

# **Harmonization of Islamic Law and Customary Law in the *Pambissa Kampong* Tradition in Latimojong Village**

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## **Abstract:**

The research aims to determine the role and influence of Islamic law in the implementation of the *pambissa* kampong tradition in Latimojong, the adaptation and change of customary law in the *pambissa* kampong tradition and its impact on the sustainability of this tradition, and the process of harmonization of Islamic law and customary law in the *pambissa* kampong tradition and the factors that influence it. The type of research used is empirical legal research. To support this empirical legal research, a normative approach and a sociological approach are used. Shows: (1) The role and influence of Islamic law in the implementation of the Pambissa Kampong Tradition in Latimojong is that customary law adopts Islamic law in its entirety, both in terms of principles and in terms of implementation. Its implementation is adjusted to Islamic law. If there are differences in principle between Islamic law and customary law, then the implementation of Islamic law must be a priority. (2) Changes in customary law in the Pambessa Kampong tradition and its impact on the continuity of this tradition are customary law, which means that rules are made from the behavior of a

growing community and developed until it became a law that was obeyed unwritten. So that customary law changes according to the conditions prevailing in society. (3) The process of harmonization of Islamic law and customary law in the Pambessa Kampong tradition and the factors that influence it. Harmonization in question is an effort to harmonize customary law and Islamic law in one national legal system. If all this time there seems to be a difference between customary law and Islamic law, it is urgent to restore harmony between the two.

Tujuan penelitian ini untuk mengetahui peran dan pengaruh hukum Islam dalam pelaksanaan tradisi *pambissa kampong* di Latimojong, bagaimana adaptasi dan perubahan hukum adat dalam tradisi *pambissa kampong* serta dampaknya terhadap keberlangsungan tradisi ini, dan bagaimana proses harmonisasi hukum Islam dan hukum adat dalam tradisi *pambissa kampong* serta faktor-faktor yang mempengaruhinya. Jenis penelitian yang digunakan adalah penelitian hukum empiris untuk mendukung penelitian hukum empiris ini, digunakan pendekatan normatif, dan pendekatan sosiologis. Menunjukkan: 1. Peran dan pengaruh hukum Islam dalam pelaksanaan Tradisi *Pambissa Kampong* di Latimojong adalah hukum adat mengadopsi Hukum Islam secara utuh, baik dari segi prinsip maupun dari segi pelaksanaan. Pelaksanaannya disesuaikan dengan hukum Islam. Apabila terdapat perbedaan prinsip antara hukum Islam dengan hukum adat, maka pelaksanaan hukum Islam harus menjadi prioritas 2. Perubahan hukum adat dalam tradisi *pambessa kampong* serta dampaknya terhadap keberlangsungan tradisi ini adalah hukum adat atau hukum kebiasaan yang artinya aturan dibuat dari tingkah laku masyarakat yang tumbuh dan berkembang sehingga menjadi sebuah hukum yang ditaati secara tidak tertulis. Sehingga hukum adat mengalami perubahan sesuai dengan kondisi yang berlaku di masyarakat. 3. Proses harmonisasi hukum Islam dan hukum adat dalam tradisi *pambessa kampong* serta faktor-faktor yang mempengaruhi adalah Harmonisasi yang dimaksud adalah upaya untuk menyelaraskan antara hukum adat dan hukum islam dalam satu sistem hukum nasional. Jika selama ini seolah-olah terjadi perbedaan antara hukum adat dan hukum Islam maka sesuatu yang urgen untuk kembali mengharmoniskan di antara keduanya.

**Keywords:** *Harmonization; Islamic law; Customary law; Pambissa Kampong tradition.*

## Introduction

Islam<sup>1</sup> is a religion that covers all aspects of life,<sup>2</sup> humans do not have a single problem in life that is not explained and touched upon by Islamic values<sup>3</sup>, even

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<sup>1</sup>John L. Esposito and J. Voll. "Islam." *Democracy* (Oxford: Oxford University Press, 1996) (1994).

<sup>2</sup>Norsyahira Cik Hamid and W. K. A. W. Mokhtar. "The Comprehensive Aspect in Islam from Quran and Hadith Perspective." *International Journal Of Academic Research In Business And Social Sciences* 9.11 (2019).

<sup>3</sup>Hasnah Haron, Nurul Nazlia Jamil, and Nathasa Mazna Ramli. "Western and Islamic values and ethics: Are they different?." *Journal of Governance and Integrity* 4.1 (2020), p. 12-28.

though the problem seems small and trivial. That is Islam, a religion that gives grace to all nature.<sup>4</sup> In Islamic law,<sup>5</sup> adultery is one of the major sins.<sup>6</sup> In Islam, sexual relations between men and women who are not legally husband and wife are considered adultery.<sup>7</sup>

Adultery is a sexual relationship committed by a man with a woman who is not bound by a valid marriage according to Islamic law, based on mutual consent on the part of both parties, without any doubt of the perpetrator or perpetrators of adultery. In Indonesia, adulterers receive punishment, both according to custom and the positive laws that exist and apply in society. According to the Encyclopedia of Islamic Law, Zina is sexual relations between a man and a woman who are not or have not been bound by marriage without any element of doubt in the sexual relationship.<sup>8</sup>

Fuqaha scholars from the Hanafi school of thought argue that adultery is sexual relations carried out by a man consciously against a woman accompanied by sexual desire and between them there is no legal marriage bond or a dubious marriage bond, that is, a marriage whose validity is doubtful, such as a marriage bond without a guardian, without witnesses, or a mut'ah marriage.<sup>9</sup> For certain groups, sexual relations outside of marriage are considered normal, as in the modern world there are so many underage marriages and also unregistered marriages.

Cases of adultery committed by the community and criminal sanctions for violations committed by the community are enforced from generation to generation. The overly lenient sanctions set out in the criminal code in Indonesia often make people underestimate them, so many violate them. The norms of Islam, which are embraced by most of the Indonesian people, stipulate that adultery is a great sin as, said Allah swt., in Q.S Al-isra'/17:32, which affirms that adultery is a

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<sup>4</sup>Seyyed Hossein Nasr, "ISLAM, THE AND THE." *Earthcare: An Anthology in Environmental Ethics* (2009), p. 82.

<sup>5</sup>Wael B. Hallaq, *An introduction to Islamic law*. Cambridge University Press, 2009.

<sup>6</sup>Farah Edhar Khaerunisa, "Adultery In The Perspective Of Islamic Religious Law And Positive Law In The Indonesian Community." *Hunafa: Jurnal Studia Islamika* 18.2 (2021), p. 158-174.

<sup>7</sup>Mohammad Daud, *Hukum Islam dan Peradilan Agama*, (Jakarta: PT. Grafindo, 2019), p. 3.

<sup>8</sup>Abdul Aziz Dahlan, et al., *Ensiklopedi Hukum Islam*, jilid 6, cet. 1, (Jakarta: Ichtisar Baru van Hoeve, 1996), p. 26.

<sup>9</sup>Neng Djubaedah, "Perzinaan dalam peraturan perundang-undangan di indonesia dan di tinjau dari hukum Islam", (Cet. 1; Jakarta: Media Grafika, 2010), p. 119.

heinous act and a bad way.<sup>10</sup> Adultery in Islamic crime related to the law given is very varied, it can be whipped and/or stoned.

Customary law, which applies in several regions in Indonesia, stipulates that adulterers receive punishment from local customary authorities. The punishment can be in the form of being expelled from the fellowship of ostracism, being sentenced to death for having violated the family, the village where he lives, paying a fine to the family who feels aggrieved, offering animal sacrifices to the traditional chief to perform a village purification ceremony to restore the magical religious balance.

Traditional and cultural phenomena are an interesting problem, and continue to develop in the community.<sup>11</sup> The development of customary law is more or less influenced by religious norms such as Islam. This discussion of customary law is considered important although not in-depth because in the positive legal theory that is widely adopted, the entrance to religious law recognition has been received or absorbed by customary law living in Indonesia. Time moves quickly and steadily until it turns seconds into minutes, minutes into hours, hours into days, and so on. In the end, it is time that bring everything to the modern era as it is today. All of this has brought changes to each human behavior which is the area of moral competence.

However, in various regions, responding to adultery behavior is an act that deserves appropriate punishment and is stipulated in customary law. This also applies to Latimojong Village, which still adheres to the tradition of *pambissa kampung*. This tradition is still preserved by the people of Latomojong Village and is applied to people who commit adultery (*mappangeddi*), or adultery committed to a woman who has a valid marriage bond but commits adultery with another man (cheating). People who commit adultery, then get pregnant and abort their pregnancy, will get customary sanctions.

The tradition of Pambissa Kampong involves religious activities such as prayers, dhikr, and traditional ceremonies that are believed to bring blessings and harmony to the lives of the local community. Although this ritual has strong religious values, it is still carried out by considering the customs that have existed in the community. This shows the potential for harmonization between Islamic law

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<sup>10</sup>Kementerian Agama RI, *Al-Quran dan Terjemahnya* (Jakarta: Pustaka Al-kausar, 2016), p. 503.

<sup>11</sup>Rahmawati, et al. "Harmonizing Islamic Law and Local Culture: A Study of The Mampatampung Tradition in Duri, Enrekang Regency." *Jurnal Ilmiah Al-Syir'ah* 22.1 (2024), p. 67-78.

and customary law in the religious practices of the community in Latimojong Village.

However, the problem is the lack of awareness of the people in Latimojong about the acts they do in terms of adultery. Traditional leaders gave affirmation in terms of providing customary law sanctions. The settlement process will be brought to the customary court, if the deliberations carried out between the parties do not reach the word violation, then the perpetrator can be given sanctions in the form of reprimands, customary fines, fulfillment of customary obligations, linked to the facts that exist in the problem encountered.

Responding to this, of course, it is an interesting thing to dialogue, because Indonesia is a country of law with the majority of its people being Muslims with various patterns of tradition in each place. Therefore, *pambissa kampung* as a tradition in sanctioning those who commit adultery, must also consider the presence of criminal law in Indonesia and Islamic law. Therefore, in this study, we will elaborate on the harmonization of Islamic law and customary law regarding the tradition of *pambissa kampung* in Latimojong Village. It is urgent to provide a factual answer to the position of customary law given to the perpetrators of adultery in its relevance to Islamic law, considering that in Islamic law or Islamic criminal law (*jinayah*) it also makes adultery as a *jarimah* or an act mentioned in the nash as a prohibited act.

## Method

This research is empirical legal research using a normative approach and a sociological approach. This type of empirical legal research is carried out by interpreting or translating in research language the results of research obtained from information through field studies.<sup>12</sup> To support this empirical research, normative research, and sociological approaches are also used. The normative approach is an approach that is oriented to religious texts, namely the Qur'an and hadith as well as the opinions of scholars. Meanwhile, the sociological approach is an approach that is associated with social theories, especially family sociology. The source of data in this study is interviews with respondents, who are considered to know deeply related to the tradition of *pambissa kampung* in Latimojong Village. In addition, another source of data that was carried out was an in-depth observation, to examine the practices of the *pambissa kampung* tradition, what the mechanism of its application is like and what are the forms of application of the law of the *pambissa kampung* tradition. In addition, a documentation study was also carried

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<sup>12</sup>Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta : Sinar Grafika, 2009), p. 18.

out, to strengthen the interview and observation data. The analysis used is qualitative descriptive, this analysis is expected to be able to describe the tradition of *pambissa kampung* about the harmonization of Islamic law.

## **Discussion**

### **Overview of Legal Harmonization**

The definition of harmonization, Etymologically harmonization comes from the basic word harmony, referring to a process that begins with an effort to achieve or realize a harmonious system. The term harmony also means harmony, suitability, harmony, and pleasant balance. In the Big Indonesian Dictionary, harmony is given the meaning of a statement of feeling, action, idea, interest, harmony, harmony, there must be rhythm and movement. Gandhi drew elements of the formulation of the definition of harmonization from the explanation in the Collins Cobuild Dictionary and Van Dale Groot Woordenboek, namely the existence of things that are contradictory in proportion to form an attractive whole, as part of a system, or society; and creating an atmosphere of friendship and peace. From the definitions above it can be concluded that the term harmony is defined as harmony, suitability, compatibility, and balance. Elements that can be drawn from the formulation of the definition of harmonization include; (1) Align the two plans using their respective parts to form a system; (2) A process or effort to realize harmony, suitability, harmony, compatibility, and balance; (3) Cooperation between various factors in such a way that these factors produce a noble unity.<sup>13</sup>

Starting from the elements in the formulation above, it can be concluded that the meaning of harmonization is both in its meaning as an effort and in its meaning as a process, interpreted as an effort or process that aims to overcome the boundaries of differences, conflicting matters, and irregularities. An effort or process to realize harmony, suitability, conformity, suitability, and balance, between various factors in such a way that these factors produce unity or form one noble whole as part of a system.

Definition of Legal Harmonization, Legal harmonization is an effort or process that aims to overcome differences, contradictions, and irregularities in the law. Efforts or processes to realize harmony, suitability, compatibility, compatibility, and balance between legal norms in statutory regulations as a legal system within a unified national legal system framework.

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<sup>13</sup>Satjipto Rahardjo, *Ilmu Hukum*, (Bandung : Citra Aditya Bakti, 2019), p.12.

The term effort refers to thinking to achieve a goal, namely the process. In the process, in time, effects are produced that provide feedback and influence, and in time afterward, produce outputs. In this way, the legal norms in legislation as a subsystem within a unified framework of the national legal system, are not hindered by differences, do not conflict with each other, and do not occur duplication or overlap.<sup>14</sup> When we carry out harmonization, several possibilities can occur as follows: (1) There is vertical inconsistency in terms of regulatory format, namely lower legislative regulations conflict with higher regulations, for example between government regulations and laws; (2) There is vertical inconsistency in terms of time, namely, several regulations that are hierarchical, for example, similar laws but one comes before the others; (3) There are horizontal inconsistencies in terms of regulatory substance, namely several regulations that are hierarchically parallel, for example among laws, but the substance of one regulation is more general than the substance of other regulations; (4) There is horizontal inconsistency in terms of substance in the same regulation, meaning that only the number of provisions differs; (5) There are inconsistencies between different formal sources of law, for example between laws and judges' decisions, or between laws and customs.

### **Customary Criminal Law**

Criminal law is a law that has a special nature, namely in terms of sanctions, every time we are faced with law, our thoughts are directed towards something that binds a person's behavior in society. According to Pompe in Teguh Prasetyo, criminal law is the totality of legal provisions regarding acts that can be punished and criminal regulations.<sup>15</sup>

Customary criminal law is a law that indicates events and must be punished because the events and actions have disturbed the balance of society.<sup>16</sup> If we refer to Hilman Hadikusuma's view, the meaning of customary criminal law is not seen from the perspective of criminal law but from the perspective of customary law. Looking at customary criminal law from the perspective of criminal law will only result in an understanding of the law from a purely positive perspective, the term customary criminal law is a translation of the term customary *delict recht*.<sup>17</sup>

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<sup>14</sup>Satjibto Raharjo, *Harmonisasi Hukum*, (Jakarta : PT. Grafindo, 2020), p. 14.

<sup>15</sup>Teguh Prasetyo, *Hukum Pidana*, (Depok : PT. Raja Grafindo Persada, 2017), p. 4

<sup>16</sup>Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan. "Legal pluralism within the space of Sharia: Interlegality of criminal law traditions in Aceh, Indonesia." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5.1 (2021), p. 426-449.

<sup>17</sup> Hilman Hadikusuma, *Hukum Pidana Adat*, (Bandung : Alumni, 2014), p. 17.

The definition of customary criminal law places more emphasis on the level of blameworthiness of an act in the view of Indigenous peoples, such as being wrong or discordant in society. Lilik Mulyadi said. When examined from the perspective of its source, customary criminal law has written and unwritten sources. Strictly speaking, written sources can be customs that arise, are followed, and adhered to continuously and from generation to generation by the indigenous people concerned.<sup>18</sup>

In contrast to the positive criminal law currently in force in Indonesia, these events and actions are punished because there is a written law that regulates them. As long as the events and actions are not regulated by law, they are not considered criminal. This is called the principle of legality as stated in Article 1 of the Criminal Code which states, "an act cannot be punished, except under the authority of criminal regulations in existing legislation, before the act is committed."<sup>19</sup>

Customary criminal law is a law that indicates events and actions that must be punished because these events and actions have disturbed the balance of society. So it is different from Western criminal law which emphasizes what events can be threatened with punishment and what kind of punishment because the event is contrary to statutory regulations.<sup>20</sup> If criminal law focuses on the existence of a cause so that a person can be threatened with punishment, then customary criminal law focuses on the existence of a consequence so that a person and his relatives must be responsible for that consequence.

### **The Position of Customary Law in Indonesia**

Our Constitution before the amendment did not explicitly show us the recognition and use of the term customary law. However, if we examine it, it can be concluded that the formulations in it contain noble values and the spirit of customary law. The preamble to the 1945 Constitution, which contains the Pancasila view of life, reflects the nation's personality, which lives in values, thought patterns, and customary law. Article 29 paragraph (1) The State is based on the belief in One Almighty God, Article 33 paragraph (1) The economy is structured as a joint effort based on the principle of kinship.<sup>21</sup>

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<sup>18</sup>Lilik Mulyadi, "Eksistensi Hukum Pidana Adat Di Indonesia", *Jurnal Hukum dan Peradilan*, Volume. 2, Nomor. 2, Juli 2013. p. 228.

<sup>19</sup>Moeljatno, *KUHP kitab undang-undang hukum pidana*, (Jakarta : Bumi Aksara, 2011), p. 38.

<sup>20</sup>Hilman Hadikusuma, *Hukum Pidana Adat*, (Bandung : Alumni, 2014), p. 18.

<sup>21</sup>Dewi C Wulansari., *Hukum Adat Indonesia Suatu Pengantar*, (Bandung: PT. Refika Aditama, 2019), p. 108.

At a practical level, based on the 1945 Constitution, the state introduces rights called State Control Rights (HMN),<sup>22</sup> this is based on Ulayat Rights, and Pertuanan Rights, which are traditionally recognized in customary law. In the RIS constitution article 146 paragraph 1 states that all judicial decisions must contain the reasons and in some cases must state the statutory rules and customary law rules which are used as the basis of the law. Furthermore, in the Provisional Constitution, article 146 paragraph 1 is re-stated. With Article 102 and taking into account the provisions of Article 25 of the 1950 Constitution, there is an order for the authorities to codify the law. So this is included in customary law. In its opinion, this codification order also applies to customary law, and this codification order is the first time it has been mentioned in the Legislation of the Republic of Indonesia which regulates provisions for the codification of customary law, even though in reality it cannot yet be implemented.<sup>23</sup>

With the Presidential Decree of July 5 1959, the 1945 Constitution came into force again. There were 4 main ideas in the preamble to the 1945 Constitution, namely unity covering the entire Indonesian nation, this also includes the legal field, which is called national law. The second main idea is that the state wants to realize social justice. This is different from legal justice. So the principles of human social function and property rights in realizing this are important to be realized and adapted to the demands and development of society, while still being based on primary values. The third main idea is that the state embodies the sovereignty of the people, based on democratic deliberation and representation. This main idea is fundamental, the existence of unity of feeling between the people and their leaders, meaning that leaders must strive to understand legal values and feelings, political feelings and use them as a spirit in carrying out public interests through making public policies. In this relationship, it is necessary to have the human character of a public leader who has the character of being brave, wise, fair, upholds the truth, has soft feelings, and is humane.<sup>24</sup>

The fourth main idea is: that the state is based on the Almighty God, this requires that legal and social ideals must always be linked to human functions, society has faith and devotion to the Almighty God, and the state recognizes God as the determiner of all things and the direction of the state alone. -eyes as a means of

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<sup>22</sup> Oleksandr Mykhailovych Shevchuk, et al. "Human Right to Access Public Information: The Experience of Ukraine and the Practice of the ECtHR." *Hasanuddin Law Review* 9.2 (2023), p. 155-167.

<sup>23</sup>Dewi C Wulansari., *Hukum Adat Indonesia Suatu Pengantar*, p. 108.

<sup>24</sup>Tolib Setiady, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaa)*, Penerbit Alfabeta, Bandung, 2019.

carrying humans and society as their function must be diligent with the vision and intention of obtaining the approval of Almighty God. However, after the constitutional amendment, customary law was recognized as stated in the 1945 Constitution, article 18D paragraph 2 which states: The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary Republic of the State. Indonesia, which is regulated by law.<sup>25</sup>

Understanding the formulation of Article 18 d of the 1945 Constitution means: (1) The Constitution guarantees the unity of Indigenous peoples and their traditional rights; (2) Constitutional guarantee as long as customary law is still alive; (3) societal developments; (4) By the principles of the Unitary State of the Republic of Indonesia; (5) Regulated in law.<sup>26</sup>

So this constitution guarantees recognition and respect for customary law if it meets the following requirements: (1) Reality requirements, namely that customary law is still alive and by societal developments; (2) Ideality requirements, namely by the principles of the unitary state of the Republic of Indonesia, and validity is regulated by law. Legislative law is by the 2001 TAP MPR, so the legal sequence is: 1945 Constitution; MPR Decree; Law/Perpu; Government Regulations; Regional Regulations<sup>27</sup>

This does not provide a formal position for customary law as a source of statutory law, except for customary law in the form of customary law which is formally recognized in legislation, customs, judges' decisions, or the opinions of scholars.

Customary law in Emergency Law Number 1 of 1951 is contained in articles 1 and 5. Article 1 is confirmed. Except for village courts, all court bodies which include governorate court bodies, self-government court bodies (Zellbestuurrechtspraak) except religious courts if the court is according to living law a part of the self-government court, and customary courts (Inheemse rechtspraak in rechsreeks gestured gebied) except religious courts if the court According to living law, it is a separate part of the customary court which has been abolished.<sup>28</sup>

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<sup>25</sup>Tolib Setiady, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaa)*, 2019.

<sup>26</sup>Bambang Sutyoso, *Reformasi Keadilan dan Penegakan Hukum di Idonesia*, UII Press, Yogyakarta, 2020.

<sup>27</sup>Bambang Sutyoso., *Reformasi Keadilan dan Penegakan Hukum di Idonesia*, 2020.

<sup>28</sup>Supanto, *Kejahatan Ekonomi Global dan Kebijakan Hukum Pidana*, (Bandung: Penertbit PT Alumni, 2020).

Article 5 paragraph (3) Sub b Civil Material Law and for the time being the civil criminal material law which until now applies to self-governing regional heads and people who were previously tried by customary courts, custom still applies to people and people - that person with the meaning: an act which according to living law must be considered a criminal act but which has no equivalent in the Civil Code is deemed to be punishable by a sentence of not more than 3 (three) months in prison and/or a fine of five hundred, namely a fine of five hundred hundred, namely as a substitute punishment if the customary sentence imposed is not followed by the condemned party. If the customary law imposed in the judge's opinion exceeds the punishment of imprisonment or a fine, then a substitute sentence of up to 10 years in prison may be imposed, with the understanding that the customary law according to The judge's understanding is no longer in tune with the times. That an act which according to the law must be considered a criminal act and which is comparable to the Civil Code is considered to be threatened with the same law as the law of the appeal which is most similar to that act.<sup>29</sup>

This provision seeks to abolish customary criminal law and its sanctions for natives and foreign easterners with customary criminal justice, except that it is only administered by general courts, religious courts, and village justices, village justices of the peace. Thus, since the issuance of Drt Law Number 1 of 1951, customary criminal law has no longer had its proper place because it is very limited in the legal politics of the Republic of Indonesia. In Article 2 of the Minister of Agrarian Affairs/KBPN Regulation No. 5 of 1999 concerning Guidelines for Resolving customary law community customary rights issues, it is stated.<sup>30</sup>

The implementation of customary rights as long as they still exist is carried out by the customary law community concerned with the provisions of local customary law. Customary rights of customary law communities still exist if customary law in Law Number 5 of 1960 is a regulation that is in direct contact with indigenous communities. Article 5 of Law no. 5 of 1960 emphasized: that agrarian law that applies to earth, water, and space is customary law, as long as it does not conflict with national and state interests based on national unity, with Indonesian socialism and with the regulations contained in this law and with statutory regulations. -other laws, everything by paying attention to elements originating from religious law. In the Explanation of the Law, it is stated:

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<sup>29</sup>Supanto, *Kejahatan Ekonomi Global dan Kebijakan Hukum Pidana*, (Bandung: Penerbit PT Alumni, 2020).

<sup>30</sup>Sunarjati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Bandung, 2021.

Customary law is perfected and adapted to the interests of society in a modern state and its international relations and is by Indonesian socialism.<sup>31</sup>

This provision is a realization of Decree MPRS II/MPRS/1960 Appendix A Paragraph 402. The customary law referred to is not the original customary law that applies in customary communities, but rather customary law that has been reconstructed, customary law which has been: perfected, and revised. , modern, which according to Moch. Koesnoe considers that the customary law contained in the UUPA has disappeared materially because it is influenced by Western legal institutions and characteristics or has been modified by Indonesian socialism so that all that remains is the formulation (the clothes) only.<sup>32</sup>

Agrarian law only applies certain things thereto. The reduction can be seen in state power. The existence of State Control Rights (HMN), is a form of withdrawal to the state of the Customary Rights owned by indigenous peoples over land located in the territory of Indonesia, which is then re-constructed as a form of delegation of state authority in implementation which can be delegated to the lower government. So Ulayat Rights in traditional communities, which were previously absolute and eternal, have been reduced depending on interests and determined by the state. A further consequence is the emergence of rights to land according to customary law, namely with the Right to Open Land (*ontginningrecht*) granted by the customary community, so that he has the Right to Enjoy (*genotrecht*), and has prior rights (*voorkersrecht*) over the land he cultivates, the emergence of property rights. through the appointment of village meetings in Central Java (*pekulen, norowito*) and West Java (*kasikepan, kanomeran, kacacahan*), by UUPA reduced and subordinated through government regulations, as regulated in article 22 paragraph (1) UUPA: The existence of property rights according to customary law is regulated by Government regulations.<sup>33</sup>

### **Harmonization of Islamic Law and Customary Law in the Pambissa Kampong Tradition in Latimojong**

Tradition *Pambissa kampong* is a custom in the district. Latimojong is a customary sanction that is carried out if someone commits a violation, namely committing adultery. Adultery is a *ma'apanggaddi* woman who is still legally married to her husband but has an affair with another man and ends up getting pregnant,

<sup>31</sup>Sunarjati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Bandung, 2021.

<sup>32</sup>Soekanto Soerjono dan Mustafa Abdullah, *Sosiologi Hukum Dalam Masyarakat*, (Jakarta: Rajawalin Pers, 2023).

<sup>33</sup>Soema di Pradja AS., *Hukum Pidana Dalam Yurisprudensi*, (Bandung: Penerbit, CV. Armico, 2020).

so the perpetrator is subject to traditional witness. This custom also applies customary law if there are people who are Ma'aparra, namely committing adultery, in this case getting pregnant outside of marriage and aborting the pregnancy. So the Indigenous people gave them sanctions, namely *dipetedongngi*, namely a fine of buffalo or cows for cleaning up villages that were considered "makarro" or had been polluted with immoral acts. Adultery is a dirty and vile act that cannot be accepted by reason and is prohibited by all religions. It causes very complex negative impacts, unclear lineage, severance of blood ties, destruction of family life, and spread of venereal disease.<sup>34</sup>

Latimojong is an area that also adheres to customary law, namely the tradition of *pambissa kampong* where a tradition is still preserved by the people in the Latimojong area. This tradition is a punishment imposed by Indigenous peoples on local people who commit adultery, namely *ma'apanggaddi*, women who have a valid marriage with their husbands but commit adultery with other men and end up pregnant, then the perpetrator is subject to customary witnesses. In this custom, customary law is also applied if there are people who are *Ma'aparra*, namely committing adultery, in this case getting pregnant outside of marriage and aborting their wombs, then the Indigenous people give them sanctions, namely *dipetedongngi*, which is fine for buffalo animals or cows to clean the village that has been considered "makarro" or has been polluted with immoral acts. This is a combination of Islamic religious elements and local wisdom of indigenous peoples which has been going on for generations from ancestors and masi in the community until now.<sup>35</sup>

Explanation of several existing cases, several couples have had wives or husbands and one of them is from the data that the researcher took with the initials M and N. Based on the words of Mr. Mujizat as a religious figure. This couple admitted that they had committed adultery many times and ended up pregnant, which caused these two perpetrators to be subjected to customary witnesses, namely Pambissa Kampong, for violating the existing social order.<sup>36</sup> There was also a case that occurred around 2009 when the perpetrator committed adultery outside of marriage and the aftermath was pregnancy because the perpetrator was still in the education stage and was also afraid of both parents from what they did so the perpetrator took the initiative to abort his pregnancy, referred to as Ma'aparra, at the time of his abortion the perpetrator experienced severe

<sup>34</sup>Fadel Ilahi, *Zina*, (Jakarta Timur: Qisthi Press, 2004), p. 39.

<sup>35</sup>Burhanuddin, Interview with traditional leaders in Latimojong, September 15, 2023.

<sup>36</sup>Mujizat, Interview with religious leaders on September 15, 2023.

bleeding resulting in his face looking very pale so that the public suspected that he had just aborted his content. After a very long interrogation, finally, the perpetrator admitted his irreprehensible act and was subjected to a customary witness, namely *dipetedonnggi*, of course, this buffalo was borne by the two perpetrators, after carrying out the customary sanction they then held marriage as in general and currently the perpetrators are in the village and they are accepted in the community, even they occupy strategic things in the community.<sup>37</sup>

*Pambissa kampong* is a custom in the district. Latimojong is a customary sanction that is carried out if someone commits a violation, namely committing adultery. Adultery is a dirty and vile act that cannot be accepted by reason and is prohibited by all religions. It causes very complex negative impacts, unclear lineage, severance of blood ties, destruction of domestic life, and spread of venereal disease. Furthermore, in Islam, various types of adultery have been explained, among others, as follows:

- a) Zina Muhsan is an act of adultery committed by a man/woman who is obliged to maintain his honor. This means people who are married or married.
- b) Zina Ghairu Muhsan means the act of adultery committed by an unmarried man/woman.<sup>38</sup>

In dealing with the implementation of the village *pambissa* tradition in Latimojong:

- a) Customary law adopts Islamic law in its entirety, both in terms of principles and in terms of implementation. For example, the village *pambissa* tradition.
- b) Its implementation is adjusted to Islamic law.
- c) If there are differences in principles between Islamic law and customary law, then the implementation of Islamic law must be a priority and customary law can be implemented if circumstances permit.

The village *pambissa* tradition views adultery as an immoral act, so in Latimojong society, it has regulated what behavior is considered immoral as well as the customary sanctions given for committing adultery. As Burhanuddin said:

*Dipetedonnggi atau dipakalauwwi yami too tau den mo muanena naa manjo siapa si porai muane senga ma'a panggaddi. yamina di bissai to kampong apana den tau maa rurusala lan kampong na di petedonnggi apa na solanggimi to pa'a palao*

<sup>37</sup>Burhanuddin, Interview with traditional leaders in Latimojong, September 15, 2023.

<sup>38</sup>Imam Al-Hafizh Abu Isa Muhammad, *Terjemah Sunan At Tirmidzi Jilid II*, (Semarang: CV Asy Syifa', 1992), p. 800-803.

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*malangkomi tomai pare, taemina kembua tomai tanaman ke wattu kembuai apa, yamito na di pakelau to tau di alai tedong.*<sup>39</sup>

This means: the person who is subject to the customary witness is if there is a woman who already has a legal husband according to religion and according to the marriage law in force in Indonesia, but has an affair with someone's husband or a man who is still single, because this is a very reprehensible act and is considered As something that could damage the social order with this obscenity, the customary witness was implemented, namely in Petedonggi, because this had an impact on the community's crops and agricultural products which were not as abundant as usual.

*"Yaduka dipetedonnggi too tau ma'a parra jadi yamidisanga maparra to tau hamil tapi na pasun. Jadi yato tau dipetedonnggi jolo mane dipakawin undu diposirina todi sanga apa, tapi ketae siana pasunni ecdipakawin siari."*<sup>40</sup>

This means: that people are subject to traditional witnesses in Petedonggi if maa Parra, namely aborting a pregnancy, this witness is valid because the local community believes that this is a serious violation because they committed a crime, namely adultery and killing the baby in the womb. However, after customary law is implemented, the perpetrator can only carry out the marriage.

*Den duka disanga bunga lalan, tugasna tomanjo selidiki atau mentiro' manggapai na maa kakande buda temai balao, tikalili tomai daun pare, yaduka todaun loka tikalili innang den iatau pusara sala lan kampung.*<sup>41</sup>

Meaning: there is also a special title in Latimojong, namely bunga lalan, namely people who are given a special task to find out if the plants have been eaten by rats, too many rice leaves have been eaten by ulau, and banana leaves have holes because they have been eaten by caterpillars. This is believed by the Latimojong community to be a sign that there are people who commit customary violations.

Customary law is customary law, which means that rules are made from the behavior of a community that grows and develops so that it becomes a law that is obeyed unwritten. So customary law changes according to the conditions prevailing in society, as said by the Latimojong sub-district head.

<sup>39</sup>Burhanuddin, Interview with traditional leaders in Latimojong, September 15, 2023.

<sup>40</sup>Burhanuddin, Interview with traditional leaders in Latimojong, September 15, 2023.

<sup>41</sup>Burhanuddin, Interview with traditional leaders in Latimojong, September 15, 2023.

*Perubahanna yamito tedong apa lakote masussamo jadi bisa sia disellei sapi yang penting yato patuan a'paa sia ajena, Yato alli tedong muane sola yato baine tanggung ie, yaa alli iesola dua nabagi sisang sesena sola dua.*<sup>42</sup>

This means: the change is that people who used to buy buffalo can now slaughter cows because buffalo are now rare. The buffalo that will be used to carry out this tradition will be borne by both parties.

*Yake ladi pusrarai yaria dipasadia totedong, atau sapi digere jiokamong pollo wai parigusi, disanga dipabawai wai tokarrona. Tapi nakande sia tau, tae wadding dibawa lako banua dikande mia jio topadding dirambuan langi, harus di captui jio to dingai gere ie, nakua ambe, den na pusrarai wattu ya jadi kapala na den tau maa rurusala lank ampong, dipasusi sia ke maa bere pada umumnya dibacakan bismillah, di petaranni to piso, menghadap kiblad duka sia. Yangkandei todagingna totedong tau lain, maksudnya bukan keluarga inti pelaku, tetep nalakukan masyarakat karna sejalan sia sola syariat agama.*<sup>43</sup>

This means: the most important implementation of this tradition is that if there is no buffalo, it can be replaced with a cow and slaughtered in the village of "Pajang", which is one of the villages in Latimojong which is located at the end of the village and is flowed by a large river, "dipabawai wai to karrona" the people believe that The misfortune of this adultery results under flowing water leaving the village, namely Latimojong. People are not allowed to take meat from animals that are slaughtered and finished at that place home and the perpetrator's family is prohibited from eating the meat, it is cooked and the smoke rises to the sky, the slaughtering process is the same as Islamic law: read bismillah, recite the prophet's prayer, face the Qibla, read takbir, and use sharp tools. The imam of the mosque said that this tradition is still carried out when people commit violations because it is in line with Islamic law and also as a deterrent effect on the perpetrator and the Latimojong community will think twice if they want to commit a violation because of shame or embarrassment, usually called a social witness which will be social issues that will last a lifetime.<sup>44</sup>

As a universal legal system, Islamic law is accommodating to the legal system that applies in a society. In this case, Islamic law provides space for customary law to continue to be implemented by society, of course, provided that

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<sup>42</sup>Supriadi. Interview with the Latimojong sub-district on September 16, 2023.

<sup>43</sup>Supriadi. Interview with the Latimojong sub-district on September 16, 2023.

<sup>44</sup>Supriadi, Interview with the Latimojong sub-district on September 16, 2023.

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it does not conflict with Islamic values. This is proven by Islam's acceptance of customs or Urf as part of *adilatul ahkam* or legal propositions.

Harmonization is an effort to harmonize and unite to create harmony. The harmonization in question is an effort to harmonize Customary Law and Islamic Law in one National Legal System. If all this time there seems to be a difference between customary law and Islamic law, then it is urgent to bring harmony between the two. Among the steps that can be taken is to review the main issues that constitute the legal differences and similarities between these two legal systems. Harmonization can be seen from the existence of customary law in Latimojong which is still implemented because it is in line with Islamic law, as Mr. Mujizat said.<sup>45</sup>

*Yabang ria nasikarroan too ka kedentau maa kedo sala lan tondok yami to na di alai tedong, yami di sanga ada, yaaria kumua ayana kina kita lako tee allo inna rurusala tau too di pasusi ie tee supaya garri ie.*<sup>46</sup>

It means; The basis for this is the belief of the local community that if anyone violates it, they will be subject to traditional witnesses to give a deterrent effect to the perpetrator and make other people ashamed of committing adultery.

*Jadi yake di pusara ie teeapa yato tau matua langkampong den sarupa imang desa, kepala desa, kepala dusun, sama turui tau too taumatua lankampong.*<sup>47</sup>

This means: that when this custom is implemented, the government plays an important role, such as the village head, hamlet head, mosque imam, traditional leaders, and the community participates in implementing the village *pambissa* tradition.

Subdistrict head. *In tamban tau budah in pammesai yake soromi in petedonggi taemo na bias in carita what is considered sina has been redeemed because soromo carried out customary sanctions, maa pekkiri kie lang pugauk ie,* because of the rampant cases of infidelity, as well as juvenile damage.<sup>48</sup>

Meaning: the sub-district head added that after the tradition was carried out the community considered the case to be over and should not be told about it again.

<sup>45</sup>Mujizat, Interview with religious leaders on September 15, 2023.

<sup>46</sup>Mujizat, Interview with religious leaders on September 15, 2023.

<sup>47</sup>Mujizat, Interview with religious leaders on September 15, 2023.

<sup>48</sup>Supriadi, Interview with the Latimojong sub-district on September 16, 2023.

In connection with the conditions above, Islamic teachings do not prohibit its followers from accommodating customs, as long as the customs do not conflict with Islamic law, namely the Qur'an and Hadith.<sup>49</sup> So the harmonization of Islamic law and customary law in the *pambissa kampung* tradition can be seen in the process of implementing the tradition. Although this tradition seems to give different sanctions to adulterers, the law is full of values of rejection of adultery that is prohibited in Islam. In addition, the tradition of *pambissa kampung* is carried out to provide a deterrent effect to the perpetrators of adultery, not to repeat the act, because it is prohibited in Islam and prohibited in customary law. So between Islamic law and customary law, there is harmonization or mutual reinforcement in upholding the religious rules of Allah. In addition, the application of the law, or the slaughter of cows or buffaloes, does not deviate from the teachings of Islam, because slaughtering it is still called Allah's asthma. For this reason, the tradition of *pambissa kampung* in Latimojong village is a form of punishment or witness given to adulterers to get a deterrent effect by not committing adultery, because it is also prohibited in Islam, as explained in the Quran and hadith.

## **Conclusion**

A conclusion in this research that the role and influence of Islamic law in implementing the *Pambissa Kampung* tradition in Latimojong is that customary law adopts Islamic law in its entirety, both in terms of principles and in terms of implementation. For example, the village *pambissa* tradition. Its implementation is adjusted to Islamic law. If there are differences in principle between Islamic law and customary law, then the implementation of Islamic law must be a priority and customs can be implemented if circumstances permit. Changes in customary law in the *Pambissa Kampung* tradition and its impact on the continuity of this tradition are customary law or customary law, which means that rules are made from the behavior of the community as it grows and develops so that it becomes a law that is obeyed unwritten. So that customary law changes according to the conditions prevailing in society. The process of harmonization of Islamic law and customary law in the *Pambissa Kampung* tradition and the influencing factors is that harmonization is an effort to harmonize and unite to create harmony. Harmonization in question is an effort to harmonize customary law and Islamic law in one national legal system. If all this time there seems to be a difference

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<sup>49</sup>Syaikhu, et al. "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7.1 (2023), p. 195-215.

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between customary law and Islamic law, then it is urgent to bring harmony between the two. Among the steps that can be taken is to review the main issues that constitute the legal differences and similarities between these two legal systems.

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