

# Implications of Mixed Marriage in the Perspective of Gorontalo Customary Law and Its Reality based on International Private Law Principles

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## Abstract

*This paper aims to describe the application of local wisdom values as part of the implementation of the Gorontalo Marriage Customary Law to mixed marriages performed by Indonesian citizens of Gorontalo ethnicity and foreign nationals and to analyze the consequences of mixed marriages according to Gorontalo customary marriage law. The method of data collection was carried out through the stages of inventorying secondary data, tracking primary data through interviews, in-depth focus group discussion, and then analysis qualitatively. This paper uses descriptive analytic methods. The discussion demonstrates that mixed marriage is a family law event that has occurred from time immemorial. It's just that people's understanding of the order of family life is getting wider. This is due to the fact that cross-country personal relations are getting better, which has implications for the family law order from the perspective of local wisdom, especially in regions where the family system is open to other legal systems, including Gorontalo's customary marriage law. Mixed marriages, in the view of the local wisdom of the Gorontalo people, can be carried out through the Gorontalo traditional wedding procession in full if the husband and/or wife submit to the Islamic religion. This is legally obligatory because of the philosophy of Gorontalo customs: "Adati Hula-Hulaa To Syara, Syara Hula-Hulaa To Qurani" (Adat is based on Syara, Syara is based on the Al-Quran), so that every wedding procession that chooses to use Gorontalo's customs contains advice and prayers (for God's sake), which have the value of guidance as stipulated in the Al-Quran. As for the consequences of mixed marriages on Gorontalo's customary law, where one of the bride and groom is a foreigner but not Muslim, they cannot be married according to Gorontalo's customary law; the process is based on Al-Quran values.*

## 1. Introduction

The problem of marriage in the conception of law in Indonesia has received national regulation, which is regulated in Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (Marriage Law). Along with the times, the development of problems that occur in Indonesia are also increasingly complex, especially in matters of marriage.

According to Article 1 of Marriage Law, what is meant by marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One Supreme God.

In Indonesia, marriage is one of the cultural practices that most invites formulation efforts from various groups of one society. Marriage is believed to be a relationship that unites two people in love and has become the business of many people, or institutions, from parents, extended family, religious institutions to the state. This personal view is ultimately sanctified through the institution of marriage, because marriage aims to form a family filled with mutual love and affection among family members.

This is related to the word of Allah SWT, as in QS Surah Ar-Rum: 21

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Translation

*"And among His signs is that He has created partners for you from your own kind, so that you are inclined to and feel at ease with him, and He has created love and affection between you. Indeed, in that there are indeed signs (of Allah's greatness) for people who think."*

Islam views marriage as the aim of building a noble and Islamic household. Marriage also aims to develop pious offspring in order to prosper the world, so that human life on earth is not interrupted. That is God's purpose for creating male and female. And

in both created a tendency or instinct to love one another, so that the human structure is perfect, and this life is not interrupted.<sup>1</sup>

Various marriage problems are interesting to discuss because marriage is a legal act that causes causation between the spouses who do it. In the flow of life, marriage does not only involve people of the same religion and one nationality. There are cases where the husband and wife come from different religious or national backgrounds. In the name of democracy and human rights, it is often used as an argument in the act of mixed marriages, even though many cases occur by setting aside obligations and compliance with existing provisions.

The definition of Mixed Marriage is regulated in Article 57 of Marriage Law states that a mixed marriage is a marriage between two people who in Indonesia are subject to different laws, because of differences in nationality and one of the parties is an Indonesian citizen. While the understanding of some people is of the opinion that mixed marriages do not only involve partners of different nationalities, but also of different religions and different ethnicities. So that the practice of mixed marriages is classified into several categories, namely mixed marriages due to differences in religion, mixed marriages due to differences in nationality, this also shows that the practice of mixed marriages has developed and no longer refers to the classical view which tends to understand mixed marriages due to religious differences alone. From a legal standpoint, this development is interesting to study. That a provision was born to provide an answer to the postulates of mixed marriages which are already familiar to Muslim communities in Indonesia.<sup>2</sup>

Photographing Gorontalo is synonymous with depicting an ethnicity in this archipelago. The people of Gorontalo are known to be very thick with a combination of traditional and cultural nuances. This portrait is reflected in the reality that has crystallized since ancient times, precisely in 1637 AD, in the expression "*Aadati hulo-hulo'a to sara'a, sara'a hulo-hulo'a to Kitabullah*" which, when translated into

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<sup>1</sup> Muhammad Yusuf Putra, "Sistem perkawinan adat Pohutu Moponika dalam menciptakan keharmonisan keluarga perspektif At-Thufi: Studi kasus di Kota Gorontalo" (undergraduate, Universitas Islam Negeri Maulana Malik Ibrahim, 2018), <http://etheses.uin-malang.ac.id/14850/>.

<sup>2</sup> Defanti Putri Utami and Finza Khasif Ghifarani, "Perkawinan Campuran Di Indonesia Ditinjau Dari Hukum Islam Dan Hukum Positif," *MASADIR: Jurnal Hukum Islam* 1, no. 2 (2021): 156–75.

Indonesian, is "Adat is based on *syara*, *syara* is based on the Book of Allah". The characteristics of Gorontalo culture are clearly seen in ceremonies in the form of weddings, seven months (*Molonthalo*) for first pregnant women, births, initiation, funerals, celebrations of Islamic holidays, giving customary titles, receiving regional and state guests, and others and so on. Especially for the wedding ritual, quite a lot of steps are carried out. Starting from the Secret *Mopoloduwo*, *Tolobalango*, *Depito Dutu*, *Mopotilandahu*, Saronde Dance, Marriage Contract and other rituals. The wedding customs of the community in Gorontalo City, which were previously used as a symbol of the thickness of cultural elements in social life, are now experiencing a shift in these elements as a result of an attitude of rational, practical and fashionable and modernist thinking.<sup>3</sup> Globalization is marked by increasingly high technological advances, human interaction between countries is increasingly wide open, opening up great opportunities for interaction between people, which can end in marriage between nations.

## 2. Problem Statement

The study of this is very interesting, when two or more cultures meet in a legal relationship between human marriages between countries, it can be analyzed sociologically within the framework of local wisdom.

Based on this, the authors formulated the problem regarding the phenomenon of mixed marriages, between Indonesian Citizens, Gorontalo Tribe and Foreign Citizens and the implications of Gorontalo's customary law for mixed marriages.

## 3. Methods

This article is the result of research that is researched empirically juridically. The juridical approach is carried out on statutory provisions, the case approach and the conceptual approach, while the empirical research is carried out on the symptoms and behavior of humans who engage in mixed marriages.

This type of research according to its form is descriptive research that aims to describe the phenomenon of mixed marriages, between Foreign Citizens and

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<sup>3</sup> Yowan Tamu, "Dari Ritual Menuju Beban Sosial: Memotret Pergeseran Makna Ritual Pernikahan Di Kota Gorontalo," August 21, 2019, <https://repository.ung.ac.id/karyailmiah/show/3920/dari-ritual-menuju-beban-sosial-memotret-pergeseran-makna-ritual-pernikahan-di-kota-gorontalo.html>.

Indonesian Citizens, of Gorontalo descent, in the implementation of Gorontalo Customary Law and all its legal implications.

Sources of data used in this study are primary data and secondary data. Primary data is field data obtained from informants used through data collection tools in the form of observations, observations, interviews that are structured or not, while secondary data is data obtained through documentation studies, literature, or Court decisions/decisions that are collected in a systematized manner. from various existing sources. The data is in the form of a collection of laws and regulations, as well as other documents including decisions that are considered to support the research results.

As for the analysis of the data obtained both secondary data, as well as from the literature, as well as primary data extracted based on observations, interview results, will be analyzed descriptively on legal issues using qualitative methods. Furthermore, the results of the questionnaire will be analyzed using numbers which are then analyzed qualitatively.

#### **4. Discussion**

##### **4.1. The Concept of Marriage According to the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage and Several Legal Systems**

Human nature as a creature created by God, with the classification of male and female gender, one another will be attracted to each other and then unite themselves in a marriage bond. The model of social life, from the simple to the modern, marriage as an institution is always considered sacred. This is understandable because with this marriage, in addition to fulfilling biological needs, it is also hoped that offspring will be born which of course are expected to continue human life in a sustainable manner. Marriage is an affair that is almost always associated with a ceremony that is thick with wisdom, religious overtones, for two people of different sexes to form a family. From the institution of marriage, a family unit is formed.

Each social order has a different character in giving value to this marriage institution, which is mostly based on religious elements, therefore marriage is very laden with norms that uphold its sanctity. Even in practice in society, the ceremony of carrying

out a marriage is marked by various symbols of attributes, which chant the basic values of people's lives. The joints of life that are formed from the institution of marriage crystallize into a principle which in the next process is used as the basis for the formation of legal norms. The existence of legal norms is used to become the frame of the marriage institution.

The many customary laws owned by Indonesian people, as well as the diversity of religions adopted by the nation's children, also affect the existence of the marriage institution. As a result, the rules of marriage that apply also vary. Ending the era of pluralism of marriage law in Indonesia, supported by the spirit of realizing the ideals of fostering national law, in order to accommodate the development of a society that is always on the move, where human needs are increasingly complex, a marriage law with the nuances of unification was developed, namely the birth of the Law Number 1 of 1974 concerning Marriage.

The marriage law is based on the principles that are lived by the Indonesian people, namely:

- 1) The purpose of marriage is to form a happy and eternal family.
- 2) Marriage is considered valid if it is held based on religious law and belief, then it is recorded according to the rules.
- 3) The principle of monogamy is basically used as a foundation.
- 4) The prospective bride and groom should be mentally and physically mature when they get married.
- 5) Considering that the purpose of marriage is to form a happy and everlasting and prosperous family, then the principle is adopted to make it difficult for divorce to occur.
- 6) There is a balance of legal status between husband and wife.<sup>4</sup>

Marriage, according to Article 1 of Marriage Law, emphasizes that, "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One and Only God.

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<sup>4</sup> Moch Isnaeni, *Hukum Perkawinan Indonesia* (Bandung: Refika Aditama, 2016), 22.

When compared with the existing marriage arrangements in BW, it emphasizes that marriage institutions are only seen from a civil aspect. As in Article 26 Burgerlijk Wetboek (BW) which states, "The law views the matter of marriage only in civil relations". This seems to confirm that marriage is private, and is not related to religious elements.

Among customary law communities, who are still strong in maintaining the principle of kinship based on heredity (blood) or genealogical ties, the purpose of marriage concerns the honor of the family and relatives concerned in the community, so the process of carrying out the marriage must be regulated by customary rules to avoid irregularities and violations. which will eventually bring down the dignity and honor of the family and the family concerned.

According to Soekanto, "Marriage is not just an event concerning the relationship between men and women who are married, but also for parents, siblings and their families" so that the function of marriage is a life value to maintain the genealogy and position in question, in addition to marriage is a means to repair kinship relations that have been distant or cracked, as well as a means of approach and peace between relatives, also related to issues of position, wealth and inheritance problems.<sup>5</sup>

In Indonesia, at the beginning we recognized mixed marriages, namely during the Dutch colonial period, the population of the Dutch East Indies at that time was divided into 3 (three) major groups based on Article 131 jo 163 Indische Statsregeling (IS), namely Europeans, Indigenous and Eastern Foreigners who were subject to the rules different customs. The European group is controlled by European Law, *Burgerlijk Wetboek (BW)*, while Indigenous people are subject to customary law, then Foreign Easterners, some are subject to BW and some are subject to their customary law. This class division raised the issue of mixed marriages, which at that time were regulated by the GHR. The types of mixed marriages are:

- 1) Marriage in which the parties are of different class
- 2) Marriage in which the parties have different nationalities

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<sup>5</sup> Tolib Setiady, *Intisari Hukum Adat Indonesia Dalam Kajian Kepustakaan* (Bandung: Alfabeta, 2008), 204.

- 3) Marriage in which the parties are in different regions
- 4) Marriage in which the parties have different customary law
- 5) Marriage in which the parties are of different religions.

Considering that in mixed marriages, the prospective bride and groom are subject to different laws, when there is a problem, the question will arise which law will be applied (Applicable Law), then based on Article 2 jo. 6 GHR, the law that will be enforced is the Prospective Husband Law. This is due to the strong influence of BW which always puts men first, because decades ago juxtaposed men with ship captains, so women were considered unable to lead. Likewise, if there is a problem of inter-religious mixed marriages, then according to BW's argument that marriage is only seen from civil rights, while religion is not used as the main benchmark.

In the era of independence, the government saw that the institution of marriage was central to its position in group life, so it was very important to frame it with legal rules that apply to all citizens without being interspersed with various different rules. Therefore, the government designed a marriage law that could be enforced nationally for all Indonesian citizens, namely the Marriage Law, Law of the Republic Indonesia Number 1 of 1974 concerning Marriage.<sup>6</sup>

Mixed Marriage, as stated in Article 57 of the Marriage Law, states that:

"What is meant by Mixed Marriage is marriage between two people who in Indonesia are subject to different laws, because of differences in citizenship and one of the parties is an Indonesian citizen"

Furthermore, according to the provisions of Article 58 of Marriage Law, it is stated that: "Mixed marriages can result in obtaining or losing citizenship."

This is almost the same as customary law where mixed marriages between indigenous people and non-indigenous people can result in gaining or losing the customary citizenship in question. Besides that, there is still the possibility that as a result of mixed marriages a person may obtain dual customary citizenship, for example due to the marriage of the Semanda Raja-Raja form or the complete loss of

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<sup>6</sup> Setiady, *Intisari Hukum Adat Indonesia Dalam Kajian Kepustakaan*.



customary citizenship because the marriage is not recognized by the indigenous peoples and the person concerned is expelled from the customary kinship or customary law alliance.<sup>7</sup>

Philosophical studies on the culture of this nation need to be re-enlivened, because the nation's culture has very high ethical values to be applied in life. Reviewing culture is not intended to instill a sense of primordialism, but rather to maintain culture. The diversity of Indonesian culture can be seen in the different processions or wedding customs. Gorontalo province itself holds traditions that breathe Islamic teachings. The majority of Gorontalo's population embraces Islam. Its customs are heavily influenced by Islamic teachings and rules. Therefore, the people of Gorontalo adhere to the traditional motto "*Adati hula hula Sareati - Sareati hula hula to Kitabullah*" which means, "Adat is based on *syara*, *syara* is based on the Book of Allah"

The influence of Islam has become an unwritten law in Gorontalo which also regulates all the lives of its people, including marriage customs. The wedding procession is carried out according to the traditional ceremony according to the stage or length of the marriage ceremony.

The first stage is called secret *mopoloduwo*, in which the groom's parents come to the bride's parents' residence to obtain permission to marry off their child. If both agree, then the time is determined to carry out the *tolobalango* or proposal.

*Tolobalango* is an official proposal which was attended by the country's superior traditional leaders and family through the spokesman for the male family (*Lundthu Dulango Layio*) and the spokesperson for the women's family representative (*Lundthu Dulango Walato*). The purpose of proposing marriage is sung through beautiful rhymes.

In the traditional Gorontalo proposal, no mention is made of the cost of the wedding (*tonelo*) by the envoy of the groom's family, but the most important thing is to disclose the dowry and the delivery of the event to be held next.

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<sup>7</sup> Setiady, 234.

At the agreed time for the *tolobalango* event, the next procession is *depito dutu* (between dowries) and between possessions which consist of a dowry package, a complete package of traditional Gorontalo cosmetics and modern cosmetics, plus a set of bride's clothes, betel nut and fruits, fruits and herbs (*dilonggato*).

All of these deliveries are loaded into a vehicle decorated to resemble a boat called a *kola-kola*. The delivery procession is carried from the *yiladiya* house (residence/house of the king) of the groom to the *yiladiya* house of the bride accompanied by traditional drums and a *tinilo* group accompanied by tambourines playing traditional Gorontalo songs that have been passed down for generations, which contain praise, appeals, and prayers safety in the household life of the world and the hereafter.

On the night of the day before the marriage contract, a series of *mopotilandthu* (engagement night) events are held which begin with completing the Qur'an. This process means that the prospective bride has completed or completed her study by reading "*Wadhuha*" to QS. Al-Lahab. Followed by the *molapi saronde*, a dance performed by the prospective groom and the father or male guardian.

This dance uses a scarf. The father and groom take turns dancing it, while the bride watches from a distance or from the room.

For the prospective groom, this is a means of *molile huali* (looking at or peeking at his future wife). With this dance, the groom steals glances to see his candidate. The *Saronde* begins with the beating of a tambourine accompanied by the *Tulunani* song, whose verses are composed in Arabic, which are also prayers for safety. Then, the prospective bride accompanied by a companion performs the traditional *Tidi Daa* or *Tidi Loilodiya* dance. This dance depicts courage and confidence in facing the storms that will occur in the future when you are married. After dancing the *Tidi* dance, the bride-to-be sits back down on the aisle and the groom-to-be and the entourage of traditional leaders and their families return to their homes.

The next day, the traditional stakeholders carry out the marriage ceremony as the top event where the bride and groom will be united in a legal marriage bond according to Islamic law. By half-squatting, the groom and the *penghulu* pledge the consent and

dowry agreed upon by both families. This event was then closed with a prayer as a sign of gratitude for the smooth running of the wedding ceremony.<sup>8</sup>

The wedding customs of the community in Gorontalo City, which were previously used as a symbol of the thickness of cultural elements in social life, are now experiencing a shift in these elements as a result of an attitude of rational, practical and fashionable and modernist thinking. Especially with the influence of globalization, where interaction between nations is increasing rapidly, reaching the formation of family institutions through marriage, which also contributes to changes in the principles of social institutions including kinship or family in Gorontalo which is called *ngalaka*, family procedures are called *motongalaqa* and The family system is called *ungalaa*, which in general Gorontalo people adopt bilateral or parental principles, namely a system that follows the lineage of the mother and father (*mongoudulaqamohualiya*).

Related to the principle of *aadati hula-hulaqa to Kuru'ani* (customs based on *syara*, *syara* based on the Qur'an), that is, everything must be based on sharia originating from the Al-Qur'an, so that customs that conflict with it are declared null and void, Likewise, the customs of *Lou Ngalaqa/Motolongalaqa* are also adapted to Islamic law. Islam teaches, "Keep yourself and your family from the fire of hell. Thus, Islamic teachings regulate family relationships. If in the family there is a violation related to normal values, let alone contrary to religious principles, then the violator is given sanctions within the family. The most severe sanction is *tapilo* i (separated/thrown away, and no longer recognized as a family member, as in behavior that brings shame (*moqolito*) and humiliation (*moqohina*). Reflection on the socialization of internalizing customary, customary, social and religious values in family relationships, visible in behavior, as usual (not customary), *Moomu* (reluctant), *moolito/moqolito* (ashamed/embarrassing), *moqohina* (making despicable), and others. A child or son-in-law must speak politely to his parents/in-law. Dressing inappropriately, speaking loudly and rudely, while looking at faces is an ordinary dila (not a habit). A husband/wife will *moolito*, if the husband/wife cannot adapt properly (*motolongalaa*) in their family environment. If a wife/husband has "illicit relations"

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<sup>8</sup> Setiady, 4.

with other people, such behavior will cause humiliation (*moqohina*) not only to the husband/wife and children in a nuclear family, but also to the whole family in the parental system.<sup>9</sup>

#### 4.2. Implications of Customary Law on Mixed Marriages

Local wisdom is the cultural identity or personality of a nation that causes the nation to be able to absorb, even process culture originating from outside/other nations to become its own character and abilities. The identity and personality of course adjust to the view of life of the surrounding community so that there is no shift in values. Local wisdom is a means of cultivating culture and defending oneself from foreign cultures which local people consider inappropriate with the values and principles they know.

Recognition of community customs is regulated in the Minister of Home Affairs Regulation Number 3 of 1997 concerning Empowerment and Preservation of Indigenous Culture and the Development of Customs, Community Customs and Traditional Institutions in the Regions. Furthermore, in Article 8 it is stated that customary institutions have the status of consultative/consensus institutions for customary heads/ traditional stakeholders/ traditional elders, other traditional leaders/ leaders who are outside the organizational structure of the provincial level 1 regional government/ municipality/ regency level II region, sub-district. and or *Kelurahan/ Village*.<sup>10</sup>

Then in Article 9, the duties and authorities of customary institutions are regulated to represent indigenous peoples, especially in matters relating to and affecting *adat*, managing customary rights and/or customary assets to improve the progress and standard of living of the community towards a better and settle cases involving customary disputes.<sup>11</sup>

In line with the spirit of the regulation above, customs in the Gorontalo area are

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<sup>9</sup> Alim S. Niode, *Gorontalo: Perubahan Nilai-Nilai Budaya Dan Pranata Sosial* (Jakarta: Pustaka Indonesia Press, 2007), 67–70.

<sup>10</sup> Ade Saptomo, *Hukum Dan Kearifan Lokal: Revitalisasi Hukum Adat Nusantara* (Jakarta: Grasindo, 2010), 21.

<sup>11</sup> Saptomo, 22.

continuously being developed according to the needs of the community. Even though these customs do not fully meet the characteristics of customary law in question, the value system as a form of local wisdom of the Gorontalo people is a set of values that bind people's lives both in family and community life.

Karim Pateda, the history of the development of Gorontalo and local wisdom in relation to the cultural traditions and customs of Gorontalo, there are five sources of law for the Gorontalo people called *Butu Lo Lipu*, which consist of:<sup>12</sup>

- 1) *Wu'uduis* related to awareness of prevailing norms (habits)
- 2) *Traditionalis* ethics/behavior which if violated gets rewards/sanctions from society.
- 3) *Tinepois* wise and prudent
- 4) *Tombulaoare* considerations and conditions
- 5) Miss *To'ois* law

According to *Butu Lo Lipu*, the legal event of mixed marriages is an event that is commonly carried out, occurs with the interaction of human relations, between regions and even between countries that have various cultures and customs, which are bound by various behavioral ethics, even more than that. have strict legal rules. As with positive law in Indonesia, it is regulated in Article 57 and Article 60 of Law Number 1 of 1974 concerning Marriage.

The principles contained in the customs of Gorontalo, among others:

- 1) Prioritizing family relations, cooperation and consensus deliberation
- 2) Adhere to religion, be hospitable and tolerant
- 3) The strong influence of Adat, as the principle of "Adat is based on *syara*, *syara* is based on the book of Allah"
- 4) Always think critically even though it displays simplicity
- 5) Likes to respect by respecting others with the premise that respect for people is a form of self-esteem.

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<sup>12</sup> Karim Pateda, "Ti-Hungina'a," in *Adat Dan Hukum Adat Di Gorontalo* (Gorontalo, n.d.).

Gorontalo's traditional marriage procedures, through several stages, namely:

- 1) *Mongilalo* custom or review in clarifying the conditions for choosing a prospective wife.
- 2) The *Mohabari* custom contains *adab* values to convey sacred intentions through deliberation for consensus between the two families
- 3) Indigenous *Momatata Pilo Otawa*, asking for firmness from the two big families informally and confidentially
- 4) *Motlobalango* custom, the inauguration of the results of consensus deliberations, but has not yet involved the government and *syara* officials.
- 5) The *Modepita Maharu* custom, the obligation of the *syare'at* with the cause of marriage to give something to the prospective wife either in the form of money or other objects, is marked by the *Tonelo* tool, which in essence is not based on social stratification, but on the provisions of Islamic law.
- 6) The *Modepita Dilonggato* custom, delivering food ingredients for the day of the wedding, is an obligation on the part of the man, but it is also possible for the woman to complete it.
- 7) *Moponika* custom, which consists of wedding night customs consisting of the stages of *Mopotilandahu* (betrothed), *Mohatamu* (Khatam Quran), *Mopotidi* (Dancing), then the custom on the wedding day, namely *Mongakaji* (marriage contract), then the stage of *Molomela Taluhu Tabiya* (annulment water ablution), then the *Mopopipidu* stage (pairing), then proceed with *Momale Bohu* (giving marriage advice, which includes teachings and prayers), *Modelo* custom, starting with the surrender custom (*Dudelo* custom) and the bride is allowed to go to the groom's family home. The first night after the wedding, the custom is continued with *Mopoturunani* (the arrival of the family to find out whether the girl whose son is marrying is a virgin).

All stages of Gorontalo wedding customs can be carried out in their entirety if the bride and groom fulfill the requirements and principles of Gorontalo customs, including the religion they adhere to is Islam. Likewise in mixed marriages, even if one of them is a citizen of foreign descent, as long as he submits himself to the teachings of the Islamic religion, the procession can be carried out in its entirety.

Gorontalo's customary marriage law does not recognize interfaith marriages. The same is the case with marriage law according to Law Number 1 of 1974 concerning Marriage, which regulates Mixed Marriages but does not allow interfaith marriages.

Mixed marriage is a process of mixing two or more cultures that are local and global culture, which allows interaction. In theory, the interaction process can give rise to, among other things, the incorporation of state law, local culture, and other similar laws.<sup>13</sup> According to state law, mixed marriages are required to implement Article 2 of the Marriage Law, which states that marriages are carried out according to religious law and beliefs, then followed by registration by the state. The form of interaction according to local culture is that the implementation of a marriage that has gone through a recording process can also go hand in hand with the traditional procession of one of the prospective bride and groom. This interaction referred to as incorporation is the adaptation of some state law to local law or vice versa.

#### **4.3. The Reality of Mixed Marriages in Indonesia in Several Areas is Based on Local Wisdom and the Principles of Private International Law**

Mixed marriages can occur as referred to in the marriage law, namely marriages between two citizens, namely Indonesian citizens and foreign nationals. However, in the practice of existing life, mixed marriages can also be interpreted as marriages between different tribes, between different religions. Casuistically, the phenomenon of mixed marriages can occur at the same time between marriages carried out by couples with Indonesian citizenship and foreign nationals, where one does not submit to the other Islamic/non-Islamic religion, so that even this marriage is a marriage of different religions. As written by Sri Wahyuni,<sup>14</sup> this article discusses the implementation of interfaith mixed marriages between Kalimantan Dayaks with Indonesian citizenship and Sarawak Malay Muslims with Malaysian citizenship on the Indonesia-Malaysia border. Both live together as an ethnic unit in the border area. They are not separated by the border of the two countries. They live in an

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<sup>13</sup> Pateda, 29.

<sup>14</sup> Sri Wahyuni, "Pelaksanaan Perkawinan Campur Beda Agama Antara Warga Melayu Malaysia Dan Dayak Kalimantan Di Daerah Perbatasan Sambas Kalimantan Barat (Antara Living Law Dan Hukum Positif Indonesia)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 1 (March 1, 2017): 31-46, <https://doi.org/10.14421/ahwal.2016.09103>.

environment that upholds tolerance between different religions. The Dayaks are predominantly Christians and the Malays are Muslims. In this area live ethnic Malays, Dayak, Chinese, Banjar, Javanese, Batak and Minangkabau. The languages used are Indonesian, Malay, Dayak, Chinese dialect, and Banjar.

Mixed marriages of different religions are carried out according to customary law and are based on Indonesian law in accordance with Article 2 (1) and (2) of the Marriage Law. Therefore, mixed marriages cannot be carried out formally, but they have a way of changing their religious identity to follow other couples. For example, a Christian who wants to marry a Muslim and they carry out their marriage according to Islamic law which is recorded at the Religion office, a prospective wife or husband must follow Islamic procedures, and vice versa. This is done based on Article 59 paragraph (2) which states that, "mixed marriages held in Indonesia are carried out according to this marriage law".

This means that for mixed marriages the conditions for marriage in general according to this law also apply, namely that the validity of a marriage depends on the laws of each religion and the beliefs of each adherent.

Marriages between Indonesian and Malaysian citizens in this border area are mixed marriages which are carried out based on the agreement of the parties whether to be carried out in the Sajingan Sambas area, West Kalimantan, Indonesia or in the Sarawak region, Malaysia and whether the marriage is carried out

at the place of the bridegroom or at the place of the bride. Everything is carried out based on the agreement of both parties so that the model of mixed nationality marriage becomes easier.

If the marriage is carried out in the Sajingan area (which means in Indonesian territory), then the marriage is carried out based on Indonesian law, namely registration based on Indonesian law, and the Malaysia citizenship completes the requirements from the marriage registrar in his country, Malaysia. On the other hand, if the marriage is carried out in Malaysian territory, the Indonesian citizen completes the requirements issued by the Indonesian registrar first, then the marriage is



registered under Malaysian law. However, it is the traditional marriage that unites them, namely the Dayak traditional marriage with all its rituals. As explained above, although these border communities have different nationalities (Indonesian and Malaysian), they come from the same tribe and ancestor, the Dayak. Therefore, they still carry out traditional Dayak marriages whether the marriage is carried out in the territory of Indonesia (*Sajingan*) or in the Sarawak region of Malaysia. Next, religious marriages and registration according to state law are also carried out so that traditional, religious and state-based marriage processions are still fulfilled in this Indonesian-Malaysian border community.

It is different with mixed marriages in Bali, in casuistry, mixed marriages that are not based on the Marriage Law are carried out according to customary law. In the case of mixed marriages in the *Bondalem* traditional village, when a divorce case occurs, it invites input for the *prajuru* of the *Bondalem* traditional village, including gender responsive elements in the form of the implementation of mixed marriages using the *awig-awig* of the *Bondalem* traditional village, carried out according to the religion of the *predana*, and there is a marriage agreement in the form of *nawur jinah penanjung* stones or initial money for savings in the customary village treasury if one day the party or the woman who is married returns to the teenager's house (*mulih deha*) due to a divorce, the Adat village krama and the woman's family will accept it with open arms. The *penanjung batu jinah* is in the form of initial money which is agreed upon as a prerequisite for returning one day to be accepted as a wife's manners in the event of a divorce.<sup>15</sup>

Mixed marriages in the city of Sabang are caused by various factors. As a tourism city, Sabang City is located at the entrance to the country of Indonesia, making it easier for traffic to connect to other countries. According to Mursyid and Nurzakiah,<sup>16</sup> mixed marriage is used as a means of career development and business development. In addition, mixed marriages have become a trend among the people, and by carrying

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<sup>15</sup> Ni Ketut Sari Adnyani and I. Gusti Ayu Purnamawati, "Pengarusutamaan Gender Krama Istri (Warga Perempuan) dalam Hukum Adat Bali," *Pandecta Research Law Journal* 15, no. 1 (June 15, 2020): 26–43, <https://doi.org/10.15294/pandecta.v15i1.18422>.

<sup>16</sup> Mursyid Djawas and Nurzakia Nurzakia, "Perkawinan Campuran di Kota Sabang (Studi terhadap Faktor dan Persepsi Masyarakat tentang Dampak Perkawinan Campuran)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 2 (May 29, 2019): 307–34, <https://doi.org/10.22373/sjkh.v2i2.4740>.

out mixed marriages, they have their own pride. They are proud to have husbands from different countries. Economic factors are also a cause, because many men are foreign nationals who open business units in Sabang City. In general, mixed marriages in this city are not of different religions, because, for them, interfaith marriage is unlawful.

In Malaysia, Muslims are not allowed to marry non-Muslims. So, non-Muslims must convert to Islam before legally marrying a Muslim. The conditions for marriage contained in the Law Reform Marriage and Divorce Act Number 164, that marriages between Malaysian citizens and foreign nationals must be registered by the marriage registrar and ensure that the marriage fulfills the requirements according to the applicable regulations. If the marriage is performed outside of Malaysia, then it is considered that the marriage must comply with the law of the couple's residence. Mixed marriages in Malaysia, of course, have legal implications for the perpetrators of the marriage, both in terms of children, assets, and citizenship.<sup>17</sup>

## 5. Conclusion

Mixed marriage is a legal event recognized in the Marriage Law, namely marriage between Indonesian citizens and foreign citizens, whose implementation mechanism is based on positive law in Indonesia; it must be carried out in accordance with religious law and beliefs, followed by state registration. The definition of mixed marriage according to Gorontalo customary law is a marriage performed by Indonesian citizens of Gorontalo ethnicity and foreign nationals, or marriages between Gorontalo people and other ethnic groups in Indonesia, or between Gorontalo ethnic groups and descendants of Arabs, Pakistanis, Indians, Chinese, or other descendants. In principle, mixed marriages can be carried out with a procession of stages of Gorontalo's customs as long as both the bride and groom are Muslims. This is because, philosophically, Gorontalo Customary Law has the principles *Adati Hula-Hulaa to Syara, Syara Hula-Hulaa to Qurani* (Adat is stacked on Syara, and Syara is stacked on the Al-Quran), so that each procession contains advice and prayers (for

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<sup>17</sup> Maryam Yasmin, "Akibat Perkawinan Campuran Terhadap Anak Dan Harta Benda Yang DiPeroleh Sebelum Dan Sesudah Perkawinan (Studi Banding Indoensia-Malaysia)" (Skripsi, Depok, Universitas Indonesia, 2011), <https://lib.ui.ac.id/file?file=digital/20273564-S332-Akibat%20perkawinan.pdf>.

God's sake), which are worth guidance in the Qur'an, whose law is obligatory.

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