

**Article History**

Received: 1 May 2025

Reviewed: 12 Aug 2025

Accepted: 17 Sep 2025

Published: 30 Sep 2025

***Dui' Papehre* Customary Law Reconstruction Based on Human Rights Values in the National Legal System**

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The purpose of this research is to reconstruct the practice of Dui' Papehre in Bugis marriage customs, ensuring it aligns with human rights values, particularly non-discrimination and equality, while preserving its cultural essence. This research also examines the harmonization between customary law, national law, and human rights principles, and proposes recommendations for legal reform.

The research method used is normative law with a descriptive-analytical approach, supported by legislative, conceptual, and sociological perspectives. Data is sourced from legal documents and literature and analyzed qualitatively.

The novelty of this research lies in its unique combination of analyzing Dui' Papehre from the perspectives of customary law, national law, and human rights, thereby filling a gap left by previous studies that have not comprehensively discussed this intersection.

The findings reveal that the practice of Dui' Papehre still holds cultural value, but it often raises human rights concerns, particularly regarding the rights to form a family and non-discrimination, when the nominal value is disproportionate. The analysis shows that regulation through local regulations with reasonable nominal limits, dispute mechanisms, and community-based customary mediation can preserve traditions without violating human rights.

In conclusion, the harmonization of customary law, national law, and human rights principles is key to ensuring that Dui' Papehre remains sustainable and fair. Transparent and participatory regulations will ensure that this tradition aligns with social justice and the protection of citizens' constitutional rights.

Keywords: Dui' Papehre; Customary Law; Human Rights; Legal Harmonization; Bugis Traditional Marriage

Abstrak

Tujuan Penelitian untuk merekonstruksi praktik Dui' Papehre dalam adat perkawinan Bugis agar selaras dengan nilai-nilai hak asasi manusia, khususnya nondiskriminasi dan kesetaraan, tanpa menghilangkan esensi budayanya. Penelitian ini juga mengkaji harmonisasi antara hukum adat, hukum nasional, dan asas-asas hak asasi manusia, serta mengusulkan rekomendasi untuk pembaruan hukum.

Metode Penelitian menggunakan metode hukum normatif dengan pendekatan deskriptif-analitis, yang didukung oleh perspektif perundang-undangan, konseptual, dan sosiologis.

Data bersumber dari dokumen hukum, literatur, dan dianalisis secara kualitatif.

Kebaruan penelitian ini secara unik memadukan analisis Dui' Pappenre dari perspektif hukum adat, hukum nasional, dan hak asasi manusia, mengisi celah yang ditinggalkan oleh penelitian-penelitian sebelumnya yang belum secara komprehensif membahas persinggungan ini.

Hasil temuan Praktik Dui' Pappenre masih bernilai budaya, namun kerap memicu persoalan HAM, terutama hak membentuk keluarga dan non-diskriminasi, ketika nominalnya tidak proporsional. Analisis menunjukkan bahwa pengaturan melalui Perda dengan batas nominal wajar, mekanisme sengketa, dan mediasi adat berbasis partisipasi masyarakat dapat menjaga tradisi tanpa melanggar HAM.

Kesimpulan penelitian harmonisasi hukum adat, hukum nasional, dan prinsip HAM menjadi kunci agar Dui' Pappenre tetap lestari sekaligus adil. Regulasi yang jelas dan partisipatif akan memastikan tradisi ini selaras dengan keadilan sosial dan perlindungan hak konstitusional warga.

Kata Kunci: Dui' Pappenre; Hukum Adat; Hak Asasi Manusia; Harmonisasi Hukum; Perkawinan Adat Bugis

1. INTRODUCTION

Marriage is one of the crucial events in human life.¹ It has sacred value and is regulated in various legal systems, including customary law.² In the context of the Bugis community, marriage is viewed not only as the union of two individuals but also as a connection between two extended families. One of the traditions closely attached to the Bugis traditional marriage procession is the giving of *dui' Pappenre*, or shopping money.³

Dui' Pappenre is often mistaken for dowry, even though the two have different positions and functions in the Bugis marriage tradition.⁴ Dowry is money given by the groom to finance the woman's marriage party, while dower is a mandatory gift from the prospective husband to the wife-to-be, which is the absolute right of the wife.⁵ This misconception is not only common among the general public but is also sometimes reflected in several academic studies.

The *dui Pappenre* phenomenon has become a controversial topic in recent years.^{6 7} On the one hand, this tradition is seen as a form of appreciation for the bride and her family. On the other hand, the sometimes very high amount of *dui Pappenre* has caused various social

¹ Kairuddin Karim, Anwar Laga, and Akbar Fhad Syahril, "Inheritance Rights of Children Leased by Womb in Civil Law Perspective," *European Journal of Privacy Law & Technologies*, 2024, 108, <https://universitypress.unisob.na.it/ojs/index.php/ejplt/article/view/1862>.

² Rika Elvira, "Ingkar Janji Atas Kesepakatan Uang Belanja (Uang Panai) Dalam Perkawinan Suku Bugis Makassar," *Unpublished Thesis* (Universitas Hasanuddin, 2014), <https://core.ac.uk/download/pdf/77620367.pdf>.

³ Muhammad Rinaldy Bima, "Hakikat Uang Belanja Dalam Perkawinan Adat Bugis Dari Perspektif Hukum Islam," *Jurnal Tana Mana* 3, no. 2 (2022): 211–16, <https://doi.org/https://doi.org/10.33648/jtm.v3i2.314>.

⁴ Ilham Mangenre, "Inilah Fatwa Uang Panai MUI Sulsel," *MuiSulsel.or.id*, 2022, <https://muisulsel.or.id/ini-fatwa-uang-panai-mui-sulsel/>.

⁵ Mas' ud Mas' ud, "Penentuan Dui Pappenre'dalam Perkawinan Adat Suku Bugis (Studi Kasus Di Kecamatan Kusan Hilir)" (Perpustakaan UIN Antasari Banjarmasin, 2024), <https://idr.uin-antasari.ac.id/25904/>.

⁶ Gunawan Gunawan and Amir Amir, "Perspektif Hukum Islam Tentang Dui Pappenre Studi Kasus Dikelurahan Nipah Panjang 1 Kecamatan Nipah Panjang Kabupaten Tanjung Jabung Timur Provinsi Jambi," *Al-Hukmi: Jurnal Hukum Ekonomi Syariah Dan Keluarga Islam* 4, no. 2 (2024): 115–29.

⁷ Sri Rahayu and Yudi Yudi, "Uang Nai': Antara Cinta Dan Gengsi," *Jurnal Akuntansi Multiparadigma* 6, no. 2 (2015): 224–36, <https://doi.org/http://dx.doi.org/10.18202/jamal.2015.08.6018>.

problems, including marriage delays, family conflicts, and even the cancellation of marriage plans.⁸

In the context of human rights, excessively high *dui' Papenre* determination can potentially violate the fundamental rights of individuals, such as the right to form a family and the right to be free from discrimination. This is further complicated, considering that Indonesia has ratified various international human rights instruments and has an obligation to respect, protect, and fulfil these rights.⁹

Indonesia's national legal system, which recognizes legal pluralism, including customary law, also faces the challenge of harmonizing customary practices with human rights principles.¹⁰ Undang-Undang No. 1 Tahun 1974 tentang Perkawinan,¹¹ for example, does not explicitly regulate *Dui' Papenre*, thus creating a legal vacuum in this context.¹²¹³

Several previous studies have examined the phenomenon of *dui' Papenre* from various perspectives. However, there is still a gap in a comprehensive analysis that integrates aspects of customary law, national law, and human rights principles. In addition, few studies have explored how the practice of *dui' Papenre* can be reconstructed to be more in line with human rights values without losing its cultural essence.

The shift in the meaning and function of *dui' Papenre* in modern Bugis society is also enjoyable. Burhan Kadir, a Bugis cultural expert, revealed that the number of *dui' Papenre* is often determined to maintain prestige, even without considering the social status that should be the basis for its determination.¹⁴ This shows that socio-cultural dynamics need to be further researched.

⁸ Al Khoriah Etiek Nugraha, "Kedudukan Dan Makna Uang Panai Dalam Tradisi Pernikahan Bugis-Makassar," *DetikSulsel*, 2022, <https://www.detik.com/sulsel/budaya/d-6105246/kedudukan-dan-makna-uang-panai-dalam-tradisi-pernikahan-bugis-makassar>.

⁹ Kabar Lathuhary, "Komnas HAM Ingatkan Pentingnya Pemenuhan HAM Masyarakat Adat," *komnasham.go.id*, 2022, <https://www.komnasham.go.id/index.php/news/2022/6/15/2154/komnas-ham-ingatkan-pentingnya-pemenuhan-ham-masyarakat-adat.html>.

¹⁰ Bima, "Hakikat Uang Belanja Dalam Perkawinan Adat Bugis Dari Perspektif Hukum Islam."

¹¹ *Vide* Undang-Undang No. 1 Tahun 1974 tentang Perkawinan

¹² The main challenge of this legal pluralism is how to harmonize or balance the customary rules that apply in society with the principles of human rights (HAM) that are recognized nationally and internationally. Sometimes, customary rules can conflict with human rights standards, for example in terms of gender equality or the protection of individual rights. Therefore, there needs to be harmonized efforts so that customary law can continue to be implemented without violating basic human rights. One of the real examples of this challenge is in the case of *Dui' Papenre* in Bugis traditional marriage. *Dui' Papenre* is a tradition of determining the cost or dowry of marriage, which can be very high, often causing the postponement of marriage or burdening the couple about to get married. This tradition is important for indigenous peoples as a form of respect and maintaining family status. Still, on the other hand, it can cause social problems such as marriage delays or economic burdens for new couples..

¹³ Indonesia's national legal system adheres to the principle of legal pluralism, which recognizes the coexistence of customary law alongside state law; however, this poses a significant challenge in aligning customary practices with human rights principles. One example is that Undang-Undang Perkawinan does not explicitly regulate *Dui' Papenre*, resulting in a legal vacuum in this case. This means that there are no national rules that clearly govern or protect such practices, which can lead to legal uncertainty and potential conflicts between customs and human rights. As a result, although customary law is recognized as part of the cultural diversity that must be protected, its implementation still often clashes with national law, especially if the customary practice has the potential to violate the principles of equality or non-discrimination guaranteed by human rights.

¹⁴ Nugraha, "Kedudukan Dan Makna Uang Panai Dalam Tradisi Pernikahan Bugis-Makassar."

This suggests that there are socio-cultural dynamics that require further research. Several studies related to the tradition of dowry in Bugis culture have been conducted from various perspectives, such as those conducted by Reski Daeng, Selvie Rumampuk, and Mahyudin Damis, who studied the practice of collecting dowry in the context of Bugis migration in Bitung City,¹⁵ Sri Rahayu and Yudi discuss the social motivation between love and prestige in determining the amount of dowry,¹⁶ and Muhammad Rinaldy Bima, who studied this tradition from an Islamic legal perspective, particularly regarding the relevance and assessment of sharia regarding the practice of giving dowry money in Bugis traditional marriages.¹⁷

Other studies also confirm the socio-cultural dynamics of the *dui' papenre* or dowry tradition in Bugis society. For example, Nasrullah Masthurah (2024), in his article "The Contemporary Dynamics of Dowry in Bugis-Makassar Wedding Ceremonies," ethnographically discusses how the determination of the dowry amount is now influenced not only by lineage, but also by economic status, education, and occupation. Thus, dowry has a dual function as a symbol of respect and financial pressure, reflecting the adaptation of tradition to the demands of the times.¹⁸ Another study by Nining Avita (2022) entitled "Dowry and Dui Menre in the Marriage of the Bugis Community in Bone Regency" analyzes the integration between the *dui menre* tradition and Islamic law in Bugis marriage practices in Bone, showing that both are a mandatory unity that strengthens the position of women while maintaining the continuity of customary and religious law in modern Bugis society.¹⁹

Based on the description above, this study is of significant urgency and is different from previous studies. This study will analyze the practice of *dui' Papenre* in the framework of human rights law, which has not been done much before. This research aims to reconstruct the concept of *dui' Papenre* so that it is more in line with human rights values without eliminating its cultural essence.

Penelitian ini secara sistematis bertujuan untuk menganalisis secara kritis peluang harmonisasi antara hukum adat, hukum nasional, dan prinsip hak asasi manusia dalam pelaksanaan tradisi *dui' Papenre*. Dengan landasan metodologis yang kuat, penelitian ini diarahkan untuk merumuskan rekomendasi kebijakan hukum yang konkret dan berbasis evidence, sehingga mampu mengintegrasikan nilai-nilai kearifan lokal dengan prinsip keadilan, proporsionalitas, dan perlindungan hak asasi manusia dalam bingkai sistem hukum nasional. Melalui telaah multidisipliner dan kajian normatif-empiris, penelitian ini berupaya memastikan bahwa praktek *dui' Papenre* tetap dapat dipertahankan dan diapresiasi sebagai

¹⁵ Reski Daeng, Selvie Rumampuk, and Mahyudin Damis, "Tradisi Uang Panai' Sebagai Budaya Bugis (Studi Kasus Kota Bitung Propinsi Sulawesi Utara)," *HOLISTIK, Journal of Social and Culture* 12, no. 2 (2019), <https://ejournal.unsrat.ac.id/index.php/holistik/article/view/24592>.

¹⁶ Rahayu and Yudi, "Uang Nai': Antara Cinta Dan Gengsi."

¹⁷ Bima, "Hakikat Uang Belanja Dalam Perkawinan Adat Bugis Dari Perspektif Hukum Islam."

¹⁸ Nur Masthurah et al., "Evolving Traditions: The Contemporary Dynamics of Uang Panai'in Bugis-Makassar Wedding Ceremonies," *Tamaddun* 23, no. 1 (2024): 51–60, <https://doi.org/https://doi.org/10.33096/tamaddun.v23i1.713>.

¹⁹ Nur Avita, Ahmad Rusyaid Idris, and Frina Oktalita, "Integration of Tradition and Sharia: Dowry and Dui Menre in the Marriage of the Bugis Community in Bone Regency," *El-Mashlahah* 12, no. 2 (2022): 124–38, <https://doi.org/https://doi.org/10.23971/elma.v12i2.4712>.

warisan hukum adat yang hidup, tanpa mengabaikan tuntutan reformasi hukum serta jaminan terhadap hak-hak fundamental seluruh warga negara. Thus, this research is expected to contribute theoretically and practically to bridge the gap between tradition, law, and human rights in Bugis traditional marriage.

2. METHOD

This research is a normative legal research that is descriptive-analytical, with a statute approach, a conceptual approach, and enriched with a sociological and analytical approach.²⁰

²¹ The data sources used are secondary data, consisting of primary legal materials (related laws and regulations), secondary legal materials (books, journals, scientific articles), and tertiary legal materials (legal dictionaries and encyclopedias). Data collection techniques are carried out through library studies and documentation. The data obtained are analysed qualitatively with descriptive-analytical methods to produce legal arguments and new concepts in order to reconstruct the practice of *Dui' Pappenre* so that it is in line with human rights values.

3. DISCUSSION

3.1. Reconstruction of the *Dui' Pappenre* Concept in the Framework of Human Rights Law

The reconstruction of the concept of *dui' Pappenre* within the framework of human rights law is an important effort to harmonize customary practices with universal human rights principles. *Dui' Pappenre*, as an integral part of Bugis marriage customs, needs to be reviewed to ensure that its implementation does not conflict with human rights values guaranteed by the constitution and international legal instruments.

Article 28 I paragraph (2) of the 1945 Constitution provides a firm constitutional basis²² for analyzing *dui' Pappenre* practices from the perspective of human rights law by affirming the right of everyone to be free from discriminatory treatment on any basis. In the context of *dui' Pappenre*, this article requires a critical evaluation of the practice to ensure that it does not create discrimination based on economic status, social class, or other factors.²³ The principle of non-discrimination guaranteed by this article also obliges states to take active steps in preventing and addressing potential discrimination that may arise from this practice.^{24,25} Furthermore, this article emphasizes the importance of maintaining human equality and dignity in the implementation of *dui' Pappenre* and the universality of the principle of non-

²⁰ Syahrudin Nawi, *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*, 5th ed. (Makassar: PT.Umitoha Ukhuwah Grafika, 2017).

²¹ Budi Juliardi et al., *Metode Penelitian Hukum* (CV. Gita Lentera, 2023).

²² *Vide* Pasal 28I ayat (2) Undang-Undang Dasar 1945

²³ In relation to the practice of *Dui' Pappenre*, this article is an important basis for assessing whether the tradition causes discrimination, for example on the basis of economic status, social class, or other factors. If the determination of *Dui' Pappenre* makes it difficult for a person to marry just because he is economically incapable, then it can be considered a violation of the principle of equality of rights and justice guaranteed by the constitution. Therefore, the practice of *Dui' Pappenre* needs to be critically evaluated so that its implementation does not cause injustice or discrimination, and everyone still has the same opportunity to form a family without economic or social barriers

²⁴ Ag.gov.au, "Rights of Equality and Non-Discrimination Public Sector Guidance Sheet," ag.gov.au, n.d.

²⁵ Habib Sulthon Asnawi et al., *Dinamika Hukum Perkawinan Di Indonesia: Tinjauan Hukum Keluarga Islam Terhadap Legalitas Perkawinan Kepercayaan Penghayat*, ed. M.S.I. Dr. M. Nurdin Zuhdi, S.Th.I. (Yogyakarta: Bildung, 2022).

discrimination, which must be applied in various aspects.

As such, any attempt to reconstruct or regulate the practice of *dui' Papenre* must carefully consider the aspects of non-discrimination, equality, and the protection of human dignity as guaranteed by the constitution to ensure that this practice is in line with fundamental human rights principles. Meanwhile, Article 3 of Law No. 39 of 1999 concerning Human Rights affirms the fundamental principle of equality and human dignity inherent from birth.²⁶ In the context of the practice of *dui' Papenre*, this article provides a strong legal basis for evaluating whether the practice aligns with the principles of equality and non-discrimination. When *dui' Papenre* is set in an amount that is too high or disproportionate to the economic ability of the male party, it can create discrimination based on economic status. It violates the principle of equality guaranteed by law.

This kind of practice can be considered contrary to the spirit of the article because it creates artificial barriers in forming families and marriages, which in turn can threaten the dignity and dignity of the individuals involved.²⁷ Therefore, this article requires a critical review of the practice of *dui' Papenre* to ensure that its implementation does not create inequality or discrimination contrary to human rights principles and to ensure that every individual, regardless of economic status, has an equal opportunity to realize his or her fundamental rights, including the right to form a family.²⁸

The right to form a family, as guaranteed in Article 28 B paragraph (1) of the 1945 Constitution, guarantees the right of everyone to form a family and continue the offspring through legal marriage, which has significant implications,²⁹ in the context of the practice of *Dui' Papenre*. When the amount of *dui' Papenre* is set at an unattainable amount, it can create substantial obstacles for couples to realize their constitutional right to form a family. This practice can be considered contrary to the spirit of human rights protection guaranteed by the state, as it effectively restricts access to marriage institutions based on economic ability. This not only violates the principles of equality and non-discrimination but also has the potential to disrupt social cohesion and community stability.

Therefore, the interpretation and implementation of Pasal 28B ayat (1) UUD 1945 In the context of *Dui' Papenre*, there is a balance between respect for cultural traditions and the fulfilment of the constitutional right of citizens to form a family. It emphasizes the need for regulation or reconstruction of *dui' Papenre* practices that consider aspects of accessibility and proportionality so that they do not become an obstacle to realizing fundamental rights

²⁶ *Vide* Pasal 3 Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia

²⁷ Moh. Ali Wafa, "Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam," *AHKAM Jurnal Ilmu Syariah* 17, no. 2 (2017): 30, <http://journal.uinjkt.ac.id/index.php/ahkam/index>.

²⁸ Practices such as *Dui' Papenre*, which requires a large amount of dowry or wedding fees, are actually contrary to the spirit of the article in the law that wants to protect everyone's right to form a family. Why is that? Because this customary rule can be an artificial barrier for someone who wants to get married, especially for those whose economic conditions are less fortunate.

²⁹ Dioba Savana and Sobirin Malian, "Tinjauan Yuridis Hukuman Kebiri Perspektif Perlindungan Hak Asasi Manusia Tentang Hak Memiliki Keturunan Dan Hak Hidup Berkeluarga," *Ahmad Dahlan Legal Perspective* 3, no. 1 (2023): 27-46, <https://doi.org/https://doi.org/10.12928/adlp.v3i1.7280>.

guaranteed by the constitution.

Identifying aspects of *dui' Papenre* that potentially violate human rights includes several things. First, determining the amount without considering the economic ability of the male side can be considered a form of economic exploitation. Second, using *dui' Papenre* to measure social status can create discrimination and unhealthy social stratification. Third, social pressure and negative stigma for those unable to meet the required number of *dui' Papenre* can violate one's right to dignity and honour.³⁰

To reconstruct the *dui' Papenre* concept, it is important to consider the principles of proportionality and fairness. Article 28J paragraph (2) of the 1945 Constitution states that in exercising his rights and freedoms, every person is obliged to submit to the restrictions established by law with the sole intention of ensuring recognition and respect for the rights and freedoms of others and meeting fair demands following moral considerations, religious values, security, and public order in a democratic society.³¹ This article allows for restrictions on individual rights and freedoms, including in customary practices such as *dui' Papenre*, as long as such restrictions are established by law and aim to ensure recognition and respect for the rights and freedoms of others. In the context of *dui' Papenre*, this practice's regulation must have a transparent and legitimate legal basis. It must balance the right to carry out traditions and not to be unduly burdened by customary demands.

Furthermore, this article emphasizes the importance of considering moral aspects, religious values, security, and public order in a democratic society when restricting rights. In the reconstruction of the concept of *dui' Papenre*, this implies that the process must pay attention to the moral and religious values adopted by the community and their impact on social security and order. Phrases "dalam suatu masyarakat demokratis" also emphasized the need for community participation in formulating policies and regulations related to this practice. Thus, Article 28 J paragraph (2) of the 1945 Constitution provide a comprehensive framework for the proportional and equitable reconstruction of *Dui' Papenre* while respecting traditional values and democratic principles.³²

The reconstruction of the concept of *dui' Papenre* can be done by setting a reasonable maximum limit through local regulations, taking into account the socio-economic conditions

³⁰ The practice of *Dui' Papenre* that does not consider justice and humanity can cause people to feel exploited, discriminated against, and lose their self-esteem. Therefore, it is important to revisit these traditions in order to still respect basic human rights, such as justice, equality, and the protection of the dignity of each individual

³¹ *Vide* Pasal 28 j ayat (2) Undang-Undang Dasar 1945

³² The *Dui' Papenre* tradition is a cultural heritage of the Bugis people and has long been an essential part of social order, customary law, and collective identity. Born as a conflict resolution mechanism that prioritizes harmony, respect, and communal solidarity, this tradition not only has historical value but also has philosophical meaning that emphasizes justice, responsibility, moral values, and religious norms. In the context of a modern democratic society, its existence remains relevant because it aligns with the principles of Article 28J paragraph (2) of the 1945 Constitution, which requires that restrictions on citizens' rights must take into account morals, religious values, security, and public order. The *Dui' Papenre* reconstruction process prioritizes community participation so that it can adapt to current developments without abandoning the essence of local wisdom. This flexibility ensures its sustainability as a means of resolving problems that integrates the preservation of traditional values with respect for citizens' rights, while simultaneously supporting social order and harmony in the modern era.

of the local community. This aligns with Pasal 6 Undang-Undang No. 39 Tahun, 1999, which states that in enforcing human rights, differences and needs in customary law, societies must be considered and protected by law, society, and government.³³ This article at least provides a strong legal basis for the reconstruction of the concept of *dui' Papenre* in a way that respects the distinctiveness of local customs while maintaining the principles of human rights. This article recognizes the importance of paying attention to and protecting differences and needs in customary law communities, which, in the context of *dui' Papenre*, can be implemented by determining reasonable maximum limits through local regulations. This approach allows for flexibility in accommodating the socio-economic conditions of local communities while providing legal protection against potential human rights violations.

Educating the public about the true meaning of *dui' Papenre* and the importance of respecting human rights in customary practices is also a crucial step. This can be done through legal counselling and socialization programs involving traditional leaders, religious leaders, and local governments. The goal is to create a shared understanding of balancing tradition with human rights principles.

Emphasizing the symbolic value of *dui' Papenre* rather than its nominal value can be an alternative to preserving the cultural essence of this tradition without violating human rights principles. This can be done by encouraging people to appreciate the philosophical and spiritual meaning of *dui' Papenre*, not just the material aspect.

Establishing a customary mediation institution that can help resolve disputes related to *dui' Papenre* by considering human rights must also be considered. This institution can bridge customary law and human rights principles, ensuring that conflict resolution is carried out fairly and humanely.

Integrating human rights values into the customary law system is an important step in the reconstruction of the concept of *dui' Papenre*. This is in line with the spirit of Pasal 28I ayat (3) UUD 1945, which states that traditional communities' cultural identity and rights are respected in line with the development of the times and civilization. Provide an important constitutional framework for balancing the preservation of cultural identity and the rights of traditional societies with the demands of the times and civilizations, including human rights principles. In the context of *dui' Papenre*, this article provides legitimacy to maintain the practice as a cultural heritage but also requires adjustments to align with contemporary human rights standards.

This approach allows for the reconstruction of the concept of *dui' Papenre* that respects its traditional roots while adapting it to the values of equality, non-discrimination and human dignity. Thus, this article encourages the creation of harmonization between cultural preservation and human rights enforcement, allowing the practice of *dui' Papenre* to remain relevant and accepted in modern society. Implementing this article in policies and regulations related to *dui' Papenre* may include efforts to reinterpret the meaning and function of the practice to reflect the values of Bugis culture but not contradict the principles of human rights

³³ *Vide* Pasal 6 Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia

guaranteed by the constitution and international law.

3.2. Harmonization of Customary Law, National Law, and Human Rights Principles in the Context of *Dui' Papenre*

The harmonization of customary law, national law, and human rights principles in the context of *dui' Papenre* is a complex effort that requires a multidisciplinary and comprehensive approach. *Dui' Papenre*, as an integral element of Bugis marriage customs, reflects local cultural values that have been rooted for centuries. However, this practice must be reviewed in a modern state of law with an established national legal system and a commitment to international human rights standards to ensure its alignment with broader and universal legal principles.

An analysis of the gaps between these three legal systems reveals several potential areas of conflict that require special attention. The customary laws governing *dui' Papenre* are often based on uncoded oral traditions and hereditary practices. In contrast, Indonesia's national law does not explicitly regulate this practice, as reflected in the Undang-Undang Perkawinan.³⁴ On the other hand, the human rights principles guaranteed in the 1945 Constitution and international instruments such as the Universal Declaration of Human Rights (UDHR) emphasize equality and non-discrimination, which can clash with the practice of *dui' Papenre*, which is sometimes considered burdensome for men or creates economic barriers to marriage.

The gap between customary law and national law in the context of *dui' Papenre* is further complicated by the legal pluralism embraced by Indonesia. Article 18B paragraph (2) of the 1945 Constitution acknowledges customary law's existence, but this recognition is conditional and limited. Clause "sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia" creating ambiguity that requires deep legal interpretation. Interpreting clauses in Pasal 18B ayat (2) UUD 1945 is crucial in harmonizing customary law and national law, primarily related to the practice of *dui' Papenre*.

An in-depth juridical study is needed to determine several important aspects: first, the criteria "still alive", which requires clear indicators to assess the relevance of customary practices; Second, the parameter of conformity with "community development" to measure the harmony of customary practices with contemporary social dynamics; third, the limits of alignment with the "principles of the Republic of Indonesia" to ensure that the recognition of customary law does not conflict with state sovereignty; and fourth, the regulatory mechanism in the proper law to accommodate the diversity of customary law. A straightforward interpretation of these aspects will provide a strong foundation for efforts to harmonize the practice of *dui' Papenre* with the national legal system and human rights principles.

Constitutional Court Decision Number 31/PUU-V/2007 has given an interpretation that recognizing the unity of customary law communities must be based on the reality that lives in society (living law). However, its implementation in the context of *dui' Papenre* still requires further study, especially regarding potential clashes with human rights principles such as

³⁴ *Vide* Undang-Undang No. 1 Tahun 1974 tentang Perkawinan

equality and non-discrimination.³⁵

This harmonization is becoming even more urgent considering that the practice of *dui' Papenre* directly intersects with citizens' fundamental rights, such as the right to form a guaranteed family in Article 28B paragraph (1) of the 1945 Constitution. A comprehensive and multidisciplinary approach involving constitutional law, legal anthropology, and legal sociology is needed to formulate solutions that accommodate legal pluralism without sacrificing constitutional principles and human rights.

This identification requires harmonization covering several critical aspects. First, there needs to be legal clarity regarding the status of *dui' Papenre* in the national legal system, including formal recognition and limitations on its application.³⁶ Second, the mechanism for determining the amount of *dui' Papenre* must be reviewed to ensure that there is no element of coercion, economic exploitation, or violation of the principle of equality. Third, there needs to be assurance that this practice does not violate the principles of gender equality and the right to form a family as guaranteed in the Pasal 28B UUD 1945 and various international human rights instruments that Indonesia has ratified.³⁷

In the effort to harmonize, relevant jurisprudence, such as Constitutional Court Decision Number 31/PUU-V/2007, Which emphasizes that customary law has a constitutional position in the national legal system, must be considered.^{38,39} This ruling provides a legal basis to accommodate customary practices such as *dui' Papenre*, but such practices must be in line with constitutional and human rights principles. An in-depth analysis of this ruling and its implications for *dui' Papenre* practice could provide a clearer legal framework for harmonization.

Concrete recommendations for legal reforms that can accommodate the practice of *dui' Papenre* more equitably and humanely include several strategic steps.⁴⁰ First, there needs to be a codification of customary law related to *dui' Papenre*, which contains clear limits on the maximum amount that can be requested, taking into account the socio-economic conditions of the local community. Second is establishing a customary mediation institution involving

³⁵ Putusan Mahkamah Konstitusi Nomor 31/PUU-V/2007 emphasizes that the recognition of customary law communities and their traditions, such as the practice of *Dui' Papenre*, must be based on customs that are truly living in the community (living law). However, the implementation of these traditions must still be further studied so as not to conflict with human rights principles, especially related to equality and non-discrimination. In other words, even though the custom is recognized, its implementation must still pay attention to the value of justice and must not cause injustice or discrimination for anyone.

³⁶ Mitra Pratiwi, "Hukum Uang Panai' Pada Pernikahan Masyarakat Bugis Sidenreng Rappang Sulawesi Selatan Dalam Perspektif Wahbah Zuhaili Dan Abdurrahman Al-Juzairi" (Universitas Islam Negeri Sunan Ampel, 2023).

³⁷ Wari Martha Kambu, "Tinjauan Yuridis Tentang Hak Asasi Manusia Berdasarkan Pasal 28d Ayat 3 Undang-Undang Dasar 1945," *Lex Et Societatis* 9, no. 1 (2021).

³⁸ Zayanti Mandasari, "Politik Hukum Pengaturan Masyarakat Hukum Adat (Studi Putusan Mahkamah Konstitusi)," *Jurnal Hukum Ius Quia Iustum* 21, no. 2 (2014): 227–50.

³⁹ Faiq Tobroni, "Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35/PUU-X/2012)," *Jurnal Konstitusi* 10, no. 3 (2013): 461–82.

⁴⁰ Yusna Zaidah, "Dinamika Penentuan Dui Papenre'dalam Perkawinan Adat Suku Bugis Di Kalimantan Selatan: Dampak Terhadap Kehormatan Keluarga," *Interdisciplinary Explorations in Research Journal* 2, no. 1 (2024): 168–94, <https://doi.org/https://doi.org/10.62976/ierj.v2i1.430>.

customary leaders, the government, and legal experts to resolve disputes related to *dui' Papenre* with transparent and fair procedures. Third, the integration of human rights education in the customary curriculum aims to increase public awareness of fundamental rights and their implications for customary practices.

Strategies to bridge the gap between traditions, national laws, and international human rights standards can begin with a dialogical approach that involves all stakeholders.⁴¹ Discussion forums involving indigenous leaders, legal academics, human rights activists, and government representatives must be held regularly to discuss issues related to *dui' Papenre* and find acceptable solutions for all parties. This approach aligns with the principle of public participation in forming laws stipulated in the Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan.⁴²

It is also important to consider the principles in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognized, which Indonesia recognizes. The Declaration emphasizes respecting Indigenous rights while upholding international human rights standards. In the context of *dui' Papenre*, this means seeking a balance between the preservation of tradition and the protection of individual rights. Comparative analysis of other countries that have successfully harmonized customary practices with human rights standards can provide valuable insights into this process.⁴³

The implementation of this harmonization can be carried out through the formation of regional regulations (Perda) that specifically regulate *dui' Papenre*. This Regional Regulation must contain provisions that ensure transparency in determining the amount of *dui' Papenre*, dispute resolution mechanisms, and sanctions for parties who violate the provisions. This Regional Regulation must involve the active participation of indigenous peoples to ensure its legitimacy by the principles of good governance and participatory democracy.⁴⁴

In addition, the role of state institutions such as National Human Rights Commission and

⁴¹ Ontario Human Rights Commission (OHRC), "To Dream Together: Indigenous Peoples and Human Rights Dialogue Report," Ontario Human Rights Commission (OHRC), 2018, <https://www3.ohrc.on.ca/en/dream-together-indigenous-peoples-and-human-rights-dialogue-report>.

⁴² *Vide* Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan

⁴³ Jamil Ddamulira Mujuzi, "Reconciling Customary Law and Cultural Practices with Human Rights in Uganda," *Obiter* 41, no. 2 (2020): 239–56.

⁴⁴ The regulation of *Dui' Papenre* through Regional Regulations (Perda) is a concrete form of legal representation and recognition of the customs that live and develop in the community. By being implemented in a regional regulation, the *Dui' Papenre* mechanism is not only culturally recognized but also gains formal legitimacy as part of a regional legal system that respects legal pluralism. Thus, the regional regulation serves as a vehicle for local characteristics and specific conditions, including customary law as a living law that reflects the spirit and identity of the local community. The urgency of establishing *Dui' Papenre* in a regional regulation lies in the need for transparency in determining the amount, settlement mechanisms, and clear sanctions, so that the community receives certainty, justice, and protection in implementing this tradition. However, the formation of a regional regulation cannot change the substance and meaning of customary law; instead, the formulation process must involve the active participation of indigenous communities so that the norms and procedures contained truly represent local desires and values. Thus, the existence of the regional regulation becomes an instrument for protecting and preserving the *Dui' Papenre* tradition, ensuring that the custom remains alive in harmony with the principles of good governance and participatory democracy, without losing the essence and authenticity of the customary law itself.

National Commission on Violence Against Women needs to be strengthened in this context. These institutions can act as mediators and supervisors to ensure that the practice of *dui' Papenre* does not violate human rights principles. They can also provide recommendations to the government on the steps that need to be taken for legal harmonization based on in-depth research and analysis of the impact of *Dui's Papenre* practices on the fulfilment of human rights.

The harmonization of customary law, national law, and human rights principles in the context of *dui' Papenre* must be understood as a continuous and dynamic process. Periodic evaluations of implementing policies and regulations related to *dui' Papenre* must be carried out to ensure their effectiveness in bridging the gap between the three legal systems. With a holistic and sustainable approach, the practice of *dui' Papenre* can continue to be preserved as a valuable cultural heritage while still in line with national legal principles and international human rights standards.^{45 46}

This harmonization is important to maintain a balance between tradition and modernity and ensure that customary law can contribute positively to the development of Indonesia's more inclusive and equitable national legal system. This effort requires a long-term commitment from various stakeholders, including the government, Indigenous leaders, academics, and the wider community, to continuously evaluate and adjust *dui' Papenre* practices to remain relevant and by the values of justice and human rights developing in Indonesia's dynamic society.

4. CONCLUSION

The urgency to reconstruct the practice of *Dui' Papenre* in Bugis traditional marriage lies in the effort to align it with human rights principles, particularly the right to form a family and the principle of non-discrimination as guaranteed by the 1945 Constitution of Indonesia, without diminishing the cultural essence and living customary law of the community. As a tradition with historical and philosophical significance, *Dui' Papenre* should be regulated proportionally and transparently through the harmonization of customary law, national law, and human rights principles, including the enactment of Regional Regulations that set reasonable limits on the amount, provide dispute resolution mechanisms, and establish customary mediation bodies. This process must involve the active participation of indigenous communities and be accompanied by public education programs emphasizing the symbolic meaning of the tradition over its material value, ensuring that *Dui' Papenre* remains a relevant cultural heritage in the modern era while upholding equality, justice, and the protection of human dignity.

⁴⁵ Amri Panahatan Sihotang and Ruetaitip Chansrakaeo, "Integration Between Customary Law and National Law: An Effort to Build a Pancasila Prismatic Law State," *SASI* 29, no. 2 (2023): 248–58, <https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/1304>.

⁴⁶ World Intellectual Property Organization (WIPO), And The, and United Nations University (UNU), "The Role of Customary Law in Access and Benefit-Sharing and Traditional Knowledge Governance: Perspectives From Andean and Pacific Island Countries," 2008, https://www.wipo.int/documents/1314251/3305698/customary_law_abs_tk.pdf.

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