

Harmonizing Legal Positivism and Natural Law for Social Engineering: Addressing Child Marriage in Indonesian Indigenous Communities

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Abstract

Introduction: This article examines the normative tension between state law and customary law in regulating child marriage practices within indigenous communities. In the Indonesian legal system, marriage is regulated through a formal legal framework emphasizing legal certainty and protection, while customary practices are rooted in communal values, traditions, and unwritten norms. Within the perspective of legal pluralism, the coexistence of these legal systems often creates challenges in terms of effectiveness, compliance, and social legitimacy.

Purposes of the Research: The purpose of this research is to analyze the application of legal positivism and natural law theory in social engineering toward child marriage practices in indigenous communities, as well as to formulate an appropriate approach for addressing such practices within the framework of Indonesian law.

Methods of the Research: This research employs a normative juridical method using statute and conceptual approaches. Legal materials consist of primary sources such as legislation and secondary sources including legal doctrines and scholarly writings related to customary law, marriage law, and legal theory.

Results of the Research: The findings reveal that the persistence of child marriage in indigenous communities reflects a normative tension between the formal validity of state law and the moral legitimacy of customary law. Neither legal positivism nor natural law independently provides an adequate solution. Instead, an integrative approach based on Roscoe Pound's concept of law as social engineering, supported by legal positivism and natural law, offers a more effective framework for promoting legal reform while respecting indigenous cultural values. This study contributes to the literature by proposing an integrated analytical framework that bridges legal certainty, moral legitimacy, and participatory social transformation in legally pluralistic societies.

Keywords: Legal Positivism; Natural Law; Child Marriage; Customary Law; Social Engineering.

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INTRODUCTION

Since birth, humans have been gifted with an instinct to live together with others, beginning their lives within the family, then within society and then within the nation. As social beings, humans naturally need other humans. Furthermore, as human civilization develops, a nation develops customs, each with its own unique characteristics. These differences in customs are important values and can provide the characteristics and identity of a nation. The development of civilization, the advancement of science and technology,

and modern life cannot simply erase the customs that exist within a society.¹ Indonesia is not only made up of urban and rural communities, but also indigenous communities who still uphold their traditions and culture. To date, the Customary Territory Registration Agency and the Indigenous Peoples' Alliance of the Archipelago have recorded the number of indigenous communities on each island: 392 in Sumatra, 772 in Kalimantan, 664 in Sulawesi, 176 in Maluku, 59 in Papua, 253 in Bali and Nusa Tenggara, and 55 in Java.²

Indigenous communities are a crucial element in Indonesia's social structure. These communities are comprised of norms, principles, and laws that stem from their traditions and culture, which have been passed down from generation to generation. Customary law, which guides their lives, regulates many aspects of life, including natural resource management, dispute resolution, and the governance system within their communities. Customary law is crucial for indigenous communities, as it not only regulates their social and economic lives but also maintains their cultural identity. Each tribe or indigenous community in Indonesia has its own unique customary legal system, reflecting how they interact with nature, fellow community members, and the outside world. Although customary law has long existed and proven effective in regulating the lives of indigenous communities, its recognition within the broader Indonesian legal system remains frequently questionable. Since independence, Indonesia has recognized the importance of the diversity and existence of indigenous communities in its constitution. Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "The State recognizes and respects customary law communities and their rights as long as they are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia."³

Indonesian customary law is a school of thought based on natural law theory. In Indonesian legal thought, natural law contributes, particularly to theology, which legitimizes religion. Religion is inseparable from law in the context of the nation and state, and natural law provides a moral source for law in a secular state. For example, Law Number 1 of 1974 concerning marriage reflects the contribution of theological natural law. Natural law is a type of law that is eternal and immutable, independent of facts, and has principles derived from God, human reason, and the universe. As a representation of universal justice and truth, natural law is timeless and independent of conventions or other institutions. Natural law depicts law as a representation of justice and truth that applies universally and eternally.⁴ Amidst these changes, customary law continues to exist and plays a vital role as a deeply rooted system of social control, particularly in the social-community dimension. The existence of customary law reflects the recognition of collective and binding local values, acting as a living law recognized by the community. Therefore, customary law is not merely a legacy of the past, but rather an adaptive mechanism that ensures continued social harmony at the community level.⁵ However, the problem arises when customary law fails to regulate and/or becomes a form of social engineering for

¹ Veren Sempo, Deizen Rompas, Carlo Gerungan, "Hak Masyarakat Hukum Adat di Tengah Modernisasi di Tinjau Dari Pasal 18B Ayat (2) Undang-Undang Dasar 1945", *Jurnal Lex Privatum* 13, no. 4 (2024), 1

² Nicholas Ardy Wibisana, Bernadeth Gisela Lema Udjan, Solfian, "Perlindungan Masyarakat Hukum Adat dalam Bentuk Pengakuan Masyarakat Adat (Studi Kasus Masyarakat Eks Desa Sendi, Pacet-Mojokerto)", *Jurnal Sepientia et Vertus* 9, no. 1 (2024), 386.

³ Ningrum Ambarsari, Adwin Tista, Muthia Septarina, Sri Herlina, Yulianus Safri Nadiya, "The Existence of the Position of Indigenous Peoples in the Indonesian Legal System", *Jurnal Kolaboratif Sains* 8, no. 2 (2025), 1174.

⁴ Ilham Daffi Syabana, Idris, "Analisis Pengaruh dan Implementasi Aliran Hukum Alam (Rasional) Terhadap Sistem Hukum Indonesia dan Hukum Lingkungan di Indonesia", *Jurnal Hukum, Politik dan Ilmu Sosial* 3, no. 1 (2024), 202.

⁵ Maria Yosepin Endah Listyowati, Prasetyo Hadi Prabowo, Selveia Wisuda, Reza Fitrianyah, Frans Geraldo Hetaria, "Dinamika Living Law: Peran Hukum Adat Bersih Desa dalam Menjaga Kohesi Sosial Masyarakat Lokal Ponorogo", *Jurnal Ilmu Sosial dan Humaniora* 4, no. 4 (2025), 962.

indigenous communities, or even conflicts with positive legal regulations. For example, customary marriage practices, which are clearly regulated in religious law and marriage laws, are perceived by the community as incomplete without a mix of customary law and customs, even though customary law is unwritten.⁶ Then the problem is that customary law does not regulate absolutely the age limit for marriage, that is, there are no provisions regarding the minimum and maximum age limits for carrying out marriage.⁷

Some examples of marriage practices that occur in indigenous communities in Indonesia are: 1) There is a nomadic tribe that lives deep in the forests in Riau Province and North Sumatra called the *Suku Anak Dalam* (SAD), or called the CubeTribe. The *Suku Anak Dalam* is a minority ethnic group that lives in the interior of Riau and South Sumatra. Many *Suku Anak Dalam* are found living in the forests in Batang Cenaku District, Indragiri-Hulu Regency. The *Suku Anak Dalam*/Orang Rimba have laws and traditions that help them live their lives. They are not religious but believe in spirits, gods, and other objects, or animism. In their traditional marriage there is a significant age difference between the groom and the bride where the groom is usually 11-14 years old, and the bride is usually 17-21, so in the *Suku Anak Dalam* traditional marriage, the prospective husband is usually younger than the prospective wife. In the *Suku Anak Dalam* traditional marriage, it is also found that the husband is permitted to marry his wife's sister as long as he is still able to provide for his wife physically and mentally, which is also called marriage with a marriage.⁸; 2) In several villages in Sumenep Regency, the practice of child marriage begins with an engagement arranged by the parents, usually while the child is still in the womb. After the engagement, the child is married at the age of 12-15, at the parents' request, citing concerns about adultery, so they are married immediately.⁹; 3) The "*balas budi*" (service repayment or reciprocity) culture serves as the foundation for traditional marriages within the Sea Tribe community in Lingga Regency. These customary marriages often involve underage individuals and are conducted based on traditional and religious ceremonies. However, these marriages are not officially recorded in civil records and the Religious Affairs Office because they do not meet the legal age requirements as specified in the marriage laws. Moreover, dispensation requests are not submitted to the court by the Sea Tribe community to perform these traditional marriages. The implications of these underage traditional marriages result in the violation of the right to health and education for the Sea Tribe children in Lingga Regency.¹⁰

In fact, if examined according to positive law, namely in the Marriage Law, the provisions regarding the age of marriage in Indonesian law are regulated in Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage (jo. Law Number 16 of 2019), which states that marriage is only permitted if men and women have reached the age of 19 (nineteen) years. This provision is the result of changes from previous regulations that differentiated the age limit between men and women, so that it is now standardized to ensure equality and better

⁶ Hafisah, Mhd Yadi Harahap, Lailan Nahari, "Fenomena Perkawinan Malangkahi dalam Adat Mandailing Natal ditinjau Menurut Hukum Perkawinan di Indonesia", *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam* 9, no. 1 (2021), 238.

⁷ Wardah Salsabilla Choirunnisa, Erlina Nailal Khusna, "Analisis Perkawinan di Bawah Umur Menurut Hukum Adat dan Hukum Perkawinan Indonesia", *Al-Hakam Islamic Law and Contemporary Issues* 3, no. 1 (2022), 2

⁸ Aisyah Ayu Musyafah, Salsa Sabila, "Penyelenggaraan Perkawinan Suku Anak Dalam Berdasarkan Hukum Adat dan Hukum Perkawinan Indonesia", *Jurnal Notarius* 17, no. 1 (2024), 599.

⁹ Theadora Rahmawati, Umi Supraptiningsih, Makhruh Fauzi, "Tradisi Perkawinan Anak di Madura (Diskursus UU No. 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual dan Hukum Islam)", *Proceeding of the 6th International Conference on Islamic Studies*, 2022, 220.

¹⁰ Winsherly Tan, Henry Soelistyo Budi, Rina Shahriyani Shahrullah, Manashi Kalita, "Child Marriage the Reciprocity Culture of The Sea Tribe Community: Legal Conflicts and Violations of Education and Health Rights", *Jurnal Veritas et Justitia* 11, no. 1 (2025), 47

protection. However, under certain conditions, deviations are still possible through the dispensation mechanism regulated in Article 7 paragraph (2) of the Marriage Law, where parents can submit an application to the court for urgent reasons. Thus, the regulation of the age of marriage is not only strictly normative, but also provides room for flexibility through the applicable legal process. Law essentially functions to regulate and direct the behavior of society, including indigenous communities, as reflected in the concept of law as social engineering proposed by Roscoe Pound. However, in practice, the effectiveness of state law in regulating indigenous communities is not automatic, because indigenous communities already have their own legal systems that are alive and socially obeyed. From Hans Kelsen's perspective through legal positivism, law is seen as valid because it is established by state authority, so that society should submit to these rules.¹¹ Conversely, according to Thomas Aquinas's natural law theory, the validity of law is largely determined by its conformity to the values of justice and morality prevailing in society. Therefore, it can be concluded that law can indeed regulate the behavior of indigenous communities, but its effectiveness depends heavily on the extent to which the law aligns with the customary values prevalent in the community. Therefore, its validity is determined not only by formal legitimacy but also by social acceptance as living law.

Based on this background, there are two research questions discussed in this study: first, how do legal positivism and natural law theory apply to social engineering regarding the practice of child marriage in indigenous communities? Second, what is the appropriate approach to social engineering regarding the practice of child marriage in indigenous communities?. Rather than functioning as separate theoretical perspectives, Roscoe Pound's concept of law as social engineering, Hans Kelsen's legal positivism, and Thomas Aquinas's natural law theory collectively form the analytical framework of this research. Roscoe Pound provides the macro perspective by positioning law as an instrument for planned social change, allowing this study to assess whether Indonesian marriage law is capable of transforming the customary practice of child marriage within indigenous communities. The effectiveness of legal intervention is therefore evaluated not only by the existence of legal rules but also by its capacity to reshape social behaviour and community norms. Within this framework, Hans Kelsen's theory of legal positivism is employed to analyse the normative validity of state law. From a positivist perspective, the prohibition of child marriage under Article 7 of Law Number 16 of 2019 is legally binding regardless of whether indigenous communities accept or reject the regulation. Consequently, the persistence of child marriage is interpreted as a gap between normative legal validity and empirical legal compliance, demonstrating the limitations of relying solely on formal legal authority in legally pluralistic societies.

Thomas Aquinas's natural law theory complements this analysis by explaining why customary norms continue to enjoy strong social legitimacy despite conflicting with statutory law. Indigenous communities often perceive customary marriage practices as morally justified because they are rooted in tradition, communal obligations, and cultural identity. However, Aquinas also argues that law must ultimately pursue the common good and justice. Accordingly, customs that expose children to violations of their rights to education, health, and development cannot be fully justified merely because they are socially accepted. Through this combined framework, the study demonstrates that the

¹¹ Darmini Roza, Gokma Toni Parlindungan, "Teori Positivisme Hans Kelsen Mempengaruhi Perkembangan Hukum di Indonesia", *Jurnal Lex Jurnalica* 18, no. 1 (2021), 21

persistence of child marriage is best understood as the result of tension between formal legal validity, moral legitimacy, and the practical challenge of using law as an instrument of social transformation. This study employs Roscoe Pound's concept of law as social engineering as the principal analytical framework to examine whether state law can effectively transform the practice of child marriage in indigenous communities. Hans Kelsen's theory of legal positivism is used to analyse the normative authority of statutory law governing the minimum age of marriage, while Thomas Aquinas's natural law theory is applied to explain the moral legitimacy of customary norms that continue to sustain child marriage practices. The interaction among these three perspectives enables this research to examine the tension between legal validity, social legitimacy, and the effectiveness of law in achieving social change.

METHODS OF THE RESEARCH

This research is a normative legal study that focuses on analyzing legal norms, principles, and concepts in legal science related to the regulation of indigenous communities and the practice of child marriage. Normative legal research is used because this study not only examines applicable laws and regulations but also examines the compatibility between positive law and the legal values that exist within indigenous communities as living law.¹² The approaches used in this research include a statutory approach and a conceptual approach. The statutory approach is conducted by examining various provisions of positive law, particularly Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, as well as constitutional provisions regarding the recognition of indigenous communities. Meanwhile, the conceptual approach is used to analyze the concept of social engineering in law and compare two major schools of legal philosophy: legal positivism pioneered by Hans Kelsen and the concept of law as social engineering by Roscoe Pound, with the natural law theory put forward by Thomas Aquinas. The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, while secondary legal materials consist of scientific literature, journals, and books related to indigenous communities, marriage law, and legal theory. Tertiary legal materials include legal dictionaries and encyclopedias to support conceptual understanding. The legal material collection technique was conducted through library research, namely by inventorying, reviewing, and processing various legal sources relevant to the research problem. Next, the legal material analysis was conducted qualitatively using descriptive-analytical methods, namely by describing the existing problems, then analyzing them using legal positivism and natural law theories to draw conclusions regarding the most relevant approach to social engineering the practice of child marriage in indigenous communities.

RESULTS AND DISCUSSION

A. Application of Legal Positivism and Natural Law Theory in Social Engineering of Child Marriage Practices in Indigenous Communities

The concept of law as a tool of social engineering was introduced by Roscoe Pound through a sociological jurisprudence approach. Pound stated that law must be able to adapt to societal developments and function to balance various social interests. Law must not only

¹² Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies", *Journal of Judicial Review* 24, no 2 (2022).

be enforced textually but also be able to reorganize unequal social structures. In his view, law ideally promotes social harmony through planned and gradual change.¹³ The concept of law as a means of social engineering positions law not only as a tool of social control, but also as an instrument for directing and changing societal behavior toward desired conditions. This idea, as put forward by Roscoe Pound, emphasizes that law functions to organize interests within society and encourage planned social change. In the context of indigenous communities, this concept is relevant because state law is expected to be able to intervene and change social practices deemed inconsistent with modern legal values, such as the practice of child marriage. However, the application of law as a means of social engineering in indigenous communities is not simple, considering that indigenous communities have a system of values and norms that have been deeply rooted as living law. Therefore, the effectiveness of law in changing behavior depends heavily on the extent to which the law is able to adapt and be accepted by the community concerned.

Furthermore, the positivist paradigm still dominates legal science today, viewing law as independent of values or bias. Hans Kelsen's pure legal theory falls under this paradigm, which states that concepts derived from positive law are the only true components of legality; anything not found in these norms is excluded. The application of Hans Kelsen's positivist theory in Indonesia presents certain complexities. The strict separation between law and morality as adopted by positivism does not fully reflect the reality of Indonesian society, which is rich in ethnic, customary, and linguistic diversity. Hans Kelsen's view tends to limit the role of law in a complex social context by not considering the social and moral factors that play a significant role in societal dynamics.¹⁴ From this perspective, law is characterized by being written, formal, and legally binding, so its validity is determined by the legitimate procedures for its formation within the state's legal system. Therefore, within the framework of legal positivism, every individual and community group, including indigenous communities, is seen as having an obligation to comply with applicable laws, such as provisions regarding the minimum age for marriage stipulated in statutory regulations, regardless of whether such norms align with the social and cultural values prevailing within that society.

From a legal positivism perspective, the provisions regarding the minimum age for marriage in Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage (jo. Law Number 16 of 2019) constitute a concrete form of law as a valid norm because it is established by the state through legitimate procedures. Based on Hans Kelsen's thinking, the validity of these norms does not depend on whether society accepts or deems them fair, but rather on the fact that they are part of the prevailing legal system. Therefore, all citizens, including indigenous communities, are legally obliged to comply with the minimum age for marriage, which is 19 years for men and women.¹⁵ Within this framework, the practice of child marriage that still occurs in indigenous communities is seen as a form of disobedience to state law, and therefore, normatively, it must be prevented through legal instruments, either through direct prohibition or dispensation mechanisms by the courts. Thus, legal positivism places state law as the highest authority in regulating societal

¹³ Rasji, William Chandra, Marcellius Kirana Hamonangan, "Law as a Tool of Social Engineering: Roscoe Pound Concept and Its Relevance to Legal Reform in Indonesia", *Rewang Rencang: Jurnal Hukum Lex Generalis* 5, no. 10 (2025).

¹⁴ Nur Talita Prapta Putri, Ananda Aulia, "Penerapan Teori Positivisme Hans Kelsen Di Indonesia", *Jurnal Kajian Kontemporer Hukum dan Masyarakat* 2, no. 1 (2024), 5

¹⁵ Winsherry Tan, "Child Marriage within the Sea Tribe of Kelumu Island: Issues and Problems", *Jurnal Media Hukum* 29, no 2 (2022), 123

behavior, with the aim of creating legal certainty and protecting broader interests, although in practice it often clashes with social realities and customary values still alive in society.

The application of legal positivism to the practice of child marriage is reflected in the state's efforts to establish a minimum age for marriage and a legal mechanism that binds all citizens without exception. Through the provisions of Article 7 of Law Number 1 of 1974 concerning Marriage (jo. Law No. 16 of 2019), the state expressly prohibits the practice of underage marriage, except through a dispensation mechanism submitted to the court.¹⁶ Within this framework, the law serves as a social engineering tool to change societal habits that still practice child marriage, with the aim of protecting children's rights, health, and the future of the younger generation. This approach has the advantage of creating legal certainty and uniform standards for all of society. However, in practice, the application of legal positivism often faces obstacles, particularly in indigenous communities, where state legal norms are not always effectively followed. This is evident in the persistence of child marriages that are carried out according to customary law and not officially registered, thus demonstrating a gap between normative law and the social reality that exists in society.

Customary law is a living law within a society, formed from customs, traditions, and values passed down through generations, thus reflecting the sense of justice and morality believed in by the community. This aligns with Thomas Aquinas's thinking in natural law theory, which emphasizes that law must be rooted in the values of justice, morality, and human reason. Therefore, although customary law is not a direct derivative of natural law theory, it can be seen as substantially close to the principles of natural law because both are rooted in living values recognized by the community.¹⁷ Thus, customary law is more accurately understood as a legal system that sociologically reflects the values of natural law, although it remains a distinct legal system within the framework of legal pluralism. Therefore, laws that do not reflect justice and are inconsistent with the morals and social values prevalent in society tend to be socially ineffective, as they fail to gain acceptance and compliance from the community itself. Therefore, natural law emphasizes the importance of harmony between legal norms and the values that develop within society as the primary basis for the validity of law.

The application of natural law theory in the practice of indigenous communities can be seen from the existence of customary law as a reflection of moral values, justice, and customs that exist within the community. Customary law not only functions as a rule, but also reflects the values believed in and practiced collectively by the community, thus having strong social legitimacy. In this context, the practice of child marriage is often seen as legally valid because it is considered part of tradition, a social need, or a mechanism for maintaining the honor and continuity of the community. From the perspective of natural law as proposed by Thomas Aquinas, this condition indicates that laws that align with community values tend to be more easily accepted and socially effective. However, this approach also has weaknesses, because practices considered correct according to custom may not necessarily align with the principles of universal justice, particularly regarding the protection of children's rights, health, and access to education, thus potentially giving rise to problems within the framework of modern law and human rights.

¹⁶ Winsherry Tan, Agustianto, Febri Jaya, "Legal Dilemma Between Law on Protection Child and Marriage Law in Addressing Early Marriage", *Jurnal Justisi* 10, no 3 (2024), 397.

¹⁷ Jenniefer Royhan, "Analisis Pemikiran Hukum Alam Thomas Aquinas dalam Konteks Perlindungan Hak Asasi Manusia di Indonesia", *Jurnal Kajian Kontemporer Hukum dan Masyarakat* 4, no. 1 (2025), 5.

The persistence of child marriage in indigenous communities demonstrates a normative tension between legal positivism and natural law rather than merely a conflict between state law and customary law. From Hans Kelsen's positivist perspective, the validity of marriage law derives exclusively from its enactment by legitimate state authority. Consequently, indigenous communities are legally required to comply with the statutory minimum age of marriage regardless of their customary beliefs. In contrast, Thomas Aquinas's natural law perspective explains that legal norms derive legitimacy from their conformity with moral values and the common good recognised by society. Consequently, customary rules governing marriage continue to enjoy strong social legitimacy because they are perceived as expressions of communal identity, cultural continuity, and collective morality. This duality creates a normative tension that cannot be resolved solely through legal coercion or solely through cultural recognition. Excessive reliance on legal positivism risks producing formally valid laws that remain socially ineffective because indigenous communities continue to prioritise customary norms. Conversely, exclusive reliance on natural law may unintentionally legitimise customary practices that undermine children's fundamental rights, including their rights to education, health, and development. Therefore, neither perspective independently provides an adequate solution to child marriage in legally pluralistic societies.

For example, what happened to the indigenous sea people in Lingga Regency who held underage marriages because of the culture of "returning favors", these marriages brought various negative impacts, especially in the violation of children's rights in the fields of education and health. The customary marriage of the sea people tribe carried out by minors has a negative impact on the bride and groom who are carrying out the child marriage. The phenomenon of young mothers of the sea people tribe who underwent the childbirth process at the Penuba Health Center, showing that although the incidence of maternal death has decreased, but incidence of malnourished children and mother's readiness and knowledge still need attention, also the cases of infant mortality has increased in 2021. The main performance indicator of the Health Office of Population Control and Family Planning of Lingga Regency, the Percentage of underweight in toddlers was not achieved by 0.35 of the target of 0.1% so that the achievement of this indicator is in the category of "very bad" with a performance percentage value of 145.47%. Also followed by other indicators, namely the Maternal Mortality Rate (MMR) per 100,000 KH, the target is 132 with an achievement of 413.56 with a performance percentage value of -117.24 in the category of "very bad" and the Infant Mortality Rate (IMR) per 1,000 KH was achieved with the category of "very good". In addition, there were also incidents of maternal death during childbirth. The MMR and IMR are global health problems that are important indicators in the success of maternal and child health programs as well as indicators in describing the degree of public health and have the potential to cause economic and social decline at the household, community, and national levels. Based on reported maternal deaths, the MMR of the Population Control and Family Planning Health Service of Lingga Regency in 2021 was 418.76 per 100,000 live births (5 maternal deaths/1194 live births multiplied by a constant of 100,000). The 2020 MMR achievement was better when compared to the 2021 MMR which was 222.72 per 100,000 live births. Based on the number of maternal deaths, there was also an increase from 3 maternal deaths in 2020, rising to 5 cases in 2021. The causes of maternal deaths in Lingga Regency in 2021 were still dominated by direct causes, namely, 2 cases of preeclampsia, 1 case of bleeding, 1 case of pneumonia and 1 case of heart failure. Furthermore, such

marriages undoubtedly violate the rights of children, including the right to life and the right to education. Early marriages can lead to a higher risk of mortality during childbirth compared to women of mature age. Another consequence of early marriage for girls is the emergence of various issues, including psychological impacts such as anxiety, depression, and even suicidal thoughts.¹⁸

The tension in the practice of regulating indigenous communities is primarily evident in the conflict between state law and customary law, both of which claim legitimacy in regulating community behavior. On the one hand, state law expressly prohibits the practice of child marriage through statutory provisions, but on the other hand, customary law still accommodates the practice as part of the community's traditions and social needs. This condition causes the practice of child marriage to continue despite being normatively prohibited, thus demonstrating that state law is not always effective in changing the behavior of indigenous communities. This phenomenon then gives rise to legal dualism, where state law and customary law operate simultaneously with different standards, thus creating legal uncertainty and revealing a gap between formally applicable legal norms and the social reality that exists within society. An evaluation of the effectiveness of law as a means of social engineering in the context of indigenous communities shows that the success of state law in changing social practices, such as child marriage, still faces various limitations. Although the state has established strict regulations, in practice, many indigenous communities continue to uphold and practice customary law as the primary guideline in their lives. This indicates that community compliance is not solely determined by the existence of formal rules, but also by the extent to which these rules align with the values, culture, and social needs that exist within the community. Therefore, it can be tentatively concluded that law as an instrument of social engineering cannot simply rely on formal legitimacy alone, but rather requires a more contextual approach that takes into account the social values that develop within the community to ensure its acceptance and effective implementation.

B. The Right Approach to Social Engineering Against Child Marriage Practices in Indigenous Communities

In efforts to socially engineer the practice of child marriage in indigenous communities, the legal positivist approach and natural law theory each have significant limitations when used independently. The legal positivist approach, which emphasizes law as a formal rule established by the state, tends to be rigid¹⁹ and pays little attention to the social realities of indigenous communities. As a result, even when legal norms are clearly established, such as the minimum age for marriage, their implementation is often ineffective because they don't align with the values, culture, and practices deeply rooted in the community. This demonstrates that an overly formal approach can potentially create a distance between the law and the society it regulates. On the other hand, the natural law approach which focuses on moral values and justice that exist in society also has weaknesses, especially because it relies too much on local values that are not necessarily in line with the principles of universal justice.²⁰ In the context of indigenous communities, this could potentially legitimize harmful

¹⁸ Winsherry Tan, Henry Soelistyo Budi, Rina Shahriyani Shahrullah, Manashi Kalita, "Child Marriage in The Reciprocity Culture of The Sea Tribe Community: Legal Conflicts and Violations of Education and Health Rights", *Jurnal Veritas et Justitia* 11, no. 1 (2025), 30-31

¹⁹ Pratama Herry Herlambang, "Positivisme dan Implikasinya Terhadap Ilmu dan Penegakan Hukum", *Indonesian State Law Review* 2, no. 1 (2019), 107

²⁰ Imelda Indah Putri Hua, Irawan Triadi, "A Comparison of the Concept of Justice in Natural Law and Positive Law: Its Relevance to Law Enforcement Practices in Indonesia", *Media Hukum Indonesia* 3, no. 4 (2025), 538.

practices, such as child marriage, because it is perceived as being in accordance with the community's traditions and social needs. Therefore, both approaches demonstrate that neither legal positivism nor natural law fully address the complexity of the problem when used separately. Therefore, a more comprehensive and integrative approach is needed to socially engineer the practice of child marriage in indigenous communities.

In the context of indigenous communities, a contextual legal approach is required, namely a law that can adapt to the social, cultural, and values prevailing within that community. A top-down approach, or one that imposes the will of the state without considering social realities, is often ineffective in changing societal behavior. Therefore, law should not be understood merely as an instrument of governance, but also as a means of understanding and accommodating the characteristics of the society it regulates, including the social structures, value systems, and cultural practices that are deeply rooted in the lives of indigenous communities.²¹ In this case, the concept of living law becomes important, namely law that is truly alive, recognized, and implemented by society in everyday life. Living law reflects norms that are not always written down.²² However, it has socially binding power because it stems from the collective agreement and awareness of the community. By understanding and integrating living law into the process of lawmaking and implementation, it is hoped that a more responsive and effective approach to social engineering will be created, particularly in addressing practices such as child marriage in indigenous communities. Integrating state law and customary law is a crucial approach to social engineering for child marriage practices in indigenous communities. The two should not be positioned as mutually exclusive systems, but rather as complementary systems. State law retains a primary role in establishing universal normative standards, such as protecting children's rights, health, and education, while customary law remains valued as part of the social identity and local wisdom that lives within the community. Therefore, the approach taken is not to unilaterally replace customary law with state law, but rather to seek common ground that allows both to function harmoniously. A concrete form of this integration can be realized through limited recognition of customary law as long as it does not conflict with the basic principles of national law, and through efforts to harmonize norms between state law and customary law. This harmonization can be achieved by adapting customary values to align with the principles of human rights protection, without eliminating the cultural essence of indigenous communities. With this approach, it is hoped that the law will not only have formal legitimacy from the state but also gain social acceptance from the community, making it more effective in regulating and changing emerging practices, including child marriage.

A participatory approach to social engineering positions indigenous communities not as objects to be regulated, but as subjects actively involved in the process of law formation and implementation. In this approach, the role of traditional and community leaders is crucial as a bridge between traditional values and state legal norms. The process is not coercive, but rather involves dialogue, legal education, and the formation of mutual agreements that take into account the interests and values inherent within the community. By directly involving the community, the law is no longer viewed as something imposed from the

²¹ Defril Hidayat, Hainadri, "Hukum Sebagai Sarana Pembaharuan Dalam Masyarakat (Law as a Tool of Social Engineering)", *Datin Law Jurnal* 2, no. 1 (2021), 68-69

²² Ernesta Arita Ari, Agus Sugiarto, Yunianto Sudrajad, Iwan Rasiwan, Johannes Triestanto, "Living Law Regulations in the National Criminal Code: Between Recognition of Customary Law and Legal Certainty", *Jurnal Kolaboratif Sains* 9, no. 1 (2026), 956.

outside, but as the result of a shared understanding, resulting in a higher level of acceptance and compliance. Therefore, a participatory approach is considered more effective than a coercive approach because it builds legal awareness while maintaining the sustainability of social values within indigenous communities. In practice, however, the implementation of social engineering in indigenous communities has not yet been fully realised. Government intervention has largely relied on statutory regulation, judicial marriage dispensation procedures, and public campaigns concerning child protection. While these measures strengthen legal certainty, they often fail to reach indigenous communities where customary institutions remain the primary source of social authority. Traditional leaders, religious leaders, and community elders continue to play a decisive role in determining the legitimacy of marriage practices. Consequently, legal reform that excludes these actors tends to produce formal compliance only, without substantially changing community behaviour. This explains why child marriage continues to occur in several indigenous communities despite the existence of statutory prohibitions.

The experience of indigenous communities discussed in this study illustrates this limitation. Among the Sea Tribe community in Lingga Regency, child marriage persists because customary obligations associated with the reciprocity ("*balas budi*") culture continue to be regarded as socially binding. Similarly, among the *Suku Anak Dalam* and in several customary communities in Madura, decisions regarding marriage are strongly influenced by customary traditions and family authority rather than by statutory legal requirements. These examples demonstrate that social engineering cannot rely solely on legal sanctions but must involve continuous dialogue with indigenous leaders, culturally sensitive legal education, and collaborative norm transformation. In this context, indigenous leaders become strategic agents of legal change rather than obstacles to legal reform. Therefore, the ideal approach to social engineering for child marriage in indigenous communities is an integrative or combined approach that balances various legal perspectives. This approach combines legal positivism, which emphasizes legal certainty through formal state regulations, natural law, which emphasizes justice and moral values, and a sociological approach that considers the social and cultural realities inherent in society. By integrating these three approaches, the law not only functions as a normative coercive tool, but also as an instrument that is responsive to the values and needs of society, so that it is able to create a balance between legal certainty and substantive justice. Thus, it can be concluded normatively that the best approach to social engineering against the practice of child marriage in indigenous communities is not a single, stand-alone approach, but rather an integrative one. This approach combines state legal norms with the values entrenched in society, so that the law not only has formal legitimacy but also gains social acceptance. Through this approach, it is hoped that a legal system will be created that is not only effective in regulating but also just and appropriate to the characteristics of indigenous communities, thereby sustainably reducing the practice of child marriage.

CONCLUSION

Application of legal positivism and natural law theory to social engineering the practice of child marriage in indigenous communities demonstrates the limitations of each approach. Legal positivism emphasizes legal certainty through formal state norms, such as setting minimum marriage ages, but in practice, this is often ineffective due to insufficient consideration of the social realities and cultural values of indigenous communities. On the

other hand, the natural law approach, which emphasizes moral values and justice inherent in society, tends to be more socially acceptable, but has the potential to legitimize harmful practices, such as child marriage, if local values do not align with the principle of protecting children's rights. Therefore, the most appropriate approach to social engineering the practice of child marriage in indigenous communities is an integrative approach that combines legal positivism, natural law, and sociological approaches. This approach emphasizes the importance of harmonizing state law and customary law, applying the concept of living law, and using participatory methods that involve indigenous communities as legal subjects. Thus, the law not only has formal legitimacy, but also gains social acceptance, making it more effective in changing child marriage practices sustainably while still respecting the cultural values of indigenous communities. The findings of this study also have practical implications for policymakers and institutions responsible for indigenous affairs and child protection. The proposed integrative approach should be implemented through coordinated policies that combine statutory enforcement with community-based legal transformation. This includes strengthening collaboration between government agencies, courts, indigenous leaders, religious leaders, and local communities in developing culturally appropriate legal education, encouraging the revision of customary practices that conflict with children's rights, and improving access to marriage registration and judicial dispensation mechanisms. Such measures enable social engineering to function not merely as legal coercion but as a participatory process capable of achieving both legal certainty and social legitimacy in preventing child marriage within indigenous communities.

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