

Implementation of Spousal Rights and Obligations in Kawin Turun Marriage, South Kotamobagu

Implementasi Hak dan Kewajiban Suami Istri dalam Praktik Kawin Turun Kotamobagu Selatan

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Abstract

Customary dispute resolutions for premarital pregnancies frequently circumvent formal domestic obligations, creating severe normative tensions within global legal pluralism. In Indonesia, the Kawin Turun practice legally binds couples through religious contracts but intentionally mandates immediate physical separation, generating a critical subsequent vacuum of reciprocal spousal rights. To address this prevailing literature blind spot regarding suspended marriages, this qualitative study investigated the systemic empirical evasion of mandatory marital duties without utilizing statistical data. The research reveals that communal philosophies actively subjugate positive national legislation by manipulating formal marriage exclusively to legitimize unborn children while completely abandoning mutual cohabitation and economic maintenance. Consequently, this customary mechanism systematically strips marginalized vulnerable women of their fundamental financial protections. Ultimately, this article argues that mitigating such structural deprivation requires shifting from passive state recognition to active institutional intervention, offering a global paradigm for reconciling indigenous conflict resolution with the strict enforcement of universal human rights.

Abstrak

Resolusi sengketa adat untuk kehamilan pranikah sering menghindari kewajiban domestik formal, menciptakan ketegangan norma yang parah dalam pluralisme hukum global. Di Indonesia, praktik Kawin Turun mengikat pasangan secara sah melalui kontrak agama tetapi sengaja mewajibkan perpisahan fisik langsung, menghasilkan kekosongan lanjutan hak timbal balik suami istri secara kritis. Untuk mengatasi titik buta literatur mengenai perkawinan yang ditangguhkan ini, studi kualitatif menyelidiki penghindaran empiris sistemik atas tugas perkawinan wajib tanpa menggunakan data statistik. Penelitian ini mengungkapkan bahwa filosofi komunal secara aktif menundukkan legislasi nasional dengan memanipulasi perkawinan formal eksklusif guna melegitimasi anak kandungan sambil sepenuhnya mengabaikan kewajiban hidup bersama dan pemeliharaan ekonomi. Akibatnya, mekanisme adat ini melucuti perempuan rentan yang terpinggirkan dari seluruh perlindungan finansial fundamental mereka. Pada akhirnya, artikel ini berargumen bahwa memitigasi perampasan struktural semacam itu membutuhkan pergeseran pengakuan negara pasif menuju intervensi institusional aktif, menawarkan paradigma global menyelaraskan resolusi konflik adat dengan penegakan ketat hak asasi manusia universal.



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A. INTRODUCTION

1. Background

The intersection of state marriage law and indigenous customary practices frequently generates severe normative tensions, particularly when local dispute resolution mechanisms circumvent the fundamental obligations of domestic life.¹ In Indonesia, this clash of norms is starkly illustrated by the phenomenon of *Kawin Turun* (literally "to marry and descend") within the Bolaang Mongondow community in South Kotamobagu.² Functioning as a culturally sanctioned remedy for premarital pregnancy, *Kawin Turun* involves a formal marriage contract (*akad*) that legally binds the couple, yet is immediately followed by a prearranged separation where the husband abandons the wife's residence post-reception.³ This practice creates a critical paradox between the ideal of the law (*das sollen*) and empirical facts (*das sein*): while the marriage is administratively and religiously valid, it is intentionally devoid of cohabitation, mutual support, and spousal obligations mandated by national legislation.⁴ Consequently, the marital bond is weaponized merely as a social shield to legitimize the unborn child, rather than as a legal institution designed to establish a functional and protected family unit.

The friction between customary marriage resolutions and formal legal protections for women and children resonates profoundly within the global discourse on legal pluralism and international human rights.⁵ Recent scholarship has extensively debated the efficacy of state intervention in indigenous marital practices across various jurisdictions. For instance, scholars have highlighted how customary marriages in post-colonial legal systems often subordinate women's economic rights to communal harmony,⁶ while others argue that state-imposed marriage laws frequently fail to

¹ Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2012), Page, 85. <https://doi.org/10.4324/9780203113134>.

² Ahmad Rajafi and Ressi Susanti, "Kaweng Turung: The Absence of State's Role in Harmful Marriage Tradition," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (June 24, 2023): 171–90, <https://doi.org/10.15408/ajis.v23i1.26358>.

³ Herlina H. Sayiu and Ahmad Faisal, "Praktik Kawin Turun Pada Masyarakat Di Kabupaten Gorontalo (Studi Analisis Menurut Hukum Islam Dan Hukum Positif)," *As-Syams: Journal Hukum Islam* 1, no. 2 (2020): 21–39, <https://ejournal.iaingorontalo.ac.id/index.php/AS-SYAMS/article/view/183>.

⁴ Ratu Durotun Nafisah, "Judging and Social Cohesion: The Case of Interfaith Marriage in Indonesia," *Asian Journal of Law and Society*, March 25, 2026, 1–25, <https://doi.org/10.1017/als.2026.10044>.

⁵ Nurillo Fayzullaevich Imomov et al., "Marriage Governance and Legal Pluralism in Central Asian Family Law Systems," *Journal of Human Rights, Culture and Legal System* 6, no. 1 (March 17, 2026): 59–83, <https://doi.org/10.53955/jhcls.v6i1.895>.

⁶ Yenny Febrianty et al., "Legal Reform in Customary Marriage Law in Indonesia and South Africa for Inclusive Justice," *Journal of Law and Legal Reform* 6, no. 3 (July 31, 2025): 1027–1242, <https://doi.org/10.15294/jllr.v6i3.20896>.

accommodate the sociological realities of rural communities.⁷ Within the specific context of Indonesian customary law (*adat*), existing literature predominantly scrutinizes the validity of forced or arranged marriages through the dual lenses of Islamic jurisprudence and the 1974 Marriage Law.⁸ These studies generally conclude that while customary practices seek to restore social equilibrium, they often conflict with the modern legal paradigm that emphasizes gender equality and fundamental marital rights.⁹

Despite this robust academic engagement, a critical blind spot persists in contemporary legal literature. Previous studies have heavily concentrated on the preliminary legality of customary marriages or the sociological drivers of premarital settlements, thereby neglecting the prolonged legal limbo that ensues after the ceremony.¹⁰ There is a conspicuous absence of socio-legal analysis regarding the post-contractual vacuum of spousal rights—specifically the systematic abandonment of the husband's obligation to provide maintenance, protection, and residence, alongside the wife's constrained domestic role. By exclusively treating *Kawin Turun* as an issue of marriage validity or anthropological tradition, current legal frameworks fail to address the substantive failure of the marriage to fulfill its legal functions, thus leaving women and children trapped in a legally valid but practically defunct union without a formal divorce decree.¹¹

Addressing this fundamental gap, this article argues that the practice of *Kawin Turun* constitutes a systemic legal evasion that effectively strips women and children of their fundamental rights under national marriage law, necessitating a paradigm shift from passive legal recognition to active state intervention. By examining the stark disparity between the normative mandates of the Indonesian Marriage Law and the empirical reality of the Bolaang Mongondow community, this research offers a novel conceptual approach to understanding customary social divorces. The article concludes that

⁷ Arman Budiman, Rumadi, and Alif Faza Dli'fain, "The Contestation of State, Religious, and Customary Laws on Child Marriage: A Legal Pluralism Perspective," *Hikmatuna : Journal for Integrative Islamic Studies* 11, no. 1 (June 11, 2025): 53–64, <https://doi.org/10.28918/hikmatuna.v11i1.11004>.

⁸ RR Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (June 16, 2023): 25–48, <https://doi.org/10.15408/ajis.v23i1.32549>.

⁹ Muh. Akbar Fhad Syahril et al., "Reconstructing Women's Status in Mowea Sarapu: Customary Divorce, Maqasid Al-Shari'ah, and Gender Justice in Tolaki Muslim Legal Pluralism, Indonesia," *Jurnal Theologia* 36, no. 2 (January 6, 2026): 311–26, <https://doi.org/10.21580/teo.2025.36.2.29864>.

¹⁰ Stijn Cornelis van Huis, "The Shadow of Legal Pluralism in Indonesian Islamic Courts: Child and Spousal Maintenance," *The Indonesian Journal of Socio-Legal Studies* 4, no. 1 (2025): 1–26, <https://doi.org/10.54828/ijsls.2024v4n1.4>.

¹¹ Rajafi and Susanti, "Kaweng Turung: The Absence of State's Role in Harmful Marriage Tradition."

mitigating this legal vacuum requires an integrated framework involving preventive legal education, stringent supervision by the Office of Religious Affairs (KUA), and community-based interventions, thereby offering a global lesson on reconciling customary conflict resolution with the universal protection of women's marital rights.

2. Research Questions

The customary practice of *Kawin Turun* in the South Kotamobagu District exposes a profound normative gap between the statutory provisions of national marriage law and their empirical implementation within indigenous communities. Although these marriages are executed with formal and religious validity, the substantive domestic relationship is systematically circumvented, precipitating a severe legal vacuum in the fulfillment of reciprocal spousal rights and obligations. Driven by this critical paradox, this research critically analyzes how the practice of *Kawin Turun* constitutes a systemic evasion of the fundamental marital duties mandated by the Indonesian Marriage Law. Consequently, this study seeks to formulate a prescriptive legal reconstruction, examining how state intervention and existing legal frameworks must be optimized to guarantee substantive legal protection for women and children ensnared in this customary mechanism of social divorce.

3. Research Methodology

This study executed a socio-legal research design to investigate the empirical manifestation of customary marriage dispute resolutions against the normative framework of national marriage legislation. The primary statutory instruments analyzed included Law Number 1 of 1974 concerning Marriage—specifically Articles 30 through 34 governing reciprocal spousal duties—and the Compilation of Islamic Law (*Kompilasi Hukum Islam*). Field data were collected through in-depth interviews and non-participant observations in the South Kotamobagu District. To maintain methodological rigor, the study applied strict inclusion criteria: the selected cases had to involve couples who formally registered their *Kawin Turun* marriages at the local Office of Religious Affairs (KUA) but subsequently lived apart without any mutual domestic fulfillment. Conversely, cases that had culminated in formal divorce decrees from the Religious Court with permanent legal force were strictly excluded from this study.

Given the highly sensitive nature of premarital pregnancy and customary social divorce, all data acquisition adhered to stringent socio-legal research ethics.¹² This procedural compliance included securing informed consent prior to all interviews and ensuring the complete anonymity of the informants through the use of initials (e.g., DP, PM, and IM). The acquired data were subjected to qualitative socio-legal analysis rather than generic descriptive mapping. The researchers operationalized a triangulated analytical framework, purposefully avoiding the use of statistical data, to juxtapose the empirical testimonies of the couples, their extended families, and KUA officials directly against the statutory mandates.¹³ This analytical trajectory facilitated a critical evaluation of the legal vacuum created by the customary practice, ensuring the findings provided a deep, doctrinal critique of the systemic evasion of marital rights rather than a broad quantitative generalization.

B. DISCUSSION

1. The Subjugation of State Law By Communal Philosophy In South Kotamobagu

The community of South Kotamobagu, predominantly belonging to the Bolaang Mongondow ethnic group, is profoundly governed by the ancestral philosophy of *Mototompiaan*, *Mototabian*, and *Mototanoban* (mutual correction, mutual affection, and mutual reminder). While this local wisdom ostensibly promotes social cohesion, a critical socio-legal analysis reveals that within the institution of marriage, these communal values frequently subjugate the mandates of state law. In the context of premarital pregnancies, marriage decisions are systematically usurped by extended families and community leaders to restore collective dignity, rather than to establish a lawful and functional union based on mutual consent. This empirical finding extends the theoretical framework proposed by Lukito, who argues that in societies characterized by strong legal pluralism, customary regimes consistently prioritize communal equilibrium over individual statutory rights.¹⁴ However, this research demonstrates that the phenomenon in South Kotamobagu goes beyond mere legal coexistence; it constitutes a deliberate normative hijacking where local philosophy is actively utilized to legitimize the circumvention of national marriage laws.

¹² Dawn Watkins and Mandy Burton, *Research Methods in Law* (London: Routledge, 2025), Page, 67. <https://doi.org/10.4324/9781032710372>.

¹³ Mike McConville and Wing Hong Chui, eds., *Research Methods for Law* (Edinburgh University Press, 2024), Page, 102. <https://doi.org/10.1515/9781399515092>.

¹⁴ Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable*. Page, 85.

Field investigations delineate four interwoven structural factors that perpetuate the practice of *Kawin Turun*: the absolute hegemony of kinship networks, pervasive legal illiteracy regarding reciprocal spousal rights, severe economic incapacity, and the disruptive influx of modernization altering youth interactions.^{15,16} From a doctrinal perspective, these elements do not merely act as sociological variables; they function as structural barriers that actively dismantle the legal obligations prescribed in Articles 30 through 34 of the Indonesian Marriage Law. By prioritizing the immediate restoration of family honor over the economic readiness and domestic commitment of the couple, the customary mechanism forces individuals into a legally binding contract that is intentionally devoid of substantive domestic intent. This directly refutes the assumption in formal legal positivism that a legally registered marriage automatically guarantees the implementation of marital rights.

Engaging with the global discourse on indigenous marital dispute resolutions, this localized phenomenon mirrors the severe legal tensions observed in other post-colonial jurisdictions. As highlighted by Febrianty et al., customary marriages in transitional legal systems often subordinate women's socio-economic rights to maintain patriarchal or communal harmony.¹⁷ The *Kawin Turun* practice powerfully corroborates this global narrative, illustrating that when statutory law—which champions gender equality and the functional family unit—collides with a customary mandate aimed solely at erasing the social stigma of premarital pregnancy, the latter decisively prevails.¹⁸ Consequently, the local wisdom of the Bolaang Mongondow community paradoxically facilitates a systemic evasion of legal responsibilities. By analyzing this empirical reality, this study elevates the domestic issue of *Kawin Turun* into a critical global lesson: statutory frameworks designed to protect women and children are rendered obsolete when state apparatuses fail to penetrate deeply entrenched communal structures that value collective reputation over substantive human rights.

¹⁵ "P. M Dan Orang Tua HK, 'Hasil Wawancara,' (Kotamobagu Selatan), 7 Januari" (2026).

¹⁶ "D. P Dan Orang Tua KSM, 'Hasil Wawancara,' (Kotamobagu Selatan), 19 Februari," 2026.

¹⁷ Febrianty et al., "Legal Reform in Customary Marriage Law in Indonesia and South Africa for Inclusive Justice."

¹⁸ Budiman, Rumadi, and Dli'fain, "The Contestation of State, Religious, and Customary Laws on Child Marriage: A Legal Pluralism Perspective."

2. The Post-Contractual Vacuum: Empirical Execution And The Illusion Of Legal Protection

Based on empirical investigations across three primary cases—namely the DP and PM case in Kotamobagu Selatan Village (2022), the IM and YP case in Bungko Village (2018), and the AP and ID case in Pobundayan Village (2005)—the execution of *Kawin Turun* operates fundamentally as a premarital socio-legal settlement rather than the initiation of a domestic union.¹⁹ Following the formal religious contract (*akad*), a consistent and deliberate pattern emerges: the husband and his kinship network systematically abandon the wife's residence immediately post-reception. Under the normative framework of the Indonesian Marriage Law, specifically Articles 30 and 32, a valid marital bond necessitates the establishment of a permanent shared residence and mutual domestic participation. However, in *Kawin Turun*, the marriage is operationalized exclusively to secure legitimate status for the unborn child and to mitigate communal stigma, thereby intentionally circumventing the statutory obligation of cohabitation.

This empirical reality challenges the prevalent scholarly trajectory regarding indigenous marital disputes. While existing literature, such as the studies by Rajafi and Susanti, successfully highlights the "absence of state's role" during the initiation of harmful traditions, they predominantly frame the issue as a pre-marital anomaly concerning forced consent.²⁰ By extending the socio-legal critique pioneered by van Huis—which exposes the shadow of legal pluralism in evading spousal maintenance—this research argues that the core legal violation of *Kawin Turun* lies in its post-contractual vacuum.²¹ Because the marital bond is never formally annulled through a legally binding divorce decree from the Religious Court, the marriage remains administratively intact. Consequently, the wife is ensnared in a "suspended marriage" (*gantung*). She is deprived of her legal standing as a divorcee capable of remarrying, yet she is simultaneously denied the substantive maintenance, protection, and companionship owed to a functioning wife.

From a global legal perspective, this localized phenomenon of a suspended marriage constitutes a severe infringement of universal human rights, directly contradicting the principles of gender equality and the right to a functional family unit as championed by

¹⁹ "D. P Dan Orang Tua KSM, 'Hasil Wawancara,' (Kotamobagu Selatan), 19 Februari."

²⁰ Rajafi and Susanti, "Kaweng Turung: The Absence of State's Role in Harmful Marriage Tradition."

²¹ van Huis, "The Shadow of Legal Pluralism in Indonesian Islamic Courts: Child and Spousal Maintenance."

international conventions.²² The structural evasion of spousal rights reduces the marital contract to a mere administrative shield, systematically stripping women and children of their socio-economic protections. The precise anatomy of this normative violation—contrasting the ideal statutory obligations against the empirical reality of *Kawin Turun*—is systematically dissected in Table 1 below.

Table 1. Gap Between Marriage Law Norms and the Practice of Kawin Turun

Marriage Law Provision	Ideal Obligation	Findings in the Practice of <i>Kawin Turun</i>	Form of Legal Gap
Article 30 of the Marriage Law	Husband and wife are jointly obliged to uphold family life as the foundation of society.	The marriage is formally conducted but is not followed by actual cohabitation as husband and wife.	The essential function of family life is not substantively established.
Article 31 of the Marriage Law	Husband and wife have equal status within the family and society.	The wife is placed in a more vulnerable position due to pregnancy, social stigma, and family responsibilities.	Legal equality is not reflected in social reality.
Article 32 of the Marriage Law	Husband and wife are required to have a permanent shared residence.	The husband leaves the wife immediately after the marriage ceremony and reception.	The obligation to establish a shared residence is not fulfilled.
Article 33 of the Marriage Law	Husband and wife are obliged to love, respect, remain faithful to, and provide mutual physical and emotional support.	The marital relationship does not develop because the marriage serves primarily as a social solution rather than the beginning of family life.	Mutual physical and emotional support is not realized.
Article 34 of the Marriage Law	The husband is obliged to protect the wife and provide maintenance according to his financial capacity.	Financial support and protection are not adequately provided because the husband is not economically prepared.	The wife and child are at risk of losing legal and economic protection.

3. The Systematic Dismantling of Spousal Rights And The Urgency For State Intervention

Empirical testimonies expose a systemic dismantling of the reciprocal rights and obligations mandated by the Indonesian Marriage Law. During the field investigation, the husband (PM) admitted a complete absence of economic readiness and stability, rendering him incapable of fulfilling his statutory mandate under Article 34, paragraph (1) to provide primary maintenance. Consequently, the economic survival of the wife and

²² Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), <https://doi.org/10.1080/23311886.2023.2206347>.

the unborn child is entirely outsourced to the wife's extended family. This stark empirical reality directly refutes the normative ideal presented by Islamic law scholars, such as Fahmi, who emphasize the husband's absolute role as the household's protector and primary provider to achieve a harmonious (*sakinah*) family.²³ Instead of acting as a spiritual and economic guardian, the husband's immediate departure post-ceremony intentionally strips the wife of her fundamental rights to companionship, guidance, and physical protection.

From the wife's perspective, the statutory mandate stipulated in Article 31, paragraph (3), which positions the wife as the primary homemaker, is weaponized into an isolated burden. The wife (DP) revealed her profound psychological unpreparedness for a domestic life thrust upon her without consent or spousal support. This condition transcends mere domestic negligence; it constitutes a severe structural victimization. By analyzing this phenomenon through the lens of international human rights, the *Kawin Turun* practice actively violates the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), specifically Article 16, which guarantees equal rights and responsibilities during marriage and at its dissolution.²⁴ While current domestic literature often sanitizes such customary practices as localized "family problem-solving," this research extends the scholarly discourse by demonstrating that the customary mechanism systematically forces women to endure the socio-psychological stigma of a defunct marriage without any corresponding legal or economic safeguards.²⁵

Ultimately, the severe chasm between the normative ideals of Articles 30 through 34 and the social reality of *Kawin Turun* necessitates immediate prescriptive legal action. The absence of state intervention transforms the Marriage Law from a protective instrument into a hollow administrative checklist. To rectify this post-contractual vacuum, passive legal recognition is insufficient. The state, operationalized through the Office of Religious Affairs (KUA), must reconstruct its approach by implementing

²³ Zulkifli Reza Fahmi, "Pembagian Peran Suami Dan Istri Dalam Membangun Rumah Tangga Sakinah Menurut Syekh Nawawi Al-Bantani," *Qanun: Jurnal Hukum Keluarga Islam* 1, no. 1 (May 1, 2023): 1–20, <https://doi.org/10.51825/qanun.v1i1.16>.

²⁴ Fahad Al Aghbari et al., "Rights of Women in the Establishment and Dissolution of Marriage in Oman: Between CEDAW and Sharia Perspective," *Legality : Jurnal Ilmiah Hukum* 32, no. 1 (February 3, 2024): 33–50, <https://doi.org/10.22219/ljih.v32i1.31493>.

²⁵ Ahmad Maulana Maghrabi and Syahrul Anwar, "Hak Dan Kewajiban Anggota Keluarga Dalam Perspektif Kekerasan Dan Tindak Pidana Dalam Keluarga," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 28, no. 2 (December 31, 2025): 190–201, <https://jurnalfsh.uinsa.ac.id/index.php/qanun/article/view/3035>.

mandatory, preventive legal education prior to the authorization of customary marriages, coupled with rigorous post-marital supervision. By transitioning from passive registrars to active protectors of marital rights, state institutions can bridge the critical gap between enforcing formal marital validity and guaranteeing the substantive realization of universal human rights for women and children.

C. CONCLUSION

The customary practice of *Kawin Turun* in the South Kotamobagu District constitutes a systemic evasion of the Indonesian Marriage Law, as the formal religious contract is deliberately manipulated to legitimize an unborn child while systematically abandoning the substantive domestic obligations of cohabitation and spousal maintenance. Consequently, this post-contractual vacuum traps women and children in a legally ambiguous suspended marriage, completely depriving them of the economic protection and physical security mandated by both national legislation and international human rights standards. To rectify this profound normative gap, passive state recognition of customary dispute resolutions is grossly insufficient and must be replaced by a prescriptive framework of active state intervention. Mitigating this structural deprivation requires the Office of Religious Affairs (KUA) to transcend its administrative role by enforcing rigorous pre-marital legal education and continuous post-marital supervision, thereby ensuring that the universal protection of women's marital rights decisively supersedes communal efforts to preserve social prestige.

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