

CHILD MARRIAGE IN THE RECIPROCITY CULTURE OF THE SEA TRIBE COMMUNITY: LEGAL CONFLICTS AND VIOLATIONS OF EDUCATION AND HEALTH RIGHTS

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Abstract

The culture of “reciprocity” remains preserved and continues to serve as the foundation for the implementation of customary/Adat marriages among the indigenous Sea Tribe community in Lingga Regency. This study aims to strengthen cultural norms and regulatory frameworks, while also addressing the enforcement of such cultural practices. Employing an empirical legal approach, the study found that the practice of reciprocity conflicts with the prevailing national marriage law. Specifically, due to imbalances in social obligations, the Sea Tribe community often carries out child marriages based on custom without obtaining a court-issued marriage dispensation, as legally required. Furthermore, the Sea Tribe can no longer be classified as an Adat law community, as it no longer meets the criteria; instead, it should be regarded as a customary community that remains subject to national law. Drawing on Satjipto Rahardjo’s Theory of Legal Compliance, the study identifies three key factors contributing to the community’s non-compliance with marriage law: the lack of proper legal indoctrination, entrenched collective habits, and a limited understanding of the benefits of legal obedience. Consequently, the continued application of the reciprocity culture results in violations of children’s rights to health and education within the community. In light of Mochtar Kusumaatmadja’s Theory of Development Law, this study underscores the need for marriage law to more effectively govern the practices of the Sea Tribe community.

Keywords:

child marriage; health and education rights; reciprocity culture; sea tribe community

Abstrak

Budaya “balas budi” merupakan budaya yang masih dipertahankan dan dijadikan landasan dalam melaksanakan perkawinan adat pada masyarakat adat Suku Orang Laut Kabupaten Lingga. Penelitian ini bertujuan untuk menganalisis pengaturan dan penerapan budaya serta implikasi dari budaya tersebut. Dengan menggunakan metode yuridis empiris, dalam penelitian ini ditemukan bahwa budaya “balas budi” bertentangan dengan ketentuan dalam peraturan perundang-undangan mengenai perkawinan. Ditemukan bahwa, dengan budaya tersebut, masyarakat Suku Orang Laut

demikian imbalan jasa harus melakukan perkawinan anak secara adat tanpa meminta dispensasi nikah ke pengadilan. Lebih lanjut, masyarakat Suku Orang Laut nyatanya bukan lagi merupakan 'masyarakat hukum Adat' karena sudah tidak memenuhi kriteria masyarakat hukum Adat, namun hanya merupakan komunitas masyarakat adat sehingga wajib tunduk pada hukum nasional. Berdasarkan Teori Kepatuhan Hukum oleh Satjipto Rahardjo, ada tiga faktor yang menyebabkan masyarakat Suku Orang Laut mengabaikan hukum perkawinan, yaitu tidak adanya indoktrinasi yang benar, kebiasaan bersama, dan pemahaman akan manfaat menaati hukum dalam kehidupan bersama masyarakat Suku Orang Laut. Dampaknya, implikasi budaya tersebut berujung pada pelanggaran terhadap hak kesehatan dan pendidikan anak-anak Suku Orang Laut. Teori Hukum Pembangunan oleh Mochtar dalam hal ini menegaskan bahwa hukum perkawinan seharusnya mengatur tindakan masyarakat Suku Orang Laut.

Kata Kunci:

budaya balas budi; hak kesehatan dan pendidikan; perkawinan anak; suku orang laut

Introduction

The Sea Tribe community (*Suku Orang Laut*) is one of the groups that still inhabit various areas in the Riau Islands Province. They are considered one of the indigenous tribes residing in the province. Culture and history show that the Malays are the original tribes that have inhabited the Riau Islands since the 15th century. However, the Malays are not the only indigenous tribes in this area of the Riau Islands. The Sea Tribe, or the Orang Laut, is one of the native tribes of the Riau Islands.¹ The distribution of the sea tribe community is almost evenly spread across every regency and city in the Riau Islands Province, although the numbers may vary between different regions. Generally, they live in small groups, and their population is not very large.

Originally, the sea tribes led a nomadic lifestyle, moving from one island to another using boats that also served as their dwellings. These boats had roofs made of woven palm leaves known as 'Kajang'. The sea tribe's lives were heavily reliant on the sea, characterized by a traditional lifestyle, and they were known for not adhering to any specific religion (animism). However, in contemporary times, many of them have adopted various religions such as Islam, Christianity, or Buddhism, as observed in regencies like Lingga and Karimun. Some have also transitioned to government-provided houses through housing development programs. Despite

¹ Winshery Tan, Child Marriage within the Sea Tribe of Kelumu Island: Issues and Problems, *Jurnal Media Hukum*, Vol. 29. No. 2, 2022, p. 122.

these changes, the sea tribe's way of life remains intricately connected to their original customs and their profound relationship with the sea.²

This research focuses on the Sea Tribe in the Lingga Regency on the grounds that Lingga Regency has a high poverty rate in the Riau Islands Province where most of Sea Tribes live in this regency, as seen below:

Table 1. Poverty Rates in Cities/Regencies of the Riau Islands Province

No	City/Regency	Percentage
1	Lingga	13,93
2	Tanjung Pinang	9,57
3	Anambas	7,09
4	Karimun	6,85
5	Bintan	6,42
6	Natuna	4,95
7	Batam	5,05

Source: Viva Budi Kusnadar, 2021³

Lingga is a regency with the highest poverty rate in the Riau Islands as presented by Table 1. According to the Central Statistics Agency, the impoverished population in the regency amounted to 12.58 thousand people or 13.93% as of March 2021. This poverty rate is higher compared to March 2020, which was 13.85%. The next highest in poverty rates is Tanjung Pinang City, at 9.57%, followed by the Anambas Islands Regency with 7.09% of the population living in poverty. Subsequently, Karimun Regency has a poverty rate of 6.85%, while Bintan Regency stands at 6.42%. Batam City also registers a poverty rate of 6.12%. Natuna Regency has the lowest poverty rate in the Riau Islands (4.95%).

The Sea Tribe community in the Riau Islands Province is no longer officially recognized as a secluded indigenous community by the Ministry of Social Affairs, Directorate of Customary Affairs since 2015.⁴ Therefore, it is not considered an indigenous community by law. Despite this, the Sea Tribe community continues to live by their various customs and cultures. Their culture, derived from the Sanskrit

² Marisa Elsera, Identifikasi Permasalahan dan Upaya Pemberdayaan Suku Laut di Dusun Linau Batu, Desa Tanjunglekit, Kabupaten Lingga Provinsi Kepulauan Riau, *SOSIOGLOBAL: Jurnal Pemikiran dan Penelitian Sosiologi*, Vol. 3, No. 2, 2019, p. 6.

³ Viva Budy Kusnandar, "Lingga Regency Poverty Rate Highest in Riau Islands in March 2021," 2021, <https://databoks.katadata.co.id/demografi/statistik/10de782091f4f9a/angka-kemiskinan-kabupaten-lingga-tertinggi-di-kepulauan-riau-pada-maret-2021>.

⁴ Marisa Elsera, Nanik Rahmawati, and Annisa Valentina, Intervensi Masyarakat Suku Laut oleh Tokoh Agama di Kepulauan Riau, *Indonesian Journal of Religion and Society*, Vol. 4, No. 1, 2022, p. 51.

word “*buddhayah*,” which is the plural form of “*buddhi*” (wisdom or intellect), is interpreted as things related to human wisdom and intellect. In English, culture originates from the Latin word “*colere*,” means to cultivate or work. It can also be interpreted as cultivating the land or farming. The word “culture” is sometimes translated as “*kultur*” in Indonesian. In the Indonesian dictionary, culture (*budaya*) is defined as thoughts, customs, something that has developed, something that has become an ingrained habit that is difficult to change. In everyday usage, people often synonymize the concept of culture with tradition. In this context, tradition is defined as the visible habits of a community.⁵ One of the Sea Tribe of Lingga Regency cultures which has become their customary law is the “*budaya balas budi*” (reciprocity culture). It is reflected by the tradition of marrying one’s daughter to the groom of another family as a form of reciprocal gratitude. This is done because the groom’s family has been kind and rendered significant services or benevolent actions to the bride’s family. This visible habit has become a cultural tradition passed down through generations. The issue arises when they marry off their daughters at the age of 13-15.⁶

Based on the culture that has been preserved from generation to generation by the indigenous people of the sea tribe, when the child has reached puberty (age 13-15), the girl is immediately handed over to the groom’s family to live in “one boat.” “One boat” symbolizes unity, either becoming one household or getting married. Traditional marriages among the Sea Tribe community in Lingga Regency predominantly take place when the children are between the ages of 13-15. The phenomenon of child marriages cannot be halted due to the strong adherence to customary law by the community. Therefore, they are married off first in accordance with their religious beliefs. For example, Christians receive blessings in the church, and those who are Muslims have their weddings conducted in the mosque. However, their marriages are not officially recorded in the civil registry until they reach the

⁵ Abdul Wahab Syakhrani and Muhammad Luthfi Kamil, *Budaya dan Kebudayaan: Tinjauan Dari Berbagai Pakar, Wujud-Wujud Kebudayaan, 7 Unsur Kebudayaan Yang Bersifat Universal*, *Cross-Border Journal*, Vol. 5, No. 1, 2022, p. 784.

⁶ Interview with Pastor Noch Lumampouw, Religious Figure of the Sea Tribe of Lingga Regency, Lingga Regency, 2 July 2024, unpublished.

legal age for marriage. Subsequently, they carry out traditional wedding ceremonies based on existing customary practices.⁷

Furthermore, the customary marriage of the sea people tribe carried out by minors has a negative impact on the bride and groom who are carrying out the child marriage. Based on the results of an interview with Adragon Demello who is one of the midwives assigned to the Penuba Health Center, Lingga Regency for approximately 5 (five) years, several things were found related to the phenomenon of young mothers of the sea people tribe who underwent the childbirth process at the Penuba Health Center, showing that although the incidence of maternal death has decreased, but incidence of malnourished children and mother's readiness and knowledge still need attention, also the cases of infant mortality has increased in 2021.⁸ The main performance indicator of the Health Office of Population Control and Family Planning of Lingga Regency, the Percentage of underweight in toddlers was not achieved by 0.35 of the target of 0.1% so that the achievement of this indicator is in the category of "very bad" with a performance percentage value of -145.47%. Also followed by other indicators, namely the Maternal Mortality Rate (MMR) per 100,000 KH, the target is 132 with an achievement of 413.56 with a performance percentage value of -117.24 in the category of "very bad" and the Infant Mortality Rate (IMR) per 1,000 KH was achieved with the category of "very good". In addition, there were also incidents of maternal death during childbirth. The MMR and IMR are global health problems that are important indicators in the success of maternal and child health programs as well as indicators in describing the degree of public health and have the potential to cause economic and social decline at the household, community, and national levels.⁹

Based on reported maternal deaths, the MMR of the Population Control and Family Planning Health Service of Lingga Regency in 2021 was 418.76 per 100,000 live births (5 maternal deaths/1194 live births multiplied by a constant of 100,000). The 2020 MMR achievement was better when compared to the 2021 MMR which

⁷ Interview with Pastor. Vientje Rondonouw, Religious Figure of the Sea Tribe of Lingga Regency, Lingga Regency, 2 July 2024, unpublished.

⁸ Interview with Mrs. Adragon Demello, Midwife at the Penuba Island Health Center, Lingga Regency, 2 July 2024, unpublished.

⁹ Id.

was 222.72 per 100,000 live births. Based on the number of maternal deaths, there was also an increase from 3 maternal deaths in 2020, rising to 5 cases in 2021. The causes of maternal deaths in Lingga Regency in 2021 were still dominated by direct causes, namely, 2 cases of preeclampsia, 1 case of bleeding, 1 case of pneumonia and 1 case of heart failure.¹⁰

This culture of reciprocity can occur because of the level of poverty experienced by the sea tribe community, so that when there is a man who is willing to sacrifice himself to work for the family of the prospective bride, the family of the prospective bride will give their daughter to be married to the man as a form of reciprocity. This is done because the sea tribe community is on the poverty line so that they do not have any property to repay the kindness of the man who has been willing to sacrifice himself to work for the needs of the bride's family. While the reciprocity culture may cause health issues because based on the health perspectives, an ideal age for marriage, particularly for women, is above 20 years due to their reproductive health. Marriages below the age of 20 can pose risks such as cervical cancer, unprepared uterine cells, and the potential contraction of Human Papilloma Virus (HIV).¹¹ Furthermore, such marriages undoubtedly violate the rights of children, including the right to life and the right to education. Early marriages can lead to a higher risk of mortality during childbirth compared to women of mature age. Another consequence of early marriage for girls is the emergence of various issues, including psychological impacts such as anxiety, depression, and even suicidal thoughts.¹²

Article 31 paragraph (1) of the 1945 Constitution states that "Every citizen has the right to education." This is reiterated in Article 31 paragraph (4) of the 1945 Constitution, which emphasizes that the state must prioritize at least twenty percent of the national and regional budget for education to meet the needs of national education. Additionally, Article 42 of Law Number 39 of 1999 concerning Human Rights states that every person has the right to education. The 1945 Constitution,

¹⁰ Id.

¹¹ Shafa Yuandina Sekarayu and Nunung Nurwati, Dampak Pernikahan Usia Dini Terhadap Kesehatan Reproduksi, *Jurnal Penelitian dan Pengabdian Kepada Masyarakat (JPPM)*, Vol. 2, No. 1, 2021, p. 40.

¹² Fransiska Novita Eleanora and Andang Sari, Pernikahan Anak Usia Dini Ditinjau Dari Perspektif Perlindungan Anak, *PROGRESIF: Jurnal Hukum*, Vol. 16, No. 1, 2020, p. 51.

Article 28B paragraph (2) asserts that every child has the right to survival, growth, and development, as well as protection from violence and discrimination. Article 28H paragraph (1) of the 1945 Constitution mentions that every person has the right to a prosperous life, physically and mentally, a decent place to live, and an environment that is good and healthy, including the right to access healthcare services. It is obvious here the Sea Tribe community of Lingga Regency faces a dilemma between preserving their culture and fulfilling the rights of their daughters to education and health. Because of this existing gap based on the aforementioned background, the objectives of this research are: 1) to investigate the regulation and implementation of the “*balas budi*” (reciprocity or service repayment) culture among the Sea Tribe community in Lingga Regency, 2) to examine the implications of the “*balas budi*” culture on the fulfillment of education and healthcare rights within the Sea Tribe community in Lingga Regency.

The research employed in this study is a juridical-empirical method which utilized includes primary data collected through observation and interviews.¹³ Observations were conducted in the villages of Lingga Regency, and interviews were carried out with religious figures, the Sea Tribe community, tribal leaders, and the Kajang Foundation which empowers the Sea Tribe community in Lingga Regency. Additionally, secondary data were used, consisting of primary legal sources such as the 1945 Constitution, Law Number 16 of 2019 juncto Law Number 1 of 1974 concerning Marriage, and Lingga Regency Regional Regulation Number 4 of 2022 concerning the Empowerment of the Sea Tribe Community. Secondary legal sources encompassed scholarly articles, pocketbooks on the Sea Tribe community, and books related to customary law and marriage.

¹³ David Tan, Metode Penelitian Hukum: Mengupas dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum, Nusantara: Jurnal Ilmu Pengetahuan Sosial, Vol. 8, No. 8, 2021, p. 2469.

Analysis

Implementation of the Reciprocity Culture of the Sea Tribe Community in Lingga Regency

Indonesia is a state that respects the existence of customary law, as regulated in Article 18B of the 1945 Constitution. Additionally, in the formulation of state laws, customary law, customs, and culture always serve as considerations in the creation of positive law.¹⁴ According to I Nyoman, law is one of the cultural products inseparable from various aspects influencing the formation of positive law. These aspects include political, economic, ideological, religious, and others. Customary law is a law that applies, grows, and develops within the community of a region. The law can be found in every society, regardless of its simplicity or size.¹⁵ The existence of indigenous/Adat communities is also recognized according to Article 18B paragraph (2) of the 1945 Constitution, which elaborates on “*zelfbestuurende landschappen*” (self-governing regions) and “*volksgemeenschappen*” (indigenous communities); where the state is obliged to respect the rights of the respective regions. In Indigenous communities, there are varied rules. These encompass criteria for determining matches, determining dowries, the process of conducting marriages, and the procedures for marriage ceremonies.

Table 2. Regulatory Framework on the Existence and Rights of Indigenous Legal Communities in the 1945 Constitution

Terms	Approach	Substance	State Responsibility	Restrictions/ Requirements
Article 18B paragraph (2)	Governance	A unity of indigenous legal communities and the traditional rights of indigenous legal communities	Recognition and respect by the State. Furthermore, regulated by laws.	Subject to the conditions: as long as it is still alive, by the development of society, by the principles of the Unitary State of the Republic of Indonesia as regulated by law.
Article 28I paragraph (3)	Human Rights	Cultural identity and the rights of traditional communities	Respect by the State	Subject to the conditions in line with the progress of time and civilization.

¹⁴ H. Munir Salim, Adat Sebagai Budaya Kearifan Lokal Untuk Memperkuat Eksistensi Adat ke Depan, Al-Daulah: Jurnal Hukum Pidana dan Ketatanegaraan, Vol. 5, No. 2, 2016, p. 250.

¹⁵ Adenisatrawan, Eksistensi dan Resistensi Hukum Adat Perkawinan Suku Tolaki Dalam Era Digital (Studi Kasus: Kabupaten Konawe Selatan), Jurnal Esensi Hukum, Vol. 3, No. 2, 2021, p. 119.

Article 32 paragraph (1) and paragraph (2)	Culture	Rights to develop the cultural values of regional languages	The State respects and guarantees freedom.
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Source: Compiled by authors, 2024

According to the opinions of Indigenous legal experts, based on customary legal communities, there must be at least three criteria fulfilled: a group of people bound by their customary legal system, citizens whose community constitutes a collective Indigenous legal community, and a legal community based on residence or descent.¹⁶ By these three criteria, the Indigenous Sea Tribe community in Lingga Regency does not meet one of the criteria, namely, they do not have a permanent place of residence. The Sea Tribe has a tradition of living nomadically, moving from one place to another within the maritime region. This is one of the reasons why the Sea Tribe community in Lingga Regency does not fall into the category of indigenous legal communities.

Recognition and protection for indigenous communities are regulated in the Ministry of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Legal Communities. Article 4 and Article 5 of this Regulation stipulate the stages of recognition and protection for indigenous legal communities through the following stages: a. identification of indigenous legal communities, b. verification and validation of indigenous legal communities, c. designation of indigenous legal communities. The identification is carried out by examining the history of indigenous legal communities, customary territories, customary laws, traditional assets, and institutional/governance systems.

Even though the Sea Tribe community does not fit the criteria as a group of indigenous legal communities, the Sea Tribe in Lingga Regency constitutes a community that tightly holds onto their culture and traditions, passed down from generation to generation. The existence of the Sea Tribe community still prevails in

¹⁶ Dominikus Rato, *Hukum Adat di Indonesia (Suatu Pengantar)*, Laksbang Justitia, Surabaya, 2014, p. 4.

Lingga Regency, the Riau Islands Province. The following is the number of Sea Tribe in Lingga Regency:

Table 3. Population of Sea Tribe in Lingga Regency as of November 2021

No	Village	Male	Female	Total of Population	Total of Family
1	Mentuda	294	226	560	176
	Kelumu	95	83	178	54
2	Baran	44	37	81	28
	Pena'ah	58	60	118	31
	Laboh	33	35	68	23
3	Temiang	62	56	118	30
	Tajur Biru	67	70	137	39
4	Tanjung Kelit	193	172	365	118
	Pasir Panjang	18	10	28	8
	Persiapan Berjung	7	6	13	5
5	Sungai Buluh	139	116	255	86
6	Limbang	43	22	65	22
7	Pulau Medang	22	24	46	13
8	Penuba	141	140	281	92

Source: Empowerment Roadmap for the Sea People in Lingga Regency

Total population of the Sea Tribe community in Lingga Regency is 2,273 individuals, consisting of 725 households. The following are the details regarding the types of occupations within the Sea Tribe community in Lingga Regency:

Table 4. Sea Tribe Community Based on their Occupations as of November 2021

Village	House wives	Clergy	Fishermen	Unemployed	Private Sector	Entrepreneur
Mentuda	145	-	150	190	-	-
Kelumu	47	-	36	81	-	2
Baran	19	-	23	35	3	-
Pena'ah	30	-	34	48	2	-
Laboh	25	-	25	18	-	-
Temiang	27	-	29	58	-	-
Tajur Biru	38	1	38	57	2	-
Tanjung Kelit	108	-	113	144	-	-
Pasir Panjang	7	-	7	11	3	-
Persiapan	4	-	5	4	-	-
Sungai Buluh	66	-	62	81	3	-
Limbang	10	-	15	36	-	2
Pulau Medang	10	1	-	22	2	-
Penuba	75	-	17	-	-	-

Source: Empowerment Roadmap for the Sea People in Lingga Regency, 2021

It can be observed that the majority of the Sea Tribe community, specifically 785 individuals, are unemployed. Additionally, 611 individuals are housewives, and 554 individuals work as fishermen. Regarding the culture of reciprocity, this tradition has been consistently applied and passed down from generation to generation. The essence of this culture is that a man works as the backbone of the family, allowing the woman to marry him. The “*budi*” (service) repaid is the dedication of the man who has worked and served as the family’s backbone. The “*balas*” (repayment) given is by offering his daughter for marriage to that man. Service repayment hereafter is called ‘reciprocity’. Based on observations, the Sea Tribe community marriages practices based on this reciprocal culture, with the age of both spouses ranging from 13 to 14 years old.

The devotion of men who are willing to be the backbone of the family from women is carried out over a fairly long period of time, usually done while waiting for the girl to enter puberty, which is usually 13-14 years old, while marriage can only be carried out by men and women when they are 19 years old according to marriage law. This culture of reciprocity occurs due to the poverty conditions experienced by the sea people. This can also be seen from the data in table 1 that Lingga Regency is the poorest area in the Riau Islands Province and most of the people in Lingga Regency are sea people. Poverty is the basis or reason for this culture of reciprocity to be carried out continuously. The family of the bride experiences poverty so that when there is a man who can meet the economic needs of the bride’s family, the bride’s family will feel very grateful and the way to repay the man’s kindness is to give the daughter they have to marry to the man because there is no other property or anything that can be given to the man other than the children they have. Children are considered as the only assets so that children can be married off under age to men who have worked to meet the economic needs of the woman’s family, in addition, children can also be empowered to work to produce family needs. This also encourages the unfulfilled right to education for children.

Regarding the fulfillment of education, the local government has provided educational facilities in the form of free schools, but parents do not take their children to school because they think that school is a waste of time, it is better for

them to send their children to work as laundry workers to meet family needs. Then regarding the practice of underage marriage through this culture of reciprocity, the local government so far has not had a significant solution. The solution that the local government is currently working on through the local village head is to cooperate with religious figures to legally marry them only in the hope that they can be guided spiritually in forming a good family according to their beliefs and religion. Because, if they are not married, then they will carry out their own marriage according to their traditional ceremonies. In the past, traditional marriages in the Sea Tribe community were solely conducted through customary processes. However, since the 1980s, with the introduction of religious teachings among the Sea Tribe in Lingga Regency, the community has embraced recognized religions in Indonesia. Consequently, marriage ceremonies are now conducted through both traditional and religious processes.¹⁷

Indonesia is a pluralistic nation due to its diverse local cultures.¹⁸ This cultural diversity also influences the marriage system practiced by local communities. Rules regarding marriage in Indonesian ethnic groups are influenced by various factors, including cultural and religious elements from recognized religions in Indonesia, such as Hinduism, Buddhism, Christianity, Islam, and even Western influences.¹⁹ Therefore, the regulation and implementation of marriage in Indonesia still carry magical and religious values and are highly sacred. This implies that in traditional marriage rituals, there is believed to be a spiritual connection between the living and their ancestors across eternity. Thus, the rituals are not only intended for the living but also for their ancestors.²⁰

Customary marriage laws are not only significant events for the living but are also highly meaningful and fully attended by the spirits of both parties' ancestors. In the case of Sea Tribe communities, the phenomenon of customary marriages involves ceremonies influenced by both traditional and religious practices, with no

¹⁷ Observation on the Life of the Sea Tribe in Kelumu Village, Lipan Village, Lingga Regency, 2024, unpublished.

¹⁸ Fitri Lintang Sari and Fatma Ulfatun Najicha, Nilai-Nilai Sila Persatuan Indonesia Dalam Keberagaman Kebudayaan Indonesia, *Global Citizen: Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan*, Vol. 11, No. 1, 2022, p. 80.

¹⁹ Purwadi, *Upacara Tradisional Jawa: Menggali Untaian Kearifan Lokal*, Yogyakarta Pustaka, Yogyakarta, 2005, p. 5.

²⁰ Trianto and Titik Triwulan Tutik, *Perkawinan Adat Wologoro Suku Tengger*, Prestasi Pustaka Publisher, Jakarta, 2008, p. 8.

registration in civil records or the Office of Religious Affairs (Kantor Urusan Agama/KUA). This is because they do not meet the age requirements for marriage, as stipulated in Article 7 paragraph (1) of Law Number 16 of 2019 concerning Marriage, where the legal age for both males and females is 19 years. Furthermore, Article 7 paragraph (2) of this Law allows parents/guardians to request marriage dispensation for their children who wish to marry but do not meet the legal age requirement due to “urgent” reasons. However, the law does not provide detailed explanations about the meaning of “urgent” in the context of marriage.

Based on observations, the Sea People community does not seek marriage dispensation due to a lack of awareness among religious figures, village leaders, and local Sea Tribe community members regarding the regulations for requesting marriage dispensation as outlined in marriage laws.²¹ Additionally, when referring to the reciprocity culture that serves as the basis for these marriages, there is no regulation regarding the age limit for marriage. According to the culture, someone who is eligible for marriage is considered an adult based on customary legal community standards, not measured by age limits specified in legislation. In customary law, a marriage bond does not solely imply that spouses should support and complement each other’s lives; it also signifies the involvement of parents, family, and relatives on both sides to enhance the happiness and longevity of their family life. According to customary law, an individual can only enter into and carry out a marriage once they have reached adulthood. However, in customary law, adulthood is not defined by a specific age but is instead concretely assessed based on the individual’s ability to live independently, have a job, and not be dependent on their parents.

Referring to Satjipto Rahardjo’s Legal Compliance Theory,²² several factors can influence community compliance with the law. Firstly, there is indoctrination. In the case of the Sea Tribe community, individuals are indoctrinated from a young age to marry as soon as possible, with values instilled since childhood. Even witnessing siblings marrying underage is a common experience since childhood,

²¹ Interview with Pastor Noch Lumampouw, *supra* note 5.

²² Satjipto Rahardjo, *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia*, Alumni, Bandung, 1979, p. 20.

leading to the establishment of a doctrine. Secondly, there is a habit. The tradition of marrying at a young age has been passed down through generations, and the sea people community is accustomed to not recognizing age limits, making underage marriage a normalized habit. Marrying quickly is considered better, not only as a way to reciprocate the kindness of the groom's side but also to ease the financial burden on the family by marrying off their daughters promptly. Thirdly, there is utility. Humans tend to live in a decent and orderly manner, but what is decent and orderly for one person may not be the same for another. Therefore, there is a need for a standard regarding decency and orderliness, which are guidelines or measures of behavior known as norms. Thus, one factor that leads to compliance with norms is the utility of those norms. Based on the third factor, the Sea Tribe community needs to be made aware of the dangers of underage marriage, so they should comply with positive laws prohibiting underage marriage due to the negative impacts it can bring. By realizing these negative impacts, the Sea People community will understand the utility of the legal norms prohibiting underage marriage.

Referring to these three factors of legal compliance, there is a need for indoctrination of the values highlighting the dangers of underage marriage, and changing the long-standing habit and culture of underage marriages practiced by the Sea Tribe community in Lingga Regency. Additionally, there is a need to demonstrate the utility of avoiding underage marriage, such as providing opportunities for education, the chance to pursue meaningful work, and raising awareness of the negative impacts of underage marriage, such as maternal and child mortality and indications of domestic violence. These opportunities aim to show the Sea Tribe community, especially women, that by avoiding underage marriage, they can secure their rights for personal progress. Women should also be made aware that underage marriage has negative consequences, particularly for women themselves.

The Cultural Implications of Reciprocity (*Balas Budi*) on the Fulfilment of Education and Healthcare Rights for the Sea Tribe Community in Lingga Regency

As previously explained that the cultural practice of '*balas budi*' (reciprocity) serves as the foundation for the implementation of traditional marriages within the Sea Tribe community. These marriages, it often involve underage individuals or those categorized as minors according to legal regulations, who have not yet reached the legal age for marriage under the marriage law. Child marriages represent a form of discrimination, particularly against young girls, and constitute a violation of human rights that should be universally prohibited. However, in practice, underage marriages occur in various regions around the world. Discrimination against the existence of women is frequently fuelled by religious and cultural influences in some parts of the world. Women are consistently treated as minorities and sometimes as second-class citizens, visible but often unheard.²³

Based on observations, it is evident that the phenomenon of traditional marriages in Lingga Regency within the Sea Tribe community is difficult to control. As religious leaders, efforts are made to redefine the meaning of marriage to minimize the potential negative impacts of underage marriages. Therefore, religious leaders suggest that marriages should be solemnized in a religious context, such as in a church, and not solely through traditional ceremonies. However, the official registration of the marriage would only take place once both parties have reached the legal age for marriage as specified by marriage laws. This approach aims to guide and direct the marriage through religious teachings, minimizing the potential negative consequences that may arise due to the physical and mental unpreparedness of the individuals involved. For example, within the church, teachings emphasize the husband's role in loving his wife, while the wife functions as a helper in the household who must respect her husband. This is instilled to prevent domestic violence within the marriage.²⁴

²³ Ebenezer Durojaye, *Woman, but Not Human: Widowhood Practices and Human Rights Violations in Nigeria*, *International Journal of Law, Policy and the Family*, Vol. 27, No. 2, 2013, p. 176.

²⁴ Observation on the Life of the Sea Tribe in Kelumu Village, Lipan Village, and Lingga Regency, *supra* note 15.

Traditional marriages within the Sea Tribe community involving underage individuals have negative repercussions for the young couples involved in such unions. Based on an interview with Adragon Demello, a midwife assigned to the Penuba Community Health Center in Lingga Regency for approximately five years, several issues related to the phenomenon of young sea gypsy mothers undergoing the childbirth process at the health center were identified, as follows:²⁵

1. The current incidence of maternal mortality has decreased compared to the past.
2. Incidents of malnourished children still need attention. This occurs because during pregnancy, mothers do not consume nutritious foods, resulting in the unborn baby lacking essential nutrients.
3. The readiness and knowledge of mothers before the childbirth process are insufficient. The preparedness and knowledge of mothers in caring for infants are also notably lacking. For example, it is still common to find mothers who do not bring baby supplies during the childbirth process at the health center. This can lead to imbalanced growth and development in babies, often resulting in malnutrition or delayed growth.
4. Cases of infant mortality increased in 2021 compared to 2020.

Child marriages not only impact the violation of health rights for children but also violate their right to education, as those who have entered into such marriages lose the opportunity to pursue formal education in schools. According to our observations, individuals who have entered into these marriages miss out on formal education opportunities due to being preoccupied with household and childcare responsibilities. From a customary legal perspective, the background of underage marriages may involve coercion or pressure due to messages from deceased parents or agreements made by the parents of both parties.²⁶

Table 5. Sea Tribe Community Based on Education Levels as of November 2021

No	Village	No School/ Not Yet Enrolled	Elementary School	Incomplete Elementary	Junior High School	School / Equivalent	Diploma	Bachelor's Degree
1	Mentuda	447	72	14	17	9	1	-
2	Kelumu	171	3	4	-	-	-	-

²⁵ Interview with Mrs. Adragon Demello, Midwife at the Penuba Island Health Center, supra note 7.

²⁶ Tolib Setiady, *Intisari Hukum Adat Indonesia: Dalam Kajian Kepustakaan*, Alfabeta, Bandung, 2013, p. 40.

3	Baran	56	14	-	4	4	-	3
4	Pena'ah	84	8	14	3	6	-	3
5	Laboh	58	6	-	4	-	-	-
6	Temiang	114	2	2	-	-	-	-
7	Tajur Biru	132	2	-	-	3	-	-
8	Tanjung Kelit	363	1	-	-	1	-	-
9	Pasir Panjang	20	-	8	-	-	-	-
10	Persiapan Berjung	13	-	-	-	-	-	-
11	Sungai Buluh	186	32	20	11	-	1	-
12	Limbung	53	7	4	-	1	-	-
13	Pulau Medang	37	7	-	-	-	1	1
14	Penuba	1	3	273	2	2	-	-
	TOTAL	1735	157	339	41	26	3	7

Source: Empowerment Roadmap for the Sea People in Lingga Regency 2021

Children are subjects who must receive protection, as stipulated in Law Number 35 of 2014 concerning Child Protection. Article 1, paragraph (1) of the Child Protection Law defines a child as someone who is under 18 (eighteen) years old, including those still in the womb. Furthermore, Article 1, paragraph (2) of the Child Protection Law defines child protection as all activities to ensure and protect the child and their rights so that they can live, grow, develop, and participate optimally by human dignity, as well as receive protection from violence and discrimination. This law also outlines a set of rights that a child must possess. The right to education is addressed in Article 9, and the right to obtain health is also a crucial aspect of a child's rights. Article 44 emphasizes that the Government and Regional Government must provide facilities and implement comprehensive health efforts for children to ensure that every child attains optimal health from the womb.

Based on observations, the local government, specifically Lingga Regency, has provided health facilities such as health centers for the Sea Tribe community, especially in terms of childbirth. However, due to the young age of the women giving birth, there is a significant risk of maternal and child mortality. It is explicitly stated in Article 26, paragraph (1) letter c, that parents/guardians have the obligation to prevent child marriage. By adopting Mochtar's Legal Development Theory, the law should serve as a means of societal renewal. In this regard, the law refers to written laws that should continuously accelerate development. The Legal Development

Theory provides insight into the dominant role of legislation in Indonesia, which is one of the objective conditions in the Theory of Legal Development.

However, law is just one part of social norms, as other norms in society also serve as instruments for development and social engineering, such as human moral norms, religion, ethics, manners, and customs. There is a close interrelationship between law and these other social norms, each reinforcing the other. Nevertheless, there is indeed a distinction between law and other social norms, particularly regarding the establishment of legal provisions that can be enforced in an organized manner. As one of the social norms, the purpose of law is to maintain order, a fundamental requirement for a well-organized society. Additionally, the purpose of the law is to achieve justice, which varies in content and scale according to society and its era. Therefore, the order established through law must be aligned with justice.²⁷

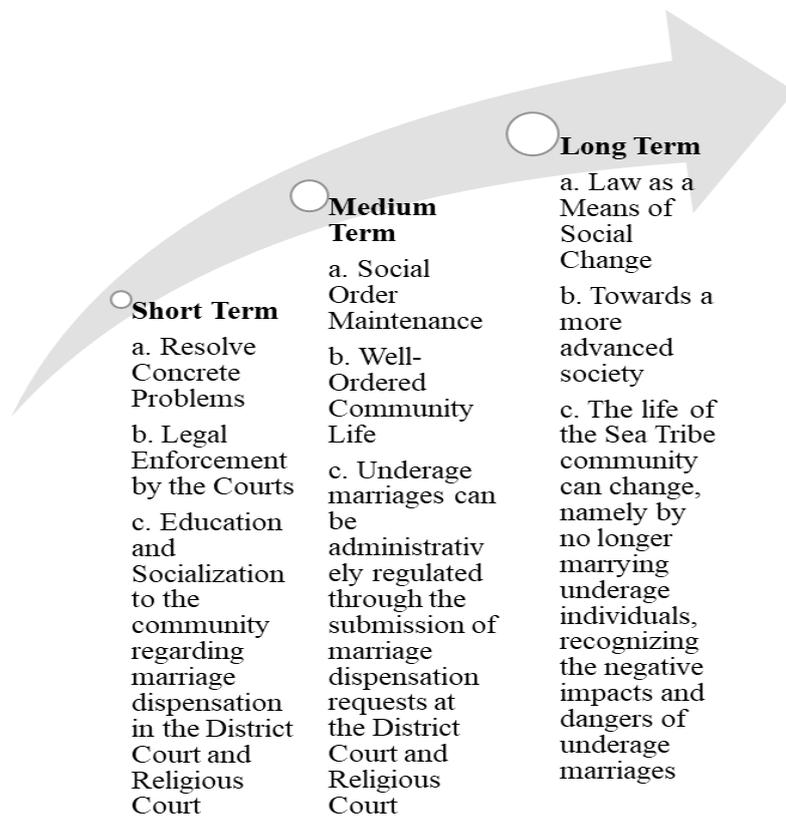
The goal of legal order indicates that law functions as a means to preserve order in society. This function is considered conservative, meaning it aims to preserve and uphold what has been achieved. Such a function is necessary in a society undergoing development. However, in a society that is still in the process of development, law cannot solely function conservatively; it must also assist in the process of societal change to create order and harmony. Thus, the concept of the Theory of Legal Development essentially aims to explain the role or function of law in a developing society, known in Indonesia as national development. In a developing society, law not only provides order but must also facilitate social change and orderly development.

The legal principles regarding marriage in Indonesia have been established in written law, specifically positive law under Law Number 16 of 2019 concerning Marriage. Similarly, regulations concerning child protection are addressed in the written law, specifically Law Number 35 of 2014 concerning Child Protection. These written legal principles should not only provide order for society but should also be capable of bringing about positive changes. However, these two written laws conflict

²⁷ M. Zulfa Aulia, *Hukum Pembangunan dari Mochtar Kusuma-atmadja: Mengarahkan Pembangunan atau Mengabdi pada Pembangunan?*, Undang: Jurnal Hukum, Vol. 1, No. 2, 2018, p. 371.

with each other and do not share the same spirit in regulating or even preventing child marriages. Furthermore, other social norms, such as customary laws within the Sea Tribe community in Lingga Regency, permit child marriages under the rationale of “*balas budi*” (reciprocity). Based on this, both legal principles and customary laws have not succeeded in instilling a sense of order within the Sea Tribe community in Lingga Regency and have not been effective in altering the behavior of the community.

According to the Theory of Legal Development, the long-term goal of law is to achieve social change or change within society. To reach this long-term goal, it is necessary to first understand the milestones or legal targets that need to be achieved in the short, medium, and long term. These milestones are as follows:



Based on the above diagram, it can be understood that the legal goals to be achieved are divided into three categories, namely:

1. The short-term legal goal is to resolve concrete problems through legal enforcement by the courts. Based on this short-term legal goal, the specific objective for addressing traditional Sea Tribe marriages in Lingga Regency is to provide education and socialization regarding the

submission of marriage dispensation at the District Court and Religious Court. This is done with the aim that underage marriages can be conducted legally through existing national laws, ensuring the protection of the civil rights of women and the children resulting from such marriages. In the context of dispensation submissions, the courts must actively collaborate with village heads and religious leaders to actively engage with the community, facilitating them in applying for marriage dispensations. This is particularly crucial as the Sea Tribe community faces challenges in accessing the legal process due to their limited knowledge and financial resources, considering the large distances and transportation costs involved in reaching the courts.

2. The second legal goal pertains to the medium term, aiming to maintain social order and create a well-ordered community. In achieving this goal, it is hoped that after dispensation is granted by the courts for underage marriages, an administrative order will be established, ensuring that the marriage is legally recognized by the state. With this administrative order, it is expected to protect the civil rights of women and the children resulting from the marriage.
3. The third legal goal is focused on the long term, aiming to serve as a means for social change to advance society. In this regard, the long-term legal goal for the sea gypsy community is to bring about a change in their way of life, refraining from engaging in underage marriages, and realizing the negative impacts of such unions.

To achieve the short, middle, and long terms for the Sea Tribe community in Lingga Rengency can also be analyzed by adopting the Gustav Radbruch's basic legal values. According to him, three fundamental elements serve as the basis for legal approaches, namely justice (philosophical), legal certainty (juridical), and societal benefits (sociological). He emphasizes the close relationship between society and order, highlighting the necessity of norms such as customs, ethics, and laws to maintain order within a community. The approaches of Gustav Radbruch align with the concept of the Indonesian constitutional state as stipulated in the 1945

Constitution amendments, reflected in Article 18B (2), Article 24 (1), Article 28D (1), and Article 28H (2) of the 1945 Constitution. Article 18B (2) recognizes and respects the existence of customary law communities, which have been neglected and lacked recognition from the state. This aligns with Radbruch's view of customary law communities as part of the Indonesian population, encompassing customs, ethics, and laws. Accordingly, in analyzing the situation and cultural issues faced by the Sea Tribe community in Lingga Regency, it suggests that three legal values advanced by Gustav Radbruch should be used as references as follows:

1. **Legal Certainty.** It is proposed to accommodate the constitutional rights of the Sea Tribe community, especially marriage issues by providing legal certainty for their customary law in fulfilling and addressing their constitutional rights.
2. **Legal Justice.** While the existence of customary law in the Sea Tribe community is recognized under Article 18B of the 1945 Constitution, the rights have been overlooked. Hence, it is proposed that the Customary Law of the Sea Tribe community should reflect legal justice for the community.
3. **Legal Utility.** The sea people do not meet the category of customary law society, this has been determined by the Ministry of Social Affairs, Directorate of Customary Affairs since 2015. However, the sea people can be categorized as a customary society because there are various customs that are still carried out today, one of which is the culture of reciprocity. Indonesia does recognize and respect the existence of customary law society, but unfortunately the sea people are not included in the category of customary law society so that the sea people should obey the applicable national law. However, it is not excessive to force a culture that has been passed down from generation to generation to obey a national legal order that has been in effect. Therefore, in fact the culture of reciprocity can still be carried out, it's just that when repaying the favor, the man who has worked for the woman's family can do it by waiting for the daughter to reach the age of marriage as regulated in the

marriage law. In addition, the recommendation is to form a cross-sectoral team involving relevant agencies for the synchronization of targeted programs to empower the Sea Tribe community. Additionally, the establishment and strengthening of customary institutions, and collaborating with the cross-sectoral team, are crucial for implementing the existing laws, ensuring order, and providing benefits to the Sea Tribe community. Public participation, including religious and community leaders, is also recommended for transforming the culture of the Sea Tribe community in Lingga Regency to align with the existing law and regulations.

Conclusion

The “*balas budi*” (service repayment or reciprocity) culture serves as the foundation for traditional marriages within the Sea Tribe community in Lingga Regency. These customary marriages often involve underage individuals and are conducted based on traditional and religious ceremonies. However, these marriages are not officially recorded in civil records and the Religious Affairs Office because they do not meet the legal age requirements as stipulated in the marriage laws. Moreover, dispensation requests are not submitted to the court by the Sea Tribe community to perform these traditional marriages. The implications of these underage traditional marriages result in the violation of the right to health and education for the Sea Tribe children in Lingga Regency.

The Sea Tribe community, deeply rooted in cultural values, finds it challenging to adhere to positive law. Even if well-crafted positive laws are established, the Sea Tribe community may struggle to comply due to long-standing cultural practices conflicting with the existing law. To achieve legal order within the Sea Tribe community in Lingga Regency, the “*balas budi*” (reciprocity) culture can be transformed in the form of the woman’s family by offering their daughter in marriage when she reaches a minimum age of 19. The culture is not eliminated but transformed, and this change can be achieved through local religious teachings on the dangers and impacts of underage traditional marriages.

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