



## **Interlegality of Marriage Law: Tracing the Dynamycs of Sumbong Marriages Practices in Jambi**

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### **Abstract**

*This article departs from the interlegality of marriage laws in Jambi society today, which discusses sumbong marriages. Sumbong marriage itself is a marriage that is legal according to religion, state, and custom. However, the ability to marry sumbong itself is considered valid by carrying out a customary settlement first, which was initially prohibited by customary law. The prohibition on marriage in Indonesia is contained in Article 8 of Law Number 1 of 1974 concerning Marriage and Article 39 of the Compilation of Islamic Law. Departing from this phenomenon, the author tries to examine the writing, which includes the implementation of marriage law in the Jambi community, the legal pluralism of the Jambi community, and the interlegality of customary, religious and state law in the marriage law of the Jambi community. The type of research carried out by the author is field research (Field Research) with qualitative methods. The nature of this research is analytical descriptive research. The approach used by the authors is a sociological empirical approach with interlegality. The author's findings clearly show that legal interactions in this tradition involve interactions between several laws, including religious, state, and customary laws used in sumbong marriage practices. By applying the legal interlegality theory approach, customary law, state law, and religious law become one unit. The concept of interlegality is found in adopting the values contained in the sumbong marriage tradition, whether based on state law, Islamic law, or Jambi customary law. This adoption process is based on the characteristics of the Jambi community's legal identity and its social environment, which is still steeped in customs, and the community also upholds the norms that apply in society and adheres firmly to "adat basandi syarak, syarak basandi kitabullah."*

**Keywords:** *Interlegality; Dynamycs of Marriage Law; Sumbong Marriage.*

### **Abstrak**

Tulisan ini berangkat dari interlegalitas hukum perkawinan yang ada pada masyarakat Jambi saat ini yang terfokus membahas mengenai *kawin sumbong*. *Kawin sumbong* sendiri merupakan perkawinan yang sah secara agama, negara maupun adat. Namun, kebolehan *kawin sumbong* sendiri dianggap sah dengan melakukan penyelesaian secara adat terlebih dahulu yang pada mulanya dilarang oleh hukum adat. Larangan perkawinan di Indonesia sendiri tertuang dalam Pasal 8 Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Pasal 39 Kompilasi Hukum Islam. Berangkat dari fenomena ini penulis berusaha mengupas tulisan yang meliputi, pelaksanaan hukum perkawinan masyarakat Jambi, pluralisme hukum masyarakat Jambi, dan interlegalitas hukum adat, agama dan negara dalam hukum perkawinan masyarakat Jambi. Jenis penelitian

yang dilakukan penulis adalah penelitian lapangan (*Field Research*), dengan metode kualitatif, sifat penelitian ini ialah penelitian deskriptif analitik, pendekatan yang digunakan penyusun ialah pendekatan empiris sosiologis dengan *interlegality*. Temuan penulis terlihat jelas bahwa proses interaksi hukum dalam tradisi ini melibatkan interaksi antar sejumlah hukum, antara lain hukum agama, hukum negara, dan hukum adat yang digunakan dalam praktik perkawinan *sumbong*. Dengan menerapkan pendekatan teori interlegalitas hukum, maka hukum adat, hukum negara, dan hukum agama menjadi satu kesatuan. Konsep *interlegalitas* terdapat pada proses adopsi nilai-nilai yang termuat dalam tradisi *kawin sumbong*, baik bersumberkan kepada hukum negara, hukum Islam maupun hukum adat Jambi. Proses adopsi ini didasarkan kepada karakteristik identitas hukum masyarakat Jambi dan lingkungan sosialnya yang masih kental dengan adat istiadat, masyarakat juga menjunjung tinggi norma-norma yang berlaku di masyarakat dan berpegang teguh kepada "*adat basandi syarak, syarak basandi kitabullah*".

**Keywords:** *Interlegality; Dynamics of Marriage Law; Sumbong Marriage.*

### INTRODUCTION

Legal Pluralism of marriage law in Indonesia, including in Jambi society, has complex consequences and requires a careful approach in formulating legal policies that consider the diversity of cultures, religions and traditions of the community. Efforts to harmonize and align between various sources of law can be the key to achieving equality, justice, and better protection of human rights in the context of marriage. Legal pluralism in Jambi refers to the existence and interaction of several legal systems in the region. Jambi, like many other regions in Indonesia, has diverse legal systems that influence each other, including customary law, religious law, and state law. Each of these legal systems influences and regulates different aspects of life, including inheritance, land rights, and dispute resolution and marriage.

The marriage system may be reforming in society recently, such as in the Kerinci Community, Jambi there is a prohibition on endogamous marriage. Marriage in this area is known as *sumbong marriage*. *Sumbong marriage* (Fajri et al., 2021: 85) is termed for marriages carried out with close relatives, but not blood relatives (Hilman Hadikusuma, 1990: 69) . This *sumbong marriage* also occurs because the Lekuk 50 Tumbi Lempur area is far from other sub-districts, this is what causes most people to marry only their closest relatives. *Sumbong marriage* consists of 11 types. The marriage that is always discussed by society is *the pusako child and father's/mother's relatives* because it is part of *the sumbong marriage*. *Sumbong marriage* is the closest marriage permitted by religion and the state but prohibited by custom. These marriages are known as *inconsistency*, meaning marriage is forbidden by business. However, it is not *dampang sako dimabek mati*,

meaning that it is only prohibited by custom and not prohibited by religion or the state, so the solution must be taken according to tradition, namely by paying the customary sanction (punishment) before the marriage can take place (Tasman, 2014: 286) .

It is customary in society that laws and regulations regulate the obligations and rights of each party during a legal marriage. If the rituals of each religion are followed, the wedding is considered valid. The characteristics of the people of Kerinci Jambi are generally Malay and all Muslim. Religious law prohibits marriage with muhrim, custom approves and adds to the prohibition on marriage with close relatives because it can break the "rules", namely calling (*base*) in straight lineages and deviant lineages based on "*adat basandi syarak, syarak basandi kitabullah.*" (Tasman, 2014: 289)

Based on data in the field, there were 8 cases of *sumbong marriages*, 7 cases of *sumbong marriages with pusako children*, and sanctions were paid when the wedding took place. Meanwhile, the sanctions for marriages with *relatives of the father/mother* will only be born in 2022. Suryadi, as Depati of Suko Brajo, said that from 2017-2022, there were 8 cases of *sumbong marriages*, seven of which were marriages carried out with *pusako children*. This *pusako child* is a marriage between a nephew and an uncle (who are still related). The punishment given is being sentenced to pay the penalty for one goat, *kecik babatu gedang babungkal, baikou bakupalo*, not allowed to be cut because the custom of *kupak lembago sumbing*, although permitted by religion, is prohibited by customary law. Furthermore, the case that just occurred in 2020 and the new sanctions will be paid in 2022, the marriage was carried out with the father's/mother's relatives (the custom is *berasak pusako beranjak*), the punishment given was one buffalo, 1 ringgit (38 million), 100 cans of rice, *kecik babatu gedang babungkal, baikuo bakupalo* must not be cut and cut again (Suryadi, personal communication, August 2022) .

There are also several studies that have discussed this *sumbong marriage*, including: (Ali & Puspita, 2022: 159-173) *Sumbong marriage* is not against positive law. Sanctions for *sumbong marriage* are given in order to maintain the noble values contained in the *sumbong marriage* tradition in terms of maintaining offspring and expanding kinship. (Hasmiati & Elviandri, 2022: 3239-3244) *Sumbang marriage* is a form of compliance that is not a legal system of the *polahi* tribe, by imposing sanctions on those who commit inbreeding. From a biological point of view, this marriage will produce genetically and biologically defective offspring. (Fajri et al., 2021: 75) The customary sanction of *sumbong marriage* has been a custom of the community for a long time since the existence of customary law. This custom is due to the nature of marriage, which is allowed only within its limits to prevent property from falling into the hands of others. The

punishment aims to strengthen kinship ties and protect posterity. (Ali & Puspita, 2022: 160) *Kawin sumbong* is a marriage performed in the eyes of the Kerinci Jambi community because it is a marriage with the closest relative. If a marriage does not exist, then sanctions must be paid according to the type of marriage. The imposition of sanctions has become a custom passed down from generation to generation. (Mega Puspita, 2023) *Kawin sumbong* is legal according to religious and positive law. It's just that there is a prohibition by adat, the marriage is still valid on condition that the sanction/fine is paid first. This disharmony makes it seem like there is a conflict between customary law and positive and religious law. However, in fact there is a compromise given by customary law that the marriage is still valid in the eyes of customary law by fulfilling the conditions given for violating customary law.

Many previous studies have discussed legal diversity, including research by Murdan, Dedy Sumardi, Ratno Lukito, Moch Nur Ichwan, Irzak Yuliardy Nugroho and CH Mufidah, Zezen Zainul Ali and Mega Puspita. The interlegality of marriage law in Indonesia, especially among the Sasak community, especially between customary law, Islamic law and state law. Similar patterns, meaning a harmonious or one-to-one relationship, mixing, assimilation, or conflict between customary law, religious law, and state law, will be known if Indonesian marriages are studied in more depth. The marriage of the Sasak people, to use *Zarathustra Nietzsche's expression*, symbolises a spirit of transformation that accepts all new standards as they emerge and causes the birth of new norms (becoming children) (Murdan, 2018: 130) .

Regarding *legal pluralism*, a figure whose role is to accompany the victim so that the victim's rights are not neglected is a dialectical determinant of the legal tradition. Regulations protecting women and children, customary laws, and Islamic legal practices are interchangeable. To achieve justice and ensure that the civil rights of victims, such as the ability to pursue further education, are upheld while eliminating the devastating effects of the psychological distress they experience, these three legal traditions are combined. In Aceh, combining legal practices has proven to be a successful way to ensure justice for women and children and create new laws to build a victim-friendly national justice system (Sumardi et al., 2021: 426) .

In the Minang civilisation, for example, there are likely to be many legal systems (*legal pluralism*) that regulate marriage. Apart from its impact on social order, the prohibition of tribal marriages also poses a threat to the ability of Islamic law to determine a person's soul mate through marriage, as well as the power of Indonesian marriage law to recognise marriages conducted based on mutually agreed terms (Nugroho & Mufidah, 2022: 25) . In Jambi it is also similar to the Minang civilisation, one of which is the

case of sumbong marriage, that sumbong marriage does not conflict with positive law and religious law. The customary sanction of sumbong marriage is intended to expand ties of kinship. Customary law and positive law in sumbong marriages are in synergy and go hand in hand as long as customary law does not conflict with applicable positive law (Ali & Puspita, 2022: 159) .

Based on the above-mentioned studies, each has advantages and disadvantages. This article seeks to refine the articles that have been written by previous authors. One of the interesting sides of this study is the exploration of the dynamics of the practice of sumbang marriage. The community is based on the philosophy of “adat basandi syarak, syarak basandi kitabullah”. This practice highlights the complexity of the interaction between customary law, religion and the state in the context of marriage. This article opens a window to understanding how Jambi people manage their marriages by considering different aspects of law. It shows how important it is to understand the concept of interlegality in local contexts, where religious traditions and state regulations are intertwined and influence each other in marriage rules.

## **RESEARCH METHODS**

The research method used is qualitative research with empirical legal research. The research approach used is empirical sociology using direct observation. This methodology highlights the search process and legal norms that regulate society by paying attention to legal diversity. This research was conducted in the Islamic Community of Kerinci, Jambi. The sampling technique used was purposive sampling, a data source sampling technique with the consideration that these traditional leaders are considered the most knowledgeable regarding the data needed in this article. Data collection was carried out by interviewing traditional leaders in Kerinci, Jambi as primary data including Depati Agung, Depati Suko Brajo, Depati Payung, Ninik Mamak, Alim Ulama, Clever and Cultural Experts. Then secondary data is obtained from literature related to books, journals and others. Analysis is carried out by analyzing data regarding legal diversity in sumbong marriage customs obtained from the field data collection process, then selected according to their quality. The information is then described in the form of words to facilitate data interpretation and help capture the findings of data analysis regarding legal interlegalities in sumbong marriage customs using clear, methodical, and strong words.

## **RESULTS AND DISCUSSION**

### **Implementation of Jambi Community Marriage Law**

Religious law prohibits marriage with muhrim, but custom approves and adds to the prohibition on marriage with the closest family because it

can damage the rules, namely calling (base) in straight lineages and deviant lineages because custom is based on Islamic law. All religious restrictions also apply to prohibit businesses. regarding marriages within very close descendants, which are not permitted by religion, are called "*sumbong marriages* ." Children born from these marriages are a problem that must be raised and viewed negatively by society.

Marriage with the closest family is permitted by religion and prohibited by custom, which is called "miscance can be redeemed", meaning that marriage is forbidden by trade, but not "diampang sako dimabek mati" is only prohibited by custom with pusako, so the traditional method must be used first, namely pay the customary fine (penalty) before the marriage can take place. The origin of this prohibition is the belief of ancestors (ancestors) that breaking standard rules can bring disaster, so you have to pay a fine for it and maintain very close family relationships; if a divorce occurs, very tight family relationships will be damaged. , that's why traditional people call *piring pecah periuk binaso*.

There are 11 types of *sumbong* weddings (Tasman, 2014: 289–290) :

- 1) *Dilarang kawin dengan saudara sanak bapak, atau sanak ibu, "adat berasak pusako beranjak", dihukum beras dua puluh gantang, kambing satu ekor, emas sekati (800 gram), kecil babatu gedang babungkal, baikou bakupalo, tidak boleh diirung digunting lagi.*
- 2) *Dilarang kawin dengan anak pusako, dihukum beras dua puluh gantang, kambing satu ekor, emas dua puluh (50 gram), kecil babatu gedang babungkal, baikou bakupalo, tidak boleh diirung digunting.*
- 3) *Dilarang mengawini keponakan sanak ibu/ayah. Adat gempar pusako gentar, dihukum beras dua puluh gantang, kambing satu ekor, emas sekati (800 gram), kecil babatu gedang babungkal, baikuo bakupalo, tidak boleh diirung dan digunting.*
- 4) *Dilarang mengawini saudara satu kali sanak ninek, dihukum beras dua puluh gantang, kambing satu ekor, kecil babatu gedang babungkal, kalau keturunan wali, emas dua puluh (50 gram), tidak boleh diirung dan digunting.*
- 5) *Dilarang mengawini keponakan satu kali sanak ibu/ayah, dihukum beras dua puluh gantang, kambing satu ekor, emas dua puluh (50 gram), kecil babatu gedang babungkal, baikou bakupalo.*
- 6) *Dilarang mengawini keponakan satu madu, dihukum beras dua puluh gantang, kambing satu ekor, emas dua puluh (50 gram) kecil babatu gedang babungkal, tidak boleh diirung dan digunting lagi. Pada hakikatnya, adalah saudara kandung, karena dia saudari dari kita juga.*
- 7) *Dilarang mengawini keponakan dua kali sanak ninek, dihukum beras dua puluh gantang, kambing satu ekor, emas dua puluh (50 gram), tidak boleh diirung dan digunting.*

- 8) Dilarang mengawini ibu/ anak satu kali sanak ninek, dihukum beras dua puluh gantang, kambing satu ekor, emas dua puluh (50 gram), kecil babatu gedang babungkal, baikou bakupalo, tidak boleh diirung dan digunting, dibayar hukum baru boleh kawin.
- 9) Dilarang mengawini ibu/keponakan dua kali sanak ninek, dihukum beras dua puluh (50 gram), kecil babatu gedang babungkal, baikou bakupalo.
- 10) Dilarang kawin sumbong dago, (janda mamak/guru) dihukum beras dua puluh gantang, kambing satu ekor, dua puluh emas (50 gram), kecil babatu gedang babungkal, baikou bakupalo, tidak bulih diirung digunting.
- 11) Dilarang kawin sumbong dagi, mengawini janda keponakan, dihukum dua puluh gantang, kambing satu ekor, dua puluh emas (50 gram), kecil babatu gedang babungkal, baikou bakupalo.

As stated by Rafli as Ninik Mamak, the form of *sumbong marriage* is as follows:

"The *sumbong* wedding procession is almost the same as weddings in general; the difference is that there is the payment of sanctions with thanksgiving for killing a goat or buffalo. After the contract is completed, it continues with the traditional parago by the *depati ninik mamak*, who states that this couple is a *sumbong* marriage and has paid the penalty for a goat or buffalo. The real form of the goat is cooked during the day, then the *ulu nasi* (liver, heart, spleen and other stomach contents) is tied using rattan and then cooked in a *koali* with *rendang* spices. After that, it is served in front of four types of people and eaten together with the guests after the wedding ceremony." (Rafli, personal communication, August 2022) .

The process of legal interaction in the *sumbong marriage tradition* can be seen from the processions of carrying out this marriage. Marriage still follows the applicable procedures; the married couple registers with the local KUA. Weddings are also carried out based on religious (Islamic) law, terms and conditions, by applicable regulations. Likewise, with customary law, couples who are getting married also respect the values contained in customary law. According to state law and religious law, *sumbong* marriages are valid in the eyes of the law but are lame in the eyes of custom. Even though customary law prohibits *sumbong unions*, customary law still harmonises with state law and religious law that marriages are still valid provided that they carry out everyday settlements, namely paying sanctions as a manifestation of violating standard regulations.

Based on data in the field, there were 8 cases of *sumbong marriages*, 7 cases of *sumbong marriages* with *pusako children*, and sanctions were paid when the wedding took place. Meanwhile, the sanctions for marriage with

*relatives* will only be born in 2022. Suryadi, SE confirmed this as Depati Suko Brajo:

"According to Suryadi as Depati of Suko Brajo, from 2017-2022, there were 8 cases of *sumbong* marriages, seven of which were marriages with *pusako children*. This *pusako child* is a marriage between a nephew and an uncle (who are still related). The punishment given is being sentenced to pay the penalty for one goat, *kecik babatu gedang babungkal*, *baikou bakupalo*, not allowed to be cut because the custom of *kupak lembago sumbing*, although permitted by religion, is prohibited by customary law. Furthermore, in the case that just occurred in 2020 and the new sanctions will be paid in 2022, the marriage was carried out with the father's/mother's relatives (the custom is *berasak pusako beranjak*), and the punishment given was one buffalo, 1 ringgit (worth 38 million), 100 cans of rice, *kecik babatu gedang babungkal*, *baikuo bakupalo* must not be cut or cut again." (Suryadi, personal communication, August 2022)

The people of Lekuk 50 Tumbi Lempur Kerinci, Jambi are people who are aware of the norms that live in society. Whether they like it or not, people must respect the values of customary law. The average community has a place to live and live, and the majority make their living as farmers. The community is highly aware of Indonesian citizens, Muslim communities and customary law communities.

There are various reasons for implementing this marriage law. The first reason for implementing the *sumbong* marriage sanction is to expand kinship relations. The Lekuk 50 Tumbi Lempur community once adhered to an arranged marriage system, also known as the belief that marriages can only occur between local community members. To prevent wealth from passing into other people's hands, arranged marriages are made with family members. Daswarsa community leaders shared similar sentiments:

"The tradition of *sumbong* marriages is implemented, so this sanction is given because the marriage occurs between the same scope (family), which traditionally is incompatible or not good to look at because there are still sibling ties even though they are distant relatives. "Consequently, this punishment is used so that people have more freedom to establish family relationships and are not required to marry within these relatives." (Daswarsa, personal communication, September 4, 2022)

*Second*, maintaining ties of kinship is why there is a sanction for *absentee marriage*. We will only sometimes feel harmony, warmth and calm



when building a household. There will be challenging times, leading to many disputes and even divorce in some situations. By what Depati Umbrella said:

“A married couple becomes part of two large families and two men and a woman. Even though they still have a relationship with their former family, a divorce would result in a rift. Traditional law authorities have carefully considered this *sumbong* marriage tradition and imposed sanctions. *Raso* and *parties*, which refer to developing a sharp sense of humanity or a high conscience in everyday life, are the basis for considering this tradition.” (Jaharudin, personal communication, September 5, 2022)

*Third*, in this case, it concerns the person who will get married. The people of Gunung Raya Kerinci sub-district are very passionate regarding *sumbong* marriages; the people believe that if a *sumbong* marriage occurs, then undesirable events will appear later, such as disabled children. This marriage sanction is a warning or form of penance to prevent this from happening in the future.

The firm adherence of the people of Lekuk 50 Tumbi Lempur to the customary prohibition of inbreeding can also be traced to the belief that such marriages will give birth to many disabled children; if the marriage continues, many of the offspring will be weak. This is in line with an interview conducted by the author with a Muslim scholar, namely Buya Subirman:

“According to the Prophet's hadith, avoiding marriage with close relatives will prevent the birth of weak offspring. The intention is to marry distant people who have no family ties. The reason is, firstly, the family increases, and secondly, the intelligence possessed by the offspring will come. It could be that a relationship that still has a family has a disease, then the disease will only revolve around that. If the candidates are both intelligent, there is no problem, but there is concern that those who are still related have an illness. "That's why the prophet recommends that marriage be recommended away from family relations or marrying a foreigner who has no family relations whatsoever." (Subirman, personal communication, September 2, 2022)

There are various views expressed by customary law authorities regarding marriage law. This *sumbong* marriage custom has been passed down from generation to generation and has become ingrained in society. The native people of Lekuk 50 Tumbi Lempur Kerinci often urge

exogamous marriages but still allow *endogamous marriages* on condition that they undergo a traditional settlement first. If not, it will be considered to have violated customary provisions and will be subject to material and non-material sanctions. As stated by Drs. H. Amris Kahar as Depati Agung Lekuk 50 Tumbi Lempur, Kerinci Jambi:

" *Adat Basandi Syara', Syarak Basandi Kitabullah* means that customs must not conflict with Islamic law or are termed *syara'* as customary to use. Marriage is not permitted in Islam, as well as tradition prohibits or does not allow it. This marriage is permissible in religion, but it is disgraceful in the eyes of society and businesses because it is unsightly. Even though customary law allows it, this is done by paying expected sanctions/settlements. "If you don't pay, you will be considered to have violated customs and will be ostracised or deemed to have wandered into the country." (Amris Kahar, personal communication, September 1, 2022)

In line with what was expressed by Lempur cultural experts, Duko said:

"There are many types of *sumbong* marriages; one of the most common is marriage between *pusako* children. *Pusako* child marriage is a marriage between mother and nephew; their family relationship is not blood, but still has family ties. The sanction for this kind of marriage is to pay for one goat. "This marriage is based on religion, state or custom, but to respect traditions, you have to pay a penalty because this kind of custom has been passed down from generation to generation from ancestors, and if you don't pay the fine, you will bear the risk of living in society. " (Duko, personal communication, September 3, 2022)

As stated by Depati Suko Brajo:

"Previously, customary law was not written, but word of mouth from the ancestors (implied); only in 2004 was it included in the *Tambo Adat* written by Aulia Tasman. The power of custom remains strong because it has been enforced from the past until now. As the saying goes (if it is sifted, it withers; if it is stirred, it dies) meaning that if customary law is transferred or abolished, customary law will not survive and cannot maintain the balance in society. "The indicator that customary law is strong is when these traditions continue to be implemented and obeyed by all elements of the Lekuk

50 Tumbi Lempur Kerinci traditional community." (Suryadi, personal communication, August 2022)

Based on several opinions from traditional law authorities, the tradition of *sumbong marriage* has been a habit of ancient people. The union often found is the *sumbong type* with *pusako children* and *father/mother siblings*. This *sumbong* marriage is legal according to religion, state and custom. It's just that custom adds to the law by providing sanctions to benefit the people of Lekuk 50 Tumbi Lempur Kerinci, Jambi. If you do not pay the sanctions, you will be at your own risk in the territory of indigenous peoples.

### **Pluralism of Jambi Community Marriage Laws**

The phenomenon of law is universal. Global societies live in a circle of legal diversity. They are faced with various legal options that exist in their midst. Thus, they can choose one law and leave the other according to their wishes.

According to (Werner Menski, 2006:173) legal pluralism is linguistically derived from English, namely Legal Pluralism Theory. Legal pluralism was introduced by Werner Menski in his book *Comparative Law in a Global Context (The Legal) System of Asia and Africa*. Legal pluralism is an approach to understanding the legal relationship between constitutional law (positive law), aspects of society (socio-juridical approach) and natural law (moral/ethical/religious). In general, legal pluralism means enacting more than one type of law in one state territory, such as Indonesia where the society is plural in terms of religion, customs and language, all of which must be respected and recognized (Yuswalina, 2016: 125).

(Tamanaha, 2017: 447-483) legal pluralism is everywhere, where legal pluralism occurs at all levels ranging from local and glonal levels, rural and urban levels. Not only concerning the place, legal pluralism also touches various aspects of legal social life in society. In short, legal pluralism touches all areas and all aspects. This symptom of legal pluralism also occurs in Indonesia.

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In the context of today's marriages, the Islamic community of Kerinci, Jambi, as a whole, does not only practice traditional marriages. However, they also practice Islamic marriage law and Indonesian marriage

law because the majority of Kerinci people are Malay. Discussions about these three systems, including legal culture, legal institutions and legal norms, were not only hotly discussed during the colonial era and today's Indonesian government. However, long before the colonialists came to romanticise the archipelago, religious leaders, traditional leaders, and other community leaders had discussed the relationship between these three norms. One proof of this expression is the classic expression which says "agama mengato, customary wear: adat basandi syarak, syarak basandi kitabullah".

The teachings absorbed by the Kerinci people initially never conflicted between custom, religion and state. These three norms are things that cannot be separated from each other. Customs are a concrete manifestation of the values contained in Islamic law. For example, regarding the prohibition on traditional marriages following the rules of Islamic law. There are only a few additional rules regarding the prohibition of marriage according to custom; these are also *maslahah* values that ancient ancestors have carefully considered for their children and grandchildren. The marriage process is the same as marriages in Indonesia, following Islamic procedures and laws; only when a bride is still related to the groom sanctions (fines) will be imposed according to the *sumbong* marriage carried out. The *sumbong* marriage tradition aims to encourage people to marry outside the scope of Kerinci Lempur society (*exogamy*). Although, in principle, it allows marriage within the same area (*endogamy*), it is done by carrying out customary settlements, namely paying sanctions.

Legal pluralism in Kerinci Islamic society is triggered by several things: *first*, community compliance in carrying out the three norms of custom, religion and state (Posner & Rasmusen, 1999: 369–382). The community's enthusiasm for implementing the law is very high; even without being reprimanded, the community consciously pays sanctions to businesses for violating customary norms. This can be seen in the tradition of *sumbong marriages*, which are carried out by registering with the KUA; the wedding is attended by the head of the village, traditional leaders, religious scholars and community leaders. Marriage sanctions are still paid. People know the consequences they will get if they don't pay the sanctions.

*Second*, from a political perspective, legal policies were influenced by colonialists (Zaelani, 2019: 128–163). The most crucial reason for legal pluralism, more specifically in the field of marriage in Indonesia, occurred because of the legal policies issued by the colonialist government, especially the Dutch East Indies government. For example, Article 10 of *Algemene Bepalingen van Wetgeving* (AB) Concerning General Provisions for the Government of the Dutch East Indies stipulates that the population of the Dutch East Indies is divided into several civil groups, including the

European Group, Bumiputra/Indigenous Group. The classification of the people of the Dutch East Indies can also be seen in Article 109 *Regarding Regulation (RR)* and Article 163 *Indische Staatregeling (IS)*, with several groups, including the European Group, Bumiputra/Indigenous Group and Foreign Eastern Group (Muhammad Bakri, 2011: 259 -261) .

*Third*, the legal situation in Indonesia. The most crucial reason Indonesian jurisprudence recognises the pluralism of society is because of the diversity of cultures, races, religions and groups (Muhtamar et al., n.d : 38-51). Based on the fact that the diversity of the Indonesian community fought for Indonesian independence with a spirit of freedom is an important reason why Pancasila as a national ideology must recognise the existence of pluralism in Indonesia. Pancasila, as the most fundamental legal norm, is used as the source of all sources of law in Indonesia so that it is stated in the constitution and implemented in the form of law; other statutory regulations must automatically recognise the linguistic diversity of Indonesian society as a natural social fact, then grow and develop together with the natural and socio-cultural phenomena of Indonesian culture.

*Fourth*, there are differences in how marriage is practised in Kerinci society. Marriage customs are the same as those of Indonesian culture in general (Katz & Katz, 1975: 653). It's only different at the traditional level; the wedding ceremony starts from the *nyilau*, *nyasat*, *tak peltak*, *manggal* to the peak of the wedding ceremony. Even though it differs from marriages in general, the traditions carried out are still maintained and do not ignore the rules that apply in religious or state law. For example, at the *manggal event*, the invitation/appeal for *the baralek* to get married uses a betel nut containing white lime, areca nut, and betel. This *manggal* tradition does not override the rules that apply in our country, Indonesia; the *manggal* to the Head of the Office of Religious Affairs (KUA) is also based on Government Regulation Number 9 of 1975 that notification is made ten days before the marriage contract is carried out, and follows the procedures stated in the KUA.

### **The Interlegality of Customary, Religious and State Laws in Jambi Community Marriage Law**

*Sumbong marriage* tradition was built in the spirit of plurality by applying three laws: custom, religion (Islamic Law) and the State. Using an *interlegality lens* provides signs that consciously recognise pluralism or legal diversity. Legal conflicts and contestations will naturally continue to occur. However, the most important thing to consider is what polarisation can be created to create harmony between existing legal norms. As released by Wai, legal debates are an essential part of the spirit of mutual support that arises from a shared commitment to achieving transnational legal

standards. The argument thus becomes a positive implementation that consciously deflects the negative potential of the struggle for authority (Zelfeni Wimra, 2022: 20) .

*Interlegality* emphasises the diversity of laws in a country with different variations in customary law; Islamic law and state law cannot be seen separately from other social domains because they create legal order. De Sousa Santos stated that this theory emphasises aspects of the process and results of accepting the values contained in the various legal traditions. The mixing process produces new laws or *legal hybrids* (Hoekema, 2005, pp. 10-11) . *Interlegality* is also used to see the dominance of state (official) law, which has the power of legal certainty. Open dialogue is held to defend minority groups due to assimilation pressures (Proulx, 2005: 81-82) .

Starting from the explanation of legal *intelligence* (McJohn, 1998: 141), it is necessary to state that legal diversity is a social phenomenon we cannot avoid in a pluralistic society such as Indonesia. Second, there are variations in the law. In that case, there will inevitably be normative discussions or conflicts in a pluralistic society, and it is not uncommon for culture shock to occur when new norms are introduced. Finally, the clash of legal norms is a dialectical process in which the entry, penetration and fusion of one norm with another (interlegal norm) will benefit both parties (win-win solution). In terms of legal battles, at least several social attitudes emerge, including 1) integration between one norm and another; 2) combining or adapting one norm to another norm (incorporation/adaptation); 3) legal conflict between one norm and another norm (legal/norm conflict); 4) competition between one norm and another (competition); 5) a norm Mutual avoidance with other norms (Ade Saptono, 2010: 29-30) .

The theory of *interlegality* is used to reveal the veil of the intent behind adopting the values contained in the *sumbong marriage tradition*, whether based on state law, Islamic law or the customary law of Kerinci, Jambi (Manifesto, n.d.). This adoption process is based on the characteristics of the legal identity of the Kerinci Jambi community and their social environment. Each legal system contains various legal traditions tied to multiple interests that describe the social setting where law occurs and is practised. By looking at the conditions in the people of Kerinci, Jambi, the law created is the social setting of traditional institutions from the past until now. This setting was designed to develop community order (customary norms). As stated by Depati Agung:

"The *sumbong marriage tradition* is a tradition that the community has carried out for a long time since this customary law existed; this tradition cannot be separated from the life of the Lekuk 50 Tumbi Lempur traditional community, Kerinci. If this tradition is abolished, custom will not function as it should. Meanwhile, custom is a culture

that we must preserve forever. Because it is useful for the future good of our children and grandchildren; moreover, this tradition does not conflict with religious or state law." (Amris Kahar, personal communication, September 1, 2022)

Law Number 1 of 1974 codifies Indonesia's national marriage law. The provisions, legal basis, conditions, prohibitions, safeguards, annulment and other matters relating to marriage are all explained in detail in this law. The law prohibits marriage between "two people who have a relationship based on their religion or other applicable prohibitions, it is prohibited to marry," as stated in Article 8 letter (f) (Manan & Ruzaipah, 2021: 147-159) .

Customary law is one of the additional laws mentioned. According to Attachment A to MPRS Decree No. 402 NO II/MPRS/1960, which stipulates that customary law is the basis for forming national law, the regulation is based on this statement. Customary law is solid and distinct in the MPRS legal framework for creating state law. To uphold justice, developing customary laws must not hinder the progress of society. Norms relating to national interests may include elements of customary law. Customary law is aimed at the Unitary State of the Republic of Indonesia, founded based on Pancasila, does not violate the constitution, and must eliminate the notions of capitalism, feudalism and human exploitation. It is based on national unity and avoids conflict with national interests. It does not conflict with the religious component (Laksanto Utomo, 2016: 141) .

Customary law is regulated in Article 18B Paragraph 2 of the 1945 Constitution of the Republic of Indonesia, which states that "The State recognises and respects regular law community units and their traditional rights as long as they are still alive and by the development of society as a tribute to their existence, even though in practice it is still limited (Thontowi, 2013: 22) . This shows that the Indonesian state has given constitutional recognition to customary law in its judicial system. If customary law does not conflict with applicable positive direction, it can still be used in practice (*ius constitutum*).

The relevant law does not prohibit *absentee marriage (ius constitutum)*. The marriages practised are still valid according to the analysis of "Marriage Law" because they do not conflict with the rules of positive law. The *community uses the sumbong wedding custom* to encourage closeness in the workplace and continue family life for future generations. The main goal of customary law is to maintain a balance between the social life of society and individual privacy. If the law is violated, it will help restore people's lives and achieve the desired balance (Ali & Puspita, 2022: 168) .

Based on findings in the field, the tradition of *sumbong marriage* is implemented so that people who violate customary provisions can pay sanctions to customs. Three factors cause sanctions to be imposed: *first*, so

that community kinship relations become more widespread, by implementing *exogamous marriages*, even though *endogamous marriages* are permitted, but by paying the sanctions first. *Second*, maintain kinship ties with closest relatives and the people of Kerinci, Jambi, because family relationships will also be damaged if a divorce occurs. *Third*, keep your lineage to be better and brighter.

Customary law is in synergy with Islamic law, not *vis a vis* customary law (Anggraeni, 2023: 1). It is also modern in thinking about the benefit of the community even though its aims and objectives are not stated in the text of Islamic law. If, in Islamic law, *marriage* is permissible, according to customary law, sanctions must be paid to clear one's good name. This is visible in the third causal factor of the *sumbong marriage tradition*, namely maintaining lineage or offspring. This customary prohibition prioritises the benefit of the people of Kerinci, Jambi. The objectives of the rules established by customary law align with the goals of Sharia law, namely preserving religion, soul, reason, life and property. The *sumbong marriage tradition* is at the *hajiyat* level, aiming to maintain offspring and not give birth to weak offspring.

The information above is sufficient to prove that Customary Law, Sharia Law, and State Law are all by *sumbong marriage customs*. Customary law and religious law have legal justification from the state, especially the direction of the state itself. Therefore, this form of marriage harmonisation is only with basis. The Constitution of the Unitary State of the Republic of Indonesia, which serves as a guideline for organising Indonesian state life, is the foundation for these three laws (Dahwal & Fernando, 2024).

Customary law is based on Article 18B paragraph (2), which states that the state recognises and respects regular law community units and their traditional rights as long as they are still alive and by the progress of society and the Unitary State of the Republic of Indonesia along with the principles outlined in the law. Invite. Based on Article 28 E and Paragraphs 1 and 2 of Article 29 of the 1945 Constitution of the Unitary State of the Republic of Indonesia, which strengthens the following matters:

"Article 28 paragraph (1) Every person is free to embrace religion and worship according to their religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the country's territory and leave it, and has the right to return. (2) Every person has the right to believe and express thoughts and attitudes by their conscience. (3) Everyone has the right to freedom of association, assembly and expression of opinion."

National law is based on Article 1 Paragraph 3 of the 1945 Constitution of the Unitary State of the Republic of Indonesia, which



stipulates that Indonesia is a legal state. In the case of *sumbong marriage*, there is the harmonisation of the three legal systems, but not *a choice of law*. In this case, society is a society that is aware of the existence of three complementary legal systems: its position as a Muslim society, Indonesian citizens and customary law society. In this case, there is an *interlegality* of legal norms with other laws adopted by society. The prohibition of marriage, in this case, does not mean it is against positive or Islamic law. Still, there is a compromise that the marriage remains valid by paying sanctions according to custom. If you do not pay the penalty, you have violated customary rules.

The interlegality of customary, religious, and state laws in Jambi community marriage law reflects a complex and dynamic relationship between these different legal frameworks. In the context of marriage, these three legal systems often intersect and influence one another, shaping the norms and practices surrounding marriage within the Jambi community.

Customary law, rooted in traditional practices and cultural norms, plays a significant role in regulating marriage within the Jambi community. It governs various aspects of marriage, including betrothal, dowry, and marital rites, and is often deeply ingrained in the social fabric of the community. Customary law provides a framework for conducting marriage ceremonies and resolving disputes related to marriage within the community (Itmam, 2020: 338–347).

Religious law, particularly Islamic law, also holds sway over marriage practices in the Jambi community, especially among Muslim populations. Islamic law dictates the requirements and procedures for marriage, including the consent of parties, the presence of witnesses, and the payment of dower. It provides a religious framework for marriage, guiding individuals on the proper conduct of marital relations and responsibilities.

State law, as codified in national legislation, further regulates marriage within the Jambi community. Laws such as the Marriage Law of 1974 and the Compilation of Islamic Law govern the legal aspects of marriage, including registration, rights, and obligations of spouses, and dissolution of marriage. State law provides a legal framework for marriage that is applicable to all citizens, regardless of religious or cultural background.

The interlegality of these legal systems becomes apparent in the practice of marriage within the Jambi community. While each system operates independently, they often overlap and interact, influencing individuals' decisions and actions regarding marriage. For example, individuals may choose to marry according to customary practices while also ensuring compliance with religious and state legal requirements. In cases of dispute or conflict, individuals may seek resolution through

customary, religious, or state legal mechanisms, depending on the nature of the issue and their preferences.

Overall, the interlegality of customary, religious, and state laws in Jambi community marriage law underscores the complexity and richness of legal pluralism within the community. It highlights the coexistence of diverse legal traditions and the ways in which individuals navigate and negotiate between these different systems in the context of marriage.

There are several values contained in the tradition of *sumbong* marriage. *First*, the practice of *kawin sumbong* is seen as a way to maintain family honor and maintain social dignity. Legitimately, the marriage is valid according to religious, positive and customary law, and is recognized by the community. *Second*, the noble values of customary law are important to maintain and preserve. *Third*, respect for the applicable legal authority, the disharmony that occurs can be well compromised by customary law. *Fourth*, there is acceptance of values and integration in society. Although different in customary, religious and state systems, the practice of *kawin sumbong* provides an example of how society can balance and integrate various norms and values in everyday life.

### CONCLUSION

In the context of the concept of interlegality, the process of adoption of values contained in the *sumbong* marriage tradition from various legal sources such as state law, Islamic law, and Kerinci Jambi customary law shows how various legal systems interact with each other and combine their values to form a larger whole. This adoption process reflects the complex dynamics in society where cultural, religious and legal values together form the foundation for certain social practices. The adoption of these values shows that communities pay attention to and respect different sources of legal authority, and they are able to adapt their traditional practices to the requirements of the applicable law. It also shows that although there are differences between state law, Islamic law and customary law, they do not necessarily conflict with each other, but can work together to create harmony in social and legal life. In addition, the process of adopting values from different sources of law also reflects the ability of communities to address legal and cultural conflicts in a way that respects and strengthens their identity and traditions. This illustrates a rich dynamic in local legal practice where communities do not simply follow one single legal system, but creatively combine different aspects of multiple legal sources to achieve social justice and cultural diversity.

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