

Customary Law Before Religion and State Laws Regarding Marriage In Manggarai, Eastern Indonesia*

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Abstract

This article explores the position of customary law before state law and Catholic religious law regarding marriage in Manggarai, Flores, Indonesia. This study applied a critical analytic approach. This study found that the legal position of Manggarai adat concerning marriage is weaker and tends to be marginalized. It happened because state law explicitly Law No. 1 of 1974 concerning Marriage merely accepting the legality of marriage based on religious law and not customary law. Meanwhile, religious law, in this case, Catholicism, does not provide space for customary law in matters of marital legality. As a result, many married couples who have been bound their marriage according to customary law experienced injustice as their marriage was considered illegitimate according to religious and state law. However, this research found many positive contributions of customary law to the process, legality, and integrity of marriage. Therefore, this study recommends that the Indonesian Marriage Law and Catholic Religious Law need to accommodate customary law in marriage, taking into account human rights and justice principles. Both laws need to be revised so that they can place local customary law in an equal position.

Keywords: Marriage; Manggarai; Customary law; Religious law; State law

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Hukum Adat di hadapan Hukum Agama dan Negara Tentang Pernikahan Di Manggarai, Indonesia Timur

Abstrak

Artikel ini mengeksplorasi posisi hukum adat di hadapan hukum negara dan hukum agama Katolik mengenai perkawinan di Manggarai, Flores, Indonesia. Melalui pendekatan kritikal analisis, penelitian ini menemukan bahwa posisi hukum adat Manggarai berkaitan dengan perkawinan lebih lemah dan cenderung dipinggirkan. Hal ini disebabkan oleh karena hukum negara, khususnya UU Nomor 1 Tahun 1974 tentang Perkawinan hanya menerima legalitas perkawinan berdasarkan hukum agama dan bukan hukum adat. Sementara itu hukum agama, dalam hal ini agama Katolik, tidak memberi ruang kepada hukum adat dalam urusan legalitas perkawinan. Akibatnya banyak pasangan yang menikah legal secara hukum adat mengalami ketidakadilan karena dianggap tidak sah menurut hukum agama dan negara. Padahal penelitian ini menemukan banyak kontribusi positif hukum adat terhadap proses, legalitas dan keutuhan perkawinan. Karena itu, studi ini merekomendasikan agar UU Perkawinan RI dan Hukum Agama Katolik perlu mengakomodir hukum adat di dalam perkawinan, dengan memperhatikan prinsip Hak Asasi Manusia dan keadilan. Kedua hukum tersebut perlu direvisi agar bisa menempatkan hukum adat lokal pada posisi yang sejajar.

Kata Kunci: Perkawinan; Manggarai; Hukum Adat; Hukum Agama; Hukum Negara

Обычное право перед правом религии и государства относительно брака в Мангарайе, Восточной Индонезии

Аннотация

В этой статье исследуется положение обычного права перед правом государства и католической религией в отношении брака в Мангарайе, Флорес, Индонезия. В этом исследовании применен критическо-аналитический подход. Это исследование показало, что правовое положение обычного права в Мангарайе в отношении брака слабее и имеет тенденцию к маргинализации. Это связано с тем, что право государства, особенно Закон № 1 от 1974 года о браке, признает законность брака только на основе религиозного, а не обычного права. Между тем религиозное право, в данном случае католицизм, не уступает обычному праву в вопросах законности брака. В результате, многие пары, состоящие в законном браке в соответствии с обычным правом, сталкиваются с несправедливостью, поскольку считаются незаконными в соответствии с религиозными правами и правами государства. Фактически, это исследование обнаружило множество положительных вкладов обычного права в процессе, законности и целостности брака. Таким образом, в данном исследовании рекомендуется, чтобы индонезийское право о браке и католическое религиозное право учитывали нормы обычного права в браке с учетом прав человека и принципов справедливости. Оба права необходимо пересмотреть, чтобы уравнять местное обычное право с религиозным.

Ключевые Слова: брак; Мангарай; обычное право; религиозное право; государственное право

A. INTRODUCTION

Manggarai society at Flores, Eastern Indonesia is a community that is still strong in practising its culture and carrying out various traditions faithfully. Even though they have entered the modern era, their attitude and behaviour still follow their traditional customs, rituals, rules, and laws. In the case of marriage, prospective couples with their extended families must follow some rituals and procedures. When a young man falls in love with a girl, the first and foremost thing he does is report it to his parents. Furthermore, all the affairs and plans for their marriage will be taken over by a large family through several stages of traditional events from *tuké mbaru weda rewa* (propose girl) to *wagal and podo* (wedding parties and delivery to the groom's house). Our previous study found that almost all marriages in Manggarai have been carried out through adat procedures. Although the Manggarai custom is very complex, couples and families prefer to perform various stages and rituals for a marriage (Lon, 2019; Lon and Widyawati, 2018).

Since Catholicism entered this region at the beginning of the 20th century, the Manggarai people have followed not only the religion but also the rules of Catholicism, including in marriage matters. Catholic marriage requires couples and their families to register a marriage plan at the parish of the couples, follow a series of training of Catholic marriage preparation, carry out a Catholic wedding ceremony and do marriage law registration. In addition, many couples ask the priest to bless their bridal chamber, room supplies such as bed covers, and new holy objects such as rosary, bible, statue and cross.

Catholic religious' identity has become an integral part of the life and identity of the Manggarai people in a relatively short time. Studies from Webb in 1990 (in Widyawati, 2013) and Widyawati (2013, 2018) show that the identity of Catholicism cannot be separated from the people of Flores. Webb once wrote that Flores people lived on the island where "even trees, rocks and birds are Catholic." This expression emphasizes the strong identity of Catholicism for Flores people, especially Manggarai.

Furthermore, Manggarai people also carry the identity of citizenship as Indonesians. Since Indonesia's independence in 1945, there has no record in history about the defiance of their identity as an Indonesian citizen. On the contrary, Manggarai people are very proud of their Indonesian-ness. When Kahar Muzakar's rebellion (Batari, 2017) took place in Eastern Indonesia or political turmoil in 1965, the Manggarai people remained faithful with *Pancasila* and *Negara Kesatuan Republik Indonesia*. In particular, for Indonesian Catholics, the motto "to be 100% Catholic and 100% Indonesia" is not merely popular

among the Catholics but at the same time as evidence of Indonesian Catholic obedience as part of the Republic of Indonesia Unitary State. Catholics are a minority group in Indonesia. As a minority, they have little bargaining power with various state policies, including regarding marriage law.

Today Manggarai people are struggling with these three identities. Like it or not, the Manggarai people are bound by three laws in their life in general and in marriage in particular. The three laws are Manggarai customary law, Catholic religious law, and the Republic of Indonesia State Law. The interaction of these three laws in the case of marriage is often complex and complicated. Many studies indicate the gap between the requirement for the formality of the State law and the requirement of the local tradition (Irianto, 2004; McCarthy, 2004). Fitzpatrick (2007) and Erb (2007), in their study of the interaction of state law and customary law, concluded that the government's recognition of the existence of customary law was not optimal so that indigenous peoples did not have adequate access to existing natural resources. Similar conclusions were made by Mutaqin (2011), McWilliam (2006), Susanti and Sebastian (2016), and von Benda-Beckman (2011). While many studies also find that customary law is very potential to enrich the national law (Lukito, 2013; Antlov, Wetterberg, and Dharmawan, 2016) and Catholic religious law (Luzbetak, 2015; Norget, 2009; Pompe, 1988).

This article will highlight the encounters of the State Law of the Republic of Indonesia (Decree No. 1 of 1974 concerning Marriage), Catholic Religious Law, and Manggarai Customary Law in terms of marriage. There are several questions to be explored: first, how is the interaction between state law and Manggarai customary law in terms of marriage? How is the interaction between state law and Catholic religious law in marriage? How is the interaction between Catholic religious law and Manggarai customary law in terms of marriage? Second, how is the effort to harmonize these three laws? All of these questions will be answered mainly through critical analysis of various sources of the rule of law of the state, the law of the Catholic Religion, and Manggarai customary law concerning marriage. The focus of the analysis is related to the legality of marriage in each law and its impact on married couples. In addition to sources on the rules of the three laws above, this research also used various research sources on customary law and marriage in Manggarai. These sources help to understand the impact of the gap among these three laws on marriage in Manggarai.

B. METHODS

This research used a qualitative approach, specifically a comparative study. It compared three laws: customary, religious and state laws. The customary law was the Manggarai customary law. The religious law was according to Catholic teachings and canon law. The state's law was the law on marriage. Each of these laws was analyzed its contents (content analysis). To understand the Manggarai marriage law, this study used an ethnographic approach. To explore the law of the Catholic Church, it studied the documents on Canon Law and analyzed its content. To explore the state marital law, this study analyzed the content of Marriage Law No. 1 of 1974.

In addition, this study also completes it with many field findings, specifically regarding the impact of differences of the three laws. The interviewees were those who experienced legal conflicts relating to the legality of marriage. Qualitative data were then analyzed descriptively.

C. RESULTS AND DISCUSSION

1. State Law and Customary Law

Customary law is a law that lives in a community and is useful for regulating social life and providing guidance of good values for the continued existence of the community. Customary law is a custom that is, according to Cornelis van Vollenhoven, on the one hand, has legal and social sanctions and, on the other hand, is not codified (customary) or unwritten (Mutaqin, 2011; Acciaioli, 2007). Customary law is also the embodiment of its people's souls and continues to grow and develop as life itself (Lukito, 2013). Manggarai customary law had existed far before they knew the Catholic religion. Catholicism only came to Manggarai at the beginning of the 20th century. Manggarai Culture existed for centuries before. Likewise, the presence of the state took place long afterwards. The Manggarai people only became part of Indonesia at the time of independence (even a few years later precisely for Eastern Indonesia), and the Marriage Law just existed in 1974. Before religious law and state law exist there, the Manggarai people followed customary law.

When the Founding Fathers proclaimed Indonesian independence in 1945, they built national unity on the motto of *Bhinneka Tunggal Ika* (Unity in diversity). This motto is a manifestation of the recognition of the existence of various communities and customary law in this archipelago. Furthermore, Article 18 B of the 1945 Constitution states recognition and respect for

customary law and indigenous peoples' rights. It states that "The state recognizes and respects the customary law community units and their traditional rights as long as they are still alive and following the community's development and the principles of the Unitary State of the Republic of Indonesia, which stipulate in the law." Constitutionally, all customary practices carried out by indigenous and tribal peoples are fully respected by the state, as they continue to operate following the development of their communities and do not violate or contradict the principles of the Unitary State of the Republic of Indonesia. Recognition and respect for the existence of customary law in the Constitution show significant influences and benefits of customary law in the lives of the Indonesian people.

Interestingly, Decree Number 1 of 1974 concerning Marriage does not explicitly mention customary law in marital matters. In the article of the Decree, the words "adat," "culture," "tribe" are absent, except in the explanation of article 37 relating to the distribution of assets when a divorce occurs. It means that marriage references, according to customary, ethnic, and cultural traditions, are absent from the space of thought of this law. There is no space in terms of marriages according to the customs and cultural traditions. If examined more seriously, marriage in Indonesian society is generally still very thick nuances of culture and tradition. It has become a problem and difficulty for many tribes and traditions (Irianto, 2004; McCarthy, 2004; Sudantra dan I Gusti, 2019).

In Manggarai, the practice of marriage, according to customary law, is still prevalent today. Interestingly, the Catholic Church and the State do not recognize and ratify some of these marriages. Questions also arise relating to the legal position and legality of the marriage. Article 2 of Decree No. 1 of 1974 concerning Marriage states that marriage is legal if carried out according to their own beliefs and religious laws. Consequently, some of the customary marriages, not legalized according to religious law, are illegal. If it is not legal, then such marriages will experience many difficulties related to civil rights and state administrative matters. Articles 2 of Decree No. 1 of 1974 concerning marriages underlines that the record of legal marriages must be according to applicable regulations. As a result, couples cannot have a legal marriage certificate, and their children are often considered illegal. Socially, they often experience discriminatory actions from others. Religiously they continue to be regarded as sinners (Lon, 2019). Juridically, legal uncertainty arises about their marital life

Thus, on the one hand, the Constitution of the Republic of Indonesia recognizes the existence of customary law, while, on the other hand, Decree No. 1 of 1974 concerning Marriage ignores the existence of customary law by not including it in its articles. This situation can undoubtedly confuse and create injustice and legal uncertainty in the Manggarai community.

2. State Law and Catholic Religious Law

As stated before, legal regulations regarding marriages in Indonesia are under Decree No. 1 of 1974 Marriage. According to Article 2 of the Decree, marriages are valid if carried out according to their beliefs and religious laws. It means that every Indonesian citizen who is going to have a marriage should pass through their respective religious institutions and submit to their religious marriage rules. Furthermore, all marriages must be carried out according to the laws of each religion and belief. Concretely, for Catholics, a legal marriage must be conducted according to Catholic religious' law, while the marriage of people who are Muslim or Protestant or Buddhist or Hindu must follow the provisions of their respective religions.

According to the rules of the Catholic religion, a marriage is valid if it fulfils the following three conditions: first, there is a marriage agreement that is personal, free, and responsible between a man and a woman regarding their marriage. Second, both men and women do not have legal obstacles (such as previous marriage, vows, ordination or criminal cases, et cetera) and natural impediments (such as impotence, childhood, straight-line blood relations) for marriage. Third, the marriage agreement is carried out in official Church ceremonies or ceremonies recognized by the authorized Catholic Church authorities and in the presence of official Church representatives.

For Catholics, marriage is sacred, monogamous, and indissoluble. Thus a legal and sacramental Catholic marriage cannot be divorced by anyone or any institution except by death (Book of Canon Law Article 1141). Here a problem arises when Decree No. 1 of 1974 concerning Marriage gives judges authority in court to divorce a marriage, including a Catholic marriage. It says in Articles 38 (and 39) of this Decree: "A marriage may be divorced because of a court decision."Civil judges' authority to divorce a marriage raises problems for the validity of the catholic marriage. It may be contrary to the authority of Catholic religious leaders.

On the one hand, Article 2 of the state law recognizes religious authority for the validity of marriage but, on the other hand, ignores religious

authority because the judge in court can eliminate the validity of the marriage. This phenomenon is no less creating legal uncertainty and causing various other impacts. One serious impact is the difficulty of Catholic religious leaders to accept and acknowledge the divorce. By Catholic religious law, divorce is prohibited based on the Lord Jesus' commands in the Bible, specifically in Matthew 19, 1-12, and Mark 10, 1-12. The rejection of the divorce had many adverse effects for the couple divorced by the state court.

In many cases, they (husband and wife) are excluded from their religious community; they suffer a lack of access to spiritual service and even stigmatized as sinners. When each spouse takes a new husband or wife, the marriage is not recognized and acknowledged by the Catholic Church. Even children born to new couple's experience difficulties in matters of religion and state administration. Many of them are not baptized or received at the first communion program. They even have no baptism certificate, so that they have difficulty going to school (Lon, 2019).

3. Catholic Religious Law and Customary Law

Since long before the Second Vatican Council, Mgr. Wilhelmus van Bekkum, the first bishop in Manggarai, and several European missionaries have shown concern, recognition, and appreciation of the cultural richness and customary law of Manggarai. Through *Kaba* Eucharistic Celebration and *Déré Serani*, Mgr van Bekkum et al. showed harmony between the teachings of the Catholic faith and the traditional customs of Manggarai. Their efforts inspired the Second Vatican Council in 1963-1965 and influenced official Church teachings about God's presence in history and culture. It is said in document *Gaudium et Spes* (GS) number 58 that God himself has said according to a culture that is unique to various times. Throughout the ages and various situations, the Church has utilized the resources of various cultures, disseminated, and elaborated on the proclamation of Christ to all nations. The Church has also explored and deepened deeper into the culture and expressed it better in liturgical celebrations and the lives of diverse faith communities.

By the testimony of Scripture and Catholic Tradition, the Church believes that God creates everything in the world. Culture is not just the result of human creativity or human creative products but also is a manifestation of the Creator's self. God created humans in His image. God also gives freedom to humans so that humans develop in their extraordinary creativity. The manifestation of this creativity results in various rich cultures. Thus, God, from

the beginning of creation, has desired a culture. Furthermore, the Church believes that through the mystery of incarnation, that is, the incarnation of God into a man and revealing itself through His creation (Heb. 1: 1), God is present and becomes part of human life and culture. More than that, God also purifies human life and culture.

Pope John Paul II (*Evangelium Vitae*, no. 96) writes: "at the heart of every culture lies the attitude man takes to the greatest mystery: the mystery of God" and Pope Francis (*Laudato Si* No. 146 and *Amoris Laetitia* No. 202) declares: In this sense, it is essential to show special care for indigenous communities and their cultural traditions ... For "cultures are quite diverse and every general principle ... needs to be inculturated if it is to be respected and applied." In connection with marriage, Pope John Paul II (*Familiaris Consortio*) asserted that precisely from its human nature, marriage has a cultural dimension. Therefore, in proclaiming God's plan for marriage, the Church cannot be separated from the influence of every culture, both positive and negative influences. For this reason, people need to be wise and intelligent to enculturate God's message about marriage. Recognition of the positive things in Manggarai customary law will enrich the Church's teachings on marital rules, while Christian values can purify negative things in customary law.

There are similarities and differences or contradictions between the demands of the Catholic Church and Manggarai customary law in terms of marriage. Differences and disagreements are not only related to procedural matters but also involve substantial matters concerning the concept of marriage, the legality of marriage, marriage agreements, and the form of the celebration of marriage. In contrast to Manggarai customary law which views marriage as a bond between two large families (the family of *anak rona* = wife-giver and the family of *anak wina* = wife-receiver), the Catholic Church Law sees the marriage as a personal bond between a man and a woman (Book of Canon Law Article 1055). According to Catholic Church Law, marriage agreements and commitments must occur between a man and a woman who want to marry each other, not between their two extended families. On the other hand, according to Manggarai customary law, marriage agreements and commitments occur between the two extended families (the family of *anak rona* and the family of *anak wina*), even though the bride and groom do not want to marry each other. If the two extended families have not agreed, the inauguration of the marriage does not occur even though both partners are ready. As a result, some couples only carry out marriages in the Catholic Church and ignore traditional marriages. Conversely, some couples get married

traditionally (according to customary law) but not officially recognized in the Catholic Church.

One crucial case is the cross-cousin marriage (*kawing tungku cu*), which is the marriage between the daughter of a brother and a son of a sister. According to Manggarai customary law, this type of marriage is an ideal marriage because it is useful to strengthen the previous marriage relationship and considered to be one way to maintain the wealth of a large family. Whereas the Catholic Church prohibits this marriage because of a very close blood relationship that endangers the health quality of the offspring or children of the marriage (Lon, 2019; Lon and Widyawati, 2018).

Furthermore, Manggarai customary law allows divorce in the following cases: first, the case of a previous marriage that is not blessed with children. Manggarai custom allows a husband to take a second or third wife if the previous wife is unable to give him a child; second, case of the previous wife who is often sick or has severe physical illness or disability such as suffering a stroke and is unable to fulfil the needs of her husbands; third, the case of not having a son or daughter. The Catholic Church, on the other hand, absolutely prohibits divorce based on the command of the Lord Jesus Himself (Matt. 19, 1-12 and Mark. 10, 1-12).

The differences above certainly harm the married couple and their children. Lon and Widyawati's research (2018, 2019) found that families or couples who were legally married according to Church Law but not legally endorsed by customary law experienced anxiety, discomfort, psychological and social burdens. They were afraid of the curse of their ancestors. They claimed that some of the pain they were experiencing was because they were not traditionally married, and their ancestors were angry and gave them illness. They also considered that their fortune was still minimal because they had not fulfilled customary law. Besides, traditionally, they had not been considered an official part of the new independent family. Therefore, they could not get the right to customary inherited land, the right to participate in other customary rituals, the right to obtain customary funds (proceeds from *Sidaand Bantang*) at the time of death, marriage or the cost of education for other family members, the right to hold the title of clan/tribe, the right to enter a traditional village formally, the right to be traditionally ritualized for children and families.

Conversely, for married couples who had been married customarily but had not yet received legitimacy according to Catholic religious law, they faced difficulties in terms of the legality of their marriages and children. They could not have a legal marriage certificate, and children resulting from marriage were

often considered illegal. They often found difficulties in managing various state administrations. They also experienced a religious burden and regarded as sinners. They could not fully participate in many religious services of the Church. It had become a social and religious stigma for them.

4. Harmonization and Legal Breakthrough

The dynamic interaction of state law, religious law (the Catholic Church), and Manggarai customary law can be paradoxical, differential, or integral and lead to conflict or integration (Lon, 2019). The linkage of these three laws can result in integration between the three, or incorporation where each of the legal systems adopts part of certain norms from other laws or conflicts in which each legal system rejects the application of a legal system other than itself. So far, efforts to harmonize these three laws through Decree No. 1 of 1974 concerning Marriage have not been sufficient and adequate. In many cases, the position and role of Manggarai customary law are still marginal, weak, and not adequately accommodated by state law (cf. Mutaqin2011, Erb 2007, Tontowi 2015, Mahfud, 2017) and Church law. According to Frans von Benda-Beckmann and Kebbet von Benda-Beckmann (2011: 167-195), errors in viewing customary law and its conflict with religious and state law hamper the revitalization of customary law. As a result, customary law has become disadvantaged and even threatened with its existence. As a result, many married couples who were married according to customary law suffer losses due to legal uncertainty and injustice.

On the other hand, customary law, including Manggarai customary law, can enrich the domain of national law and Church law. The Founding Fathers of Negara KesatuanRepublik Indonesia realize, appreciate, and accommodate the richness of customary law by carrying out the motto *Bhineka Tunggal Ika* (Unity in diversity). According to Sudaryatmi(2012: 572-578), people can develop national law by adopting the universal values contained in customary law. Lastuti Abubakar (2013) argues that customary law may become an inspiration for national legal development in solving many problems in the globalization era.

Likewise, in the Catholic Church, the Fathers of the Second Vatican Council developed a spirit of *aggiornamento*, a spirit of openness to the local richness, local wisdom and local customary law. Luzbetak (2015) highlights the sanctity of each culture in its relations with the Catholic Church institutions, and K. Norget (2009) tried to explore the theological basis of the original

culture. In Indonesia, there are several studies on the contribution of indigenous culture to the life of the Church and State. H. Boelaars(2005), for example, encouraged the Indonesian Church to enculturate the local culture. Throughout the Indonesian archipelago, there are various groups and tribes with a lot of inner and outer wealth, possessions, worldly possessions, and supernatural property. Lon (2020) argues that a long process and adequate preparation for marriage required in Manggarai customary law help a prospective couple to develop harmonious relations in married life and achieve family welfare. The intervention of two extended families (*anak rona* and *anak wina*)in the process and for the legality of marriage is also useful to strengthen the marriage stability between the bridegroom and bride. The agreement between the two extended families in traditional marriage (*wagal*) is truly favourable for the personal agreement between the bride and groom required in catholic marriage. According to Redd (2004), the values that are instilled during marriage preparation strongly affect the harmony, well-being, and stability of a family.

Furthermore, the law must play a role in protecting the community, especially protecting their human rights. One of the fundamental human rights is the right to customary identity or tradition. The United Nations Organization explicitly declares the rights of indigenous peoples. In Article 2, "Indigenous peoples and their citizens are free and equal to all community groups and other citizens and have the right to be free from all forms of discrimination in exercising their rights, especially those based on origins or their identity." Thus, the Manggarai customary community has the right to live according to their customary law. It is appropriate that Manggarai customary law become an integral part of state law and Catholic religious law in Manggarai. Therefore, in line with many other studies or research about the interaction of state law, religious law, and customary law, it is recommended the need to re-arrange the relations among these three laws.

Jeremy Bentham, in the 19th century, and Radbruch, in the 20th century, once said that the primary purpose of the law was to provide legal certainty so that conflict did not occur in the community. The law intends to achieve justice (*gerechtigheid*), expediency (*doelmatigheid*), and legal certainty (*rechtmatigheid*) in life together. With such legal certainty, *people can achieve bonum commune* or the general welfare of the community. Here the law not only functions as a tool of social control but also as a tool of social engineering, a tool for engineering social change (Lon, 2019).

However, a law will lose its significance if it cannot provide certainty due to a conflict between one law and another. So in the context of conflict

among state law, religious law, and Manggarai customary law, it is recommended the need for harmonization by adopting each other or by making legal breakthroughs that are more comprehensive and inclusive to ensure legal certainty and justice for all parties. State law should accommodate religious law under the law gradation and within the principle of law: *Lex superior derogat lex inferior* (a higher law derogates a lower law). This principle asserts that in situations where two or more laws contradict each other, people must follow higher laws. According to Thomas Aquinas (Harmon, 2010), there are four types of law: *Lex Aeterna* (eternal law), *lex divina* (divine law), *lex naturalis* (natural law), and *lex positive* (positive law). Here God's law (divine law) is higher than human's (human-made law or positive law). In the context of legal conflict on marriage in Indonesia, divine law or God's law should be applied or given priority.

When the teachings of Catholicism believe that divorce is prohibited based on divine law (God's command in the Scriptures Matt. 19, 1-12 and Mark 10, 1-12), there should be no lower human law that can oppose it. Consequently, articles 38 and 39 of Decree No. 1 of 1974 concerning marriage, which authorizes state court judges to divorce Catholic marriages, need to be reviewed or at least added with other articles on Catholic court judges. The state court should not divorce marriages that are still bound by Catholic religious law. If the State Court continues to exercise its rights under Decree No. 1 of 1974 concerning marriage, it should harmonize with the rules of Catholic religious law. To harmonize the interests of the two laws, it recommends that a state court may process the divorce of a Catholic marriage after there is a recommendation of Church authority or Church tribunal (court). Several years ago, the Ruteng District Court requested a letter from the Ruteng Diocese Tribunal related to a divorce suit from a Catholic couple.

Likewise, Catholic religious law needs to formally accommodate Manggarai customary law, specifically regarding the rules of the agreement of the families of *anak rona* and *anak wina*, rules on marital procedural, rules on marital bridewealth, rules regarding the traditional wedding marriage (*wagal*) insofar as they do not oppose to the principle of the teachings of the Catholic faith. In Catholic Religious Law, people distinguish these two words: legal and licit. The word "legal" relates to the validity of marriage based on the law, while the word "licit" relates to the goodness of marriage based on ethics or morals. When the Catholic Church adopts the rule of customary law as a condition for the validity of a marriage, each married couple is required to (or must) follow customary law procedures and demands. If the couple does not follow it, then their marriage is invalid. However, when the Catholic Church adopts the rule

of customary law as a condition for licit Catholic marriage, then their marriage is not licit but still valid.

For example, the Catholic Church adopts the agreement between the two extended families for the licit marriage between a man and a woman in Manggarai. If there is a catholic couple who marries without an agreement between the two prominent families, the marriage is still valid but not licit (not suitable according to traditional morals). The marriage is not contrary to Catholic religious law but is not good according to traditional Manggarai law. Here halal/licit deals with ethics, not with the validity of a marriage. Of course, the ideal marriage in Manggarai is a marriage that follows customary law and Church law. Such marriages are valid according to religious law but also ethically or morally acceptable by the Manggarai people.

The law basically cannot be against human rights. Article 10 of Decree No. 39 of 1999 concerning Human Rights emphasizes marriage as a human right. So when there is a conflict between state law, religious law, and customary law, the law that harms human rights needs to be removed or dispensed. For example, when the Catholic Church law prohibits *tungku cu* marriage in Manggarai, it can be detrimental to the right to marry. For the sake of one's right in the marriage, the Catholic Church law gives the bishop the authority to dispense the rule prohibiting *tungku cu* marriage. Here the dispensation is significant to appreciate and protect the human right of Manggarai people.

In contrast, the Manggarai customary law, which gives parents the authority and responsibility to take care of their children's marriages, can violate the child's right to choose a partner. When parents force their children to marry a particular person, it is not suitable for each person's rights and freedom in choosing a partner. In such cases, customary law cannot be used or need to nullify. Here Catholic religious law should not adopt such kinds of rules in customary law.

Likewise, any sanctions imposed either by customary law or Church law or State law may not violate the human rights of everyone in matters of marriage. The Church and State should still consider children's human rights not based on legal or illegal marriage. Concretely, children born from illegal marriages, according to Church law, must continue to be baptized and given services by the Church.

D. CONCLUSIONS

The encounter of state law, Catholic religious law, and Manggarai customary law on the issue of marriage are at a crossroads because there are procedural and substantial differences. On the one hand, state law is ambiguous to Catholic religious' law and unclear to Manggarai customary law, while Catholic religious law has not formally adopted the richness of Manggarai customary law. Here Decree No. 1 of 1974 concerning Marriage is still far from the expectation of an ideal law, and therefore the demand to revise it is a necessity. A good marriage law should guarantee the creation of justice, the achievement of *bonum commune* (public welfare), and legal certainty. Suitable to the thought of Thomas Aquinas, good law must make sense, comprehensive, and inclusive. A good law must be part of the people's culture and be built and found in the souls of its citizens.

The effort to have a good marriage law should be done on the principle of *lex superior derogate lex inferior*, the principle of protecting human rights, and the principle of legal certainty. According to these principles, state law must respect God's law in the Catholic religion. Likewise, Catholic religious law must adopt Manggarai customary law through acts of legal easing (dispensation) and making of new rules at least for licit marriage in Manggarai.

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