

# EQUALITY (KAFA'AH) IN MARRIAGE: A DIALOGUE OF ISLAMIC, STATE, AND CUSTOMARY LAW IN INDONESIA

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## EQUALITY (KAFA'AH) IN MARRIAGE: A DIALOGUE OF ISLAMIC, STATE, AND CUSTOMARY LAW IN INDONESIA

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### ABSTRACT

**Purpose:** Religious (Islamic), state and customary laws in Indonesia offer the same concept with different indicators. Islam offers the aspects of religion, descent, wealth, and beauty as elements to be considered. The state adds the aspect of age as a physical and psychological consideration for couples facing marriage. Customary law accommodates all of them by requiring the requirement of customary social strata in marriage. The praxis dialogue of the three laws above in Sasak tribal society is the object of study in this research.

**Theoretical Framework:** Equality in marriage is a religious teaching, some of which is also constructed in local cultural values. The meeting of religious and cultural values sometimes does not go hand in hand, and gets resistance from the community. Conflict theory, social change, and Islamic methodology are used as basic theories.

**Method:** The research used qualitative descriptive-analytical method, by observing the words, actions, and feelings of the informants in the research. Documentation and interviews were used to find the deepest things object of the research.

**Results:** The study found that the equality required in the Sasak traditional marriage system aims to maintain descendants well and intact. However, the social strata requirements imposed in Sasak society have an impact on injustice on the female side and ignore the value of equality between humans. Marriage with mandatory equal conditions in social strata is widely ignored and resisted by the community. Social changes that cover the education system, economy, politics, communication, culture, technology, and other elements of novelty are a trigger for dialogue and resistance to the mandatory requirement of equality in social strata in Sasak traditional marriage. Religion and the state safeguard the legal needs of the community based on equality, justice and partiality.

**Conclusions:** In principle, both religious law (Islam), customary law and state law aims to protect citizens and help them to achieve the goals of marriage. However, the meeting of the local values of a particular culture with the universal values of religion and the state is often not in harmony. Local culture values are still restrained by the old culture (feudalism), while religious and state laws tend to be open. With the opening of access to education, the mindset of the community has changed, which is also in line with the accelerated development program in Lombok.

**Keywords:** equality, marriage, custom, religion, state.

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## IGUALDAD (KAFA'AH) EN EL MATRIMONIO: UN DIÁLOGO ENTRE EL DERECHO ISLÁMICO, ESTATAL Y CONSUETUDINARIO EN INDONESIA

### RESUMO

**Propósito:** Las normas religiosas (islámicas), estatales y consuetudinarias de Indonesia ofrecen el mismo concepto con distintos indicadores. El Islam ofrece los aspectos de la religión, la ascendencia, la riqueza y la belleza como elementos a tener en cuenta. El Estado añade el aspecto de la edad como consideración física y psicológica para las parejas que se enfrentan al matrimonio. El derecho consuetudinario da cabida a todos ellos exigiendo el requisito del estrato social consuetudinario en el matrimonio. El diálogo praxis de las tres leyes mencionadas en la sociedad tribal sasak es el objeto de estudio de esta investigación.

**Quadro Teórico:** La equiparación en el matrimonio es una enseñanza religiosa, parte de la cual también se construye en los valores culturales locales. El encuentro de los valores religiosos y culturales a veces no va de la mano, y obtiene la resistencia de la comunidad. Como teorías básicas se utilizan la teoría del conflicto, el cambio social y la metodología islámica. Patrimônio cultural alusivo refere-se aos aspectos não materiais da cultura, por exemplo, tradições orais, artes cênicas, exercícios sociais, rituais e festivais, que são transmitidos de geração em geração.

**Método:** La investigación utilizó el método cualitativo descriptivo-analítico, mediante la observación de las palabras, acciones y sentimientos de los informantes en la investigación. La documentación y las entrevistas se utilizaron para encontrar las cosas más profundas objeto de la investigación.

**Resultados:** El estudio constató que la equidad exigida en el sistema matrimonial tradicional sasak pretende mantener bien e intacta la descendencia. Sin embargo, los requisitos de estrato social impuestos en la sociedad sasak inciden en la injusticia del lado femenino e ignoran el valor de la equidad entre los seres humanos. El matrimonio con condiciones obligatorias de equidad en los estratos sociales es ampliamente ignorado y resistido por la comunidad. Los cambios sociales que abarcan el sistema educativo, la economía, la política, la comunicación, la cultura, la tecnología y otros elementos de novedad son un detonante para el diálogo y la resistencia al requisito obligatorio de igualdad en los estratos sociales en el matrimonio tradicional sasak. La religión y el Estado salvaguardan las necesidades legales de la comunidad basándose en la equidad, la justicia y la parcialidad. Patrimônio Cultural Ilusivo, também conhecido como Patrimônio Cultural Ilusivo, é uma forma distinta dos recursos culturais e históricos mais importantes do mundo. Sua importância para a história do mundo, cultura, artes, belas artes e estética cultural é muito importante e única. É também uma capital inestimável da cultura e da arte da sociedade humana.

**Conclusões:** En principio, tanto el derecho religioso (islam) como el consuetudinario y el estatal pretenden proteger a los ciudadanos y ayudarles a alcanzar los objetivos del matrimonio. Sin embargo, el encuentro de los valores locales de una determinada cultura con los valores universales de la religión y el Estado no suele estar en armonía. Los valores de la cultura local siguen estando limitados por la vieja cultura (feudalismo), mientras que las leyes religiosas y estatales tienden a ser abiertas. Con la apertura del acceso a la educación, la mentalidad de la comunidad ha cambiado, lo que también está en consonancia con el programa de desarrollo acelerado de Lombok. En muchos casos, el conocimiento tradicional encontrado en una cultura particular apoya a la autoidentidad de grupos étnicos e permite que los miembros de esos grupos adopten las características distintivas de su cultura. Nesta revisão de pesquisa, discutiremos o desenvolvimento de alimentos culturais e inventivos a partir da perspectiva do "patrimônio cultural ambíguo" herdado de estudos anteriores de pesquisa.



**Palavras-chave:** igualdad, matrimonio, costumbre, religión, estado.

## 1 INTRODUCTION

Indonesia, with its diverse ethnicities and cultures, places marriage as sacred. The sacredness of marriage is codified in customary law, bound and preserved in cultural activities and traditions. Each tribe in Indonesia has unique rules, traditions and cultures to ensure the marriage as a social, sacred and holy ceremony (Salahuddin, 2005). With such concepts, the customary law of marriage in Indonesian tribes covers spiritual aspects related to their ancestors (local tribal religions in Indonesia), social, kinship systems, and cultural events (Sabri et al., 2023).

The social system of indigenous peoples in Indonesia recognises social strata, a kind of caste in the Hindu tradition. In some customary laws in Indonesia, social strata are considered as indicators that ensure household happiness in marriage (Sopyan & Asyraf, 2018). The aristocratic class was encouraged to marry among themselves, and the proletarian class was advised to marry according to their social class in society (Pektra & Buduroh, 2021). Social class equality in marriage is important in Indonesia's indigenous marriage traditions. This provision is made to maintain the quality and consistency of offspring as a logical consequence of marriage (Aini, 2014). In Indonesian tribal traditions, the risk of offences in this area is to be expelled from the kinship system (Salahuddin et al., 2023).

Preserving offspring is one of the main objectives of marriage. In the Islamic tradition, the religion of the majority of Indonesians today, this is known as *hifz al-nasl* (Salahuddin & Abdillah, 2022). The Islamic concept of kafa'ah regulates equality in marriage. However, the indicator of equality in Islam is different from the customary system of tribes in Indonesia. This is where the conflict and tension between customary law and Islamic law in the praxis of Indonesian marriage.

In the above context, the state is present to regulate marriage in society (Febrianty et al., 2023). State law on marriage in Indonesia is regulated in Law No. 1 of 1974. The legal substance in the law is substantively linear with the provisions of Islamic law. The above law is strengthened by the presence of the compilation of Islamic law which specifically regulates marriages between Muslims in Indonesia, and becomes a praxis reference in the practice of community marriage (Haller, 1981; Sumardi & Hanum, 2019; Wieringa, 2013).



In the community's praxis, the three laws mentioned above apply simultaneously in the marital context. The state's involvement in community marriages is as an administrative registrar of marriage, and provides solutions (legal certainty) for conflicts that may occur in marriage (Nisa, 2018). This is where the dialogue between customary law, Islamic law, and state law in marriage in Indonesia begins. Social change, community mobility, education, social status, economy, and others are the influential factors in this dialogue (Haller, 1981; Sumardi & Hanum, 2019; Wieringa, 2013). In the marriage of Indonesian indigenous people today, three laws apply at once, all of which must be fulfilled for social, religious and state recognition. Although, in practice, the community prioritises customary law over religious and state law. Customary law is a requirement to continue towards the process of religious and state law. Here is the beginning of the dialogue on the pluralism of marriage law in Indonesian society.

In the study of legal pluralism as described above, it is limited to the case of equality in marriage in the Sasak tribe, Lombok. In addition to the Bugis tribe, cases of conflict between customary law and Islamic law in terms of equality of social strata in marriage that often occur are in the Sasak tribe. On the other hand, the Sasak people are known to be very fanatic of Islamic norms, but on the other hand, they are strongly bound by the traditions of their ancestors. In certain cases, the two cannot be reconciled; this is the focus of this research.

## 2 THEORITICAL FRAMEWORK

Social stratification is the grouping of people in a social system based on a person's duties, functions, and roles in society. Religion, economics, heredity, gender, education, and politics are variables that can affect a person's social strata in the society (Geertz, 1993; Salahuddin & Amini, 2022; Saunders, 1990; Syafruddin et al., 2023). The social stratification shapes the social class in the society, and often creates injustice and triggers a conflict (Haddon & Wu, 2023; Sumardi & Hanum, 2019). Marx concluded that social class conflicts in society are initiated by the distribution of production resources in society, which are classified into bourgeois and proletarian groups (Haddon & Wu, 2023). Weber, affirming Marx's thesis, concluded that economics is the main axis of social stratification in society (Weber, 2013).

In general, social stratification in society is divided into upper class, middle class, and lower class. Each class has specific tasks and roles that enable the continuity of



society. For community members who are at the lower and middle class levels, they must fight hard to increase their level to be able enter the higher social stratification. Common and often used instruments such as education, economics, and politics (Weber, 1979, 2013). These are the main capital and assets to benefit from the many diverse human needs (Weber, 2002).

In the traditional system of indigenous people in Indonesia, Geertz classifies people into three social strata; *priyai*, *santri*, and *abangan* (Geertz & Clifford, 1993). *Priyai* is a group of people who live in the scope of the royal palace, both with high and low status. Each person in this *priyai* group is a noble and titled according to their lineage and position. They live within a limited sphere, with rigid rules and manners. *Santri* are urban city groups with hard lives. It is usually a group that adheres to religious teachings (Islam) and develops communities around Javanese urban mosques. *Abangan* is a group of people who live in the countryside as farmers (Geertz, 1960).

The social stratification above is also brought into the private sphere of society; the institution of marriage. Social stratification becomes the main consideration in determining marriage partners. Violation of this tradition, in some indigenous tribes in Indonesia, has the effect of breaking blood relations, family relations, and kinship (Eleanora & Supriyanto, 2020; Supriyanto & Eleanora, 2020). Meanwhile, in Islamic doctrine, the religion to which the majority of indigenous people in Indonesia adhere, offers four aspects in the consideration of prospective husbands/wives, namely; religion, descent, economy, and beauty (al-Zuhaily, 2007; Hakim, 2022). From the four elements that exist, Islam prioritises religion as the main aspect considered in selecting a prospective husband/wife (Bidayati et al., 2019; Jones et al., 2011; Jumino, 2019; Laksana et al., 2020; Sardjuningsih, 2020; Zainuddin et al., 2022). A person's religiosity is a strong fortress to build a harmonious household and avoid divorce in the household (Salahuddin, 2012; Wardatun & Smith, 2020). Religious harmony and faith in the household is a central element in the Islamic marriage system (Afghan & Wiqar, 2007; Nasir, 2020). Marriage law in the Indonesian legal system requires the age of marriage as a variable of equality in marriage. The age of marriage is concerned with physical and psychological readiness to establish a household life in the context of continuing offspring and a better generation (Yenti et al., 2023).

The whole of the laws and provisions in the social system in Indonesia in principle complement each other. However, at a certain point there are conflicts and tensions that



lead to social disunity and conflict in society (Widjaja, 2023). The state as an administrator is a mediator who bridges the various laws that apply in society (Febrianty et al., 2023). (Bono, 2018; Nasir, 2020; Sarmini et al., 2018; Wieringa, 2013; Yenti et al., 2023). Global issues such as democracy, justice, gender, equality, economics, politics, and others are forcing all elements of the law to adapt to change (Beyer & Beaman, 2007; Friedman, 1992; Fukuyama, 1992; Huntington, 1997; Teehan, 2010).

### 3 METHODOLOGY

This research is a qualitative-analytical research. The informants' words, actions, and feelings are the main data analysed and elaborated with the theories and scientific concepts related to the research theme. The method of data collection is based on documentation, interviews, and observation. The documentation that was needed in this research was several customary rules related to marriage, pictures and videos related to the marriage. Interviews were conducted with marriage actors from different social strata, religious leaders, traditional leaders, and government officials in the field of marriage administration. Informants were selected randomly using the snowball technique. Data were analysed by categorising and sorting the data according to the research needs. The validity of the data findings was carried out by expert discussion, triangulation, and peer discussion.

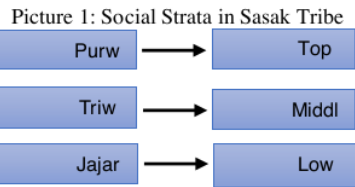
### 4 RESULTS AND DISCUSSION

#### 4.1 SOCIAL STARATA IN SASAK SOCIETY

The Sasak tribe is a tribe that lives on the island of Lombok. Almost 80% of the people who live on the island today are Sasak. The others are Chinese, Arab, Malay, Javanese, Bali, Bima, and Bugis. The Sasak people are spread evenly across all areas of Lombok island; villages, towns, mountains and coasts. Thus the traditions, culture, and customary laws that apply on the island of Lombok are Sasak customary laws. The Sasak customary law is morally binding for members of the Sasak community. Penalties for violating customary provisions are fines, ostracisation, and banished from the community.

In general, the social strata of Sasak society are divided into three groups, namely *purwangsa*, *triwangsa*, and *jajar karang*. *Purwangsa* is a closed social stratum, and it is determined through lineage. The *purwangsa* social class is of noble descent who are close

to the descendants of the king in Lombok. With a kinship system that is very thick to patriarchy, the recognised lineage is from the male side. Men in this lineage have special rights in many aspects, including in marriage (Haji munir, 2022; Munir, 2023). *Purwangsa* noble descendants in Sasak society are given the titles *gede*, *raden*, and *lalu* for men, *dende*, *lale*, and *baiq* for women. (Sumardi & Hanum, 2019). While the title for the *triwangsa* is *bape*, and the *jajar karang* is commonly addressed as *amaq* and *inaq*.



*Triwangsa* is the middle group in the Sasak community system, which consists of groups of religious leaders, businessmen, academics, and other professions. The existence of this group at the economic, intellectual, network and power levels is sometimes better than the *purwangsa* class, but in some cases the core cannot shift the existence of *purwangsa* as the elite class in society. At this level, social strata are very open and everyone can reach this strata according to their own fighting power. Social communication between *purwangsa* and *triwangsa* groups is very open, because there is a symbiotic-mutualist relationship between the two in social activities.

*Jajar karang* is the lowest group in the Sasak social system, and usually lacks access to good education, without sufficient control of economic assets, and far from the centre of power. In terms of descent, this group is from ordinary society, and usually lives as farmers and fishermen. Some of them devote themselves to the *purwangsa* group as a refuge, both economic and social protection.

Global communication, open access to education, liberating religious teachings, open social relations systems, and other issues that develop in society make the Sasak community social system blurred. Marriage, social mobility, and economy have an impact on weakening the social strata system in society. The role of community elites from the *purwangsa* group has been replaced by *tuan guru* (religious leaders) and political leaders. The presence of new groups in the Sasak social system is due to the changes in the system at the national level which have an impact on the existence of local power.

The presence of this new group force in society does not change the existing social





stratification, but it affects the shifting traditional role of the Sasak elite (*purwangsa*) in community activities. The *purwangsa* group only plays a role in formal customary events, which is a position that cannot be replaced by others (Salahuddin et al., 2023). In marriage, social resistance is also carried out, which also has an impact on the legal dialogue that binds Sasak society; customary law, Islamic law, and state law.

#### 4.2 SOCIAL STRATIFICATION IN SASAK TRADITIONAL MARRIAGE

Marriage for the Sasak community is a social deal, which involves traditional, religious and government leaders. The completion of customary administration takes precedence over religious and governmental affairs. Therefore, religious and government officials follow the customary process in principle, and only when the customary process has been completed may religious and state officials become involved to complete the marriage procession and administration.

Hilman noted that basically the Sasak traditional marriage tradition has high noble values which include the value of mutual cooperation, kinship, social solidarity, religion, culture, and spirituality (Hilman et al., 2022; Suyadi et al., 2021; Syamsuddin, 2021). The above values are in line with the purpose of marriage in Islamic law and state law. But the local values of the Sasak community contradicted the universal values that exist in Islamic law and state law (Ridho & Ritonga, 2023). Local values of Sasak customs often clash with Islamic law and state law. For example, while Islamic law offers a marriage process to seek the acceptance of the prospective wife and her family to the marriage, customary law practices use *selarian*; that is, taking the woman away from her parents' home to marry her. The negotiation of the price of the marriage process in the marriage proposal process is finalised before the marriage. *Selarian* processes, on the other hand, are completed with some force, and are often deadlocked because there is no agreement, which results in a delay of the marriage. National law limits the minimum age of marriage, but customary law does not. In the case of such an *selarian*, both sides of the family have agreed to marry the couple, so the underage couple must be married. The state in this context must fulfil the will of society, with a few notable exceptions (Hilman et al., 2022; Nisa, 2018). Neither Islamic law nor state law restricts the existence of differences in social strata, but customary law restricts marriage between couples of different social strata. In this context, customary law and state law continue to run together with all the consequences that must be borne by the prospective bride and groom.



The description above shows that the obstacles faced by prospective brides in tribal communities in getting married include cultural, social, religious and state obstacles. All of these are risks of the legal pluralism that prevails in society. There is a lot of dialogue, while still considering the existence of each law that recognized by the community (Sabri et al., 2023, 2022; Salahuddin et al., 2023). State administrative requirements, religious rituals, and cultural-traditional processions must be fulfilled in whole. Lack of elements in these three can result in the postponement and cancellation of the marriage.

One of the cultural barriers that is faced by the Sasak community is the marriage of couples from different strata in society. Sasak customary rules state that the purwangse group can only marry fellow purwangse groups. Men from the purwangse group can marry women from the triwangsa and jajar karang groups, but women from the purwangse group cannot marry men from the triwangsa and jajar karang groups. The risk for women who defy this rule is the breaking of family ties, and relinquishing all rights attached to them both materially and socially. As a result, many Sasak women from the purwangsa group do not marry because of this customary rule. This model of marriage law is criticised by feminist scholars who do not position men and women equally in the social system (Eleanora et al., 2020; Haddon et al., 2023; Kenschaft et al., 2016; Supriyanto et al., 2020; Wieringa, 2013). But along with social change, access to information and knowledge, and growing economic resources, many Sasak women from the purwangsa group resisted with all the risks inherent in it, including inheritance rights (Munir, 2023). They marry men outside of their class.

#### 4.3 DIFFERENT STRATA MARRIAGE: SUSTAIN AND CHANGE OF CUSTOMARY LAW

Women who assume the social and economic risks of marrying in different strata among the Sasak purwangsa sometimes feel worried about their future. However, many women fight against the marriage system that requires the same social strata. From the observation results, it can be mapped out the customary treatments and the shifting that occurred in Sasak customary marriage law as follows:

- a. Women have no right to have a noble title attached to their name, are expelled from the village, are cut off from kinship relations, and are not able to receive inheritance rights. Several informants aged between 60-68 years old told sad



stories about the days leading up to their marriages, most of whom were married in the early 1980s. On the day of the wedding, family disputes broke out and became the gossip of the village. Mothers cried and relatives sulked to cancel the marriage. The father was unable to defend himself because he was bound by customary rules. Running away from home with the man of their choice at the time was a dilemma. They got married without their parents and family present, just her and her husband's family. Since then they have not had any communication with their families. There are some relatives who come to visit in a secretive way just to release longing and inform them about the condition of the family. When their father and mother passed away, they did not dare to come to mourn. They were truly alienated from their families and did not get inheritance rights from their mothers and fathers. They are the victims of cultural resistance. The interviewed women were mostly well-educated, and were already earning a steady income as government employees or had well-established businesses. Others had no income, but were supported by their husbands and families. Thus they do not have material dependency on their families.

b. Several female informants aged between 45 and 50 years old who got married in the late 1999-2003 era told us about their complicated marriages. One informant told of her father dragging her back home. Some people from her husband's village surrounded her father and asked him to let her go. Her father finally let her go and she returned to her future husband's house. Her father came home upset, perhaps sad because of his daughter's defiance of custom. As described above, the punishment for women was that they could not have noble titles in their names, were excluded from kinship relations, expelled from the village and denied inheritance rights. However, in their late years, some of these women were called by their fathers to come back to the village with the customary administrators' permission, to take care of their fathers. Some of them have inheritance rights from their mothers and fathers. By receiving inheritance rights, it means that the kinship relationship that had been broken is recognised again.

c. Women from purwanga groups who married lower social strata than themselves in 2010 and above no longer suffer the sad story as narrated above. Sasak customary law has begun to dialogue with the changes that surround it. Even Sasak people who live in urban areas are very open to differences in social

strata in marriage. The customary punishment for women who marry different social strata at this time is only not being allowed to pin a noble title on their name. The husband and his family are required to prepare a plot of land of at least 300 M2 to guarantee the future of his daughter/wife.

d. At present, the applicability of Sasak customary law regarding equality of social strata in marriage is no longer a problem. The only risk is losing the noble title. Especially in urban areas, noble identity no longer has much influence. However, in rural areas, the customary law as narrated before still applies, even though it is not as strict as before. This shifting and dialogue of Sasak customary law can be seen in the following table:

Table 1: Shifting and Dialogue of Sasak Customary Marriage Laws

<i>Year Range</i>	<i>Type of punishment</i>	<i>Shifting and Dialogue</i>
1980-2000	<ul style="list-style-type: none"> <li>• No use of noble titles</li> <li>• Broken kinship relationship</li> <li>• Expelled from village</li> <li>• No inheritance rights</li> </ul>	Original Sasak customary law
2001-2010	<ul style="list-style-type: none"> <li>• No use of noble titles</li> <li>• Long-term kinship breakup (20-30 years)</li> <li>• Expelled from village</li> </ul>	Noble women (purwangsa) who married men of lower strata began to receive inheritance
2010-2022	<ul style="list-style-type: none"> <li>• No use of noble titles</li> <li>• Broken kinship in a relatively short time (2-3 years)</li> <li>• Expelled from the village for a short period of time (2-3 years)</li> <li>• The husband is required to provide a plot of land of at least 300 M2 for his wife.</li> </ul>	Aristocratic women (purwangsa) who married men of lower rank began to receive inheritance, were re-recognized in the kinship system and customs. The husband was required to pay special obligations to his wife.
Today's	<ul style="list-style-type: none"> <li>• No noble titles allowed</li> </ul>	Today, most Sasak people do not care much about social strata in marriage. Especially in urban communities.

The shifting of Sasak marriage customary law was basically initiated by the opening of access to education for women spearheaded by the Nahdlatul Wathan school. This educational institution, initiated by Maulana Sheikh Zainuddin Abdul Majid, has spread in almost all corners of the village on Lombok Island. The mission of Nahdlatul Wathan Education is to educate the Sasak community with religious and scientific education. The liberating doctrine voiced by Nahdlatul Wathan school has a strong influence on their students, who in the future are the generation that fills the life of the community. In addition, the rapid development programme in Lombok in the last 20 years



has forced the Sasak tribe to think openly, and adapt to change. Technology, communication, science, changes in people's mindset, and many other things have forced customary marriage law to dialogue with reality (Van Truong, 2023).

## 5 CONCLUSION

In principle, both religious law (Islam), customary law and state law aims to protect citizens and help them to achieve the goals of marriage. However, the meeting of the local values of a particular culture with the universal values of religion and the state is often not in harmony. Local culture values are still restrained by the old culture (feudalism), while religious and state laws tend to be open. With the opening of access to education, the mindset of the community has changed, which is also in line with the accelerated development program in Lombok, education, religion, and national development programs are triggers for dialogue of customary law, Islamic law, and national law, which has the impact of a shift in the paradigm, pattern, and legal form of Sasak customary marriage into an open and egalitarian system.



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