

THE RELATIONSHIP BETWEEN CUSTOMARY LAW AND ISLAMIC LAW IN PAPUAN MARRIAGE PRACTICES

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ABSTRACT

This article examines the customary marriage practices of the Papuan people from the perspective of Islamic law within the framework of legal pluralism. Marriage in Papuan society is not only understood as an individual bond between a man and a woman, but also as a social event involving extended families, clans, and customary structures. In practice, the fulfillment of customary requirements often becomes the main basis for the legitimacy of marriage, while the marriage contract according to Islamic law is carried out simply or even neglected. This condition reflects the dominance of customary law as a living law that is deeply rooted in the social structure of society. Through a juridical-empirical approach with normative and socio-anthropological analysis, this study shows that the relationship between customary law and Islamic law is negotiable and contextual. Islamic law is recognized theologically, but its application is often adjusted to the interests of customary social harmony. The findings of the study also reveal the serious implications of customary marriage practices for the protection of women and children, especially when the marriage is not accompanied by a marriage contract that is valid according to Islamic law. This article emphasizes that customary marriage practices in Papua cannot be viewed solely as an expression of culture, but also as a matter of justice and legal protection. Therefore, a model for strengthening Islamic law that is sensitive to the customary context is needed, without neglecting the basic principles of justice and public interest.

Keywords: *customary marriage, Islamic law, legal pluralism, Papua, protection of women and children.*

INTRODUCTION

Marriage in Papuan society cannot be understood solely as a legal bond between men and women, but rather as a social institution that connects two kinship groups and maintains the balance of social relations in the customary community. Papuan customary marriage practices are generally characterized by the involvement of customary leaders, the payment of customary dowries, and a series of symbolic rituals that convey respect for women, families, and communities. In this context, customary law functions as a social mechanism that regulates order, honor, and collective responsibility in Papuan indigenous communities.¹

¹Koentjaraningrat, *Pengantar Ilmu Antropologi*, cet. IX (Jakarta: Rineka Cipta, 2009), h. 278-281.

On the other hand, Islamic law views marriage as a sacred and legal contract, which aims to preserve lineage, honor, and human welfare. The validity of marriage in Islamic law is determined by the fulfillment of the pillars and requirements of marriage, such as the presence of a guardian, witnesses, *ijab kabul* (marriage vows), and dowry. Thus, Islamic law places marriage not only as a social event but also as a legal act that has moral and juridical consequences.²

The relationship between customary law and Islamic law in the marriage practices of the Papuan people shows a unique dynamic of legal pluralism. In Papuan Muslim communities, customary practices are not simply abandoned, but undergo a process of negotiation and adaptation with Islamic norms. The payment of customary property, for example, can be understood as part of *urf* (local custom) recognized in Islamic law as long as it does not conflict with sharia principles and does not negate the dowry as a woman's right. This shows that Islamic law's has normative flexibility in responding to local cultural realities.³

However, this relationship is not always harmonious. Some Papuan customary marriage practices have the potential to conflict with the principles of Islamic law, especially when there is no valid marriage contract, uncertainty regarding the guardian, or the legitimacy of premarital relationships based on custom. In such conditions, Islamic law provides a clear limit that custom cannot be used as a basis for justification if it conflicts with the basic principles of sharia. The rule of *al-adah muhakkamah* only applies insofar as the custom is in line with the values of justice, humanity, and benefit.⁴

Through the perspective of legal pluralism, the relationship between customary law and Islamic law in the marriage practices of Papuan society needs to be understood as an ongoing process of normative dialogue. Customary law provides social and cultural legitimacy, while Islamic law provides an ethical and legal framework. This approach is important to avoid a dichotomy between "custom" and "religion" and to emphasize that Islamic family law can function contextually in Muslim minority areas without losing its basic principles.⁵

Papuan marriage practices reveal complex legal dynamics, especially when customary law and Islamic law coexist in the same social space. In many customary communities,

²Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuh*, Juz VII (Damaskus: Dar al-Fikr, 1989), h. 29-35.

³Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, cet. IV (Jakarta: Kencana, 2014), h. 61-65.

⁴Abd al-Wahhab Khallaf, *Ilm Uşul al-Fiqh*, cet. XII (Kairo: Dar al-Qalam, 1978), h. 89-91.

⁵John Griffiths, What Is Legal Pluralism?, *Journal of Legal Pluralism and Unofficial Law*, Vol. 18 No. 24 (1986): 1-8.

marriage gains social legitimacy primarily through the recognition of the extended family, customary rituals, and the payment of customary property, while normative validity according to Islamic law, which requires a marriage contract, a guardian, and witnesses, is often placed as a secondary or even deferred aspect. This situation raises fundamental questions about the legal status of marriage in the Islamic perspective (), particularly regarding the validity of the husband-wife relationship and its legal implications for lineage, rights, and family obligations.⁶

The situation becomes even more complex when custom functions not only as a cultural tradition but also as a living legal system with strong social cohesion. In this context, communities tend to adhere to customary norms because they are considered closer to their social reality than religious laws, which are perceived as formal and institutional. As a result, Islamic law is in a position where it must constantly negotiate with customs, not only at the normative level, but also in the social power relations that determine which laws are considered applicable in everyday life.⁷

Within these relations, women are often in the most vulnerable position. Customary property, which is symbolically interpreted as respect for women and the family, in certain practices has the potential to obscure the principles of protection of women's rights as stipulated in Islamic family law, especially in relation to marriage consent, dowry, and guarantees of justice after marriage. When customary legitimacy is more dominant than religious norms, women's interests are often reduced in the name of social harmony and adherence to tradition.⁸

This problem is exacerbated by the weak integration between customary law and Islamic law in institutional practice, especially in Muslim minority areas such as Papua. Limited access to religious courts and the low institutional authority of Islamic law in customary communities mean that many marriage issues are resolved informally through customary mechanisms. Although these mechanisms are socially effective, the lack of formal recognition of Islamic law creates legal vulnerability, especially for women and children, when conflicts or disputes arise in the future.⁹

⁶John Griffiths, What Is Legal Pluralism?, *Journal of Legal Pluralism and Unofficial Law*, Vol. 18 No. 24 (1986): 1-10.

⁷Werner Menski, Legal Pluralism in Indonesia: Law, Religion and Society, *Asian Journal of Law and Society*, Vol. 1 No. 2 (2014): 149-169.

⁸Euis Nurlaelawati, Women, Islam and Family Law Reform in Indonesia, *Islamic Law and Society*, Vol. 18 No. 1 (2011): 1-32.

⁹Mark Cammack and R. Michael Feener, The Islamic Legal System in Indonesia, *Pacific Rim Law & Policy Journal*, Vol. 21 No. 1 (2012): 13-42.

Within the framework of legal pluralism, this condition shows that the relationship between customary law and Islamic law is not always harmonious, but is characterized by normative tensions and practical compromises. Without a contextual and human values-based approach, legal pluralism has the potential to perpetuate practices that contradict the principles of substantive justice. Therefore, it is necessary to interpret Islamic family law in a way that is capable of dialoguing with Papuan customs through the principles of *maqāṣid al-syarī'ah* and *maslahah*, so that Islamic law does not appear as a system that negates tradition, but as an ethical framework that protects human dignity in the context of local culture.¹⁰

Previous studies on customary marriage in Papua generally place customary practices as anthropological and social phenomena, with an emphasis on ritual functions, kinship structures, and the symbolic meaning of customary property in community life. These studies have made important contributions to understanding customs as a living value system, but they tend not to examine in depth how these customary marriage practices interact normatively with Islamic law, especially in Muslim communities in Papua. As a result, the relationship between customs and Islamic law is often understood descriptively, rather than analyzed as a legal relationship with juridical and religious implications.

On the other hand, research on Islamic family law in Indonesia has mostly focused on regions with a Muslim majority population and a relatively established institutional context, such as Java and Sumatra. These studies emphasize the role of religious courts, family law reform, and the dynamics of *fiqh* (Islamic jurisprudence) within the national legal system. However, the context of Muslim minority regions such as Papua is still relatively marginalized in academic discourse, so that the experiences of the Papuan Muslim community in implementing Islamic family law amid the dominance of local customs have not received adequate attention. This gap has led to Islamic family law often being positioned as an ideal norm without considering the real social and cultural challenges in customary areas.

In addition, there has not been much research that explicitly uses a pluralistic legal approach and *maqāṣid al-syariah* simultaneously to examine traditional Papuan marriage practices. In fact, this approach is important for bridging the tension between customary norms and Islamic legal principles without negating either one. This research aims to fill this gap by offering an analysis of the relationship between customary law and Islamic law in Papuan

¹⁰Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, *Journal of Islamic Law and Civilization*, Vol. 1 No. 1 (2010): 1-15.

marriage practices that is not only normative but also sensitive to cultural contexts and human values.

This research has academic significance because it contributes to enriching the study of Islamic family law in Indonesia, especially in the context of Muslim minority areas, which have received relatively little attention. By examining the relationship between customary law and Islamic law in the marriage practices of Papuan communities, this research offers a more contextual and realistic perspective on the application of Islamic family law. This study not only expands the space for academic discourse, but also challenges normative approaches that tend to ignore local social and cultural dynamics.

Theoretically, this research is important because it integrates the approach of legal pluralism with the principle of *maqāṣid al-syarī'ah* in interpreting customary marriage practices. This approach allows Islamic law to be understood not as a rigid normative system, but as an ethical framework capable of dialoguing with customs and the social realities of society. Thus, this study, contributes to the development of a more adaptive, inclusive, and substantive justice-oriented theory of Islamic law that protects human dignity.

In addition, this research has practical and social significance because it can be a reference for stakeholders, such as religious leaders, traditional leaders, and religious courts, in formulating approaches to resolving marriage issues that are more sensitive to the local context. By placing customs and Islamic law in a dialogical relationship, this research is expected to encourage marriage practices that are not only socially valid but also normatively fair and dignified, especially for women and children in Papuan society.

RESEARCH METHOD

This research uses a qualitative approach with a type of normative legal research enriched with a socio-legal perspective. This approach was chosen because the object of study is not only written legal norms but also social practices and customs that exist in Papuan society. Thus, law is understood not merely as a normative text but as a practice that interacts dynamically with cultural values, social structures, and the religious experiences of the community.

The normative approach is used to analyze Islamic legal provisions related to marriage, particularly the pillars and requirements of marriage, the concept of *urf*, and the principle of

maqāṣid al-syarī'ah as an evaluative framework for customary marriage practices. This analysis is conducted through a review of classical and contemporary fiqh literature, laws and regulations related to marriage, and Islamic family law doctrines. Meanwhile, the socio-legal perspective is used to understand how Papuan customary law functions as a living *law* system, which gains social legitimacy in the community's marriage practices.

The data sources in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include Islamic legal norms relevant to marriage, while secondary legal materials include books, scientific journal articles, and previous research discussing Papuan customary law, legal pluralism, and Islamic family law. Tertiary legal materials are used as support to clarify the terms and concepts used in the study. All data are analyzed qualitatively using descriptive-analytical analysis, which systematically describes Papuan customary marriage practices and then assesses them from an Islamic legal perspective while taking into account the social context and human values.

Through this method, the study seeks to produce an analysis that does not judge customary law as a practice that contradicts Islamic law, but rather places it in a dialogical relationship. This approach is expected to provide a more contextual, fair, and relevant understanding of Islamic family law for the indigenous Papuan community, while maintaining the integrity of the basic principles of Islamic law.

RESULT AND DISCUSSION

A. Papuan Customary Marriage Practices as a Socio-Legal Reality

The results of the study show that the customary marriage practices of the Papuan people are a socio-legal reality that is alive and deeply rooted in the social structure of the community. Marriage is not understood solely as an individual bond between a man and a woman, but as a collective event involving extended families, clans, and indigenous communities. In many communities, the legitimacy of marriage is determined by the fulfillment of customary requirements, such as family consent, the involvement of indigenous leaders, and the transfer of customary property. After these stages have been completed, the couple is considered socially legitimate as husband and wife, even though they may not have yet performed a marriage ceremony according to Islamic law. This

condition shows that customary law functions as a living law, the main normative system that regulates family life and social relations in Papuan society.¹¹

This finding reinforces the view that customary law in Papua functions as a *living law*, i.e., a law that derives its legitimacy not from the state or formal institutions, but from the acceptance and compliance of the community. The strength of customary law lies in its ability to maintain social harmony and balance relations between groups. Therefore, disregard for customary procedures is often seen as a serious violation that results in social sanctions, even though religious or state norms may not necessarily view it as such. In this context, customary law not only regulates the ritual aspects of marriage but also shapes the identity and social cohesion of the community.¹²

However, the dominance of customary law in marriage practices also creates problematic space when dealing with other legal systems, particularly Islamic law. When customary legitimacy is positioned as the sole basis for the validity of marriage, the normative aspects of Islamic law have the potential to be marginalized. This indicates that the legal pluralism that occurs is not merely harmonious coexistence, but also contains the potential for normative tension that requires critical reading.¹³

This tension does not always manifest itself in the form of open conflict, but more often as compromises whose implications are not fully realized. In many cases, the community feels that it has fulfilled its social and moral obligations through the implementation of customs, so that the implementation of Islamic law is seen as something that can be postponed or simplified. In fact, from the perspective of Islamic family law, marriage contracts are not merely ritual formalities, but rather a legal foundation that gives rise to reciprocal rights and obligations between husband and wife (). When this foundation is weak or even non-existent, marital relationships have the potential to lose legal certainty and normative protection.

Furthermore, this condition shows that the applicability of Islamic law in Papuan society cannot be separated from the social and cultural context in which the law is operated. Islamic law does not exist in a vacuum, but interacts with customs that have

¹¹Sally Engle Merry, Legal Pluralism, *Law & Society Review*, Vol. 22 No. 5 (1988): 869-896.

¹²John Griffiths, What Is Legal Pluralism?, *Journal of Legal Pluralism and Unofficial Law*, Vol. 18 No. 24 (1986): 1-55.

¹³Brian Z. Tamanaha, Understanding Legal Pluralism: Past to Present, Local to Global, *Sydney Law Review*, Vol. 30 No. 3 (2008): 375-411.

long shaped the community's view of family and marriage. Therefore, the main issue is not the existence or absence of Islamic law, but rather how it is understood, negotiated, and institutionalized within the social structure of customs. Without an approach that is sensitive to the local context, Islamic law risks being perceived as an external norm that is irrelevant to the realities of community life.

B. Relationship and Negotiation between Customary Law and Islamic Law

The relationship between customary law and Islamic law in the marriage practices of Papuan communities is negotiable and contextual. Islamic law is recognized theologically by the Muslim Papuan community, but its application is often adapted to the established customary structures. Marriage contracts according to Islamic law are generally carried out after the customary procession is complete or are conducted simply without formal documentation. This condition reflects the social strategy of the community in accommodating two legal systems at once, without explicitly negating either one.¹⁴

These negotiations show that Islamic law is not rejected, but is practiced within limits that are acceptable to the traditional social structure. In many cases, basic Islamic principles such as the intention to build a family and moral responsibility are still upheld, even though formal procedural aspects are not always strictly adhered to. This indicates that Islamic law functions more as a source of ethical values than as a binding positive legal system. This phenomenon is in line with findings that the applicability of religious law is highly dependent on the social and institutional context in which it operates.¹⁵

However, this negotiation is not always balanced. When customary law takes a dominant position, Islamic law has the potential to lose its protective function, especially in the context of family law. The absence of a marriage contract that is valid according to Islamic law can cause serious problems in the event of domestic conflict, divorce, or disputes over rights. Thus, the relationship between customary law and Islamic law needs to be understood not only as a cultural relationship, but also as a matter of justice and legal protection.¹⁶

The dominance of customary law in marriage practices also reveals an imbalance of normative authority between the law that exists in society and the law that is transcendent-

¹⁴M. B. Hooker, Islamic Law in South-East Asia, *Journal of Asian Studies*, Vol. 43 No. 2 (1984): 287-303.

¹⁵Mark Cammack, The Indonesian Islamic Judiciary, *Islamic Law and Society*, Vol. 9 No. 1 (2002): 12-38.

¹⁶Werner Menski, Legal Pluralism Revisited, *Journal of Legal Pluralism and Unofficial Law*, Vol. 51 No. 3 (2019): 289-312.

normative. Customary law gains legitimacy through social consensus and collective pressure, while Islamic law relies on individual consciousness and religious authority that is not yet fully institutionalized. This imbalance often places Islamic law in a subordinate position in practice, even though it has strong normative claims in theological terms. This situation shows that the main problem lies not in the substance of Islamic law, but in the mechanisms for its institutionalization and internalization within the customary social structure.

The practice of negotiation between customary law and Islamic law also reflects how Papuan society constructs contextual religious meaning. Religion is not practiced formalistically, but rather adapted to local values that have long governed social life. In this framework, compliance with customary law is often seen as part of moral compliance, including compliance with religious teachings. However, this approach risks blurring the boundaries between cultural values and Islamic legal norms, especially when customary law negates aspects of protection that are the main objectives of Islamic family law.

This discussion emphasizes that the relationship between customary law and Islamic law in Papuan marriage practices cannot be understood dichotomously, as if the two are always in conflict or harmony. The relationship exists in a fluid space of negotiation, where social compromise often dominates legal certainty. The challenge ahead is how to build a model of relationship that allows Islamic law to function more protectively without undermining the social legitimacy of customary law. This requires a dialogical approach that simultaneously involves customary leaders, religious leaders, and legal institutions.

C. Implications of Customary Marriage Practices on Women's and Children's Rights

One important finding in this study is the direct implications of customary marriage practices on the position of women and children. From a customary perspective, the payment of customary property is often interpreted as a form of respect for women and their families of origin. However, in certain practices, customary property is perceived as legitimizing control over women, making women vulnerable in the event of domestic conflict. Without a marriage that is valid under Islamic law, women often find it difficult to claim their rights normatively.¹⁷

¹⁷Ziba Mir-Hosseini, Islamic Legal Tradition and the Challenge of Gender Equality, *Human Rights Quarterly*, Vol. 29 No. 1 (2007): 1-26.

From an Islamic law perspective, the protection of women and children is the main objective of family law. When marriages are not conducted in accordance with the basic principles of Islam, such as clarity of contract and guardianship, this protection becomes weak. Children born from marriages that are only recognized by custom () also have the potential to face problems with their legal status and access to civil rights. This condition shows that the issue of customary marriage cannot be viewed solely as an expression of culture, but also as an issue of humanity and social justice.¹⁸

These implications are even more complex in Muslim minority areas such as Papua, where access to Islamic legal institutions is relatively limited. Women and children are often in an unequal position in the customary social structure, requiring the presence of a legal system capable of providing substantive protection. Thus, strengthening the role of Islamic law in marriage practices is not only normatively relevant but also socially urgent.¹⁹

Customary marriage practices that are not integrated with Islamic law have the potential to reinforce the normalization of women's vulnerability. When domestic conflicts are resolved entirely through custom, the collective interests of the community are often prioritized over the individual rights of women and children. In this situation, social peace is achieved at the expense of substantive justice. In fact, Islamic family law normatively places justice and protection of the weak as its main principles. This tension between collective customary interests and individual rights is a crucial point in a critical reading of Papuan customary marriage practices.

Strengthening the role of Islamic law in Papuan marriage practices cannot be understood as an attempt to shift customs, but rather as a strategy to strengthen the protection of humanity within the framework of legal pluralism. Islamic law, when presented in a contextual and dialogical manner, can serve as a corrective instrument against customary practices that have the potential to harm women and children. Therefore, the integration of custom and Islamic law is an urgent necessity, not only for the sake of legal certainty, but also for the realization of sustainable social justice.

¹⁸Euis Nurlaelawati, Muslim Women and the Reform of Family Law in Indonesia, *Die Welt des Islams*, Vol. 52 No. 3-4 (2012): 421-446.

¹⁹Stijn Cornelis van Huis, Plurality of Marriage Law and Marriage Registration in Indonesia, *Asian Journal of Law and Society*, Vol. 2 No. 2 (2015): 233-247.

D. Integration of Customary Law and Islamic Law through the Maqasid al-Syariah Approach

This discussion shows that the main problem in Papuan customary marriage practices does not lie in the existence of customs themselves, but rather in the absence of an integrative framework between customs and Islamic law. In this case, the maqasid al-syariah approach offers a relevant and contextual perspective. This approach places legal objectives such as the protection of life, honor, and lineage as the basis for evaluating social practices, including customary marriage.²⁰

Through the maqasid approach, customs can be positioned as valid and acceptable *urf* as long as they do not negate the main objectives of Islamic law. This approach allows for normative dialogue between customary and religious leaders, so that marriage practices can be adjusted without damaging existing social structures. Thus, Islamic law does not act as an instrument of coercion, but rather as an ethical and normative framework that reinforces human values in customs.²¹

This integration also has practical implications for the development of Islamic family law in Muslim minority areas. A dialogical approach between custom and Islamic law can strengthen the protection of women's and children's rights, while maintaining the social legitimacy of marriage in indigenous communities. Therefore, these results and discussions confirm that the future of indigenous marriage practices in Papua requires a legal approach that is sensitive to the local context, but remains oriented towards justice and human dignity.²²

CONCLUSION

This study concludes that the customary marriage practices of the Papuan people represent a reality of living and dynamic legal pluralism, in which customary law and Islamic law interact in a social space fraught with negotiation. Marriage is not understood solely as a personal relationship between a man and a woman, but as a social event that gains its primary legitimacy through customary mechanisms. In this context, customary law functions as *a living law* that

²⁰Jasser Auda, Maqasid al-Shariah as a Philosophy of Islamic Law, *Journal of Law and Religion*, Vol. 27 No. 2 (2012): 193-216.

²¹Mohammad Hashim Kamali, Law and Society: The Interplay of Custom and Shariah, *Islamic Law and Society*, Vol. 6 No. 3 (1999): 345-366.

²²Abdullahi Ahmed An-Na'im, Islamic Family Law in a Changing World, *Journal of Law and Religion*, Vol. 19 No. 1 (2003): 1-24.

has strong social binding power because it is rooted in the collective values and kinship structures of Papuan society.

The relationship between customary law and Islamic law in marriage practices is contextual and not always balanced. Islamic law is recognized theologically, but its application is often adapted to established customary structures. As a result, Islamic law more often functions as a source of ethical and moral values than as a legal system that provides normative certainty and protection. This condition shows that the applicability of religious law is highly determined by the social and institutional context in which the law operates, especially in Muslim minority areas such as Papua.

The findings of this study also confirm that the dominance of customary law in marriage practices has serious implications for the protection of women's and children's rights. When marriages are only legitimized by custom without an adequate foundation in Islamic law, women and children are in a vulnerable position when faced with domestic conflicts, divorce, and disputes over rights. This situation shows that the issue of customary marriage cannot be viewed solely as a cultural expression, but rather as a humanitarian and social justice issue that directly impacts vulnerable groups within the social structure.

However, this study does not position custom as an entity that is inherently contrary to Islamic law. On the contrary, many Papuan customs are in line with the objectives of Islamic law, such as maintaining family honor, social responsibility, and community stability. The main problem lies in the absence of an integrative framework capable of bringing custom and Islamic law together in a dialogical manner. Using a legal pluralism perspective enriched by the *maqasid al-syariah* approach, this study shows that Papuan customary marriage practices need to be read as a space for socio-legal negotiation that has a direct impact on the protection of humanity. The novelty of this study lies in its assertion that the problem does not lie in customary law or Islamic law separately, but in the mechanisms of the relationship and institutionalization of the two. This approach allows custom to be positioned as a valid *urf* (customary law) insofar as it supports substantive justice, and opens up space for the development of a model of integration between customary law and Islamic law that is contextual, dialogical, and oriented towards the protection of human dignity, especially for women and children in Muslim minority areas such as Papua.

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