of 2006 concerning Civil Rights, Eradication of Trafficking in Persons and Politics No. (Law No. 2 of 2008 and Law No. 42 of 2008). After that, Presidential Decree No. 9 on Gender Mainstreaming (PUG) in 2000 and Presidential Decree No. 181/1998 were established by the Committee for the Prevention of Violence Against Women.

²⁹ Rifa' Rosyaadah dan Rahayu, "Perlindungan Hak Asasi Manusia Perempuan terhadap Kasus Kekerasan dalam Rumah Tangga di Indonesia dalam Perspektif Hukum Internasional," *Jurnal HAM* vol 12 no 2 tahun 2021, halaman 261-272

D. Conclusion

Based on the descriptions mentioned above, it can be concluded as follows:

1. Women's human rights are rights that a woman owns, either because she is a human being or a woman. In the repertoire of human rights law, arrangements can be found in various legal systems regarding human rights. Regulations regarding recognizing a woman's rights are found in multiple legal systems on human rights. The legal system on human rights in question is the legal system for human rights, both international and national. As a group in society in a country, women are a group that is also obliged to get guarantees for the rights they have in basic terms. Article 2 of the UDHR contains that everyone's rights and freedoms need to be owned without discrimination. Because women are part of a community group whose human rights must also be protected, violations of women's human rights must also be considered violations of human rights.
2. The role of customary law in efforts to resolve violence against women in Indonesia has several settlement mechanisms. In cases of psychological violence or family neglect, women still choose to resolve them by customary law. This happens because marriage by residents is still seen not only as binding on the husband and wife but also the husband's extended family and the wife's extended family. The option to settle cases under customary law was taken to avoid breaking up relations between extended families and reduce disgrace. In the context of cases of violence against women that occur in communities where kinship ties are still strong and socio-cultural values are still considered binding, it can still be said that there are very varied options for resolving the case. In settlement of cases, the criminal act can be resolved through state law by reporting to the police. However, for restoring relations between the perpetrator's family and the victim's family or with the local community, the mechanism chosen is based on customary law.

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