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The Combination of Legal System: Reconciliation of Divorce Cases in Dayak Ngaju Customary Law and Positive Law Systems

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Abstract. *This study aim to observe a legal rationale regarding a legal-system implementation of Dayak Ngaju customary dispute reconciliation in Kuala Kurun, Gunung Mas Regency, Central Kalimantan Province. In practice, the researchers found a combination performed autonomously in the legal system. Such combination was a society's belief in using both customary legal system and positive legal system. The idea of this combination was underlined by a reflection of legal rationale finding two legal systems (customary and positive) functioned respectively where suitability occurred between legal culture of living law and formal law. The principle of a combination of legal system was an evidence of a new insight or a new paradigm through factual and norm elaborations from Dayak Ngaju customary divorce reconciliation case. This study used descriptive and analytical qualitative research method on the phenomenon of Dayak Ngaju customary dispute reconciliation in Central Kalimantan. The result obtained was implementation of a legal combination (both customary and national), instead of only an effort of a harmonization. However, the result show that implementation was not practically able to replace a naturalist paradigm, yet both were believed by the society to be able to achieve philosophical goal of a law, a peace.*

Keywords: Combination; Customs; Divorce; Reconciliation.

1. INTRODUCTION

The legal paradigm shift[1] from naturalist[2] *to positivism*[3] as one of tool of modern law cannot let people fully consider that it is the only proper one in solving disputes. This

[1] Thomas S. Kuhn, *The Structure of Scientific Revolutions*, Second Edi (Chicago: INTERNATIONAL ENCYCLOPEDIA of UNIFIED SCIENCE, 1970). p. 50.
[2] Aulia Rahmat, "Rasionalisasi Hukum Alam Oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi," *Undang: Jurnal Hukum*, 2.2 (2020), 433–70 <https://doi.org/10.22437/ujh.2.2.433-470>. p. 434.

case defines that legal system pluralism[4] is under stratum with various consideration towards legal-system function. Also, this case occurs because legal problems serve at divergent social structures. This development of legal paradigm is interpreted as the advancement of legal society in Indonesia. As Jeremy Bentham argued that the purpose of law is to benefit society or so-stated *the greatest happiness of the greatest number*.[5]

The term of *paradigm* was first popularized by Thomas S. Kuhn in his book entitled *"The Structure Scientific Revolution"* in 1962.[6] Kuhn outlined the notion of paradigm[7] as constellation of results of study[8] consisting of concepts, values, techniques, and so on[9] which were used one another by scientific society.[10] Meanwhile, Nigel Warburton argued that such model was not merely based on presumptions and objections in relation to its development, but also with a series of paradigm shifts[11] used to determine the validity of problems and their solutions with the necessary role of sociological characteristics of scientific community as a scientific consensus.[12] Through collecting the findings, Samir Okasha was considered to lead to a radical view into a new paradigm,[13] regarding the combination of legal systems. The establishment of legal positivism considered as a modern legal paradigm as a normal scientific practice[14] was apparently unable to completely release natural law paradigm of classical legal which tended to rely on local wisdom of the way to build and maintain. Therefore, both legal positivism and natural law occur in society as a solution to solve legal problems.

The basic beliefs of the natural lawism is essentially rooted from an ontologism, or else reality exists according to natural laws.[15] Conversely, the legal positivism[16] merely

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[3] Tundjung Herning Sitabuana and Ade Adhari, "Positivisme Dan Implikasinya Terhadap Ilmu Dan Penegakan Hukum Oleh Mahkamah Konstitusi (Analisa Putusan Nomor 46/PUU-XIV/2016)," *Jurnal Konstitusi*, 17.1 (2020), 104 <https://doi.org/10.31078/jk1715>. p. 11.

[4] Endri, "Pluralisme Hukum Indonesia Bagi Hakim Tata Usaha Negara: Antara Tantangan Dan Peluang," *Jurnal Hukum Peratun*, 3.1 (2020), 19–34.

[5] Urbanus Ura Weruin, "Teori-Teori Etika Dan Sumbangan Pemikiran Para Filsuf Bagi Etika Bisnis," *Jurnal Muara Ilmu Ekonomi Dan Bisnis*, 3.2 (2019), 313 <https://doi.org/10.24912/jmieb.v3i2.3384>. p. 316.

[6] Ulfa Kesuma and Ahmad Wahyu Hidayat, "Pemikiran Thomas S. Kuhn Teori Revolusi Paradigma," *Islamadina : Jurnal Pemikiran Islam*, 2020, 166 <https://doi.org/10.30595/islamadina.v0i0.6043>. p. 167.

[7] Edi Kurniawan Farid, "Paradigma Dan Revolusi Ilmiah Thomas S . Kuhn Serta Relevansinya Dalam Ilmu-Ilmu Keislaman," *Jurnal Studi Agama-Agama Dan Pemikiran Islam*, 19.1 (2021), 84–99.

[8] Bonaventure Chike and D Ph, "An Analysis of Thomas Kuhn ' s Concept of Scientific Revolution," 7.1 (2021), 1–14.

[9] Peter Godfrey Smith, "Theory and Reality: An Introduction To The Philosophy of Science" (Chicago & London: The University of Chicago Press, 2003). p. 75.

[10] Alan Francis Chmers, "What Is This Thing Called Science?," Fourth Edi (Queensland: University of Queensland Press, 2013). p. 100.

[11] Nigel Warburton, *Philosophy: The Basics, Fifth Edition*, *Philosophy: The Basics, Fifth Edition*, 2013 <https://doi.org/10.4324/9781315817224>. p. 135.

[12] Chmers. p. 100.

[13] Samir Okasha, "Philosophy of Science Very Short Introductio," 7.9 (2016), 27–44.

[14] Kuhn. p. 179-180.

[15] Lego Karjoko, Zaidah Nur Rosidah, and I Gusti Ayu Ketut Rahmi Handayani, "Refleksi Paradigma Ilmu Pengetahuan Bagi Pembangunan Hukum Pengadaan Tanah," *Bestuur*, 7.2 (2020), 1 <https://doi.org/10.20961/bestuur.v7i1.42694>. p. 9.

[16] Desy Maryani, "Implikasi Positivisme Terhadap Ilmu Dan Penegakan Hukum," *Jurnal Hukum Sehasen*, 2.1 (2019), 1–24.

recognises positive law[17] itself which then emerges *analytical legal positivism, analytical jurisprudence, pragmatic positivism,* and *Kelsen's pure theory of law.*[18]

The facts of legal pluralism[19] and choice of law are often found in society when determining legal problem solution. However, the functions and duties of the state in providing legal services still prioritize the aspect of order as the main goal of modern law with positivism paradigm by continuing to open options for other legal systems to contribute to solving legal problems in the society. I Nyoman Nurjaya stated that the applied legals in society were not only manifested in laws and regulations or so-called *orders of law* but also *religious law* and *customary law* that formed anthropologically *Inner order mechanisms* or *self-regulation*[20] as it was locally functioned as a tool to maintain social order.

Furthermore, it can be seen that the openness and plurality of public trust in various legal systems leads to the philosophical aspect of the legal goal, which is a Peace[21] that referred to a harmony between outer state and inner state. Bobby Briando reminded, "The law always serves the interests of justice, order, and peace in supporting the realization of a physically and spiritually prosperous society."[22]

Efforts to achieve Peace are performed by society dealing with legal problems by combining the legal system in an orderly manner to achieve peace that oriented to an order. The effort is implied in rationale and implementation of Dayak Ngaju divorce reconciliation in Central Kalimantan. In line with H.L.A Hart stating that law was classified as *primary rules*, then Roger Cotterrell narrowed *primary rules* by arguing "In a simple society it might be possible to maintain social order solely through duty-imposing rules such as restricting violence, protecting property, or punishing deceit."[23] From this understanding, primary rules are a kind of obligation to apply a rule. It is concerned to actions that individuals should or should not do. It means that it is a norm adopted by society.[24]

2. RESEARCH METHODS

This study used a qualitative research method to observe, describe, and analyze a legal phenomenon in society. Referring to Indonesian literature, this study was interpreted as legal-sociological or non-doctrinal study on how a legal worked in society related to norms or rules,[25] based on natural facts that occurred in Dayak Ngaju divorce in Central Kalimantan. The relevant theories in the discussion of this study was legal

[17] Karjoko, Rosidah, and Rahmi Handayani. p. 5-6.
[18] Maryani. p. 8.
[19] Endri. p. 24.
[20] I Nyoman Nurjaya, "Memahami Kedudukan Dan Kapasitas Hukum Adat Dalam Politik Pembangunan Hukum Nasional," *Perspektif*, 16.4 (2011), 236 <https://doi.org/10.30742/perspektif.v16i4.86>. p. 239.
[21] Bobby Briando, "Prophetical Law: Membangun Hukum Berkeadilan Dengan Kedamaian," *Jurnal Legislasi Indonesia*, 14.3 (2017), 1–12 <https://e-jurnal.peraturan.go.id/index.php/jli/article/download/123/pdf>. p. 313.
[22] Briando.
[23] Roger Cotterrell, *The Politic of Jurisprudence* (Philadelphia: University or Pennsylvania Press, 1989). p. 96.
[24] I Nyoman Putu Budiarta Atmadja, I Dewa Gede, "Teori-Teori Hukum," 2018, 233. p. 42.
[25] Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan*, 3.2 (2019), 145–60.

system, *secondary rules and primary rules*. The approach used was *conceptual approach*, *historical approach*, and *philosophy of law approach* that were analyzed descriptively qualitatively.

3. RESULT AND DISCUSSION

3.1. Dispute Resolution: The Authority and Position of Dayak Ngaju Customary Law

Constitutional amendments on reformation period resulted recognition, respect, and protection of customary law as stated in the Constitution of the Republic of Indonesia in 1945 (henceforth UUD 1945), Article 18B Sec. (2) that: The State recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of the peoples and principles of the Unitary State of the Republic of Indonesia, which are regulated in the law.

The constitutional guarantees regarding indigenous people and their traditional rights, then linked to Mac Iver's opinion that distinguished between types of law[26] denoted being above politics is only the constitution, while other laws are below politics. Thus, the existence of a legal was the result of the politicians. It means that the recognition, respect, and protection of indigenous people and their traditional rights were potent in the perspective of Unitary State of the Republic of Indonesia constitution. This case referred to *politics of recognition* to construct togetherness among various cultures, ethnic groups, races, and religions, since *misrecognition is an oppression.*[27] As dispute resolution by costumary law was certainly respected and recognized by the constitution as human's basic, universal and lost-lasting rights. Therefore, the state must protect, respect, preserve and should not ignore, reduce, or seize. As Indonesia nation following to the Civil Law System tradition, to understand its legal system, it should start from the legislation hierarchy of the highest level, namely UUD 1945, also in elaborating settings regarding the existence of indigenous people in Indonesian legal-political system,[28] as a guarantee of constitutional protection in building, maintaining, and safeguarding the wisdom of indigenous people.

3.2. Natural Fact of Reconciliation of Divorce Cases in Dayak Ngaju Customary Law and Positive Law Systems

The idea of a combination of legal systems was a reflection of thoughts that began from the Dayak Ngaju divorce case in Kuala Kurun, Gunung Mas Regency, Central Kalimantan Province. This reflection could be seen from the Divorce Agreement Letter of Dayak Ngaju Central Kalimantan no. 21 DKA/KK/II/2021, 15 February 2021, signed by the traditional figure (referring to *Mantir*; henceforth [mantir]) Kurun District.

The idea was broken down into several factual stages, which were defined as follows.

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[26] Merdi Hajiji, "Relasi Hukum Dan Politik Dalam Sistem Hukum Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 2.3 (2013), 361 <https://doi.org/10.33331/rechtsvinding.v2i3.65>. p. 363.
[27] Jasardi Gunawan, "Studi Rekognisi Masyarakat Adat Di Amerika Dan Indonesia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 5.2 (2021), 220–31 <https://doi.org/10.36312/jisip.v5i2.1953>. p. 223.
[28] Zinade Tumbel, "Perlindungan Hukum Terhadap Hak-Hak Budaya Masyarakat Adat Dalam Perspektif Hukum Hak Asasi Manusia," *Jurnal Lex Et Societatis*, VIII.1 (2020). p. 8.

First, the stage of pre-marriage occurred with the process of proposal (so-called *mamanggul* in Dayak Ngaju term; henceforth [manunggal]). The *manuggal* process took place on November 27, 2021 and was approved, attended and witnessed by 2 *Mantir* (Anil Emun, and Koleng Customary Peace Mantir, Tampang Tumbang Anjir Village). Based on customary marriage and Religious Affairs, Kuala Kurun held in January 2021, the *manunggal* agreement was then concretely stated into *Panggul* agreement 27 December and signed by among parties. They agreed to hold a *Panggul* pledge along their marriage as a spouse through harmonious household with a legality from Dayak Ngaju customs.

Second, the traditional Dayak Ngaju marriage process between both two parties' family was held on 14 January 2021 through issuing Customs Marriage Letter confirmed by 3 *Mantir* (Bertho JH. Dohong, Anil Emun, and Koleng Customary Peace *Mantir*, Tampang Tumbang Anjir Village) and approved by the Customary Head *Damang* (Judah I. Emun Damang, Customary Head of Kurun District), Kurun District No. 16 DKA/KK/I/2021 dated January 14, 2021 held in Kuala Kurun, Gunung Mas Regency, Central Kalimantan Province. Furher process was then through a registration by Religious Affairs, Kuala Kurun District, Gunung Mas Regency January, 15 2021 as issued in Marriage Certificate No. 001/01/I/2021, in which the process was at the same place of where customary marriage was held.

Third, the stage of submitting the problem to be mediated by the Customary Peace *Mantir* (referring to traditional figure handling a peace; henceforth [CPM]) Tampang Tumbang Anjir Village due to a household rift in January 2021, later then turned into a household dispute between husband and wife. A reconciliation was performed yet misunderstanding still occurred, then it was taken care by CPM on February, 15 2021 through a statement letter without any constraints. This was performed due to no more way to mediate at family level.

Fourth, the stage of mediation was performed at CPM's house, attended by both parties' family and traditional figures of Tampang Tumbang Anjir Village, Kuala Kurun, Gunung Mas Regency, Central Kalimantan Province. In this process, the spouse acquired input, suggestions, and views to uphold their household as normally, yet failed. Then, they agreed amicably to a divorce agreement.

This divorce agreement letter No. 21 DKA/KK/II/2021 was then signed by the head of Mantir Kurun District with the following provisions: *First,* after this agreement is made and signed by each party, the household is then over and should be no demands once either of us married with others. *Second,* The first party (the husband) has violated the promise of Marriage Agreement, hence the husband has to pay a customary sanction for IDR 20,000,000.00 to the second party (wife). The dowry/*Paku* still belongs to the second party (wife). *Third,* the first party has to pay customary sanction (*singer* divorced) for for IDR 6,000,000.00. *Fourth,* this Divorce Agreement Letter is made and signed by each party, thus Marriage Agreement is declared to no longer valid. *Fifth,* if there is an error in making this Divorce Agreement, it will be corrected accordingly.

Being witnessed by several parties (including both spouses' parents, witnesses, and board members of *Mantir*), the husband submitted a Statement Letter of Grant (a land with of 5,000 m2 located in Katingan district) to his wife as a dowry *(palaku)* as agreed in Customary Marriage Letter No. 16 DKA/KK/I/2021, January, 14 2021. Thus, based

on the Divorce Agreement according to Dayak Ngaju customs, Central Kalimantan No. 21 DKA/KK/II/2021, the marriage was stated to divorce.

In addition, the *Mantir* said if the traditional marriage had been broken up, a formal divorce was then performed by using positive law.[29] As Slamet Suhartono (2019-2020:202) cited from Bagir Manan stated that "a positive law is a group of available written and unwritten legal principles and rules, and enforced by government or courts in Indonesia both generally or specially". The positive law enforcement emerged *analytical legal positivism, analytical jurisprudence, pragmatic positivism,* and *Kelsen's pure theory of law*.[30]

The legality of the Dayak Ngaju divorce agreement is used as the basis for evidence that customary mediation has been performed, as an inseparable unit of divorce claim as an effort to *rule of adjudication*.[31] The trial was performed and the Panel of Judges attempted to reconcile. In this case, it was only attended by the applicant, while the respondent never attended. The judge's consideration on acceptance decision was because nonviolent mediation performed with the Mantir was unsuccessful, then was followed by an amicable divorce agreement with the CPM. In this sense, the judge considered that a reconciliation had been performed so the panel of judges granted the applicant's request with a Verstek decision, allowing him to impose one *raj'i* divorce to the respondent before the Kuala Kurun Religious Court trial according to the Decision of the Kuala Kurun Religious Court No. 9/Pdt.G./2021/PA.KKn on March 22. The divorce pledge was performed on April 15, 2021, later Divorce certificate No. 0010/AC/2021/PA.Kkn was issued on April 15, 2021.

3.3. Combination of Legal System: New Insight or New Paradigm in Customary Divorce Reconciliation in Indonesia

Considering this combination of the legal system, the researchers conceptualized as an offer of *a new insight* or *a new paradigm*, that was believed by the society to be a tool to achieve the legal goal, Peace.[32]This rationale was based on the reality of the Dayak Ngaju society in resolving customary divorce cases collaborating with national legal system. Boby Briando said, "In other words, it is a law that always serves the interests of justice, order, and peace supporting the realization of a physically and spiritually prosperous society."[33] Constructing Indonesian law with a legal unification is considered complex due to society's pluralistic nature.[34] Furthermore, it is demanding to realize due to society's response to the unification of national law, especially those that conflicts with customary law. Also, Soetandyo said that the policy of codification and legal unification is nothing more than challenging offer in Indonesian context because it is contrary to social reality for centuries.[35] The facts illustrated that Dayak Ngaju

[29] Slamet Suhartono, "Hukum Positif Problematik Penerapan Dan Solusi Teoritiknya," *DiH: Jurnal Ilmu Hukum*, 15.2 (2019), 201–11 <https://doi.org/10.30996/dih.v15i2.2549>. p. 202.
[30] Johni Najwan, "Implikasi Aliran Positivisme Terhadap Pemikiran Hukum," *Jurnal Law Positivism, Implication, Analytical Jurisprudence*, Vol. 2 No. (2010). p. 23.
[31] F C Susila Adiyanta, "Hukum Dan Proses Pengambilan Putusan Oleh Hakim : Menelusuri Khasanah Diskursus Tentang Teori-Teori Adjudikasi [Theories of Adjudication]," 4.2 (2021), 252–64.
[32] Briando. p. 325.
[33] Ibid.
[34] Endri. p. 23.
[35] Ditta Chandra Putri Ahmad Ulil Aedi, Sakti Lazuardi, "ARSITEKTUR PENERAPAN OMNIBUS LAW MELALUI TRANSPLANTASI HUKUM NASIONAL PEMBENTUKAN UNDANG-UNDANG (Architecture of the Application of

customary law system was still developing and used as a tool[36] to resolve disputes, in accordance with the legal objective (peace) along with national legal system. In other words, it denoted that the use of law as a tool that caused social change (regulating and maintaining social life) and influenced its direction.

According to the analysis of natural facts, the reconciliation of the Dayak Ngaju divorce case, it was found that there was a combination of legal systems existing in Dayak Ngaju society, accordingly it served as rationale reflection and implementation that both Customary and Positive Laws functioned at their respective corridors. Dayak Ngaju Customary Legal System functioned to achieve the legal goals from personal tranquility (inner state), meanwhile the National Legal System system oriented to achieve legal goals in the perspective of an order (outer state) .

The natural fact of a case study of resolving divorce case Dayak Ngaju process above was analyzed using the legal system theory by Lawrence M. Friedman. This theory denoted that each legal system contained three factors, namely: *structure, substance,* and *legal culture.* These three factors were interrelated to obtain actual picture of how a legal system in a country functioned,[37]and how the legal system worked in providing solution in resolving divorce case Dayak Ngaju as an idea and flow of thoughts of a legal system combination that were systematically arranged as follows:

First, legal structure is an institution formed by a legal system, functioning to support how it works that enables to serve and enforce a law regularly.[38] The institution involved in marriage process was legal structure of Dayak Ngaju including boards of traditional figures (Kademangan and Mantri) as outlined in Ngaju Marriage Letter No. 16 DKA/KK/I/2021, January, 14 2021 in Kuala Kurun, Gunung Mas Regency, Central Kalimantan Province. The legality of Dayak Ngaju marriage was then proceeded to Kuala Kurun Religious Affairs Office as issued in Marriage Certificate No. 001/01/I/2021 on January 15, 2021.

In addition, in the process of settling a divorce case, it involved CPM and was attended by both parties' family, traditional figures, and customary institutions, then the agreement for a customary divorce was peacefully recorded in Divorce Agreement No. 21 DKA/KK/II/2021 signed by *Mantir* Head of Kurun District. *Mantir* emphasized if the customary marriage had been over, a formal divorce was then performed by using the applicable national law as registered. Thus, the parties proceeded in the Court and produced legal force in accordance with the Decision of the Kuala Kurun Religious Court No. 9/Pdt.G./2021/PA.KKn on March 22, and granted divorce permit to the applicant. The divorce pledge was performed on April 15, 2021 according to the Decision of the Kuala Kurun Religious Court No. 9/Pdt.G./2021/PA.KKn, later Divorce certificate No. 0010/AC/2021/PA.Kkn was issued on April 15, 2021.

Omnibus Law Through National Legal Transplantation Formation of Law)," *Jurnal Ilmiah Kebijakan Hukum*, 14.2 (2020), 1–18.

[36] Nazaruddin Lathif, "Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat," *Palar | Pakuan Law Review*, 3.1 (2017), 73–94 <https://doi.org/10.33751/palar.v3i1.402>. p. 76.

[37] Sudjana, "Penerapan Sistem Hukum Menurut Lawrence W Friedman Terhadap Efektivitas Perlindungan Desain Tata Letak Sirkuit Terpadu Berdasarkan Undang-Undang Nomor 32 Tahun 2000," *Al Amwal (Hukum Ekonomi Syariah)*, 2.1 (2019), 78–94 <http://literaturbook.blogspot.co.id/2014/12/pengertian-efektivitas-dan-landasan.>.

[38] Sudjana.

The flow of thinking of legal system combination can be perceived in the performance combination among Dayak Ngaju institutional system, the institutions of Office of Religious Affairs and Religious Courts in accommodating marriages and resolving divorce cases. Similarly, Otje Salman and Anton F. Susanto emphasized that the *primary rule* comprising a *social order* exists if the conditions are met, and is related to orderly maner and rules, and its rules should be perceived as an obligation by most members of relevant social group. The rationale for this theory tended to be relevant and underlined the implementation of the Dayak Ngaju marriage, Customary Peace and Dayak Ngaju divorce agreement. The institutional process of Dayak Ngaju and the Religious Courts was in accordance with *secondary rule* theory when detailed, including (1) enacting what rules can be considered valid (*rule of recognition*), (2) how and by whom it can be changed (*rule of change*), (3) how and by whom it can be enforced and forced (*rule of adjudication*).[39] The decisions of Dayak Ngaju institutions and the Judiciary had a power to achieve legal goal, namely Peace that was felt internally by among parties.

Second, a legal substance, as Friedman (Lawrence, M. Friedman: 1984:5) stated that "*The substance is composed of substantive rules and rules about how institutions should behave. By this is meant the actual rules, norms, and behavioral patterns of people inside the system. The stress here is on living law, not just rules in law books*."[40] This concept highlighted the actual sense of regulation, namely norms and behavior patterns of the people in the system. Then, Achmad Ali underlined that *a legal substance* also included a *living law*, besides a code or *law books.*[41] Being observed further, the divorce reconciliation process of Dayak Ngaju with involving mediation from the family parties was in line Hilman Hadikusuma's statement that a common legal in Indonesia refers to a marriage that is not only a "civil engagement" and a "customary engagement" but also a "kinship and neighbourhood engagement"[42]. This nature of kinship underlied mediation process among parties and their families or mediation efforts performed by board *Mantir* members of Dayak Ngaju. Once the divorce was not agreed upon at family level, as the first mediation process step of resolving disputes, then a divorce process based on Dayak Ngaju costumary legal was performed. In this case, the contents of divorce agreement possessed a *legal substance* related to the Customary Marriage Certificate. In meeting the requirements of amicable divorce agreement between husband and wife, the husband had to pay customary sanctions (singer divorce) and dowry (*palaku*) as the declaration that the customary marriage certificate was no longer valid.

Third, *legal culture* comprises to be one of paradigms in exploring and sustaining rational reflection in resolving divorce case of Dayak Ngaju. Since each society, country and society has a *legal culture*.[43] The implicit rational of traditional marriage process of Dayak Ngaju tribe is by asking then proposing (or so-called kawin *hisek* in Kalimantan term). This process is common and in accordance with customary system. In addition, the marriage process was performed into three stages, namely: the pre-marriage (or so-called *Manyaluang, Maja Misek, Mamanggul* in Kalimantan terms), the wedding day,

[39] Adiyanta.
[40] Sudjana.
[41] Sudjana.
[42] Aristoni and Junaidi Abdullah, "4 Dekade Hukum Perkawinan Di Indonesia : Menelisik Problematika Hukum Dalam Perkawinan Di Era Modernisasi," *Yudisia*, 7.1 (2016). p. 79.
[43] Sudjana.

and the post-wedding (after marriage).[44] It was seen that all stages were full of rational that reflected the nature of kinship for among parties' family and society. Also, those stages reflected the existence of a culture with law. Achmad Ali revealed a culture with law based on Friedman's view was about *the legal culture, beliefs, value, ideas, and expectations.* Thus, legal culture is a human's attitude towards law and its system including beliefs, values, thoughts, and expectations.[45] Rusma Noortyani explained initial propose/ exploration (*Manyaluang*) as a process performed after an agreement by his parents to the man was obtained to propose to the woman. Besides, the man's family attempted to find out more about the woman dealing with her origin, family history, situation, and condition. Afterwards, the next stage was *mamanggul* where requesting the woman officially when the man's party knew that the woman's party would accept their desires. The *mamanggul* event was held involving not only both parties' family but also the neighbourhood. In addition, a stage of *Maja Misek* (or so-called come visit *[maja]* and confirm *[misek]* in Dayak Ngaju term)[46] where the man's party came visit and confimed to the woman's party about the continuation of agreement during *mamanggul* event.

The combination of legal system that emerged from the researcher's awareness was revealed in the natural facts of customary law regarding marriage and divorce case reconciliation by Dayak Ngaju by not combining an autonomy between the material law of Dayak Ngaju and Positive Law. For instance, ones had accomplished the marriage traditionally, then they should also accomplish it formally to be registered at the Office of Religious Affairs, as similarly occurred concerning to Divorce Agreement. In this sense, this process of divorce case reconciliation was considered to apply a *secondary rule* rationale through *rule of adjudication* to achieve philosophical goal of a law, that was a peace denoting a harmony to perform positive legal[47] in purpose of an order (outer state) and to perform Dayak Ngaju costumary law in purpose of personal tranquility (inner state) as a combination of legal systems. Besides, it referred to a *formal law* where a set of norms or rules contained either in the Code or to reconcil a legal case, meanwhile *a law in action* was a law applied or performed by parties, lawyers, and courts.[48] Such legal system combination denoted a legal rationale that two legal systems functioned respectively, where suitability occurred between legal culture of *living law* and *formal law* towards philosophical goal of a law, that was a peace denoting a harmony of an order (outer state) and personal tranquility (inner state).[49]

According to its form, the positive law in Indonesia consisted of written (the Code) and unwritten (costumary legal). Meanwhile, the sources were also two, namely; material

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[44] N Rusma, *Struktur Narasi Perkawinan Dayak Maanyan*, 2020 <http://eprints.ulm.ac.id/1492/1/1. Struktur Narasi Perkawinan Dayak Maanyan.pdf>. p. 14.
[45] Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis*, 4.2 (2018), 148 <https://doi.org/10.35586/.v4i2.244>. p. 150.
[46] Rusma.
[47] Zaka Firma Aditya, "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Konstribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 8.1 (2019), 37 <https://doi.org/10.33331/rechtsvinding.v8i1.305>. p. 53.
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legal (legal awareness living in the society that was considered appropriate) and and non-formal. Therefore, the concept of a combination of legal systems was considered applicable as in line with Wiwik Sugiantari stated that various legal forms in Indonesia caused many legal conflicts to develop both between written and unwritten law (custom).[50]

4. CONCLUSION

A practice of Dayak Ngaju customary divorce reconciliation in Kuala Kurun, Gunung Mas Regency, Central Kalimantan Province was recognized as a fundamental right protected and guaranteed by the Republic of Indonesia. The idea of a combination of legal systems was underlined by a legal rationale finding two legal systems (customary and positive) functioned respectively, where suitability occurred between legal culture of *living law* and *formal law* towards philosophical goal of a law. As for the basic rationale of a combination of legal system was as an evidence of a *new insight* or a *new paradigm* through factual and norm elaborations from Dayak Ngaju customary divorce reconciliation case. While its implementation was not practically able to replace a naturalist paradigm, yet both were believed by the society as legal system that was able to achieve philosophical goal of a law, a peace.

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