

The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice



Andry Harijanto^{a*} Siti Hatikasari^a Juliet Musabula^b

^a Faculty of Law, Universitas Bengkulu, Indonesia.

^b Zambia Police Clinics and Hospital, Zambia, South Afrika.

*Corresponding author: andryharijanto@gmail.com

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ABSTRACT

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Indonesia has passed a policy on child protection and eliminating domestic violence. However, the critical question that needs to be asked is why violence against children increases yearly. This study aims to analyze the model of legal protection for children victims of domestic violence based on justice. This research is empirical research with primary, secondary, and tertiary data. This study concludes that the norms of Malay customary law that regulate violence in Bengkulu City, namely Cempalo Hand and Cempalo Mouth, can reduce violence against children in the household.



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1. Introduction

Whether physical, psychological, sexual, or economic violence is generally experienced by children and women, violence in the household is not only a national problem but also has an international character.¹ This is evidenced by the existence of a world conference to review and assess the progress of children and women carried out by the United Nations (UN) on equality, development, and peace in Nairobi on July 15–26, 1985, which resulted in the Declaration on the Elimination of Violence Against Women.²

Indonesia has ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of All Forms of Discrimination Against Women), abbreviated as CEDAW in Law No. 7 of 1984, which became the Convention Concerning the Elimination of All Forms of

¹ Julia Nakamura, Ratana Chuenpagdee, and Mostafa El Halimi, 'Unpacking Legal and Policy Frameworks: A Step Ahead for Implementing the Small-Scale Fisheries Guidelines', *Marine Policy*, 129 (2021), 104568 <https://doi.org/10.1016/j.marpol.2021.104568>

² Holly E. Erskine and others, 'Measuring the Prevalence of Mental Disorders in Adolescents in Kenya, Indonesia, and Vietnam: Study Protocol for the National Adolescent Mental Health Surveys', *Journal of Adolescent Health*, 2021, 1–8 <https://doi.org/10.1016/j.jadohealth.2021.05.012>

Discrimination against Children and Women.³ To implement this Convention, the United Nations in 1979 established the Commission on the Elimination of All Forms of Discrimination, or the CEDAW Commission. The CEDAW Commission oversees the implementation of CEDAW in countries that have ratified it. This Convention consists of six chapters, which are detailed in thirty articles.⁴

Even though the Indonesian government has ratified this convention since 1984, it has not yet been implemented because it requires a number of national laws that must be made by countries that ratify this convention before it can be operationalized, and as a result, other forms of discrimination still exist.⁵ Its form is violence against children and women. It was only on September 22, 2004, that Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) was passed, then followed up with Government Regulation No. 4 of 2006 concerning Implementation and Cooperation in the Recovery of Victims of Domestic Violence, so that law enforcement officers have the authority to take action against perpetrators of domestic violence.⁶

The existence of domestic violence causes every family member to feel insecure and threatened. The household, which should be a place to stay that brings peace and tranquility to every member of the family, did not materialize.⁷ This condition denies the meaning and purpose of marriage as mandated by Article 1 of Law No. 1 of 1974 concerning marriage.⁸ Domestic violence, be it physical violence, psychological violence, sexual violence, or economic neglect, injures the inner and outer bond, which is the purpose and basis of marriage.⁹

Domestic violence can happen to anyone, whether from wealthy or low-income families, with low or high education, and can happen everywhere, both in big

³ Sunny Ummul Firdaus, 'The Urgency of Legal Regulations Existence in Case of COVID-19 Vaccination Refusal in Indonesia', *Journal of Forensic and Legal Medicine*, 91.October 2021 (2022), 102401 <https://doi.org/10.1016/j.jflm.2022.102401>

⁴ Sandra Dewi Arifiani and others, 'Assessing Large-Scale Violence against Children Surveys in Selected Southeast Asian Countries: A Scoping Review', *Child Abuse and Neglect*, 93.December 2018 (2019), 149–61 <https://doi.org/10.1016/j.chiabu.2019.05.005>

⁵ Márcia R.O. Pedroso and Franciéle M.C. Leite, 'Physical Violence against Children in Espírito Santo, Brazil: Prevalence and Associated Factors', *Jornal de Pediatria*, 000.xxx (2022) <https://doi.org/10.1016/j.jpmed.2022.07.009>

⁶ Elisa Simó-Soler and Eloy Peña-Asensio, 'From Impact Refugees to Deterritorialized States: Foresighting Extreme Legal-Policy Cases in Asteroid Impact Scenarios', *Acta Astronautica*, 192.December 2021 (2022), 402–8 <https://doi.org/10.1016/j.actaastro.2021.12.015>

⁷ Ben Mathews, 'A Taxonomy of Duties to Report Child Sexual Abuse: Legal Developments Offer New Ways to Facilitate Disclosure', *Child Abuse and Neglect*, 88.December 2018 (2019), 337–47 <https://doi.org/10.1016/j.chiabu.2018.12.003>

⁸ Ansie Fouché, Daniël F. Fouché, and Linda C. Theron, 'Child Protection and Resilience in the Face of COVID-19 in South Africa: A Rapid Review of C-19 Legislation', *Child Abuse and Neglect*, 110.August (2020) <https://doi.org/10.1016/j.chiabu.2020.104710>

⁹ Maila D.H. Rahiem, 'COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia', *Child Abuse and Neglect*, 118.95 (2021), 105168 <https://doi.org/10.1016/j.chiabu.2021.105168>

cities and small towns; at the village level, in the sub-districts to RT, the people are illiterate.¹⁰ With the issuance of Law No. 23 of 2004, concerning the Elimination of Domestic Violence (PKdRT), which was declared effective on September 22, 2004, this law oversees the purpose and basis of marriage and maintains the integrity of marriage. Law No. 23 of 2004 aims to prevent violence against children and women.¹¹

However, in reality, in public life, especially in Bengkulu City, the crime of violence against children and women is still high. Therefore, it is very urgent to conduct research to protect victims of such violence legally. Legal protection protects human rights that others have harmed and is given to the community so they can enjoy all the rights granted by law.¹² Thus, a model of legal protection for children and women victims of domestic violence (KDRT) in Bengkulu City can be formulated as effective and efficient. The family remains intact, and divorce does not occur. It does not cause a sense of revenge based on norms. Malay Customary Law Through the *Rajo Penghulu* Institution.¹³

Whenever a dispute arises between members of the community in Bengkulu City, Bengkulu Province, the *Pranata Rajo Penghulu* is applied as a means of achieving a peaceful resolution. As *Pranata Rajo Penghulu*, in the daily lives of indigenous peoples, customary peace is intended to restore the equilibrium of material and immaterial goods of life that have been disturbed. This *Rajo Penghulu* institution was founded by the ancient Bengkulu ancestors who have been passed down from generation to generation.¹⁴

The *Rajo Penghulu* institution is not static, meaning that the determination of daily fines for each customary violation (error) is contingent on the disputing parties' circumstances and capabilities. The determination of this standardized fine is secondary. Simultaneously, "peace" is the most important, specifically the existence of life between Bengkulu community members who help each other

¹⁰ Malin Joleby and others, 'Offender Strategies for Engaging Children in Online Sexual Activity', *Child Abuse and Neglect*, 120, July (2021) <https://doi.org/10.1016/j.chiabu.2021.105214>

¹¹ Julie Toft and others, 'Oral Health History in Children Referred to a Child Advocacy Center in Norway', *Child Abuse and Neglect*, 132, July (2022) <https://doi.org/10.1016/j.chiabu.2022.105789>

¹² Robin Sen and others, "'When You're Sitting in the Room with Two People One of Whom... Has Bashed the Hell out of the Other": Possibilities and Challenges in the Use of FGCs and Restorative Approaches Following Domestic Violence', *Children and Youth Services Review*, 88, March (2018), 441-49 <https://doi.org/10.1016/j.childyouth.2018.03.027>

¹³ Paula Andrea Valencia Londoño and others, 'The Exacerbation of Violence against Women as a Form of Discrimination in the Period of the COVID-19 Pandemic', *Heliyon*, 7.3 (2021) <https://doi.org/10.1016/j.heliyon.2021.e06491>

¹⁴ Dr Karolina La Fors, 'Legal Remedies For a Forgiving Society: Children's Rights, Data Protection Rights and the Value of Forgiveness in AI-Mediated Risk Profiling of Children by Dutch Authorities', *Computer Law and Security Review*, 38 (2020), 105430 <https://doi.org/10.1016/j.clsr.2020.105430>

(please help or cooperation), an atmosphere of friendship, an atmosphere of intimacy, and family relationships.¹⁵

2. Research Method

The research method uses a qualitative approach and legal anthropology.¹⁶ Data collection techniques include in-depth interviews and secondary data collection.¹⁷ The determination of the informants was carried out purposefully; the key informants were determined by the researchers themselves based on considerations of having adequate education, position, and experience. The data analysis was qualitative and carried out continuously from the beginning to the end of the study.¹⁸

3. Results and Discussion

The norms of Malay customary law that regulate violence are also referred to as customary violations. According to Malay customary law, the type of customary violation (known locally as *dapek Salah or cembalo*) is subject to customary sanctions (*dendo adat*), which will be resolved in the *Pranata Rajo Penghulu* court ceremony; this is described in Regional Regulation No. 29 of 2003 pertaining to the Enforcement of City Customs.¹⁹ Types of customary violations resolved by the *Pranata Rajo Penghulu* are repeated and grave customary violations committed by a community member or group. Minor violations of custom can only be resolved at the family level or the neighborhood (RT) level. Malay customary law norms governing violations of customary violence, namely; *cempalo* of the hand is a forbidden act carried out by the hand, and the spit of the mouth is a forbidden act by the mouth.²⁰

¹⁵ Sadhvi Kalra and Devin K. Joshi, 'Gender and Parliamentary Representation in India: The Case of Violence against Women and Children', *Women's Studies International Forum*, 82.July (2020), 102402 <https://doi.org/10.1016/j.wsif.2020.102402>

¹⁶Tri Hartini, 'Legal Policy of Protection COVID-19 Patients in Hospitals', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 45–57 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.25>

¹⁷Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, 'Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66–77 <https://doi.org/10.53955/jhcls.v2i1.31>

¹⁸Muhammad Ridwansyah and Asron Orsantinutsakul, 'The Strengthening of Guardian Institutions in Nanggroe Aceh During the Autonomy Era', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 55–65 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.27>

¹⁹ Shalini Mittal, Tushar Singh, and Sunil K. Verma, 'Exploring the Trauma of Acid Attack Victims: A Qualitative Enquiry', *Women's Studies International Forum*, 88.July (2021), 102507 <https://doi.org/10.1016/j.wsif.2021.102507>

²⁰ Andala Yakubu and Soma Chaudhuri, 'Potential Opportunities and Challenging Realities: Organizations' Experiences While Accessing Resources and Advocating on Behalf of Survivors of Domestic Violence in Ghana', *Women's Studies International Forum*, 94.July (2022), 102620 <https://doi.org/10.1016/j.wsif.2022.102620>

Legal protection for children and women victims of domestic violence (KDRT) through *Pranata Rajo Penghulu*, consisting of multiple phases from beginning to end. The stage begins when someone is caught in the act of committing a customary violation (*dapek Salah*) or when a party files a formal complaint with the head of the RT, *Pranata Rajo Penghulu*, and others.²¹ The implementation of the traditional court ceremony *Mufakat Pranata Rajo Penghulu* consists of 34 stages, which are the process of resolving domestic violence (KDRT) against child and female victims through *Pranata Rajo Bengkulu* in Bengkulu City, namely legal protection for child and female victims of domestic violence. The way of deliberation and agreement of the *Pranata Rajo Penghulu*.²²

In addition, the *Pranata Rajo Penghulu* deliberation agreement is called peace according to Malay customary law in force in Bengkulu City.²³ Philosophically, the central meaning of customary peace or customary peace is to restore the existence of disturbances in the physical and mental balance of life in communities governed by customary law, and to recreate the atmosphere of ordinary law community life, which is rich in kinship, intimacy, and friendship. In the meantime, the secondary meaning of customary peace is the fine itself, the size of which is proportional to the capacity of the guilty party.²⁴

The resolution of domestic violence (KDRT) against children and women through the *Pranata Rajo Penghulu* in Bengkulu City described above is one of the models of legal protection with the method of resolving domestic violence outside the court. In reality, the resolution of domestic violence through consensus deliberation by *Pranata Rajo Penghulu* can be effective and efficient because the decision of *Pranata Rajo Penghulu* does not cause resentment from those who are considered guilty, the household remains intact, the settlement process is fast (does not take a long time like a court judge), the settlement process is more practical and less complicated, and the decision of the *Pranata Rajo Penghulu* can be directly implemented (executed) by the household.²⁵

Initially, these Malay customary law norms were created, developed, maintained, and given customary sanctions for violators by the Malays. This

²¹ Takako Tsujimura-Ito, 'State of Damage to and Support for Victims of Motor Vehicle Accidents in Japan', *IATSS Research*, 43.2 (2019), 97–107 <https://doi.org/10.1016/j.iatssr.2019.06.001>

²² Sandra Barinda and Dumilah Ayuningtyas, 'Assessing the Food Control System in Indonesia: A Conceptual Framework', *Food Control*, 134 (2022), 108687 <https://doi.org/10.1016/j.foodcont.2021.108687>

²³ Christiaan Röell and others, 'Managing Socio-Political Risk at the Subnational Level: Lessons from MNE Subsidiaries in Indonesia', *Journal of World Business*, 57.3 (2022) <https://doi.org/10.1016/j.jwb.2022.101312>

²⁴ Masri Sembiring Maha and others, 'Outcome and Extent of Disability Following Japanese Encephalitis in Indonesian Children', *International Journal of Infectious Diseases*, 13.6 (2009), 389–93 <https://doi.org/10.1016/j.ijid.2009.01.009>

²⁵ Herry Purnomo and others, 'A Political-Economy Model to Reduce Fire and Improve Livelihoods in Indonesia's Lowlands', *Forest Policy and Economics*, 130 (2021), 102533 <https://doi.org/10.1016/j.forpol.2021.102533>

follows the theory of Sally Falk Moore. They argue that methodically, the Malay indigenous peoples in Bengkulu City, which will be studied, can be viewed as a limited social arena (semi-autonomous social field).²⁶ This limited social arena can impose a rule, coercion, or sanction on the people interacting. In addition, this limited social arena exists at the same time within a broader social matrix framework. It can influence and dominate it, sometimes inviting people of their free will to enter the social arena.²⁷

The limited social arena theory is used because it examines the Malay indigenous peoples in Bengkulu City, whose autonomy is recognized and limited to interacting with each other.²⁸ From that interaction, the rules they created were maintained in force and used as behavioral guidelines by every Malay traditional citizen in social life. It aims to maintain resilience, order, peace, and justice. The resolution of domestic violence against children and women through the Pranata Rajo Penghulu in Bengkulu City will reveal the actual applicable Malay customary law norms and the historical context of legal conduct.²⁹

In actual Malay customary law communities in Bengkulu City, the straightforward case method is also utilized. According to Holleman, non-dispute cases indicate that general practices that are broad and cover a variety of fields can, of course, be observed as special instances of voluntarily obeying the law, providing numerous concrete examples even though the type is the norm. Not a dispute. If properly documented, these uncontested cases are invaluable units of analysis that reveal the relevant principles and regularities as well as the degree of legal tolerance for deviation from lawful conduct.³⁰

According to customary law, non-dispute cases involve normal activities, which serve as a normative reference point for evaluating the expected behavior of the community. By paying adequate attention to these non-disputed cases, specific guidelines and instructions are obtained in order to discover the causes of spontaneous, automatic submission to customary law norms (spontaneous, automatic submission to *ADAT*) on social life. The norms of Malay customary law

²⁶ Cristina Georgiana Safta and others, 'Counseling and Assistance for Women Victims of Domestic Violence in Romania - Case Study', *Procedia - Social and Behavioral Sciences*, 5 (2010), 2034–41 <https://doi.org/10.1016/j.sbspro.2010.07.409>

²⁷ Subramaniam Jeevasuthan and Zulkarnain Ahmad Hatta, 'Behavioural Problems of Children Exposed to Domestic Violence in Rural Villages: A Micro Social Work Inquiry in Piranpattu Village at Chankanai Divisional Secretariat, Jaffna, Sri Lanka', *Procedia - Social and Behavioral Sciences*, 91 (2013), 201–7 <https://doi.org/10.1016/j.sbspro.2013.08.418>

²⁸ Ferry Fathurokhman, 'The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases', *Procedia Environmental Sciences*, 17 (2013), 967–75 <https://doi.org/10.1016/j.proenv.2013.02.115>

²⁹ Yati Afyanti and others, 'Unmet Supportive Care Needs Survey among Male Partners of Gynecological Cancer Survivors in Indonesia', *Asia-Pacific Journal of Oncology Nursing*, 8.6 (2021), 662–69 <https://doi.org/10.4103/apjon.apjon-2113>

³⁰ Khaerul Umam Noer, Siti Chadijah, and Endang Rudiatin, 'There Is No Trustable Data: The State and Data Accuracy of Violence against Women in Indonesia', *Heliyon*, 7.12 (2021), e08552 <https://doi.org/10.1016/j.heliyon.2021.e08552>

that apply in Bengkulu City have been codified in the Bengkulu City Regional Regulation (Perda) No. 29 of 2003 concerning the Enforcement of Bengkulu City Customs; this further ensures the existence of legal certainty for the implementation of Malay customary law norms.³¹

The legal system in force in the Unitary State of the Republic of Indonesia (NKRI) is based on the legal philosophy known as Positivism, the law is identical to the legislation (law), which has a written form and is made by an institution with the authority and power to make laws (*legism*).³² In addition, the criminal law system is strengthened by its adherence to the legality principle, which states that an act that is considered a crime or a criminal act must have precedent laws and regulations. So that cases of domestic violence against children and women can be subject to criminal sanctions or can also be settled out of court through the *Pranata Rajo Penghulu* based on policy (discretion), the perpetrators of domestic violence are still children (Diversion), or the existence of the crime is estimated to have caused a loss of less than Rp. 2.500.000,-, which is already regulated by the existing laws and regulations.³³

Traditional functionaries consisting of the Traditional *Penghulu*, *Cerdik Cendikio*, and the *Syarak Penghulu* administer the *Rajo Penghulu* institution. These traditional functionaries can be found in every *kelurahan* in the city of Bengkulu. Whenever there is a dispute between community members, the two traditional leaders will examine and consider all aspects of life in order to determine a solution that is acceptable to all parties involved. In dispute resolution, the decision of the Customary Chief (*Tuai Adat*) is binding because it is based on the values contained in the culture, customs, and is in accordance with the mind and spirit of the indigenous people of the area. Disputed indigenous populations typically do not have the courage to disregard their customary harvest decisions.³⁴

The traditional functionaries of *Pranata Rajo Penghulu* in resolving disputes through customary peace sometimes fail, cannot apply optimally, do not apply effectively and efficiently, give perpetrators a sense of vengeance, and perpetrators are not present at the customary peace trial ceremony. According to the research team's analysis, this failure occurred because the traditional

³¹ Siti Nurbayani, Moh Dede, and Millary Agung Widiawaty, 'Utilizing Library Repository for Sexual Harassment Study in Indonesia: A Systematic Literature Review', *Heliyon*, 8.8 (2022), e10194 <https://doi.org/10.1016/j.heliyon.2022.e10194>

³² Ali Maksum, 'Indonesian Post-Migrant Workers: A Challenging Problem for Human Security', *Social Sciences & Humanities Open*, 4.1 (2021), 100223 <https://doi.org/10.1016/j.ssaho.2021.100223>

³³ Debora de Souza Santos and others, 'Domestic Violence against Women during the Covid-19 Pandemic: A Scoping Review', *Forensic Science International: Reports*, 5.November 2021 (2022) <https://doi.org/10.1016/j.fsir.2022.100276>

³⁴ Moh Iqra, Syabani Korompot, and Al-fatih David, 'The Principle of Equality Before the Law in Indonesian Corruption Case : Is It Relevant?', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 135–46. <https://doi.org/10.53955/jhcls.v1i3.13>

functionaries of *Pranata Rajo Penghulu* had not mastered negotiation and mediation theory and practice.³⁵

Negotiation is a tradition of out-of-court dispute resolution (ADR), the disputing parties are the decision-makers, and the dispute resolution is only approved by the disputing parties without a third party's involvement. In this phase of negotiations, the disputing parties attempt to persuade one another. They did not attempt to resolve disagreements based on preexisting rules, but instead drafted new rules to govern their relationship. Thus, negotiation is an exclusive method of resolving disputes between two parties.³⁶

This customary peace is a dispute resolution alternative based on mediation. A mediator is a third party who intervenes in a dispute resolution in order to assist the disputing parties in reaching an agreement. In this situation, regardless of whether the disputing parties request the assistance of the mediator appointed by the other party in power, the disputing parties agree to such intervention.³⁷ Both disputing parties must agree to utilize the services of a mediator to reach a resolution. There may be individuals in the *paguyuban* community who serve as mediators, arbitrators, and judges (such as traditional leaders in the community in Bengkulu City). This mediator does not make a decision, but acts as a peacemaker (facilitator) to help the disputing parties reach an agreement. There are no winners or losers in this mediation (win-win resolution).³⁸

The mediation according to positive law, such as Supreme Court Regulation No. 2 of 2003 Concerning Mediation Procedures in Court, the preamble states that reducing the accumulation of cases is one way to resolve cases more quickly and affordably, in accordance with Article 130 HIR and/or Article 153 RBg. The legal basis for this recommendation is Supreme Court Regulation Number 2 of 2012 concerning Settlement of Minor Crime Limits (*Tipiring*) and the amount of fines in the Criminal Code. In addition, it is recommended that the settlement of criminal cases whose losses are estimated to be below Rp. 2,500,000, - be settled outside of court through mediation (*KUHP*).³⁹

³⁵ Resti Dian and Suwiat Jenvitchuwong, 'Implementation of Halal Product Assurance in the Pharmaceutical Sector in Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 164–79 <https://doi.org/https://doi.org/10.53955/jhcls.v1i3.19>

³⁶ Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1–13 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.21>

³⁷ Ahmad Siboy and others, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 14–30 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.23>

³⁸ Nurfaika Ishak, Romalina Ranaivo, and Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31–44 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.24>

³⁹ Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, 'Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66–77 <https://doi.org/10.53955/jhcls.v2i1.31>

4. Conclusion

The process of legal protection for children and women victims of domestic violence (KDRT) through Pranata Rajo Penghulu in Bengkulu City, namely, there are 34 stages of settlement through deliberation and consensus of Pranata Rajo Penghulu, this is also called peace according to customary Malay law in force in Bengkulu City. Philosophically, customary peace or customary peace has the central meaning (primary), which is to restore the existence of disturbances in the balance of life in customary law communities both physically and mentally, to recreate the atmosphere of ordinary law community life which is full of kinship, intimacy, friendship, and please help. Meanwhile, the secondary meaning of customary peace is the customary fine itself, the size of which is adjusted to the capacity of the party deemed guilty.

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