

THE IDEA OF THE CONNECTION BETWEEN ISLAMIC LAW AND CULTURAL CUSTOMS AND WISDOM: A SHARIA REACTION TO REGIONAL CUSTOMS SURROUNDING MARRIAGE IN INDONESIA

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Abstract: Islamic doctrines incorporate custom, as demonstrated by customary marriage, and Islamic law and customary law are linked. Therefore, the social component known as Islamic law is the only place where Islamic teachings about custom are found. As a result, the only Islamic institution that can give legitimacy to the social structure or value system that emerges in society is Islamic law. This is due to the fact that Islam not only establishes new laws but also upholds societal structures and customs as long as they do not contradict Islamic legal precepts. Throughout the history of Islamic law in Indonesia, it can be divided into four periods: two before independence and two after independence. The first two periods can be further divided into two phases: the phase in which Islamic law was fully implemented. This phase is known as the theory of reception in complexu. The second two periods, after independence, can be further divided into two phases: Islamic law as a persuasive source and Islamic law as an authoritative source. In the tradition of customary marriage, Islam views sharia law and customary law as two sides of the same coin, inseparable; religion is a system of behavior. In this case, religion serves as a guideline that serves as a framework for interpreting human actions. Furthermore, religion is also a pattern of behavior that is always present within humans and applied in everyday life. Therefore, religion is considered part of the cultural system.

Keywords: *Reality, Islamic Law, Customs and Marriage.*

INTRODUCTION

Indonesia is a state based on law, as stipulated in Article 1, paragraph 3 of the 1945 Constitution. As a state based on law, its primary goal is to champion and protect human rights. As a state based on law, at least three aspects must be met: legal justice and legal certainty.

Islam has had a profound effect on Indonesians' lives ever since it arrived in the country. The archipelago is seen as a land rich in law since Islam has continued to expand throughout it through legal teachings. This is due to the fact that legal life in Indonesia exposes the basic complexities of law and how it is used in society from a scientific standpoint. Indonesian law encompasses at least three different legal systems: Islamic law, customary law, and colonial or national law.

Customary law has the strongest ties to local communities among the three types of law discussed above. Both colonial (national) law and Islamic law are imported. Nonetheless, Islamic

law and customary law have mutually assimilated in all three, for instance, in the area of marriage. Thus, customary law can occasionally be influenced by Islamic law and vice versa.

When it comes to marriage, however, Islamic law can occasionally be weak when confronted with customary law. One example of this is the Lombok practice of "merariq,"¹ which essentially means "berai" is accomplished by "stealing." This type of behavior is obviously forbidden since it has broken numerous social rules. This kind of conduct has become a habit or custom in Lombok society, however it may be referred to as abduction if only national legislation addressed the issue.

This is evident from the neutral and non-neutral (sensitive) nature of customary law in the legal domain. Lastuti Abubakar claims that neutral law, which includes contract law, property law, and economic law, has no bearing on human spirituality. Non-neutral laws, such as those pertaining to marriage, inheritance, and land, have a strong connection to human spirituality.² There is still legal pluralism in the Sasak Muslim community, according to a number of studies that address customs, marriage, and Muslim society in Indonesia. One such study is Murdan's, which addresses legal pluralism in Indonesia in relation to illegality in marriage in the Sasak Muslim community.³ Among the legal justifications are: The Sasak people's adherence to their religion and customs, the impact of colonial legal policies, Indonesian laws that uphold and defend plurality, the propensity of some individuals to select one law in marriage—Islamic law, Sasak customs, or the state—the practice of Arabization, the Sasak people's favorable opinion of urban marriage, and the struggle for authority or power in marriage within the Sasak Islamic community. In fact, scholars have been studying Indonesian customary and Islamic law since pre-colonial times.⁴ Snouk Hurgronje's notion of *recepti* and Saman Van Den Berg's idea of *receptie in complexu* have become fundamental classical theories in Indonesian Islamic law.

According to the aforementioned reasons, both Islamic and customary law have extremely complicated issues. The loss of Islamic legal values and the dominance of customary law are two examples of how this might be observed when the two work together harmoniously. Consequently, Islam with its *Urf* studies and customs with its established customary or cultural provisions must have a relationship in order to harmonize the legal dualism and build a solid legal order. As Clifford Geertz stated, in the area of interaction between religion and culture, he wrote religion as: (1) a

¹ John Ryan Bartholomew, *Alif Lam Mim; The Wisdom of the Sasak People*, Trans., Imron Rosyidi (Yogyakarta: Tiara Wacana, First Edition, 2001), p. 11.

² Lastuti Abubakar, "Revitalization of Customary Law as a Source of Law in Building the Indonesian Legal System," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 323. The issue of neutral and non-neutral legal products is also briefly discussed by Abdul Hadi and Sofyan Hasan, only the prospects discuss the contribution of Islamic law in the development of the national system. Furthermore, existing legal products such as Law No. 1 of 1974 concerning Marriage, Law No. 7 of 1989 concerning Religious Courts, Compilation of Islamic Law, and Presidential Instruction No. 1 of 1991, according to him, have entered the non-neutral legal area and do not yet exist in the neutral legal area. Abdul Hadi and Sofyan Hasan, "The Influence of Islamic Law in the Development of Law in Indonesia," *Nurani* 15, no. 2 (2015): 94.

³ Murdan, "Legal Pluralism in Indonesia: Integrity in Marriage in the Sasak Islamic Community" (State Islamic University of Sunan Kalijaga Yogyakarta, 2020).

⁴ Ismail Sunny, *The Position of Islamic Law in the Indonesian State System*, in the book *Prospects of Islamic Law in the Framework of National Legal Development in Indonesia*, p. 200. See also, Djatmika Rahmat, *The Path to Seeking Islamic Law, Efforts Towards Understanding the Methodology of Ijtihad*, in *Prospects of Islamic Law in the Framework of National Legal Development in Indonesia*, (Jakarta: PP-IKAHA, 1994), pp. 231-232.

system of symbols that helps (2) create strong, enduring, and pervasive human moods and motivations by (3) developing ideas about a general order of existence and (4) giving these ideas such an air of veracity that (5) the moods and motivations seem to be unique to reality.⁵

Additionally, Geertz clarified that religion and culture are behavioral systems (patterns of conduct). In this way, religion provides a framework for understanding human behavior. Additionally, religion is a behavioral pattern that people always exhibit and use in their daily lives.⁶ Religion is therefore regarded as a component of the cultural system. Thus, it is possible to define Islamic law and customary law as "something born from a habit that is consistently practiced, recognized by society, and acknowledged communally".

METHODE

The author of this study employs library research, which is a set of tasks associated with ways for gathering data from libraries. study involving literature, whether in the form of books, notes, or study reports from earlier studies, is known as library research.⁷ A literature review, according to M. Nazir, is a method of gathering data that entails reading books, articles, reports, and notes pertaining to the issue at hand. After a researcher has chosen a study topic, a literature review is a crucial step. A study pertaining to the theory and research topic is the next stage.

RESULTS AND DISCUSSION

The Concept of the Relationship between Islamic Law and Customary Law

In the course of history, Islamic law in Indonesia can be divided into four periods: two periods before independence and two more after independence.⁸

1. The first two periods can be further divided into two phases as follows:
 - a. Phase of full implementation of Islamic law. In this phase, the reception is in the complex theory proposed by L.W.C. Van Den Breg.

This argument holds that Muslims fully embraced Islamic law from the time of the Islamic monarchy until the early days of the Dutch East India Company (VOC), when the Dutch continued to refrain from meddling in all social legal issues.⁹

On May 25, 1760, the Dutch government formally published the *Resolutio der Indisch Regeering* (Resolution of the Indies), which would eventually be known as the *Compendium Freijer*, as a result of the Dutch using their VOC to increasingly loot Indonesia's natural resources.

This rule replaced the power of Islamic judicial institutions founded by Islamic kings or sultans with Dutch-created courts in addition to implementing Islamic law in the family domain (marriage and inheritance).¹⁰

⁵ Clifford Geertz, *Culture and Religion*, (Yogyakarta: Kanisius, 1992), p. 5.

⁶ Nur Syam, *Coastal Islam*, (Yogyakarta: LKIS, 2005), p. 1.; see also Clifford Geert, *Culture and Religion*, (Yogyakarta: Kanisius, 1992), pp. 8-9.

⁷ Mahmud, *Educational Research Methods*, (Bandung: Pustaka Setia, 2011), p. 31.

⁸ Ismail Sunny, *The Position of Islamic Law in the Indonesian Constitutional System*, in the book *Prospects for Islamic Law in the Framework of National Legal Development in Indonesia*, p. 200.

⁹ Djatmika Rahmat, *The Path to Seeking Islamic Law, Efforts Towards Understanding the Methodology of Ijtihad*, in *Prospects for Islamic Law in the Framework of National Legal Development in Indonesia*, (Jakarta: PP- IKAHA, 1994), pp. 231-232.

Only after the Compendium Freijer was gradually revoked and eventually with Staatstabled 1913 No. 354 did the Dutch formally acknowledge the presence of Islamic law in Indonesia.¹¹

The creation of religious courts in Java and Madura was mandated by Staatsblad 1882 No. 152, without diminishing their legitimacy in performing judicial functions in compliance with fiqh regulations.¹²

- b. The period after the demand or acceptance of Islamic law by customary law.¹³ During this stage, Cristian Snouk Hurgronje's Receptio theory—which was first proposed by Corenlis Van Vallonhoven—replaced L.W.C. Van Den Breg's Receptio in Complexu theory.¹⁴

The Wet op de Staatsinrichting van Nederlands Indie, also known as Indische Staatsregeling (I.S.), was then issued by the Dutch government to replace Receptio in Complexu with Receptio. At the same time, the Regeerings Reglement (RR) of 1885, which suggested that Indonesian judges uphold religious laws, was revoked.

The I.S. passed Stbl 1929: 212, which declared that Islamic law was eliminated from the Dutch East Indies legal system. And in paragraph 2 of Article 134, it states: "In the event of a civil case between fellow Muslims, it will be resolved by an Islamic religious judge if their customary law requires it, and as long as it is not determined otherwise by any ordinance".¹⁵

2. After independence, the second two periods can also be split into the following two phases:
 - a. Islamic law as a persuasive source: According to constitutional law, a new legal source can only be approved if it has been accepted.
 - b. Islamic law as an authoritative source, which is a source of law with direct legal power in constitutional law.

The 1945 Constitution was influenced by the Jakarta Charter before the Presidential Decree of July 5, 1959.¹⁶ But the Decree became an authorized source once it acknowledged that the 1945 Constitution was inspired by the Charter.

The August 17, 1945, declaration of Indonesian independence undoubtedly had a significant impact on the evolution of the country's legal system.

The Indonesian people, previously conditioned to follow the Dutch legal system, began to attempt to break free and develop their own legal system.

Islamic law in Indonesia has a long history, encompassing the arrival, growth, and development of Islam in Indonesia. Without delving into the controversy of whether Islam arrived

¹⁰ At that time, Islamic Law was recognized as a legal authority, however, its existence and form were still the same as unwritten customary law as befits statutory regulations. And what existed were fiqhmi books which were still in the form of studies of Islamic law in various schools of thought, although the majority were from the Shafi'i school. See: Abdurrahimman, *Compilation of Islamic Law in Indonesia*, (Ed. I: Jakarta: Akademika Pressindo, 1995), pp. 15-29

¹¹ M. Daud Ali, *The Position of Islamic Law and the Legal System in Indonesia*, (Jakarta: Risalahlm, 1984), p. 12

¹² Munawir Sjadzali, *The Basis of Political Legal Thought in Indonesia in the Framework of Determining Religious Courts in Indonesia*, in Tjua Suryaman, *Legal Politics in Indonesia, Its Development and Formation*, (1st ed.: Bandung: Raja Rosdakarya, 1991), pp. 43-44

¹³ Mura Hutagalung, *Islamic Law in the Development Era* (Jakarta: Ind-Hill-CO, 1985, First Edition), p. 19

¹⁴ Soerojo Wignjodipoero, *Introduction and Principles of Customary Law*, (Jakarta: Haji Masagung, 1990), p. 28; Hazairin, *Pancasila Democracy* (Jakarta: Tinta Mas, 1973), p. 13

¹⁵ Ismail Sunny, *The Position of Islamic Law in the Indonesian Constitutional System...*, p. 132

¹⁶ Compare the paragraph in the 1945 Constitution which later became the first principle of Pancasila as the basis of the Republic of Indonesia with the formulation in the Jakarta Charter: "belief in God with the obligation to carry out the requirements of Islam for its adherents."

in Indonesia in the 7th century according to Islamic sources or the 13th century according to Western Persian sources, Islamic law also has a periodicity, categorized as follows:

- a. Muslims generally embraced Islamic law. Dutch officials recognized and grasped this truth. According to the Batavia Statute of 1642, "inheritance disputes between native Muslims must be resolved using Islamic law, the law used by the people in everyday life".
- b. Since customary law governs Islamic societies, Islamic law is upheld if it has been recognized by customary law.
- c. If Islamic law recognizes customary law, it will be applicable.¹⁷

Islam cannot be divorced from culture or customs since it is a system that encompasses all facets of social life; in fact, Islamic doctrines include customs. Consequently, the social component of Islamic law is the only place where Islamic teachings about customs may be found. As a result, the only Islamic institution capable of legitimizing the social structure or values that emerge inside society is Islamic law. This is due to the fact that Islam not only establishes new laws but also upholds societal structures and customs as long as they do not contradict Islamic legal precepts. This is due to the fact that every civilization has a unique social structure. As a result, Islamic law likewise takes on many shapes, much like water, which is positioned according to the area it inhabits.

Government Policy on Islamic and Customary Law.

A major factor has always been the tension between the requirements of the Islamic religious system and the realities of daily living. This tension was made worse during Dutch control by colonial practices that had a direct impact on how Islamic law was applied. Two strategies were used to accomplish this policy: one in the early years of Dutch control and another in the decades that followed in the archipelago. Because the Dutch East Indies trading company (Vereenigde Oost-Indische Compagnie, or VOC) was primarily focused on the task of collecting agricultural goods from the colonies, the Dutch shown tolerance for Islamic law from the early 17th to the late 18th century. In the meantime, the second process was characterized by the transfer of authority from the VOC to the Dutch government, which led to the creation of interventionist policies in the age of Islamic law with customary law.

Islamic family law was acknowledged as a legal requirement for Muslims in the Batavia Statute of 1642.¹⁸ Marriage, inheritance, and endowment legislation were all covered under the "Resolutie der Indiesche Regering" regulation, which was put into effect on May 25, 1760.¹⁹ The religious life of the colonized population was always impacted by Dutch colonial policies, and on December 7, 1643, a church edict to the head of the Batavia district issued a decree declaring that:

High officials should make sure that the Moorish habit of circumcision and their schools are outlawed,²⁰ and that Chinese and other pagans are prohibited from practicing their devil worship and pagan divination, which they particularly perform in the streets and temples at night. Similarly, the black magic they employ to forecast fortunes ought to be outlawed since

¹⁷ Ahmad Rofiq, Op. Cit, p. 3.

¹⁸ Sudirman Tebba, Sociology of Islamic Law, (Yogyakarta: UII Press Indonesia, 2003), p. 108.

¹⁹ Abdul Manan, Op. Cit., p. 292.

²⁰ The historical origin of the term Moors is the term for Muslims on the Iberian Peninsula who ruled Spain between 711 AD and 1429. The origin of the term Moors is that they are people who come from Morocco, the Moors lived in Andalusia, Spain, which at the beginning of the historical period included the regions of Portugal and southern France.

no Christian nation permits insults to God's honor for whatever reason, as these acts only amuse non-Christians and irritate Christians.²¹

The Future of Law in Indonesia

In a similar vein, the 1970s saw the emergence of Islamic legal reforms that continued the dialectical process of Islamic law's development. Since Van Den Berg developed the notion of *receptie in complexu*, C. Van Vollenhoven (1874-1933) and Snouck Hurgronje (1857-1936) tried to use the theory of *receptie* to justify the existence of Islamic law. According to this idea, which Hazairin refers to as the Devil's theory, Islamic legal activities are determined by the law, which is essentially the customary laws that apply to Muslims.

The Indonesian people's desire to make Islamic law a positive law is something that needs to be taken into account. Islamic law will be crucial in the future given the contributions of the populace to the nation's sustainability. This is because, according to a number of experts, religion will play a major role in the upcoming era, which is, of course, the third millennium.²² As such, Indonesian law's status as a religious law will have a significant impact on the country's rate of development. Alongside the revival of Islamic thought in general, there have been innovative ideas and attempts to formalize *fiqh*, or Indonesian-specific Islamic law. However, the trends of legal reform philosophers have received comparatively thorough and independent research thus far, albeit often in a disjointed way. Studies of Islamic reformist philosophy, carried out by numerous academics in Indonesia and beyond, have flourished in the interim. The modernist group's Munawir Sjadzali and Ibrahim Hosen, as well as the traditionalist group's Abdurrahman Wahid, Ali Yafie, and Sahal Mahfudh,²³ are among the thinkers and observers who have concentrated on this topic. For instance, Law No. 1/1974 on marriage, Law No. 7 of 1989 on religious courts, and the compilation of Islamic law in Indonesia serve as models for Islamic law reform. However, the evolution of Islamic law can occasionally become quite limited when these topics are solely addressed within family law. However, Islamic law covers a wide range of facets of human existence.

Notwithstanding these issues, Islamic and customary law will always play a part in the legitimization process, especially when it comes to family law. Because Islamic law and customary law are intertwined and have a direct and indirect impact on the creation of new legal regulations, it is impossible to overlook the significance of both legal systems in the process of resolving modern issues. Prof. Hasby Ash-Sheiddieqy and Hazairin constantly and deeply cared about the renewal of Islamic law prior to the aforementioned period. These two figures adopt distinct strategies. Hazairin prefers to support the constitutionalization of Islamic law, whereas Hasby depends more on the methodical capacities of Islamic law established by earlier academics.²⁴ By analyzing the Qur'anic and Sunnahic texts, he alludes to the "spirit" of the Jakarta Charter, beginning with the conviction that the door of *ijtihad* is always open to new *mujahideen*. Therefore, Hazairin contends that the development of the Indonesian school of thought must be limited to attempts to adapt the Shafi'i school to local circumstances. These two Islamic scholars contend that Indonesian customs must be the key factor taken into account while developing Islamic law in Indonesia, notwithstanding Hasby's tendency to base Indonesian *fiqh* on all schools of thought. These scholars stress the necessity of establishing *tajdid* and *ijtihad* organizations in order to codify Islamic law that is

²¹ Ratno Lukito, Op. Cit, p. 30.

²² Kamaruzzaman Butamam Ahmad, *Historical Islam: Dynamics of Islamic Studies in Indonesia*, (Yogyakarta: Galang Press, 2002), p. 131.

²³ Ahman Rofiq, Op. Cit, p. 156.

²⁴ Ratna Lukito, Op. Cit. p. 77.

prepared to handle societal legal concerns. The approach provided is the one developed by scholars of many schools of thought, including sadd al-zari'ah, istihsan, maslahat mursalah, and qiyas.

Using Fazlurrahman's words, the revitalization of Islamic scholars in Indonesia is indicative of a neo-modernist movement. The laws that are a result of Indonesian legitimacy can reflect this.²⁵ Its features include: (1) taking into account all Islamic traditions, both traditional and modern; (2) differentiating between normative and historical Islam, or conceptual Islam; and (3) employing scientific methodology in attempts to formulate Islamic law, based on the foundations of Islamic spiritualism and the treasures of classical Islamic intellectualism (4) a historical, sociological, and chronological interpretation of the Qur'an and Sunnah; (5) a distinction between the ideal-moral and the specific legal; (6) attempts to systematize the classical modernist interpretation method; and (7) taking current issues into account when reinterpreting the Qur'an.

The renewal of Islamic legal thought in Indonesia thus tends toward neo-modernism because, in the context of individuals, institutions, and bureaucracy (government) through legislation (if this division is justified), it demonstrates that the compromise between sharia or fiqh, western law, and customary law, which lives in the consciousness of society, becomes an effective choice; the institution of ijtihad or tajdid is put forth; cross-school patterns are developed; and compilation techniques are used in both the administrative form and the legal content of the law. It is an unavoidable requirement. In the meantime, talfiq—which is socially taboo—is a very successful substitute for initiatives aimed at changing Islamic law.

Islamic law must therefore be seen as a social institution since the environment and social circumstances will always have an impact on it. Islam serves two purposes as a social institution: first, it serves as a means of social control; second, it serves as a process of social change and a new set of values. First, Islamic law is viewed as God's blueprint, which functions as social engineering and control for a community's life. The second is that, within certain bounds, the law is more of a historical artifact that serves as a rationale for calls for social, cultural, and political reform. In this situation, Islamic law must take into account communal needs without sacrificing its core values.²⁶

Interconnection of Customary Law and Islamic Law

Islamic law was progressively diminished in Indonesia following the entrance of Dutch colonists. In the end, only a few aspects of family law—marriage, divorce, reconciliation, and inheritance—remained, with religious courts serving as the enforcers, aside from religious observances. In spite of this, Islamic law is still in place, albeit partially. Sociologically and culturally, Islamic law has never perished and has always been a part of Muslims' life in all political systems, from colonialism to independence to the present.

There are two types of scholarly perspectives on Islamic law in relation to Dutch customary law. G. A. Wilken and C. Van Vollenhoven, two Dutch scholars, contended that customary law had a long history in villages prior to the introduction of foreign religions like Buddhism, Islam, and Hinduism. At the time, society also claimed that adherence to customary law could not be undermined by subjection to foreign religions. One of the primary systems of customary law accepted Islamic law.²⁷

²⁵ Ahman Rofiq, Op. Cit, p. 174.

²⁶ *Ibid*, p. 98.

²⁷ Ratna Lukito, Op. Cit. p. 43.

Those who shared this viewpoint contended that "although the power of local customs has been manifested in Indonesian society, Islamic law is also effective at the communal level and has succeeded in modifying several legal practices, especially in family law and social values," in contrast to B. W. Andaya and A. Johns' (1930) belief that Islamic doctrine had played a very significant role in royal life.

Islam had such a profound impact on communities that follow customary law that it can be claimed that Islamic law not only changed but even eradicated societal standards. Thus, it is not hyperbole to state that Islamic law was the only legal system in use prior to Dutch colonization and that this legal consciousness evolved into the majority of Indonesian customary law.²⁸ According to Lodewijk Willem Christian van den Berg (1845–1927), Islamic law actually enjoyed a lot of support in some parts of Southeast Asian culture and frequently succeeded in upending local customary authority. Thus, the conflict between these two systems might be characterized as an attempt by one system to subdue the other.

In light of this, the Dutch made the decision to differentiate between the two legal systems. Despite the fact that the majority of the population was Muslim, the Dutch government's fundamental premise was that Islamic law was only a theoretical legal system and customary law was a live and applied legal system. This perspective, however, was at odds with societal norms that saw the two legal systems as coexisting.

In a society where the relationship between Islamic law and customary law is typically depicted as antagonistic, there will always be attempts to show the opposite in two ways: first, that there is never a theoretical conflict between the two legal systems in people's real lives. Second, Islam is regarded as the refinement of tradition, and the two systems are not only compatible but actually a part of the same system that has its origins in God.

Below are some illustrations of accommodation between Islamic law and customary law:

Almost all marriages involve the practice of divorce (*ta'liq talaq*). In this instance, the husband must consent that if he leaves his wife for a predetermined amount of time and does not support her during that time, causing her to suffer, the wife will be considered divorced if she refuses to accept this and makes a complaint with the religious court. It can be argued that Islamic law has adapted customary law given the wife's capacity to take the lead in these situations.

A wife may, under certain circumstances, compel her husband to accept the return of her dowry as payment for the divorce in a divorce case known as *khul'*. If the husband declines, the judge may declare a divorce or dissolve the union right away.

Even if a religious official has already granted a permit, marriages outside of Java are forbidden without the leader of the indigenous community's written consent. Additionally, the permit must specify that the parties' consent to the marriage is accepted by the community's customary law.

Sharia Views Marriage in Traditional Traditions

Long before Indonesian laws pertaining to marriage were created, the country's marital laws already existed. Based on the desires of the Indonesian people, the Marriage Law was codified into Indonesian law. As a result, both customary and religious marriage laws are embodied in the text of these regulations. Because of this, it makes perfect sense that Indonesia has a wide variety of relevant marriage law systems, including religious and customary marriage.²⁹ Article 2, paragraph (1) of Law Number 1 of 1974 regulating Marriage, for instance, states that "Marriage is valid if it is

²⁸ Sudirman Tebba, *Op. Cit.*, p. 88.

²⁹ Nety Hermawati, "Response to Marriage Law in Indonesia," *Al-Mizan* 11, no. 1 (2015): p. 34.

carried out according to the laws of each religion and its beliefs." This can be taken to suggest that marriage can be performed in accordance with Indonesian customary law in addition to religious law. If customary law is applicable, then certain rules must be followed; this is also known as customary law.³⁰

Customary law has become a living legal norm in various Indonesian communities. The term "customary law" was first introduced by Snouck Hurgronje in his work *De Atjehnes* in 1983.³¹ This term is called *Adatrecht*, meaning the law applicable to the natives (locals) and foreign Easterners during the Dutch East Indies era. In many Indonesian communities, customary law has evolved into a living legal standard. Snouck Hurgronje initially used the phrase "customary law" in his 1983 book *De Atjehnes*. The law that applied to both foreign Easterners and natives (locals) during the Dutch East Indies era is known as *Adatrecht*. Dewi Wulansari claims that the phrase "customary law" derives from the Arabic words "hukum" (law) and "adah" (plural "ahkam"), which signify "command" or "regulation." This relates to Islamic law, such as "sharia law," which has five categories of directives: *mandud* or *sunnah* (recommended), *makruh* (reprehensible), *fardh* (obligatory), *haram* (prohibited), and *jaiz*, *mubah*, or *halal* (permissible). Conversely, *adah*, or custom, denotes "custom," such as a society's consistent behavior, hence customary law also means usual law.³²

This is evident in Lombok weddings, where there is a clear clash between Islamic and customary law. Beginning with the *selabar* (*aji krame*) and concluding with the *betikah* (*ijab kabul*) ceremony, customary law is a complicated process that is certified by the KUA (religious affairs office), the marriage registrar (*penghulu*), and, of course, the general public. In a similar vein, traditional Bima weddings feature distinctive customs, such as the *co'i* (price or sense of honor) payment, which consists of: 1) Islamic practice includes *co'i di pehe*, or *mahr*, also known as dowry; 2) *co'i di wa'a*, or personal property, as part of custom (a cultural expression), such as a house and/or land; and 3) *piti ka'a*, or spending money, as expenses for wedding celebrations and customary ceremonies or rituals. It is known as *ampa co'i ndai*, or bridal dowry paid by the lady, when the woman pays the *co'i*. The guy is the only one who gives the *co'i* in the marriage contract, although this is generally recognized even if it is not enforced in Islamic marital customs.

As we see religion and culture as a system of symbols or a system of knowledge that creates,³³ classifies, mixes, or connects symbols and uses them to communicate and deal with the environment, Islamic law and custom are like two sides of the same coin that cannot be separated. One distinction, though, is that religious symbols are considered sacred. In religion, sacred symbols typically appear in societal customs known as religious traditions. Religious traditions are defined as a collection or outcome of historical changes in which certain aspects of tradition are introduced and then abandoned.³⁴

³⁰ Ratno Lukito, *Indonesian Legal Tradition* (Yogyakarta: Teras, 2008), p. 3.

³¹ Mahdi Syahbandir, "The Position of Customary Law in the Legal System," *Kanun* 12, no. 1 (2010): p. 2.

³² Wulansari, *Indonesian Customary Law: An Introduction*, 1

Atun Wardatun, "The Social Practice of Mahr among Bimanese Muslims; Modifying Rules, Negotiating Roles," in *Women and Property Rights in Indonesian Islamic Legal Context*, ed. by John R. Bowen and Arskal Salim (Leiden: Brill, 2019), p. 17.

³³ The sacred or holy is something that is different from the profane, the sacred includes beliefs, myths, dogmas, and legends that express representations or representation systems in which the sacred essence exists and the powers that are symbolized and interconnected with each other and the profane world. However, to understand the sacred is not as simple as we imagine because many profane objects are attributed with sacredness, for example stones, mountains, trees and so on which are considered to have spirits or even declared as gods, see Peter L. Berger, *The Sacred Heaven of Religion as Social Reality*, (Jakarta: LP3ES, 1991), pp. 32-33.

³⁴ Nur, Syam, *Coastal Islam*, (Yogyakarta: LKIS, 2005), p. 17.

CONCLUSION AND SUGGESTIONS

Conclusion

Islam cannot be divorced from culture or customs since it is a system that encompasses all facets of social life; in fact, Islamic doctrines include customs. Consequently, the social component of Islamic law is the only place where Islamic teachings about customs may be found. As a result, the only Islamic institution that may give legitimacy to the social structure or values that emerge inside society is Islamic law. This is due to the fact that Islam not only establishes new laws but also upholds societal structures and customs as long as they do not contradict Islamic legal precepts. Four historical periods can be distinguished in Indonesia's conception of Islamic law: two prior to and two following independence. The first two stages can be further subdivided into two phases: the introduction of the doctrine of "reception in complexu" and the full implementation of Islamic law. Next independence, the next two periods can alternatively be split into two phases: Islamic law is both an authoritative and convincing source. Islam sees sharia law and customary law as two sides of the same coin that are inextricably linked in the institution of customary marriage. Religion is a behavioral system. In this way, religion provides a framework for understanding human behavior. Additionally, religion is a behavioral pattern that is always present in people and used in day-to-day activities. Religion is therefore regarded as a component of the cultural system.

Suggestions

In order for them to be used as references when making legal choices, academics are expected to create a number of research on regulations, especially in relation to current legal challenges. In the meanwhile, it is anticipated that law enforcement would be more accommodating when it comes to making legal choices, particularly when it comes to customary issues like marriage, which naturally have distinct laws in every town and area.

Reference

- Abdul Hadi and Sofyan Hasan, "The Influence of Islamic Law on Legal Development in Indonesia," *Nurani* 15, no. 2, 2015.
- Abdurrahlmman, *Compilation of Islamic Law in Indonesia*, Ed. I: Jakarta: Akademika Pressindo, 1995.
- Atun Wardatun, "The Social Practice of Mahr among Bimanese Muslims; Modifying Rules, Negotiating Roles," in **Women and Property Rights in Indonesian Islamic Legal Context**, ed. by John R. Bowen and Arskal Salim. Leiden: Brill, 2019.
- Clifford Geertz, **Culture and Religion**, Yogyakarta: Kanisius, 1992.
- Djarmika Rahmat, "The Path to Seeking Islamic Law: Efforts Toward Understanding the Methodology of Ijtihad," in *"Prospects for Islamic Law within the Framework of National Legal Development in Indonesia"*, Jakarta: PP-IKAHA, 1994.
- Djarmika Rahmat, **The Path to Seeking Islamic Law: Efforts Toward Understanding the Methodology of Ijtihad**, in **Prospects for Islamic Law within the Framework of National Legal Development in Indonesia**, Jakarta: PP-IKAHA, 1994.
- Hazairin, *"Pancasila Democracy"*, Jakarta: Tinta Mas, 1973.
- Ismail Sunny, "The Position of Islamic Law in the Indonesian Constitutional System," in the book *"Prospects for Islamic Law within the Framework of National Legal Development in Indonesia."*
-

- John Ryan Bartholomen, "Alif Lam Mim; The Wisdom of the Sasak Community," translated by Imron Rosyidi, Yogyakarta: Tiara Wacana, 1st edition, 2001.
- Lastuti Abubakar, "Revitalization of Customary Law as a Source of Law in Building the Indonesian Legal System," Jurnal Dinamika Hukum 13, no. 2, 2013.
- Laurensius Arlimen, "Customary Law in Indonesia from the Views of Experts and the Concept of Its Implementation in Indonesia," Jurnal Selat 5, no. 2. 2018.
- M. Daud Ali, The Position of Islamic Law and the Legal System in Indonesia, Jakarta: Risalahlm, 1984.
- Mahdi Syahbandir, "The Position of Customary Law in the Legal System," Kanun 12, no. 1, 2010.
- Munawir Sjadzali, "The Foundation of Legal Political Thought in Indonesia in the Framework of Determining Religious Courts in Indonesia," in Tjua Suryaman, "Legal Politics in Indonesia, Its Development and Formation," 1st ed.: Bandung: Raja Rosdakarya, 1991.
- Mura Hutagalung, "Islamic Law in the Development Era," Jakarta: Ind-Hill-CO, 1st ed., 1985.
- Murdan, "Legal Pluralism in Indonesia: Integrity in Marriage in the Sasak Muslim Community," State Islamic University of Sunan Kalijaga Yogyakarta, 2020.
- Nety Hermawati, "Responses to Marriage Law in Indonesia," Al-Mizan 11, no. 1. 2015.
- Notosusanto, "Organization and Jurisprudence of Religious Courts in Indonesia," Yogyakarta: Gajah Mada Publishing Foundation, 1963.
- Nur Syam, "Islam Pesisir," Yogyakarta: LKIS, 2005.
- Peter L. Berger, "The Sacred Heaven of Religion as a Social Reality," Jakarta: LP3ES, 1991.
- Ratno Lukito, "Indonesian Legal Tradition," Yogyakarta: Teras, 2008.