



## **Protection of Women's Rights in the Practice of Referencing Outside the Office of Religious Affairs: A Case Study in Tatengger Village**

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### **Abstract**

*The practice of referencing outside the Office of Religious Affairs (KUA) is still found in communities that maintain customary mechanisms, although the Compilation of Islamic Law (KHI) regulates the recording of references as part of the certainty of marriage law. Empirical studies of the practice and its implications for the protection of women's rights are still limited. This study aims to analyze the practice of referencing outside KUA in Tatengger Village, the factors behind it, and its implications for the protection of women's rights in the perspective of maslahah and legal pluralism. The research uses a qualitative approach with a case study design. Data were obtained through in-depth interviews with three informants, observations, and document studies, then analyzed using the Miles, Huberman, and Saldaña models. The results of the study show that the referral is carried out through the help of traditional and religious leaders without registration in the KUA because the iddah period has ended. This practice is influenced by divorce outside the Religious Court, low legal awareness, cost and time considerations, and limited access to KUA. This condition causes women's position to tend to be passive in decision-making and increases vulnerability to the certainty of rights, especially alimony, housing, and economic rights. The study concluded that referrals outside the KUA are not only administrative issues, but also related to the protection of women's rights and the relationship between state law, Islamic law, and customary law. These findings reinforce the importance of harmonizing the three legal systems to realize legal certainty and protection in the practice of referencing.*

**Keywords:** Public Opinion; Social Media; Viral Legal Cases; Law Enforcement

### **Abstrak**

Praktik rujuk di luar Kantor Urusan Agama (KUA) masih ditemukan dalam masyarakat yang mempertahankan mekanisme adat, meskipun Kompilasi Hukum Islam (KHI) mengatur pencatatan rujuk sebagai bagian dari kepastian hukum perkawinan. Kajian empiris mengenai praktik tersebut dan implikasinya terhadap perlindungan hak perempuan masih terbatas. Penelitian ini bertujuan menganalisis praktik rujuk di luar KUA di Desa Tatengger, faktor yang melatarbelakanginya, serta implikasinya terhadap perlindungan hak perempuan dalam perspektif maslahah dan pluralisme hukum. Penelitian menggunakan pendekatan kualitatif dengan desain studi kasus. Data diperoleh melalui wawancara mendalam dengan tiga informan, observasi, dan studi dokumen, kemudian dianalisis menggunakan model Miles, Huberman, dan Saldaña. Hasil penelitian menunjukkan bahwa rujuk dilakukan melalui bantuan tokoh adat dan agama tanpa pencatatan di KUA karena masa iddah telah berakhir. Praktik tersebut dipengaruhi oleh perceraian di luar Pengadilan Agama, rendahnya kesadaran hukum, pertimbangan biaya dan waktu, serta keterbatasan akses terhadap

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KUA. Kondisi ini menyebabkan posisi perempuan cenderung pasif dalam pengambilan keputusan dan meningkatkan kerentanan terhadap kepastian hak, terutama nafkah, tempat tinggal, dan hak ekonomi. Penelitian menyimpulkan bahwa rujuk di luar KUA bukan semata persoalan administratif, tetapi juga berkaitan dengan perlindungan hak perempuan dan relasi antara hukum negara, hukum Islam, dan hukum adat. Temuan ini memperkuat pentingnya harmonisasi ketiga sistem hukum tersebut untuk mewujudkan kepastian dan perlindungan hukum dalam praktik rujuk.

**Kata Kunci:** Protection of Women's Rights; Refer Outside the KUA; Compilation of Islamic Law

## Introduction

Marriage in Islamic law is not only understood as a relationship between a man and a woman, but also as an institution that has legal consequences for the status, position, and rights of each party. In the perspective of Islamic marriage law, marriage is a bond of birth and mind that aims to form a peaceful and sustainable family life.<sup>1</sup> One of the mechanisms provided by Islamic law to re-establish the marital bond after divorce is referral. Refer provides an opportunity for divorced couples to resume domestic life as long as they meet the applicable legal provisions. According to al-Shafi'i, as quoted by Tihami and Sahrani, refereing is an effort to restore the legal status of marriage as husband and wife after the occurrence of talaq raj'i during the iddah period.<sup>2</sup>

In the context of Islamic family law in Indonesia, the referral mechanism is not only related to the relationship between husband and wife, but also to legal certainty through recording. The Compilation of Islamic Law (KHI) Article 10 emphasizes that reference can only be proven by a citation of the Reference Registration Book issued by the Marriage Registrar. This provision is reaffirmed in Article 166 of the KHI which stipulates that the reference must be proven by a citation of the Reference Registration Book.<sup>3</sup> Such recording is important because it provides certainty about marital status and becomes the basis for proof if in the future questions arise regarding the rights and obligations of the parties.<sup>4</sup> Thus, refer-recording is not solely an administrative procedure, but also has the function of legal protection for women.

The dimension of women's protection in the KHI is increasingly seen in Article 164 which gives women who are in the period of iddah talak raj'i to object to the will of reference from their former husbands in front of the Marriage Registrar witnessed by two witnesses.<sup>5</sup>

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<sup>1</sup> Kaharuddin, *The Values of the Philosophy of Marriage According to Islamic Marriage Law and the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage* (Jakarta: Mitra Wacana Media, 2015), 2.

<sup>2</sup> H. M. A. Tihami dan S. Sahrani, *Fiqh munakahat: Kajian fiqh nikah lengkap* (Rajawali Pers, 2019), 327.

<sup>3</sup> Pagar, *Association of Laws and Regulations of Religious Justice in Indonesia* (Medan: Perdana Publishing, 2010), 172–102.

<sup>4</sup> A. Syarifuddin, *Islamic Marriage Law in Indonesia: Between Munakahat Fiqh and Marriage Law* (Jakarta: Kencana, 2006), 338.

<sup>5</sup> Pagar, *Association of Laws and Regulations of Religious Courts in Indonesia*, 172–202.

This provision shows an important development in Indonesian Islamic family law because it provides space for women to express their will and objections in the referral process. The study of Muhibbulloh, Khoiroh, and Darojad shows that the discussion of the wife's rights in reference needs to be placed in the framework of women's protection and benefit, not only in the framework of the husband's authority as is often found in the construction of classical fiqh.<sup>6</sup>

The problem arises when the reference mechanism that has been determined in state law is confronted with the legal practice that is developing in society. In communities that still maintain customary authorities and religious leaders, the resolution of family problems is not always pursued through formal state institutions. This condition shows a meeting between state law, understanding of Islamic law of the community, and customary norms. The question is not only whether the mechanism is socially acceptable, but whether it is able to provide legal certainty and protection, especially for women who are in vulnerable positions after divorce. The context was found in the community of Tatengger Village, Angkola Muara Tais District, South Tapanuli Regency. Tatengger Village is a combination of Bonan Dolok and Simaninggir MT Hamlets which have been administratively under one village government since October 2008. However, the two hamlets still maintain their respective *parhutaon* traditional activities because they have *their own Bona Bulu* or traditional houses. This condition shows that traditional structures and practices still have an important position in the social life of the Tatengger community.<sup>7</sup> This social character becomes relevant when it is associated with family law practice, including referral mechanisms.

Based on field research, it was found that cases of couples who made referrals outside the KUA involving traditional leaders and religious leaders. The couple separated after a divorce in 2017 and then wished to get back together in 2019. Based on the informant's statement, because the previous divorce was carried out outside the Religious Court and the iddah period had ended, the process of remarrying together was carried out through remarriage with the help of traditional and religious leaders, not through the referral recording mechanism at the KUA.<sup>8</sup> This practice shows the difference between formal legal mechanisms and social mechanisms accepted by the community in resolving marriage problems. This issue is important from the perspective of protecting women's rights. When the referral is not formally recorded, women may face difficulties in proving their marital

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<sup>6</sup> M. Z. Muhibbulloh dkk., "Hak istri dalam rujuk menurut fikih empat mazhab dan Kompilasi Hukum Islam (perspektif maqasid al-syari'ah)," *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 2 (2021): 185–205, <https://doi.org/10.51675/jaksya.v2i2.168>.

<sup>7</sup> Suryadi, "Interview with Religious Leaders in Tatengger Village, Angkola Muara Tais District, South Tapanuli Regency," May 23, 2025.

<sup>8</sup> Mawar, "Interview with a Couple Who Carried Out Remarriage in Tatengger Village, Angkola Muara Tais District, South Tapanuli Regency," May 23, 2025.

status and claiming the rights that arise from the marital relationship. Studies on women's rights after divorce show that legal certainty has an important position in guaranteeing women's rights, including economic rights and other rights arising from marital relationships.<sup>9</sup> In the context of this study, the absence of evidence of reference recording has the potential to weaken the position of women if there are disputes regarding alimony, residence, marital status, and other economic rights.

The urgency of the problem does not mean that the practice of referring outside the KUA can be immediately declared as a dominant phenomenon throughout South Tapanuli. Until this study was conducted, there was no official statistical data available that specifically showed the number of referral practices outside KUA in South Tapanuli Regency. Therefore, this study is not intended to measure the prevalence of these practices quantitatively, but to understand in depth how referral practices outside the KUA take place in a community that still has a strong customary structure and how these practices have an impact on the protection of women's rights. Such an approach is important because family law issues in society cannot always be explained only through the existence of formal norms, but also need to pay attention to the social structure and legal mechanisms that live in society.

A number of previous studies have discussed the issue of reference and protection of women's rights, but they have a different focus. Fakhrurrazi and Basyar, for example, examine the references in KHI through the perspective of *maslahah mursalah*. The research is important in showing normative arguments regarding reference recording, but has not examined how these provisions are applied in indigenous practices.<sup>10</sup> Meanwhile, Syaf conducted a comparative study on the concept of referencing according to the imam of the madhhab and KHI. The study provides an understanding of the conceptual differences between fiqh and positive law, but does not elaborate on the empirical problems when people choose a referral mechanism outside of formal institutions.<sup>11</sup> The research of Muhibbulloh, Khoiroh, and Darojad discusses the rights of wives in referencing according to the fiqh of the four schools and KHI with the perspective of *maqāṣid al-syarī'ah*. This research provides an important foundation for women's rights in the referral process, but the focus is still on normative and conceptual studies.<sup>12</sup> Another study by Hasanah and

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<sup>9</sup> H. Hamzah, Oyo Sunaryo Mukhlas, and Usep Saepullah, "WOMEN'S RIGHTS AFTER DIVORCE IN POSITIVE LAW AND ISLAMIC LAW," *Usroh: Journal of Islamic Family Law* 6, no. 1 (June 2022): 62–80, <https://doi.org/10.19109/ujhki.v6i1.12239>.

<sup>10</sup> R. Fakhrurrazi and Fahmi Basyar, "Refer in the Compilation of Islamic Law (KHI) The Perspective of Maslahah Mursalah," *Istidlal: Journal of Islamic Economics and Law* 9, no. 1 (2025): 45–56.

<sup>11</sup> Moh Najib Syaf, "Comparative Study of the Concept of Reference According to Imam Madzhab and Compilation of Islamic Law," *Darussalam Journal: Journal of Islamic Legal Education, Communication and Thought* 15, no. 2 (2024): 91–113.

<sup>12</sup> Muhibbulloh, Khoiroh, and Darojad, "The Rights of Wives in Reference According to the Fiqh of the Four Madhhabs and the Compilation of Islamic Law (Maqasid al-Sharia'ah Perspective)," 185–205.

Ramadi on the practice of divorce outside the Religious Court in Medan City shows the importance of examining the practice of family law outside of formal institutions. However, the study focused on out-of-court divorce from a criminological perspective and urban community context, rather than the practice of referral in indigenous peoples and its implications for the protection of women's rights.<sup>13</sup>

Thus, previous research tends to place the issue of reference in three main areas, namely normative analysis of KHI and fiqh, the study of the rights of wives in the perspective of Islamic law, and the study of family law practices outside formal institutions. A limitation that has not been touched much is how the provisions for the protection of women in Islamic family law operate when the practice of referencies takes place through customary mechanisms and does not obtain formal registration. In other words, there is still a gap between normative studies on the protection of women's rights and the empirical reality of societies that use customary mechanisms as a means of resolving family problems.

This study fills the gap by focusing on the practice of referrals outside KUA in Tatengger Village and its consequences for the protection of women's rights. The novelty of the research does not solely lie in the object of reference outside the KUA, but in the effort to connect three dimensions simultaneously, namely customary mechanisms in resolving marriage problems, the obligation to record according to KHI, and the protection of women's rights. Using the perspective of *maslahah* and legal pluralism, this study not only assesses referential practices from the legal-formal aspect, but also analyzes how the meeting between state law, Islamic law, and customary law can result in protection or vulnerability for women.

On the basis of this gap, this research is directed to answer two main questions: first, how the practice of referencing outside the KUA is carried out in the community of Tatengger Village and what factors are behind it; second, how the practice has implications for the protection of women's rights and how the relationship between customary mechanisms and formal legal provisions can be harmonized. This study aims to analyze the practice of referencing outside the KUA in the context of the Tatengger indigenous people, identify the factors that cause the community to choose the mechanism, and analyze its implications for the protection of women's rights based on the perspective of *maslahah* and legal pluralism.

The selection of Tatengger Village as the location of the research is based on its socio-customary character which allows the research to concretely observe the meeting between formal law and customary mechanisms in family matters. The existence of *parhutaon* and *Bona Bulu* that are still maintained shows that the custom still has a position in the social

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<sup>13</sup> Uswatun Hasanah and Bagus Ramadi, "A Criminological Review of the Practice of Divorce Outside the Religious Court in Medan City," *Familia: Journal of Family Law* 6, no. 1 (2025): 85–107.

structure of the community.<sup>14</sup> Therefore, Tatengger Village is a relevant context to examine how the protection of women's rights is negotiated when state law and customary mechanisms meet in the practice of referencing. Theoretically, this research is expected to contribute to the development of Islamic family law, especially in enriching the study of women's rights protection in the implementation of Islamic law in indigenous peoples. This research also expands the application of *maslahah* theory al-Syātibī in the context of contemporary family law. Practically, the results of this study can be considered for government administrators, especially the Ministry of Religion and Religious Courts, in formulating policies that are responsive to the socio-cultural characteristics of indigenous peoples while ensuring the protection of women's rights. For traditional and religious leaders, this research provides an understanding of the importance of harmonization between customary values and formal legal provisions for the protection of women.

This study uses the theory of *maslahah* and the theory of legal pluralism as theoretical foundations. The theory of *maslahah* was developed by *ushul fiqh* scholars, including al-Syātibī in the book *al-Muwāfaqāt fī Uṣūl al-Syarī'ah*. According to al-Syātibī, *maslahah* is everything that maintains the purpose of the *shari'ah* which consists of the maintenance of the soul, religion, intellect, *nasab*, and property. Al-Syātibī divides the *maslahah* into three levels<sup>15</sup>: *Al-maṣlahah al-d arūriyyah*: the benefits related to the basic needs of mankind in this world and the hereafter. The removal of this level will result in damage and chaos in human life. *Al-maṣlahah al-h ājiyyah*: the benefits needed to perfect the basic benefits, in the form of relief to maintain and maintain basic human needs. *Al-maṣlahah al-taḥsīniyyah*: complementary benefits in the form of flexibility that complement previous benefits.

In the context of this study, the recording of references at KUA as mandated by KHI can be categorized as *al-maṣlahah al-d arūriyyah*, because it is related to the maintenance of *nasab* (descendants/families) and property (women's economic rights) which are basic needs in the marriage system. The practice of referring outside the KUA that is not administratively recorded causes *mafsadah* (harm) in the form of the unprotected rights of women and the non-fulfillment of state administrative order. The theory of legal pluralism, as developed by John Griffiths and Sally Engle Merry, emphasizes that in a society various legal systems, both state and customary law, can operate simultaneously. Griffiths emphasized that legal pluralism is not just the coexistence of various legal systems, but dynamic interactions that can result in conflict, co-optation, or harmonization.<sup>16</sup> Merry

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<sup>14</sup> Suryadi, "Interview with Religious Leaders in Tatengger Village, Angkola Muara Tais District, South Tapanuli Regency."

<sup>15</sup> Abu Ishaq Ibrahim Ash-Syatibi, *Al-Muwāfaqat Fi Ushul al-Fiqh*, Juz II (Beirut: Al-Maktabah al-Tijariyah, n.d.), 8–38.

<sup>16</sup> J. Griffiths, "What is legal pluralism?," *Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.

further explained that legal pluralism occurs when various legal systems with different sources of authority operate within a single jurisdiction.<sup>17</sup>

In the context of this study, there is a parallel operation between state law (KHI) and customary law (*parhutaon*) in regulating referencing, in the Tatengger community. Customary law still has strong legitimacy in the eyes of the community, so when there is a conflict between the two, people tend to choose customary law that is closer to their daily lives. This theory helps to understand why formal legal protection for women through reference recording is difficult to implement in indigenous peoples.

## Method

This study uses a qualitative approach with an instrumental case study design to understand the practice of referencing outside the Office of Religious Affairs (KUA) in Tatengger Village, Angkola Muara Tais District, South Tapanuli Regency. The research will be carried out in May 2025.<sup>18</sup> The location was chosen purposively because the community still maintains the traditional structure of Parhutaon and Bona Bulu. Informants were selected purposively based on their involvement and knowledge of referral practices.<sup>19</sup> The research involved three informants, namely Mawar and Kodir as a couple who made references outside the KUA and Suryadi as religious leaders. Data were obtained through in-depth interviews, non-participatory observations, and document studies. The documents analyzed include the Compilation of Islamic Law (KHI) as well as literature on Islamic family law, protection of women's rights, masalah, and legal pluralism.<sup>20</sup>

The data was analyzed using the Miles, Huberman, and Saldaña models through three stages, namely data condensation, data presentation, and conclusion drawing and verification. The interview data was transcribed and coded based on four themes, namely the practice of referencing outside the KUA, the factors behind it, the implications for women's rights, and legal harmonization. Masalah perspectives and legal pluralism are used to interpret the research findings. The validity of the data is carried out through source triangulation and member checking. Triangulation is carried out by comparing the results of interviews, observations, and legal documents, while member checking is carried out by confirming the results of interpretation to informants.<sup>21</sup> The research also applies ethical principles through informant consent and the use of pseudonyms to maintain identity confidentiality.

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<sup>17</sup> S. E. Merry, "Legal pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96, <https://doi.org/10.2307/3053701>.

<sup>18</sup> L. J. Moleong, *Metodologi penelitian kualitatif*, ed. oleh Revisi (PT Remaja Rosdakarya, 2018).

<sup>19</sup> Griffiths, "What is legal pluralism?," 1–55.

<sup>20</sup> R. K. Yin, *Case study research and applications: Design and methods*, ed. oleh 6 (SAGE Publications, 2018), 15.

<sup>21</sup> Merry, "Legal pluralism," 869–96.

## Results and Discussion

### Practice of Referring Outside KUA in Tatengger Village

Tatengger Village is an area that still maintains social structures and customary practices in people's lives. Administratively, this village was formed from the merger of Bonan Dolok and Simaninggir MT Hamlets since October 2008. Even though they are under one village government, the two hamlets still carry out *their respective parhutaon* activities because they have *their own Bona Bulu* or traditional houses. This condition shows that customary institutions still have an important position in the social life of the Tatengger community. In this context, it was found that the practice of referring was not carried out through the registration procedure at KUA. The case studied is the couple Mawar and Kodir. The two separated in 2017 and then had a desire to return to build a household in 2019. Based on Suryadi's information as a religious leader, because the time that has passed has exceeded the iddah period, the process of getting back together is carried out through remarriage with the help of traditional leaders and religious leaders. Thus, socially, the community interprets this action as an effort to rebuild the marital relationship. However, administratively, this practice is different from the referral mechanism regulated in the Compilation of Islamic Law (KHI). KHI stipulates that the reference must be proven by a citation of the Reference Registration Book issued by the Marriage Registrar. In the case of Mawar and Kodir, the formal mechanism was not taken. Referrals are carried out through socio-customary mechanisms by involving traditional and religious leaders who have legitimacy in the lives of local communities.

The findings show that the practice of referencing in Tatengger Village cannot be understood only as non-compliance with administrative procedures. There is a social mechanism that makes people consider settlement through traditional and religious leaders as a closer, easier, and acceptable way. In other words, there is a difference between social legitimacy and administrative legitimacy. The practice acquires legitimacy from the social environment of society, but does not acquire the evidentiary force as determined by formal law. These findings reinforce the perspective of legal pluralism which sees that in a single social space more than one normative system can operate. Griffiths explains that legal pluralism not only indicates the existence of several legal systems simultaneously, but also the dynamic relationships between them.<sup>22</sup> Merry also points out that different legal systems with different sources of legitimacy can operate within the same social domain.<sup>23</sup> In Tatengger's case, state law through the KHI runs side by side with customary mechanisms and the authority of religious leaders. The problem then is not just the existence of the two systems, but which system is more dominant when the community has to make practical decisions.

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<sup>22</sup> Griffiths, "What is legal pluralism?," 1–55.

<sup>23</sup> Merry, "Legal pluralism," 869–96.



In the case studied, the customary mechanisms and authority of religious leaders became closer to the couple's daily lives than formal institutional procedures. This shows that the applicability of formal law in society is not only determined by the existence of rules, but also by accessibility, public knowledge, and social legitimacy of the institutions that implement them.

#### **Factors Behind the Practice of Referral Outside KUA**

The results of interviews and data analysis showed four main factors behind the practice of referencing outside the KUA, namely divorce outside the Religious Court, low legal awareness, cost and time considerations, and limited geographical access. These four factors do not stand alone, but are interconnected and form the conditions that drive couples to choose informal mechanisms. The first factor is the divorce that was previously carried out outside the Religious Court. In the case of Mawar and Kodir, the divorce was not pursued through the formal mechanism of the Religious Court, so it did not result in the recording of divorce as the state law mechanism. These conditions then affect the way couples understand their relationship status and the choice to get back together. Legally, KHI places the Religious Court as an important part of the divorce process. Article 115 of the KHI affirms that divorce is carried out in front of the Religious Court after unsuccessful peace efforts.<sup>24</sup> Thus, an out-of-court divorce raises administrative problems that then continue when the couple wants to rebuild the household. These findings show a chain of legal problems. When the divorce does not receive formal registration, the issue of the couple's legal status does not stop at the divorce stage, but can continue to the issue of referral or remarriage. Thus, the practice of referring outside the KUA in this case is part of a broader problem of low integration of society with formal family law mechanisms.

For women, this condition has greater consequences because the lack of documentation can make it difficult to prove when disputes arise regarding rights in marriage. The research of Hamzah, Mukhlas, and Saepullah shows that post-divorce legal certainty has an important relationship with women's ability to obtain their rights based on positive law and Islamic law.<sup>25</sup> The second factor is the low understanding of the legal consequences of divorce and unrecorded referrals. Research data show that informants understand the problem mainly in terms of ease of getting back together, while administrative consequences and long-term protection of rights have not been the main considerations.

The findings are important because they show that the issue of legal awareness cannot be understood simply as a lack of individual knowledge. In this case, the limitation of legal

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<sup>24</sup> Pagar, *Association of Laws and Regulations of Religious Justice in Indonesia*, 172 and 202.

<sup>25</sup> Hamzah, Mukhlas, and Saepullah, "WOMEN'S POST-DIVORCE RIGHTS IN POSITIVE LAW AND ISLAMIC LAW," 62–80.

knowledge is intertwined with the limited access of women to information. Research data shows that women like Mawar do not have adequate access to information about the legal consequences of unrecorded referrals. Thus, low legal awareness has a gender dimension. When information about legal rights and consequences is not distributed evenly, those with weaker social positions are more likely to be vulnerable. This explains why the protection that has been normatively provided by KHI has not automatically resulted in effective protection at the community level. The research of Muhibbulloh, Khoiroh, and Darojad emphasizes the importance of considering the rights of the wife in the referral process so that the implementation of the referral is in line with the purpose of *maqāṣid al-syarī'ah*. The study mainly provides normative arguments, while the findings in Tatengger show the problem of implementation: normative protection will not be effective if women do not obtain adequate knowledge and space in the referral process.<sup>26</sup>

The third factor is the perception of the cost and length of the formal process. The informant explained that the process in formal institutions is perceived to require cost and time and is considered more complicated than resolving through local community mechanisms. Economic and time factors are important because people tend to choose the mechanism that is considered the easiest and cheapest. The customary mechanism through religious leaders and community leaders allows couples to resolve marital problems in their own social environment. However, such short-term convenience is not always synonymous with long-term legal protection. From the perspective of women's protection, cost and time cannot be seen as a neutral issue. When women have more limited economic access or mobility, the cost of transportation and the time required to access formal institutions can be a more severe barrier. Thus, informal mechanisms can be a socially and economically easier option, but at the same time can increase women's legal vulnerability. These findings show that there is a trade-off between ease of access and legal certainty. Communities gain ease in resolving family problems through local mechanisms, but lose some of the protection benefits provided by formal registration.

The fourth factor is the distance and conditions of access to the KUA and the Religious Court. Observation and interview data show that geographical and infrastructure conditions are one of the obstacles to the community in obtaining formal legal services. This condition causes religious leaders and traditional leaders in the community to be an easier choice to reach. This means that the people's choice of informal mechanisms cannot be fully understood as a rejection of state law. Some of these choices are also a response to limited access to formal institutions. These findings are important for distinguishing between non-compliance with the law and the inability to access the law. If communities do not have adequate access to formal institutions, then an approach that only emphasizes

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<sup>26</sup> Muhibbulloh, Khoiroh, and Darojad, "The Rights of Wives in Reference According to the Fiqh of the Four Madhhabs and the Compilation of Islamic Law (Maqasid al-Sharia'ah Perspective)," 185–205.

administrative obligations without improving accessibility is potentially ineffective. These four factors form a circuit: out-of-court divorces result in record-keeping issues; limited knowledge makes the legal consequences not fully understood; cost and time make formal mechanisms less attractive; while distance strengthens the choice of local mechanisms. Thus, the practice of referring outside the KUA in this case is the result of the interaction between legal, knowledge, economic, and accessibility factors.

### **Implications of Referral Practices Outside KUA on the Protection of Women's Rights**

The most important finding of this study lies in the consequences of referencing practices outside KUA on women's positions. The research data shows that the decision to get back together is more dominant on the husband's side, while the referral process takes place with the involvement of traditional and religious leaders who are also dominated by male authorities. In this structure, women do not get the formal space given by KHI to express objections to the will of reference. These conditions need to be read in relation to Article 164 of the KHI. This provision gives the right to women who are in the period of *iddah* talak raj'i to raise an objection to the will of her ex-husband in front of the Marriage Registrar witnessed by two witnesses.<sup>27</sup>^6 This provision shows the development of women's protection in Indonesian Islamic family law.

However, in the case of Tatengger, the mechanism was not used. Women are in a social mechanism where decisions and arrangements are more on the part of men. Therefore, the problem is not only the absence of recording, but also the loss of women's formal space to assert their will and interests. This shows that referencing has a broader function than administrative documentation. Registration provides an institutional space for women to gain recognition of status and strengthen their legal position in the event of disputes. From the perspective of rights protection, the absence of registration documents can weaken women's position in demanding rights related to marital relationships. Suryadi explained that if the reference is not officially recorded, there is a possibility that the husband will deny the rights that the wife should receive. These findings are in line with the study of Hamzah, Mukhlas, and Saepullah which places legal certainty as an important element in the protection of women's rights after divorce.<sup>^7</sup> Thus, the issue of reference outside the KUA is not only concerned with the validity or not of an administrative procedure, but also with the ability of the law to provide evidence when women must defend their rights.

In the perspective of al-Syātibī, *masalahah* is related to the maintenance of the purposes of the Shari'ah, including the maintenance of nasab and property. Al-Syātibī divides *the masalahah* into *darūriyyah*, *ḥājīyyah*, and *taḥsīniyyah*.<sup>28</sup> If that perspective is applied to

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<sup>27</sup> Pagar, *Association of Laws and Regulations of Religious Courts in Indonesia*, 172–202.

<sup>28</sup> Ash-Syatibi, *Al-Muwafaqat Fi Ushul al-Fiqh*, Juz II, 8–38.

Tatengger's case, the practice of returning together through local mechanisms has certain advantages. Couples find it easy to rebuild family relationships without having to go through a formal process that they perceive as difficult, expensive, and time-consuming. From the social side, the mechanism also maintains family relationships and solves problems through institutions that are trusted by the community.

However, this convenience does not automatically result in *maslahah* in a broader sense. Reference recording has the function of protecting marital status and economic rights. Therefore, recording can be understood as part of *al-maṣlaḥah al-d arūriyyah* because it relates to the maintenance of nasab and property.<sup>29</sup> Thus, there is a paradox in the practice that is discovered. Local mechanisms provide social convenience in the short term, but the absence of records can result in legal harm in the long run. This convenience becomes problematic when the benefits are more felt at the initial settlement stage, while the legal risks are mainly borne by women when disputes occur. In the perspective of *maslahah*, therefore, the problem should not be solved by removing the role of customs, but by ensuring that customary mechanisms do not eliminate fundamental legal protections. Customary mechanisms can still be used as a social space for reconciliation, but formal recording should be positioned as an instrument of protection.

The findings of the study show that the practice of referencing in Tatengger Village takes place in the space of legal pluralism. There are at least three normative sources that interact, namely state law through KHI, understanding of Islamic law of the community, and customary mechanisms carried out through traditional and religious leaders. Legal pluralism according to Griffiths shows the existence of various legal systems in a single social space, while Merry emphasizes that legal pluralism allows various normative systems with different sources of legitimacy to operate simultaneously.<sup>30</sup> In Tatengger's case, the existence of customary law does not eliminate state law, but both operate with different levels of social legitimacy. Empirical findings show that it is easier for people to access customary mechanisms because traditional and religious leaders are close to daily life. On the contrary, the KUA and the Religious Court are in an institutional space that is geographically and procedurally perceived to be more difficult to access. This condition explains why customary law still has the power to work even though there are formal provisions regarding reference recording.

However, legal pluralism in this case also results in problems when norms that have social legitimacy do not provide the same strong protection as formal legal mechanisms. Customary mechanisms can provide social recognition of the couple's relationship, but they do not in themselves provide the necessary administrative evidence in the country's legal system. Therefore, the findings of this study do not support an approach that contradicts

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<sup>29</sup> Ash-Shaatibi, Juz II, 8–38.

<sup>30</sup> lihat Griffiths, "What is legal pluralism?"; Merry, "Legal pluralism."

customary law and state law in a simple way. A more important issue is how to connect the two so that the social legitimacy of indigenous peoples can be maintained without sacrificing women's legal protection.

If the research findings are analyzed as a whole, the practice of referencing outside the KUA in Tatengger Village can be understood as the result of a four-dimensional interaction: incompleteness of legal records, limited legal awareness, economic-time barriers, and geographical limitations, which then take place in customary social structures that give strong legitimacy to male authority. This finding expands on the research of Fakhrurrazi and Basyar which analyzed the reference recording from the perspective of *masalah mursalah*. The research is mainly normative, while this study shows how the problem of recording arises in the practices of indigenous peoples and how the consequences are felt by women.<sup>31</sup> This finding is also different from Syaf's research which compares the concept of reference according to madhhab imams and KHI. If the research focuses on the conceptual differences between schools and positive laws, this research moves on an empirical level by looking at how societies carry out practices again together outside of formal mechanisms.<sup>32</sup>

Similarly, the research of Muhibbulloh, Khoiroh, and Darojad emphasizes the importance of the wife's right in referencing through the perspective of *maqāṣid al-syarī'ah*. Tatengger's research shows the implementation problem of this idea: women's normatively recognized rights are not necessarily effective if the referral mechanism takes place outside of formal institutions and does not provide adequate space for participation to women.<sup>33</sup> Thus, the main contribution of this study is to show that the protection of women's rights in referencing practice does not only depend on the existence of legal norms, but also on the relationship between access to formal institutions, legitimacy of customary mechanisms, legal knowledge, and gender power relations. This is what distinguishes this study from the previous reference study which was more normative. These findings also produce the idea that legal harmonization does not have to be done by eliminating customary mechanisms. On the other hand, traditional and religious leaders can be placed as a liaison between society and formal institutions. The customary mechanism can still function as a social space for reconciliation, while recording in the KUA is a stage that ensures certainty and legal protection.

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<sup>31</sup> Fakhrurrazi and Basyar, "Refer in the Compilation of Islamic Law (KHI) from the Perspective of Masalah Mursalah."

<sup>32</sup> Syaf, "A Comparative Study of the Concept of Reference according to Imam Madzhab and the Compilation of Islamic Law."

<sup>33</sup> Muhibbulloh, Khoiroh, and Darojad, "The Rights of Wives in Referting According to the Fiqh of the Four Madhhabs and the Compilation of Islamic Law (Maqasid al-Shari'ah Perspective)."

In the context of women's protection, it is necessary to ensure that women are given the space to express their consent or objection and to obtain information about the legal consequences of the reference. Thus, harmonization between customary and state law is not just juxtaposed between the two legal systems, but ensures that the meeting of the two results in stronger protection for the vulnerable.

### **Conclusion**

This study shows that the practice of referring outside the Religious Affairs Office (KUA) in Tatengger Village is influenced by legal factors, customs, community understanding, cost, time, and access to formal institutions. Referrals are carried out by involving religious leaders and traditional leaders without official registration at the KUA. This practice provides convenience and social acceptance, but raises the issue of legal certainty, especially for women. The absence of registration can weaken the protection of livelihood rights, residence, and economic rights. From the perspective of *maslahah*, referral through local mechanisms has benefits in restoring family relationships, but it needs to be accompanied by legal certainty and protection of women's rights.

From the perspective of legal pluralism, state law, Islamic law, and customary law run simultaneously in the Tatengger society. Therefore, the harmonization of the three legal systems is needed without eliminating the role of traditional and religious leaders. Traditional and religious leaders can act as a liaison between the community and formal legal institutions, while every reference made through the customary mechanism needs to be directed to obtain registration in the KUA. Thus, social convenience and customary values can still be maintained while providing legal certainty and protection of women's rights.

Based on these findings, the government and the Ministry of Religious Affairs need to increase access and counseling on reference recording, while the Religious Court needs to expand legal services for people who have difficulty accessing formal institutions. Traditional and religious leaders need to encourage the community to record references and provide space for women in decision-making. The public also needs to increase legal awareness about the importance of reference recording. Further research is suggested to expand the location and number of informants, especially women, to obtain a more comprehensive picture of the practice of referencing and protecting women's rights in indigenous peoples.

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