

**LEGAL IMPLICATIONS OF INCEST MARRIAGE IN BALINESE CUSTOMARY LAW**

*IMPLIKASI HUKUM PERKAWINAN INSES DALAM HUKUM ADAT BALI*

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**Abstract:** This study aims to discuss incest marriage in terms of marriage law, the legal implications of incest marriage, as well as the problems of customary law and national law governing incest marriage. This study uses empirical juridical research methods with a factual and sociological approach. Incest marriage has violated the provisions contained in Article 8 of Law Number 1 of 1974, Article 30 of the Civil Code, and Article 39 of the Compilation of Islamic Law which prohibits marriage between brothers and sisters who are still related by blood. The legal implications of incest marriage as stipulated in Article 22, Article 24, Article 26, and Article 27 of Law Number 1 of 1974 can be declared null and void. Incest marriage as a tradition that developed in Bonyoh traditional village is not in accordance with national law, but on the other hand customary law in force in the region does not prohibit incest marriage. The indigenous Bonyoh villagers consider incest marriages as an effort to preserve local traditions that have been passed down by ancestors over time.

**Abstrak:** Kajian ini bertujuan untuk membahas tentang perkawinan inses ditinjau dari hukum perkawinan, implikasi hukum perkawinan inses, serta problematika hukum adat dan hukum nasional yang mengatur perkawinan inses. Kajian ini menggunakan metode penelitian yuridis empiris dengan pendekatan fakta dan sosiologis. Perkawinan inses telah melanggar ketentuan yang termuat dalam Pasal 8 Undang-Undang Nomor 1 Tahun 1974, Pasal 30 Kitab Undang-Undang Hukum Perdata, serta Pasal 39 Kompilasi Hukum Islam yang melarang adanya perkawinan antara saudara laki-laki dengan saudara perempuan yang masih memiliki hubungan darah. Implikasi hukum atas perkawinan inses sebagaimana diatur dalam Pasal 22, Pasal 24, Pasal 26, dan Pasal 27 Undang-undang Nomor 1 Tahun 1974 yaitu dapat dinyatakan batal demi hukum. Perkawinan inses sebagai tradisi yang berkembang di desa adat Bonyoh tidak sesuai dengan hukum nasional, tetapi di sisi lain hukum adat yang berlaku di kawasan tersebut tidak melarang adanya perkawinan inses. Masyarakat desa adat Bonyoh menganggap perkawinan inses sebagai upaya untuk melestarikan tradisi lokal yang telah diwariskan oleh leluhur dari waktu ke waktu.

**INTRODUCTION**

Customary law in Indonesia is seen as a source of national law formation because it is a transition from the original law of our nation.

Every nation and civilization has its own unique character. This character is formed based on the history and cultural development of the people. Every nation has its own character

and qualities, none of which are intrinsically superior to each other. The same thing also happens in the formation of a legal system that is closely related to community culture. The legal system according to von Savigny is part of the culture of a society. The law is not born from free action or the arbitrary action of a legislator, but is built and can be found in the soul of society. The law can be said to originate from customs and then be created through legal activity or juristic activity. The constitutional roots of a country can thus be traced from the history of the nation itself. This can be seen from one of the basic consensus contained in the constitution which states that the general goals of society or general acceptance are related to the same philosophy of government (Maladi, 2010). The characteristics and identity of a nation determine the basics of nationality and statehood in the constitution.

Customary law in Indonesia has regressed over time. The large number of customary laws that differ between regions makes the existence of customary law as a living law for Indonesian society increasingly marginalized (Syamsudin, 2008). Indonesian customary law communities in empirical reality sometimes face many problems when customary law meets positive law (Abubakar, 2013). Customary law is born from the habits or behaviors of the community that have been, are being, or will be carried out. The existence of customary law as a source of law in Indonesia is increasingly marginalized, one of which is due to the assumption that customary law is very traditional and out of reach of current developments (Prasetyarini & Sutrisni, 2023). The application of customary law in Indonesia is often faced with several problems, one of which is the assumption that customary law is incompatible with globalization and technology.

Bali is one of the provinces in the Indonesian archipelago, with Balinese tribes and customs that have their own characteristics. The management of applicable laws can be seen from the role of traditional villages in managing their own environment in the form of legal products in the traditional environment (Adnyani, 2016). Bali has various understandings of its traditional environment with the *Tri Hita Karana* concept as the basis for the emergence of an understanding of the community's environment. One of the

important phases in human life in society is marriage. Marriage for the Balinese Hindu community is a sacred relationship. Status as husband and wife has legal consequences in the form of rights and obligations both to spouses, families, children to be born, property, to the community.

Marriage law must be able to realize the principles contained in Pancasila and UUD NRI 1945. The marriage law has accommodated the provisions of the religious and religious laws of the parties concerned. Marriage law contains principles regarding marriage that have been adapted to the development and demands of the times. Marriage is an act that must be carried out in accordance with the norms that live in society, both religious norms and legal norms with different rules from each other. Marriage law must be able to accommodate the aspirations of the community and harmonize various legal rules, so that Law Number 16 of 2019 jo Law Number 1 of 1974 concerning marriage was formed (Suastika, 2016). The definition of marriage according to Balinese customary law is formulated as a sacred bond between a man and a woman with the aim of forming a family whose descendants are *purusa* (Hermanto, 2016). Marriage for the Balinese customary law community is essentially the same as marriage regulated in the current national marriage law.

Marriage law is strongly influenced by customary law that applies in the community. The existence of customary law as one of the sources of law in Indonesia is considered very traditional. Customary law as a living law in Indonesia is part of living law and is recognized by customary law communities. The elements that influence customary law are the behavior of a person who is carried out continuously for a long period of time and the dimension of time followed by others. These elements must be fulfilled in order for a rule to become a customary law. Marriage law contains various provisions, one of which is the provision regarding the prohibition to marry someone who is related by blood or very close marriage, the prohibition on marrying someone who commits adultery, and the prohibition on renewing marriage after a divorce that has not passed one year (Sudarsono, 1991). These provisions must be complied with in order to remain viable as a law.

Prohibition in a marriage has been regulated

in the provisions of Article 8 of Law Number 1 of 1974. The prohibition takes the form of marriage between two persons who are: (a) related by blood in a straight line down or up, (b) have blood ties on the side lines, namely between siblings, someone with their parents' siblings, and between someone and their grandparents, (c) have kinship such as stepdaughter-in-law, son-in-law, and mother or stepfather, (d) nursing parents, breastfeeding children, breastfeeding siblings, and aunts or uncles, (e) have a kinship with the wife or as the wife's aunt or niece, in the event that the husband has more than one wife, and (f) people who engage in relationships prohibited by their religion or other applicable regulations (Willikin, 2014). The prohibition of marriage as stipulated in Article 8 of Law Number 1 of 1974 must be obeyed by the entire community.

The problem that is often highlighted in conflicts that arise in today's society is the prohibition to have inbreeding. Cases that occur in the community are marriages between blood relatives or still have side kinship relationships, namely cousins. This causes the bride and groom not to get welfare from the traditional village (Sudarma & Wisuda, 2018). The emergence of customary sanctions because of the existence of customary law and the position of customary law according to the provisions of positive law in Indonesia (Duarsa, Sugiarta, & Sudibya, 2020). The customary sanctions imposed were not only felt by the two priests but also their parents.

Many problems in marriage occur in the Bonyoh indigenous area. Marriage must be carried out based on the provisions of customary law applicable in the community as well as national law as stipulated in Law Number 16 of 2019 jo Law Number 1 of 1974. Customary law and national law on marriage have become legal regulations and are strictly adhered to by the Bonyoh indigenous people. These regulations are highly obeyed by indigenous peoples, although some provisions are physically unwritten. The problem that occurs is related to the incompatibility between local traditions and applicable laws and regulations, in this case related to marriages between brothers which are currently still carried out by the Bonyoh indigenous people. Based on the description previously explained, this study discusses

incest marriage in terms of marriage law, legal implications for incest marriage, as well as the problems of customary law and national law governing incest marriage.

## METHODS

This study uses empirical juridical legal research methods covering social phenomena in society which are analyzed using a legal approach as a comparison material. The scope of research includes the object of research, namely the application of legal approaches in solving a problem (Marzuki, 2011). Research that uses legal argumentation is research that examines the application of a rule of law accompanied by arguments or legal considerations from law enforcers and interpretations that underlie its enforcement (Abrianto, Nugraha, & Grady, 2020). This research uses two approaches, namely the fact approach and the sociological approach. The data in this study was obtained from field research and literature research. Data sources used include primary, secondary, and tertiary legal materials. Primary legal materials are data obtained directly from the first source (Susanti & Efendi, 2013). Primary legal materials can be translated or elaborated with quality and in the form of literary, logical, coherent, unequal, and effective sentences (Adnyani, 2021). Primary legal materials are laws and regulations, jurisprudence, treaties, and laws originating from several countries studied. Secondary legal materials in the form of books, scientific journals, and previous research. Tertiary legal materials in the form of legal dictionaries and online media that have credibility. Research data needs to be processed to get answers to the problems studied (Adnyani, 2017; Adnyani, 2019). The data that has been obtained is then analyzed qualitatively and presented in an analytical descriptive manner.

## RESULTS AND DISCUSSION

### Incest Marriage in Bonyoh Traditional Village Based on Marriage Law

The consanguineous marriages cannot be justified because they violate the provisions of the Article 30 of KUHP, Article 8 of Law Number 1 of 1974, and Article 39 of the Compilation of Islamic Law. The legal consequence of inbreeding is the annulment of the marriage. This is in accordance with the provisions Article

22 of Law Number 16 of 2019 jo Law Number 1 of 1974 that a marriage can be annulled if the parties do not fulfill the requirements for carrying out a marriage. The legal consequences for the husband-wife relationship are the loss of all rights and obligations between husband and wife, so that the annulment results in it being as if the marriage did not occur. An annulment of a marriage also results in the absence of joint assets and the annulment of the marriage does not apply retroactively to children born from the marriage.

The conception of marriage has been regulated based on Article 1 of Law Number 16 of 2019 jo Law Number 1 of 1974. The purpose of marriage is to form a happy and eternal family or household, marriage must be a physical and spiritual bond, and not just an outward bond or an inward bond. Therefore husband and wife help and complement each other, so that each can develop their personality to help and achieve physical and spiritual well-being. That bond is a bond as husband and wife, so it is not a bond between a man and a woman as master and servant or employer with his concubine or concubine. The bond is between a man and a woman, so it is clear that Indonesian marriage law adheres to the principle of monogamy meaning that a man and a woman only have one wife or one husband at any given time. The principle of monogamy here is open meaning that only a husband can have more than one wife if desired and in accordance with religious law and fulfills certain conditions, thus the principle of monogamy is set aside. A wife may not have more than one husband at the same time. Marriage must be in accordance with the religious law of each prospective husband and prospective wife.

Article 2 of Law Number 1 of 1974 state that marriages must also be registered according to applicable laws and regulations. This means that Indonesia adheres to the principle of religious marriage and also the principle of civil marriage (Emeralda & Hamidah, 2022). It is clear with the provisions of Article 1 of Law Number 16 of 2019 jo Law Number 1 of 1974 is the basis and foundation of a marriage. It is clear that religious provisions are very dominant for example among others Article 2 paragraph 1, Article 8 letter f, and Article 51 paragraph 3 of Law Number 16 of 2019 jo Law Number 1 of 1974.

Marriage law also contains a juridical element, that is to be able to enter into a marriage one must fulfill the conditions determined by law, included in this juridical element are elements of customary law which can be deduced from Article 31, Article 35, Article 36, and Article 37 of Law Number 1 of 1974. Marriage law there is no clear explanation regarding the marriage contract actually it is only regulated in one article namely Article 29 of Law Number 1 of 1974, but at the end of the sentence in Article 25 paragraph 2 of Law Number 1 of 1974 this is implied. The formulation of the marriage agreement in Article 29 of Law Number 1 of 1974 is very broad, this understanding only refers to the possibility of contracting assets in marriage.

Law Number 16 of 2019 jo Law Number 1 of 1974 there is no detailed discussion or arrangement regarding the elements of customary law in marriage, more arrangements are found regarding religious law and the dominant one is Islamic law, marriages between prospective husbands and prospective wives who are both Indonesian citizens, mixed marriages, and other marriage systems. The legal arrangements for marriage provided by the marriage law are still incomplete and comprehensive, where enforcement must still be supported by re-enacting the provisions and laws and regulations regarding previous marriages. Provisions of the old marriage law are not automatically no longer valid.

Incest marriage has a significant impact on the party who commits. Incest marriage greatly influences the gene composition of the offspring produced (Khafizoh, 2017). There is no clear correlation according to Article 18b of the UUD NRI 1945 with Article 2 of Law Number 1 of 1974 (Pimadona & Mulati, 2019). Article 18 letter b of the UUD NRI 1945 states that the state recognizes and respecting customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the republic of Indonesia. Article 2 Law Number 1 of 1974 states that marriage is valid if it is carried out according to the laws of each respective religion and belief. Incest is strictly prohibited by religion and law. There is no clarity on how customary law rules apply to the marriage law, whereas the state should

recognize and respect the existing customary law units.

The consanguineous marriages carried out by the Bonyoh indigenous community are not legal, because they do not comply with the provisions and rules that already exist and are regulated in the law of the indigenous community. The Bonyoh indigenous community considers that consanguineous people are blood relatives regardless of distance or proximity his family line. The incestuous marriage itself is also prohibited in the marriage law because there are still blood ties as stated in Article 8 letter a of Law Number 1 of 1974 which states blood relations in the downward or upward lineage.

The consanguineous marriage between sisters and brothers violates the prohibition on marriage in Article 8 of Law Number 1 of 1974. Prohibited marriages are between: (a) blood related in a straight downward or upward lineage, (b) blood relations in a lateral lineage, namely between siblings, between someone and their parents' siblings, and between someone and their grandmother's siblings, (c) similar relations, namely in-laws, stepchildren, father's or stepmother's daughter-in-law, (d) relatives in foster care, namely foster parents, foster children, foster siblings, and foster aunts or uncles, (e) relative to the wife's relatives or as an aunt or niece of the wife in the case of a husband having more than one wife, (f) have blood relations whose religion or other applicable regulations prohibit marriage. Marriage must be carried out in accordance with the provisions of applicable laws and regulations.

People practice incest because there are several influencing factors, such as lack of religious and moral education in the family, poverty, cultural, and educational conflicts. Positive law does not view all sexual relations outside marriage as an act of adultery. Positive law only considers adultery for people in the status of husband and wife who have sexual relations outside of marriage. Positive law views that if an act of adultery is done voluntarily then the perpetrator does not need to be punished. Voluntary relationships between blood relatives are clearly not permitted. This is in accordance with Article 290 of the KUHPer states that blood kinship is a family relationship between people, where one person is a descendant of another, or between people who have the same father.

Blood kinship is calculated by the number of births, each birth is called a degree. Article 30 of KUHPer states that prohibited marriages are marriages between people who are blood related to each other in the upper or lower family line, whether due to legitimate or illegitimate birth or by marriage, and in different lines between brothers and sisters legitimate or not.

According to Islamic law, forbidden marriages can be distinguished between those that are permanently forbidden and those that are temporarily forbidden. Marriages that are forbidden forever are carried out of blood ties, marriage bonds, marriage bonds, and adultery. Marriages that are prohibited because of blood ties because marriages between a man and his grandmother's mother (continued to top), with his daughter, granddaughter (continued below), his sister, his brother's or sister's daughter (continued to bottom), marriage to an aunt namely mother's or father's sister, and grandmother's or grandfather's sibling (continuously upwards).

The local tradition of incest for the Bonyoh traditional village community is as a characteristic, image, or description of the life of the Bonyoh traditional village community which contains the noble traditional values of the Bonyoh traditional village and is considered something that is sacred. The local tradition of incest marriage is interpreted as maintaining the integrity of their relatives' bloodlines and also strengthening their family ties so that they are closer. Another thing that is also being discussed is that this local tradition is a legacy from their ancestors that needs to be maintained and its existence is preserved. The people of Bonyoh traditional village really uphold their local traditions because they have been socialized or educated about cultural values from an early age, so still able to carry out arranged marriages between their relatives and families to always marry off their children in the Bonyoh traditional village community.

The essence of traditional Bonyoh traditional village is kinship. Kinship in the community or krama of the Bonyoh customary village is interpreted in a broad sense, covering all dimensions of human life, and not only limited to forms of biological kinship. The spirit of kinship and kinship in the traditional Bonyoh village which is bound by customary law is embodied in an agreement. The main element

of this culture is solidarity between brothers which refers to two things, namely the attitude of helping other people or village involved in the agreement and the ability to be involved in the lives of other people in customary agreements. This kinship system actually wants to elevate everyone as a brother who must be respected, served, and cared for.

Incest marriage as a local tradition in the traditional village of Bonyoh can be attributed to Emile Durkheim's theory of mechanical solidarity. The traditional tradition of incest marriage for the people of Bonyoh traditional village is a portrait or depiction of the community in terms of the simplicity of local traditional traditions that are considered sacred. People share the same feeling and equality is upheld to maintain and preserve local traditions continuously. The indigenous Bonyoh villagers have the same ideology or ethical beliefs as local blood traditions, which have been formed or taught since childhood regardless of the existence of consequences. People who violate customs in Bonyoh traditional village will be subject to sanctions in accordance with customary law that has been implemented and mutually agreed.

The marriage law covers matters that are not regulated in the laws of each religion or religious belief concerned. Religious law, customary law, or other laws applicable to permanent population groups are applied as-is for matters that do not allow uniformity. Legal modification by holding a limited union in the field of marriage law is very necessary to do. The national marriage law does not restrict or prohibit what has become a tradition for indigenous peoples and tribes. Marriage law intends to carry out unification in the field of marriage law without eliminating the diversity that must be maintained, because various provisions of marriage law are still valid in Indonesian legal society.

### **Legal Implications of Incest Marriage in Bonyoh Traditional Village**

Incest marriage can be divided into two, namely intentional and accidental incest marriages. Accidental incest marriages is carried out between a man and a woman who are still related by blood due to negligence. Intentional incest marriages between a man and a woman who are related by blood has knowingly violated the rule of law. Marriage can be annulled by law and can be annulled by court. This is stated in

Article 22, Article 24, Articles 26, and Articles 27 of Law Number 1 of 1974. Term void it has a very broad meaning because the meaning of cancel is to return as before. This means that with its cancellation it will become a problem.

The purpose of canceling a marriage is to avoid any consequences marriage is not protected by law because of a lack of conditions and violations committed before the marriage occurred causing the marriage to be invalid. The application for cancellation can be submitted to the local court where the husband or wife lives and also the place where the marriage takes place took place. Parties who can apply for annulment of marriage as stipulated in Article 23 Law Number 1 of 1974 include husband or wife, family in the straight line of descent of husband or wife, officials who have authority only as long as the marriage has not been dissolved, and officials appointed as referred to in Article 16 paragraph (2) Law Number 1 of 1974 are any person who has a direct legal interest in the marriage, but only after the marriage has separated.

The ban on marriage has been regulated in Law Number 1 of 1974. The prohibition of marriage is divided into two types, namely a temporary ban and a ban that applies forever. The temporary prohibition on marriage relates to the performance of marriages that must not coincide with an illicit time. The prohibition that lasts forever relates to brides who cannot be related by blood, kinship, or temporary relations. Both of these determine the validity of a marriage that has been or will be carried out. A child born between a man and a woman who are still related by blood. The result of inbreeding that continues to live in a family as usual and gives birth to children is to cause legal consequences for the child because there is no legal bond in marriage between his parents. As a result of invalid marriage, parents have an impact on civil relations, inheritance rights, recognition of marriage, child support, living costs and parental responsibilities. The status of children according to Indonesian national marriage law is divided into two, namely legal children and illegitimate children.

A legal child according to Article 42 of Law Number 1 of 1974 is a child born from or as a result of a legal marriage. A legal child under Article 99 of the Complications of Islamic Law

is a child born from or as a result of a legal marriage and the result of a legal conception of a husband and wife outside the womb and born to a wife. The definition of an extramarital child as stated in national laws and regulations is a child conceived and born outside of legal marriage. Article 43 of Law Number 1 of 1974 states that children born out of wedlock only have civil relations with their mother and her mother's family. Article 100 of the Compilation of Islamic Law confirms that a child born out of wedlock only has sexual relations with the mother and the mother's family. The articles above explain that the status of an illegitimate child only has a civil relationship with his mother and his mother's family. This relationship is usually called parental authority, in which rights and obligations arise between children and parents. The child has no civil relationship with his father or his father's family in the form of lineage or reciprocal rights and obligations.

Every child has the right to survive, grow, develop, and has the right to protection from violence and discrimination. Those who have a responsible role in safeguarding children's human rights are parents, families, communities, as well as the government and state. Efforts to fulfill children's rights must be made as early as possible, namely from the time they are still in the womb or fetus until the child is 18 years old. Children's rights have been regulated in Articles 4 to Article 18 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In reality, not all children get their human rights protection despite these regulations.

The law has a contribution in determining the status of children, for example children resulting from consanguineous marriages who have the status of illegitimate children. The existence of these placement groups results in different rights from children who have the status of legitimate children. The illegitimate child only has a civil relationship with his mother and his mother's family, while the father's responsibility as a parent is legally released. The father's lack of responsibility towards children resulting from inbreeding can create negative potential in the future. The consequence that must be borne by the child is that the father cannot fulfill his obligations to meet his living needs and civil needs.

Living together in traditional Indonesian society has a communal pattern. Humans in customary law are people who are bound to society. Humans are not only positioned as individuals who are free in all their actions as long as they do not violate the limits of the law that has been set (Artadi, 2006). This shows that to make a decision is certainly very difficult considering that each individual has their own interests that are different from each other. Indigenous peoples view that order already exists in the universe or has existed since time immemorial (Rideng, 2022). Order is a harmonious relationship between everything. This is in line with the marriage system that has been arranged in traditional villages or in the community environment that must be obeyed because it is in the cosmic environment. Marriage basically has the same goal, which is to form a family and continue healthy offspring physically and spiritually so that a happy and eternal family is formed, and useful for a harmonious and peaceful family life according to law and religion (Prasetyarini & Sutrisni, 2023). Marriage should be carried out based on the provisions stipulated in the applicable law.

Marriage will always be a cultural element that is lived from time to time, because marriage customs regulate and strengthen an essential form of relationship between people of different types. Marriage in the era of globalization in Bali shows more openness than before (Indrayanti, Putri, & Sukisno, 2007). The Bonyoh traditional village community is very thick with the tradition of inbreeding, namely marriage between cousins (*epmisanan*) or kinship in different environments is strictly prohibited and even subject to customary sanctions for its citizens who do it. The people of Bonyoh traditional village are still confined by a marriage tradition that has discriminatory nuances (Dirdjosisworo, 2014). Incest marriages has been prohibited by national law in Indonesia.

Social relations must not contradict the legal regulations in force in society. Violation of customary regulations has implications for the provision of customary sanctions as a reaction of the community to people who commit violations. Customary sanctions are necessary to restore disturbed magical calm. Customary sanctions aim to eliminate or neutralize unfavorable circumstances resulting from customary violations.

Customary sanctions function as a means of coercion so that a person or community obeys applicable norms, as legal norms that must be obeyed, and as a legal consequence for someone who violates legal norms.

### **The Problems of Customary Law and National Law Governing Incest Marriage**

The kinship of the Bonyoh customary village residents does not refer to religion, but rather to family ties. Traditional agreements that condition everyone to help each other and consider other people as their own family (Pimadona & Mulati, 2019). Everyone is bound to others in a family relationship regardless of religion. This will produce more and more diverse offspring so that they can continue the legacy of their ancestors. Based on this, there are two things that need to be explained, namely family-centered togetherness and collective attitude of Bonyoh villagers.

Interpersonal relationships are always based on sibling relationships, everyone is seen as a brother of one family. This is clearly seen in the family structure of the members of the traditional Bonyoh village through the terms *remaja fo pemuda*, *yanyanat fo yananat*, *yaan fo yaan*, *warin fo warin*, *yanur fo yanur*, *mangohoi fo mangohoi*. This means that the Bonyoh traditional village krama family has a structure that forces each family member to have their own status (Arunde, 2018). The essence of this structure is to place parents as superiors to children and children as subordinates. One of the basic tendencies of the Bonyoh traditional village manners in tracing family relationships in association, for example through the question "who are your parents" the conclusion drawn is "you and I are brothers" even though in fact there is no blood relationship in the narrow sense.

Bonyoh traditional village residents in collective action always prioritize the legal aspect, even absolute it. Customary law is always upheld in living together. Obedience to this law is based on the ideal that kinship will increasingly be realized. That is the tendency in the collective attitude of the members of the traditional Bonyoh village. However, it should be understood that kinship due to obedience to the law does not mean a legalistic attitude which means obeying law for the sake of law, but obedience to law by the Bonyoh traditional

village community for the sake of kinship. Regulations, agreements, and agreements that are bound by law must be obeyed so that the kinship continues to last. If the rule of law is violated, then as a result the kinship or kinship becomes tarnished, tenuous, and can even be lost or broken.

Obedience and enforcement of customary law by members of the traditional Bonyoh village seems to have ruled out general regulations or the national marriage law. Indigenous Bonyoh villagers apply more marriage regulations in accordance with the customs of the traditional Bonyoh village. Things like this can be said "lex specialis de rogat lex generalis" which means special regulations overrule general regulations because the Bonyoh customary village residents uphold their customs, culture, and customary law more highly. The prohibition of incestuous marriages will raise contras from several parties. The prohibition of interfaith marriages also raises controversies from various parties because it is said to be incompatible with human rights which says that every human being has the right to marry and form a family. The human rights law does not provide certainty regarding the basic principles of marriage. The elucidation of Article 10 paragraph (1) of Law Number 1 of 1974 states that what is meant by legal marriage is a marriage carried out according to the provisions of laws and regulations (Haipon & Due, 2022). The valid marriage is a marriage that is in accordance with the provisions of the marriage law, which is valid according to religion and valid according to administrative.

Customary law and family values that have been owned by the members of the traditional village of Bonyoh have long had the power to maintain unity in a pluralistic relationship. Every life and activity is based on customary law, providing an opportunity for every individual to submit to it and believe that existing law is something sacred and has power (Maharani, 2018). Customary law can guarantee human rights, human dignity, high respect for individuals, groups, and the value of human life. The human person is noble and sublime, each has its own qualities and uniqueness. These incest rules and prohibitions lead to the theoretical conclusion that the form of kinship is also influenced by the order of ideals that characterize the collective life of the Bonyoh indigenous village because it

emphasizes legal aspects in collectivity (Tilome & Alkatiri, 2020). This form of kinship places great emphasis on social relations that must be carried out by strictly observing the terms of the agreement.

The legal comparison between applicable customary law and positive law has the same position before the customary law community. Customary law is recognized as the law that lives in society and is obeyed, while positive law is state law which is of course coercive and must be obeyed. These two legal rules have legitimacy before indigenous peoples because they have relevance to the laws governing marriage. Consanguineous marriages with cousins in the Bonyoh traditional village result in the meaning of the word consent not being fulfilled, giving rise to a tendency for rights to be restricted. Article 6 paragraph (1) of Law Number 1 of 1974 marriage must be based on the consent or agreement of the two prospective brides and grooms who are getting married. Regarding the problems that exist in the Bonyoh traditional village area, from this article it is certain that there has been no agreement. It is said that because there are customary rules that regulate it, which means the conditions for marriage as intended in Article 6 paragraph (1) of Law Number 1 of 1974 are not met, meaning that if these conditions are not met then you will not be able to get married. Behind this dynamic, there is actually a conflict that occurs when referring to Article 28B paragraph (1) of the UUD NRI 1945 which gives rights to citizens to form a household.

Article 8 letter f of Law Number 1 of 1974 confirms that a person who is in a relationship prohibited by his religion or other applicable regulations is not allowed to marry. The other regulations in question can be interpreted as other regulations that regulate society outside the law which can be called customary law. The customary law which prohibits marriage in the Bonyoh traditional village area can be interpreted as this customary law also includes other rules. The relationship between these two rules is the same provides a prohibition on marriage as evidenced by Article 8 letter f of Law Number 1 of 1974 with regulations prohibiting customary marriage in the Bonyoh area which contains the meaning of prohibiting marriage.

The position of children resulting from

incest can be reviewed based on the provisions in the KUHPer, the marriage law, and the Compilation of Islamic Law. The status of children is divided into two, namely legitimate children and illegitimate children. Incest is a prohibited marriage and if it is carried out then the marriage is invalid at all times. The status of children from incest becomes invalid, the relationship that occurs during that time is an act of adultery so that the provisions for adulterous children apply to their children. A children from incest can become legitimate children if their parents are completely unaware of the prohibition on marriage or do not know that they are related by blood.

Incest marriage carried out by people in Bonyoh traditional village can be attributed to Malinowski's theory of functionalism. The community in Bonyoh traditional village still maintains the local tradition of inbreeding in the midst of community rejection because basically the community in their daily lives is able to meet their needs thoroughly both in biological and psychological terms. People in Bonyoh traditional village highly uphold solidarity that can create a sense of comfort in their ethnicity. Another thing that makes the people in Bonyoh traditional village look so strong in everyday life is because the sense of belonging and togetherness is so strong even though there are many conflicts or rejections of local traditions that are considered unethical or not in accordance with the culture in Bangli Regency. The community in Bonyoh traditional village is very strong and steadfast in maintaining the local tradition of inbreeding so far. This can be seen in the daily lives of the people in Bonyoh traditional village which are very close and close to local traditions that are considered to have become part of life. The community in Bonyoh traditional village is a tribe that has special features, especially in terms of local traditions or culture.

## CONCLUSION

Incest marriage has violated the provisions contained in Law Number 16 of 2019 jo Law Number 1 of 1974, the KUHPer, and the Compilation of Islamic Law. Article 8 of Law Number 1 of 1974 prohibits inbreeding between brothers and sisters. Article 30 of the Indonesian Civil Code states that a prohibited

marriage is a marriage between people who are related by blood to each other. Article 39 of the Compilation of Islamic Law affirms that Incest marriage is one of the things that is forbidden so that it can be equated with adultery. Incest marriage as one of the unlawful acts can be declared null and void. This is stated in Article 22, Article 24, Article 26, and Article 27 of Law Number 1 of 1974. The term void has a very broad meaning because the meaning of void is to restore as before, meaning that its cancellation will become a new problem. Incest marriage as a tradition that developed in Bonyoh traditional village is not in accordance with national law, but on the other hand customary law in force in the region does not prohibit incest marriage. The indigenous Bonyoh villagers consider incest marriages as an effort to preserve local traditions that have been passed down over time

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