

Divorce under *Adat Iban 1993*: An Empirical Analysis of the Operation of Codified Adat Through a Case Study

Lambat anak Lindong¹, PhD
Grace anak Sumol²

Abstract

Adat Iban 1993 constitutes the first comprehensive codification of native customary law in Sarawak and continues to serve as the principal legal framework governing many aspects of Iban social life, including marriage and divorce. While numerous studies have examined customary law from historical, anthropological and doctrinal perspectives, relatively little attention has been given to how the codified Adat functions when applied to actual disputes. This paper seeks to address that gap by examining the operation of the divorce provisions of *Adat Iban 1993* through an empirical study of proceedings in a Chief's Court involving the dissolution of a long-standing marriage. The proceedings are not analysed for the purpose of evaluating judicial decision-making, but rather as an empirical setting through which the effectiveness, coherence and contemporary relevance of the codified Adat may be assessed. The analysis demonstrates that *Adat Iban 1993* continues to provide an effective normative framework for regulating marital relationships and resolving disputes. At the same time, the proceedings reveal several shortcomings in the present codification, including outdated monetary penalties, ambiguities concerning monogamy and polyandry, and uncertainties arising from the interface between customary law and written law. The paper concludes that periodic legislative review remains essential if codified Adat is to continue fulfilling its social and legal functions within contemporary Iban society.

Keywords: Adat Iban 1993, customary law, divorce, marriage, empirical legal study, native customary law, Iban, Sarawak.

1. Introduction

The codification of customary law represents an important milestone in the legal development of Sarawak's native communities. The earliest of these codifications is *Adat Iban 1993*, which came into force on 1 June 1993.³ As a codified body of customary law declared under State law⁴, *Adat Iban 1993* provides the principal legal framework governing a wide range of social relationships within the Iban community. Its provisions regulate matters relating to settlement patterns, longhouse organisation and management, family relationships, marriage, divorce, inheritance, succession, and various aspects of community life. Beyond its regulatory function, the codification seeks to preserve the values, customs and social institutions that have long

¹ Adat Iban Research Section, Majlis Adat Istiadat Sarawak.

² Adat Iban Research Section, Majlis Adat Istiadat Sarawak.

³ The others are *Adat Bidayuh 1994*, *Adet Kayan-Kenyah 1994*, *Adat Bisaya 2004*, *Adat Lun Bawang 2004*, *Adet Kelabit 2008* and *Adet Penan 2011*.

⁴ *Natives Customs (Declaration) Ordinance, 1996*.

underpinned Iban society⁵ while providing a measure of legal certainty in their administration.

Marriage occupies a central place within the Iban customary legal system. It establishes not only a personal relationship between husband and wife but also creates reciprocal obligations between families, confers rights within the *bilik* family, and reinforces membership within the wider longhouse community.⁶ Consequently, the dissolution of marriage is not regarded merely as the termination of a private relationship. Rather, divorce has broader social implications affecting family responsibilities, community harmony, inheritance, affiliation and the continuing rights and obligations arising under Adat. For these reasons, *Adat Iban 1993* prescribes specific grounds upon which a marriage may be dissolved together with the customary consequences flowing from such dissolution.

Although *Adat Iban 1993* has been in force for more than three decades, relatively few published studies have examined how its provisions operate when applied to actual disputes. Existing literature has tended to focus on the historical development of Iban customary law⁷, its anthropological foundations or its doctrinal content.⁸ Less attention has been devoted to examining how the codified provisions perform when confronted with contemporary social realities. Yet it is through actual proceedings that the practical strengths and limitations of a codified legal system become most apparent. The application of law to real disputes often reveals ambiguities, legislative omissions and changing social circumstances that may not be readily discernible from the statutory text alone.

This paper therefore examines the operation of the divorce provisions of *Adat Iban 1993* through an empirical analysis of proceedings in a Chief's Court⁹ involving the dissolution of an Iban marriage that had effectively broken down many years before formal legal proceedings were commenced. The proceedings provide a valuable

⁵ Gerunsin Lemat. (June 1993). "Adat." Paper Presented at Iban Cultural Seminar II, at Sri Aman.

⁶ See Freeman, D. (1992). *The Iban of Borneo*. Kuala Lumpur: S. Abdul Majeed & Co.

⁷ Gerunsin Lemat. (2020). *Asal Penatai Adat Iban*. Kota Samarahan: Majlis Adat Istiadat Sarawak.

⁸ For example, Benedict Sandin (1980). *Iban Adat and Augury*. Penang: Penerbitan Universiti Sains Malaysia; Jensen, E. (1974). *The Iban and Their Religion*. Oxford: The Clarendon Press.

⁹ The Chief's Court is one of the Native Courts of original jurisdiction under the *Native Courts Ordinance, 1992*. The others are the Headman's Court, The Chief's Superior Court and the District Native Court (s.3).

opportunity to examine the manner in which the codified Adat responds to issues of prolonged desertion, remarriage during the subsistence of an existing marriage, maintenance obligations and the continuing significance of customary sanctions.

The objective of this paper is not to evaluate the conduct of the court or the correctness of its decision. Rather, the proceedings are utilised as an empirical setting through which the operation of the relevant provisions of *Adat Iban 1993* may be examined. The focus throughout remains on the substantive content of the codified Adat and on what the proceedings reveal about its strengths, limitations and continuing relevance within contemporary Iban society. In this respect, the case serves not as an end in itself but as a practical illustration of the manner in which codified Adat law functions when tested against the complexities of everyday life.

Ultimately, this paper¹⁰ argues that *Adat Iban 1993* continues to provide a relatively coherent and resilient framework for regulating marriage and divorce within the Iban community. At the same time, the proceedings expose several areas where the codified provisions would benefit from clarification, updating and legislative refinement. These observations are intended not as criticism of the institutions responsible for administering customary law, but as constructive reflections on the continuing evolution of Adat Iban as a living legal system capable of responding to the needs of contemporary society.

2. Methodology and Rationale

This study adopts a qualitative case study methodology based upon direct observation of actual proceedings involving the application of *Adat Iban 1993* in relation to divorce. The case¹¹ was selected because it presents an unusual factual situation in which several important provisions of the codified Adat arose simultaneously, thereby providing a useful opportunity to examine the practical operation of the legislation in contemporary circumstances.

The proceedings concerned a marriage that had effectively ceased many years before legal dissolution was sought. During the prolonged separation, one spouse

¹⁰ The views expressed in this paper are those of the authors alone and are intended solely as an academic analysis of the operation of *Adat Iban 1993*. Nothing in this article should be construed as commenting upon or evaluating the judicial functions or decisions of the Native Courts.

¹¹ Case No.: CC/KUC/2/2025(A), Chief Native Court, Kuching.

established a second marital relationship while the first marriage remained legally subsisting. The circumstances therefore raised issues relating to desertion, remarriage, the continued obligations of spouses towards their children, and the customary consequences arising from breaches of Adat governing marriage. Collectively, these issues provide a valuable empirical basis for examining the adequacy of the existing provisions of *Adat Iban 1993*.

Data for this study were obtained through direct observation of the proceedings by the authors,¹² supported by contemporaneous field notes and a careful examination of the written grounds of decision. These materials were analysed together with the relevant provisions of *Adat Iban 1993* and other applicable written laws where necessary to provide legal context. The analysis does not seek to evaluate judicial reasoning or institutional practices. Instead, the proceedings are examined solely for what they reveal about the operation, strengths and limitations of the codified Adat itself.

The case study approach is particularly appropriate for research on customary law. Unlike purely doctrinal analysis, empirical observation enables researchers to examine how legal norms function within the social settings for which they were intended rather than abstract norms alone.¹³ It provides insights into the practical operation of customary law, identifies areas where codified provisions remain effective, and highlights circumstances in which legislative refinement may be desirable. In this sense, the proceedings serve as an empirical lens through which the continuing relevance and effectiveness of *Adat Iban 1993* may be critically examined.

3. Facts of the Case

The proceedings concerned the dissolution of a long-standing Iban marriage that had effectively broken down almost two decades before formal divorce proceedings were commenced. The factual circumstances were unusual and raised several issues relating to the operation of the divorce provisions of *Adat Iban 1993*, particularly those concerning desertion, remarriage during the subsistence of an existing marriage,

¹² The case was heard on 28th August 2025.

¹³ Argyrou, A. (2017). "Making the Case for Case Studies in Empirical Legal Research, *Utrecht Law Review*, Volume 13, Issue 3, 95-113. www.utrechtlawreview.org <http://doi.org/10.18352/url.409>. Site accessed on 11 December 2025.

maintenance of children and the continuing obligations arising from marriage. As such, the proceedings provide an appropriate factual context through which the practical operation of the codified Adat may be examined.

The complainant, a fifty-six-year-old man, petitioned for the dissolution of his marriage, alleging that the marital relationship had irretrievably broken down following persistent disagreements between the parties. Although the exact date of the marriage could not be established, the available evidence indicated that the parties were married more than thirty years prior to the court proceedings. Based on the age of their eldest child, the marriage was most likely solemnised during the early 1990s. A formal marriage certificate was subsequently issued by the Penghulu on 12th February 2000 following an application by the parties.¹⁴

On 2nd January 2006, the defendant left the matrimonial home, leaving behind the complainant and their three young children, then aged thirteen, eleven and ten respectively. During the proceedings, the defendant alleged that she had left because she had been subjected to repeated physical abuse by the complainant. However, no independent evidence was presented to substantiate those allegations. Following her departure, communication between the parties ceased completely, and the whereabouts of the defendant remained unknown to the complainant for many years. During this prolonged period of separation, the complainant assumed sole responsibility for bringing up the parties' three children without any financial or emotional support from the defendant. By the time the matter came before the Chief's Court, the children had all reached adulthood, being thirty-two, thirty and twenty-nine years of age respectively.

The factual circumstances became more complex when it emerged that the defendant had left Sarawak and travelled to Peninsular Malaysia where she obtained employment, contracted another marriage and established a new family while her first marriage remained legally subsisting. The complainant became aware of these developments only after making enquiries with the National Registration Department (*Jabatan Pendaftaran Negara*), following which he initiated divorce proceedings on 12th February 2025.

¹⁴ As stipulated under s.148, *Adat Iban 1993*.

One of the most striking features of the proceedings was the considerable lapse of time between the parties' physical separation and the commencement of legal proceedings. Nearly nineteen years elapsed before formal dissolution of the marriage was sought. This prolonged interval raises broader questions regarding public awareness of the legal requirements governing the dissolution of customary marriages and the extent to which members of the Iban community appreciate that separation alone does not terminate a marriage solemnised under Adat. The proceedings therefore provide useful insights into both the practical operation of the existing divorce provisions and the continuing need for greater public understanding of the legal consequences of Adat marriage.

4. Divorce under *Adat Iban 1993*

The proceedings principally involved the application of two provisions of *Adat Iban 1993*, namely section 151(2), which relates to divorce on the ground of desertion, and section 171, which governs the customary offence of *berangkat*.¹⁵ Considered together, these provisions demonstrate the manner in which *Adat Iban 1993* regulates both the dissolution of marriage and conduct that undermines the integrity of the marital relationship.

Rather than viewing these provisions in isolation, the proceedings illustrate how different parts of the codified Adat may operate collectively in resolving disputes arising from the breakdown of marriage. They also demonstrate the continuing relevance of customary sanctions in reinforcing the values that underpin marriage within Iban society.

4.1 Desertion under Section 151(2)

Section 151(2) of *Adat Iban 1993* provides that a marriage may be dissolved where one spouse has left the matrimonial home, failed to provide maintenance or otherwise abandoned the marital relationship without maintaining communication with the other spouse for a continuous period of not less than two years. The provision recognises that prolonged abandonment may effectively destroy the substance of a marriage even though the legal relationship continues to exist.

¹⁵ The offence of taking or marrying another person's spouse.

The factual circumstances of the present proceedings fell squarely within the circumstances contemplated by section 151(2). The defendant had left the matrimonial home in 2006, ceased communication with the complainant, failed to provide any financial support for the children and remained absent for almost nineteen years before divorce proceedings were initiated. These facts demonstrate the practical utility of section 151(2) in addressing situations where a marriage has, in reality, ceased to function long before legal dissolution is sought.

An interesting feature of the proceedings was that the complainant's petition did not expressly rely upon desertion as the legal basis for divorce. Instead, the petition referred generally to marital disagreements and the breakdown of the relationship. Nevertheless, the proceedings demonstrate that the factual circumstances clearly disclosed the essential elements of desertion as contemplated by section 151(2). From the perspective of *Adat Iban 1993*, the proceedings therefore illustrate that the statutory provision is sufficiently comprehensive to address prolonged abandonment where the factual evidence establishes the constituent elements prescribed by the codified Adat.

More broadly, section 151(2) reflects an important underlying principle of Iban customary law. Marriage creates reciprocal obligations between husband and wife, including mutual support, cohabitation and responsibility for the welfare of their children. Where one party deliberately abandons those obligations over an extended period, the continued existence of the legal relationship serves little practical or social purpose. The provision therefore enables the formal legal status of the marriage to be brought into conformity with the reality of the parties' circumstances while preserving the orderly administration of customary law. The proceedings accordingly illustrate one of the strengths of *Adat Iban 1993*. Although enacted more than three decades ago, section 151(2) continues to provide an effective legal mechanism for addressing marital relationships that have irretrievably broken down through prolonged desertion.

4.2 *Berangkat* under Section 171

The proceedings also involved the application of section 171 of *Adat Iban 1993* relating to *berangkat*. Within Iban customary law, *berangkat* refers to the act of taking another person's spouse and living together as husband and wife while the lawful marriage continues to subsist. Such conduct is regarded as a serious breach of Adat because

it undermines not only the institution of marriage but also the stability of family relationships and the harmony of the wider community.

The factual circumstances of the present proceedings disclosed that, during the subsistence of the first marriage, the defendant contracted another marriage and established a new family. These events therefore brought the matter within the scope of section 171. The proceedings demonstrate that the provision continues to provide an appropriate customary response where the marital relationship has been disrupted through conduct inconsistent with the obligations imposed by Adat.

Section 171 prescribes several customary consequences, including the payment of *ukum berangkat*, *tunggu tinggal* and *pemalu* and child maintenance. These sanctions serve purposes extending beyond punishment. They acknowledge the injury suffered by the innocent party, restore social equilibrium within the community and reaffirm the continuing importance of fidelity and responsibility within marriage. In this respect, the provision reflects the restorative character of Iban customary law, where the objective is not merely to punish wrongdoing but also to repair relationships and restore communal harmony.¹⁶

The proceedings further demonstrate that, notwithstanding the age of the codification, the substantive principles embodied in section 171 remain relevant to contemporary society. At the same time, they reveal that the monetary values prescribed more than three decades ago may no longer adequately reflect present-day economic conditions. This issue will be discussed further in the later analysis as one aspect in which the current codification may benefit from legislative review and updating.

5. Maintenance, *Entara* and Other Incidents of Divorce

The proceedings also provide useful insights into several ancillary aspects of divorce under *Adat Iban 1993*, particularly those relating to child maintenance, customary payments and the symbolic rituals associated with the dissolution of marriage. Although these matters may appear secondary to the grounds upon which the marriage was dissolved, they illustrate the holistic manner in which Adat regulates the

¹⁶ Under *Adat Iban 1993*, one of the functions of *tunggu* (restitution) is “appeasement, atonement or restoration of the physical and spiritual wellbeing of the community. There is no element of punishment.” (s.1, p. 18).

consequences of marital breakdown. Rather than treating divorce merely as the termination of a legal relationship, the codified Adat seeks to address the continuing responsibilities of the parties while restoring social equilibrium within the family and the wider community.

5.1 Maintenance of Children

One issue arising from the proceedings concerns the maintenance of children following the dissolution of marriage. Section 159(2) of *Adat Iban 1993* empowers the appropriate authority to require a party found responsible for the breakdown of the marriage, in circumstances including desertion and adultery, to contribute towards the maintenance of children who are not in that party's custody.

In the present proceedings, no order for child maintenance was made. By the time the matter came before the Chief's Court, all three children had attained adulthood, being between twenty-nine and thirty-two years of age. Consequently, the practical considerations that ordinarily justify maintenance orders no longer arose. Nevertheless, the factual circumstances reveal that throughout the nineteen-year separation the complainant alone bore the financial and parental responsibilities of raising the parties' three children. While the question of retrospective maintenance did not arise during the proceedings, the circumstances illustrate the significant social and economic consequences that may accompany prolonged marital abandonment. The proceedings therefore demonstrate the importance of section 159(2) as a protective provision designed to safeguard the welfare of children where parental responsibilities have not been discharged.

Although no maintenance order was made, the defendant was required to pay *pemai anak*¹⁷ of RM100 to each of the three children. This customary payment carries significance beyond its monetary value. It constitutes an acknowledgment of continuing parental responsibility and symbolises the recognition of obligations owed by a parent towards his or her children notwithstanding the dissolution of the marriage. In this respect, the proceedings illustrate that *Adat Iban 1993* continues to recognise

¹⁷ This means a movable or immovable inherited property or a sum of money payable by the offender to each of his children who is not under his custody. If the *pemai anak* is in cash, the amount shall not exceed RM200 as stipulated under section 162 of *Adat Iban 1993*.

the welfare of children as an important consideration in the settlement of matrimonial disputes.

5.2 The Continuing Significance of *Entara*

Another notable feature of the proceedings was the exchange of *entara* between the parties following the dissolution of the marriage. Each party presented an *entara* of RM10 before the presiding officer as part of the customary process marking the formal termination of the marital relationship.

From a purely monetary perspective, the amount involved is nominal. However, the significance of *entara* lies not in its economic value but in its symbolic and customary function.¹⁸ Within Iban customary law, marriage is regarded not merely as a contractual relationship but as a social institution that creates reciprocal obligations extending beyond the husband and wife to their respective families and the wider community. The dissolution of such a relationship therefore requires a recognised customary act signifying that those obligations have come to an end.

The exchange of *entara* serves precisely that purpose. It publicly signifies the formal dissolution of the marriage, acknowledges that the parties are no longer bound by their former marital obligations and symbolically restores social harmony following the breakdown of the relationship. Although contemporary divorce proceedings necessarily operate within an organised legal framework, the continued observance of *entara* demonstrates that the codified Adat has retained important ceremonial elements that reinforce the cultural legitimacy of the divorce process.

The proceedings therefore illustrate one of the enduring strengths of *Adat Iban 1993*. While providing legal certainty through codification, it continues to preserve ritual practices that reflect the cultural values and social philosophy of the Iban community. These customary elements distinguish Adat from many modern legal systems by recognising that divorce is not simply a legal event but also a social transition requiring public acknowledgement and communal acceptance.

¹⁸ *Entara* is translated as 'a separation token' under *Adat Iban 1993*. [(s.151(1)).

5.3 Administrative Registration of Divorce

The proceedings also illustrate the relationship between customary divorce and contemporary administrative practice. Divorce under *Adat Iban 1993* applies only to marriages validly contracted under Iban customary law. Once the marriage has been dissolved in accordance with the relevant provisions of the codified Adat, the dissolution is subsequently recorded through the Native Marriages Electronic System (NAMES)¹⁹, thereby ensuring that official records accurately reflect the parties' marital status.

The establishment of NAMES represents an important administrative development in the management of native marriages. Prior to the introduction of a centralised electronic registration system, verification of an individual's marital status depended largely upon manual records maintained by individual districts. Such arrangements inevitably increased the possibility that existing customary marriages might escape detection, particularly where parties relocated to other districts or outside Sarawak.

Although NAMES is an administrative mechanism rather than a substantive component of *Adat Iban 1993*, its introduction complements the effective administration of codified customary law by improving the accuracy of official records and reducing the likelihood of conflicting marriage registrations. The proceedings therefore demonstrate that the continued effectiveness of Adat depends not only upon sound substantive provisions but also upon efficient administrative systems capable of supporting their implementation.

6. Monogamy, Polyandry²⁰ and Jurisprudential Issues

Among the more significant legal issues revealed by the proceedings concerns the treatment of monogamy under *Adat Iban 1993*. Although the dispute was ultimately resolved through the application of the provisions relating to desertion and *berangkat*,

¹⁹ A system for the registration of marriage solemnized under the various native Adat. The system was developed as an electronic tool to verify the marital status of any native person who wishes to get married either through Adat marriage or under the *Law Reform (Marriage and Divorce) Act 1976*.

²⁰ The practice of a woman married to more than one husband at a time. *Adat Iban 1993* does not have a provision specifically regulating polyandry, but it is a breach of the Iban's subscription to the sanctity of a monogamous marriage.

the factual circumstances also exposed an important question regarding the scope of section 131 and the adequacy of its present wording.

Section 131 declares that the Iban community practises monogamy and provides that a husband who contracts another marriage during the lifetime of his wife acts contrary to Adat. The provision reflects a long-established principle of Iban customary law that marriage is intended to be an exclusive union between one man and one woman. Fidelity and mutual commitment have traditionally been regarded as essential attributes of the marital relationship; conduct inconsistent with these principles has long attracted customary sanction.

The proceedings, however, highlight an apparent asymmetry in the drafting of section 131. While the provision expressly addresses the conduct of a husband who marries another woman during the subsistence of his marriage, it contains no corresponding reference to a married woman who contracts another marriage while her lawful husband remains alive. The absence of such express language raises questions concerning the completeness of the codified provision rather than the underlying customary principle itself.

From a jurisprudential perspective, this omission appears to be one of legislative drafting rather than customary intention. Historical and anthropological accounts of Iban society consistently describe marriage as a strictly monogamous institution²¹ in which both husbands and wives were expected to observe mutual fidelity. Neither polygamy nor polyandry formed part of accepted Iban customary practice²² because they are deeply offensive to both the community and the spiritual order.²³ The omission of any express reference to polyandry in section 131 therefore should not necessarily be interpreted as implying its acceptance within Iban customary law. Rather, it appears more likely that the codified provision assumed the principle of monogamy to apply equally to both spouses without expressly articulating that position.

²¹ Freeman (1992) has described the Iban as a rigorously monogamous society (p. 22).

²² For example, Jupong Sajai. (1967). *Chemegi Charut Laki*. Kuching: Borneo Literature Bureau, p. 16-23.

²³ Gomes, Edwin H. (1911). *Seventeen Years among the Sea Dayaks of Borneo: A Record of Intimate Association with the Natives of the Bornean Jungles*. London: Seely & Co. Limited, p. 128.

The proceedings serve to illustrate this legislative ambiguity. They demonstrate that the factual circumstances contemplated by section 131 may arise in ways not expressly anticipated by the wording of the present provision. In doing so, the proceedings reveal one area in which the codified Adat would benefit from greater clarity. Expressly stating that neither spouse may contract another marriage during the subsistence of an existing marriage would remove uncertainty while more accurately reflecting the underlying customary principle of monogamy that has long characterised Iban society.

This observation should not be understood as suggesting that the substantive principle of monogamy is inadequate. On the contrary, the proceedings reaffirm the continuing relevance of that principle within contemporary Iban customary law. The issue lies instead in ensuring that the legislative language employed in the codification fully captures the breadth of that customary norm. As with many codified legal systems, practical experience gained through actual application inevitably identifies provisions that may benefit from refinement and clarification over time.

7. Interaction with Written Law

One important issue arising from the proceedings concerns the relationship between *Adat Iban 1993* and the broader framework of written law governing marriage in Malaysia. Although the proceedings were concerned principally with the application of customary law, the factual circumstances inevitably engaged certain provisions of statutory law, thereby illustrating the interaction that occasionally arises between these two legal systems. The marriage between the parties was solemnised in accordance with Iban customary law and was therefore governed by *Adat Iban 1993*. Its validity is recognised under the *Law Reform (Marriage and Divorce) Act 1976*, which preserves the validity of marriages contracted under native customary law. Accordingly, the marriage remained legally subsisting until it was formally dissolved under the applicable provisions of *Adat Iban 1993*.

The proceedings further revealed that, during the subsistence of the customary marriage, the defendant contracted another marriage outside Sarawak. Although the validity of that subsequent marriage did not form an issue for determination in the proceedings, the factual circumstances illustrate the legal complexities that may arise

where customary marriages intersect with the general law governing marriage and family relationships.

The proceedings also draw attention to the relationship between customary law and the criminal law. Section 131 of *Adat Iban 1993* affirms the principle of monogamy but provides only that an aggrieved party may lodge a complaint with the District Officer, without prescribing any specific customary sanction for a breach of monogamy nor does it expressly explain how such conduct should be addressed where it also constitutes an offence under written law. This legislative silence may create uncertainty concerning the practical operation of the provision. Under section 494 of the Penal Code, bigamy constitutes a criminal offence punishable by imprisonment and a fine. While the existence of the criminal sanction is clear, the proceedings demonstrate that the relationship between the customary provision and the statutory offence is not expressly articulated within *Adat Iban 1993* itself. Consequently, persons affected by such conduct may not readily appreciate the legal avenues available to them or the relationship between customary remedies and those provided under written law.

The issue identified here should not be understood as a deficiency in the principle of monogamy itself. Rather, it reflects the increasing interaction between customary law and the wider legal system within which it now operates. As society evolves and mobility increases, situations involving overlapping legal regimes are likely to become more common. The proceedings therefore suggest that future legislative review may usefully consider whether additional guidance should be incorporated into the codified Adat to clarify the relationship between customary obligations and relevant statutory provisions.

8. Strengths and Limitations of Adat Iban 1993 Revealed by the Proceedings

The proceedings provide a valuable opportunity to assess the practical operation of *Adat Iban 1993* beyond its textual provisions. Rather than evaluating the outcome of the proceedings themselves, it is more instructive to consider what they reveal about the strengths of the codified Adat as well as those aspects that may benefit from further legislative refinement. Viewed in this way, the proceedings become an empirical illustration of how a codified system of customary law responds to contemporary social realities.

8.1 Enduring Strengths of the Codified Adat

One of the most significant strengths demonstrated by the proceedings is the continued effectiveness of the divorce provisions in addressing prolonged marital breakdown. Section 151(2) provides a practical mechanism through which marriages that have effectively ceased to function may be formally dissolved. Although enacted more than thirty years ago, the provision continues to accommodate circumstances of prolonged desertion in a manner that remains both relevant and workable.

The proceedings also demonstrate the continuing importance of the restorative philosophy underlying Iban customary law. The customary consequences associated with *berangkat*, *pemalu*, *tunggu tinggal*, *pemai anak* and *entara* collectively illustrate that Adat seeks not merely to determine legal rights and liabilities but also to restore social equilibrium following the breakdown of family relationships. These customary institutions continue to distinguish Adat Iban from many modern legal systems, reflecting a conception of justice that extends beyond punishment to encompass reconciliation, acknowledgement of responsibility and the restoration of communal harmony.

A further strength lies in the relatively comprehensive nature of the codification itself. Rather than regulating divorce in isolation, *Adat Iban 1993* addresses the broader consequences arising from the dissolution of marriage, including obligations towards children, customary compensation, family relationships and community interests. This integrated approach reflects the holistic character of Iban customary law, in which marriage is understood not merely as a private relationship between two individuals but as an institution affecting the wider social fabric of the community.

Finally, the proceedings demonstrate the continuing adaptability of the codified Adat. Although drafted more than three decades ago, its underlying principles remain capable of addressing many contemporary disputes. This resilience reflects the enduring values upon which the codification was founded and confirms that the fundamental principles governing marriage and divorce continue to retain their relevance within present-day Iban society.

8.2 Areas for Legislative Refinement

At the same time, the proceedings reveal several aspects of the present codification that may benefit from periodic review and legislative refinement. The first concerns the prescribed monetary values attached to certain customary sanctions. The amounts specified in *Adat Iban 1993* reflected the economic conditions prevailing at the time of its codification. More than three decades later, those amounts no longer carry the same practical significance. While the customary principles remain entirely relevant, periodic revision of the prescribed monetary values would ensure that the sanctions continue to fulfil their intended social and restorative functions.

Secondly, the proceedings expose certain drafting ambiguities, particularly in relation to the expression of the principle of monogamy under section 131. Although the underlying customary norm is well established, the wording of the provision could more explicitly reflect its equal application to both spouses. Such clarification would enhance legal certainty while more accurately expressing the customary principle upon which the provision is founded.

Thirdly, the proceedings illustrate the increasing interaction between customary law and statutory law. As members of the Iban community become increasingly mobile and marriages frequently involve administrative processes extending beyond traditional communities, questions concerning the relationship between Adat and written law are likely to arise with greater frequency. Greater legislative guidance on this relationship would assist in promoting certainty while preserving the integrity of the customary legal system.

Finally, the proceedings suggest that continued public education concerning *Adat Iban 1993* remains desirable. The considerable delay between the parties' physical separation and the commencement of divorce proceedings illustrates that some members of the community may continue to regard prolonged separation as equivalent to legal dissolution. The proceedings reaffirm that, under *Adat Iban 1993*, a customary marriage continues to subsist until it is formally dissolved in accordance with the prescribed legal process. Greater public awareness of this principle would contribute to improved compliance with the requirements of the codified Adat and reduce the likelihood of disputes arising from misunderstandings concerning marital status.

Taken together, these observations reinforce an important characteristic of codified customary law. No codification can anticipate every future circumstance. As society changes, practical experience inevitably identifies provisions that may benefit from clarification, updating or refinement. The continued vitality of *Adat Iban 1993* therefore depends not only upon preserving its fundamental customary principles but also upon ensuring that the codification evolves in response to contemporary social conditions while remaining faithful to its underlying values.

9. Conclusion

This paper has examined the operation of the divorce provisions of *Adat Iban 1993* through an empirical analysis of proceedings involving the dissolution of a customary marriage. Rather than evaluating the proceedings themselves, the analysis has focused on what they reveal about the effectiveness, coherence and contemporary relevance of the codified Adat when applied to actual disputes. In doing so, the paper demonstrates the value of empirical observation as a means of understanding the practical operation of codified customary law beyond its textual provisions.

The proceedings illustrate that the fundamental principles governing marriage and divorce under *Adat Iban 1993* continue to provide a coherent framework for regulating family relationships within contemporary Iban society. The provisions relating to desertion, *berangkat*, *pemai anak* and *entara* remain capable of addressing many of the social consequences arising from marital breakdown while preserving the restorative philosophy that has traditionally characterised Iban customary law. These features distinguish *Adat Iban 1993* as more than a collection of legal rules; they reflect a normative system that seeks to restore social harmony, reinforce communal responsibility and uphold the values upon which Iban society has long been founded.

At the same time, the proceedings reveal several aspects of the present codification that merit further legislative consideration. The prescribed monetary values attached to certain customary sanctions no longer reflect contemporary economic conditions. Certain provisions would benefit from greater drafting precision, particularly in relation to the expression of the principle of monogamy. In addition, the increasing interaction between customary law and written law suggests that greater legislative clarity may assist in promoting certainty while preserving the integrity of the customary legal system. These observations do not detract from the continuing validity

of the underlying customary principles. Rather, they demonstrate that, like any codified legal system, *Adat Iban 1993* must periodically evolve to remain responsive to changing social realities.

The proceedings also reaffirm an important characteristic of codified customary law. Codification should not be regarded as the final stage in the development of Adat. Instead, it represents a continuing process through which customary principles are expressed in legislative form, applied to practical situations and, where necessary, refined in the light of experience. Actual proceedings provide valuable opportunities to observe this process in operation by revealing how codified provisions perform when confronted with the complexities of everyday life. In this respect, empirical studies of customary law can make a useful contribution to future legislative review by identifying both the enduring strengths of the existing codification and those areas where clarification or refinement may be desirable.

Ultimately, the significance of *Adat Iban 1993* lies not merely in its status as a codified body of customary law but in its continuing ability to regulate social relationships in a manner that remains faithful to the customs, values and aspirations of the Iban community. The challenge for future development is therefore not to replace those customary principles but to ensure that the codification continues to express them clearly, coherently and effectively within an evolving legal and social environment. The proceedings examined in this study demonstrate that while the foundations of *Adat Iban 1993* remain sound, periodic legislative review is essential if the codified Adat is to continue serving future generations with the same authority and relevance that it has provided since its coming into force in 1993.

Postscript: The Contribution of Empirical Research

The present study also illustrates the value of empirical research in the study of customary law. Much of the existing literature on Adat understandably concentrates on its historical development, anthropological foundations or textual interpretation. While such scholarship remains indispensable, direct observation of proceedings provides an additional perspective by demonstrating how codified customary law functions in practice. Empirical studies of this nature therefore complement doctrinal and anthropological research by illuminating the interaction between legislative provisions and the lived experiences of the communities they are intended to serve.

It is hoped that this study will encourage further scholarly research into the practical operation of codified Adat, not only within the Iban community but also in relation to the customary laws of other native communities in Sarawak. Such research can contribute to a deeper understanding of customary law as a dynamic legal system capable of adapting to changing social circumstances while remaining firmly rooted in the customs and values from which it derives its legitimacy.