



(MUDIMA)



## Customary Law System and the Influence of Religion on the Indonesian Legal System

Maysarah<sup>1</sup>, Tri Yana<sup>2\*</sup>

Universitas Pembinaan Masyarakat Indonesia

**Corresponding Author:** Tri Yana [yanayana10009@gmail.com](mailto:yanayana10009@gmail.com)

### ARTICLE INFO

*Keywords:* Customary Law, Religious Law, National Legal System, Pancasila, Legal Pluralism

*Received* : 8 August

*Revised* : 23 September

*Accepted* : 26 October

©2025 Maysarah, Yana: This is an open-access article distributed under the terms of the [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/).



### ABSTRACT

This paper comprehensively examines the system of customary law (*hukum adat*) in Indonesia and the influence of religion on the formation, development, and implementation of the national legal system. Customary law, as the indigenous legal system of the Indonesian people, has existed long before the arrival of colonial influences and major world religions such as Hinduism, Buddhism, and Islam. Historically, *hukum adat* not only served as a social guideline but also as a reflection of the nation's moral, spiritual, and cultural values. Its evolution has undergone significant transformations—from the Hindu-Buddhist kingdoms that marked the early integration of religious and customary norms, to the Islamic kingdoms that produced a syncretic blend of *syariah* and customary law, and finally, to the Dutch colonial period which institutionalized legal pluralism through the Western legal system. Following Indonesia's independence, a major challenge arose in unifying the various legal systems into a coherent national legal framework grounded in the values of Pancasila and the 1945 Constitution. Religion, as a source of ethical and moral principles, has exerted a profound influence on the substance and philosophy of Indonesian law. Islamic law, for instance, has significantly shaped family law, civil law, and Islamic economic law, while other religions have also contributed to the moral and philosophical dimensions of national law. In the modern era, globalization and legal modernization pose new challenges to maintaining the relevance of both customary and religious law amidst demands for universal justice and efficiency. This study aims to analyze the historical roots, interrelations, and harmonization potential between customary law, religious law, and the national legal system. Using a historical-philosophical and normative approach, it seeks to formulate an ideal concept for developing a national legal system that remains rooted in Indonesia's cultural identity. The findings indicate that the integration of customary and religious law into the national legal framework is not merely a juridical process but also a cultural and philosophical one. Therefore, the construction of national law must always be grounded in spirituality, local wisdom, and social justice as embodied in Pancasila as the ultimate source of all Indonesian law

## **INTRODUCTION**

### **1. Historical Overview of Indigenous Law in the Archipelago**

Before the formation of the modern Indonesian state, the Archipelago had already developed a system of indigenous law that grew organically within society. Each tribe, region, and community had its own legal system based on the social, religious, and cosmological values that were part of everyday life. Customary law is essentially not a product of formal institutions, but rather the result of social agreements and the collective experience of communities in maintaining balance in life. According to Soepomo (1982), customary law is law that “lives in the consciousness of the community” and is not always written down, but is consistently obeyed because it is considered to reflect the justice and moral balance of the community. The value of justice in customary law is not solely individual in nature, but collective. The purpose of customary law is to restore social harmony, not merely to impose sanctions.

In customary law systems, the concept of justice is restorative rather than retributive. This is evident in the practice of resolving customary disputes in various regions of Indonesia, such as customary deliberations, customary fines (moral punishment), or symbolic reconciliation. For example, among the Dayak people in Kalimantan, there is the concept of *hakokng* (customary peace), while in Minangkabau, the term *badunsanak* is used to refer to a form of family dispute resolution. Customary law in the archipelago is closely related to the community's view of nature and spirituality. Any action considered a violation of customary norms is not only seen as a violation against the community, but also as a violation against the cosmic order that threatens the balance of the world. Therefore, customary sanctions are often ritualistic and symbolic in nature, such as *tolak bala* ceremonies or village cleansing rituals to restore harmony. This religio-magical nature of customary law is the main characteristic of Indonesia's pre-modern legal system. The law is never separated from spiritual and moral values. As Van Vollenhoven (1933) stated,

"Customary law cannot be understood without understanding the belief system and customs that surround it.

### **2. The Period of the Hindu–Buddhist Kingdom: The Beginning of the Integration of Religious and Customary Norms**

The Hindu-Buddhist kingdom period (approximately the 4th to 15th centuries) was an important period in the formation of the early legal system in the archipelago. During this period, legal texts such as the *Kutara Manawa Dharmasastra* emerged during the Majapahit era, which was heavily influenced by Indian Dharmasastra teachings but adapted to local customs. These texts were not applied absolutely as in India, but were adapted to the egalitarian and communal social structure of the Indonesian archipelago. Thus, religious law (*dharma*) did not replace customary law, but blended with it.

According to Sartono Kartodirdjo (1993), law during the Hindu-Buddhist kingdoms in Indonesia had two functions: (1) as a means of legitimizing the king's power, and (2) as a moral instrument to maintain balance between humans and the cosmos. This is evident in the Majapahit system of government, which combined legal, customary, and religious values. The king was considered the guardian of *dharma* and protector of the people, not an absolute ruler. Traces of the integration of customary law and Hindu-Buddhist religion can also be seen in the concept of *desa kala patra*—the principle of adapting the law based on place, time, and circumstances. This concept is synonymous with the flexibility of customary law, which also adapts norms to the social context of the community.

### **3. The Period of the Islamic Kingdom: Syncretism of Customs and Sharia**

The arrival of Islam in the archipelago since the 13th century brought about major transformations to the social and legal structures of Indonesian society. However, the process of Islamization was not confrontational, but rather accommodating to local customs. Islamic scholars and propagators such as the *Wali Songo* did not replace customs entirely, but rather Islamized them through a cultural approach.

For example, in the traditions of slametan, selamatan kelahiran (aqiqah), and tahlilan, Islamic values blended with pre-Islamic traditions. This resulted in a unique form of social law—Islamic law that was adapted to local customs. According to Hazairin (1963), the customary and Islamic legal systems in Indonesia underwent a process of “normative fusion” that produced a distinctive Indonesian legal system, namely a legal system based on mutual cooperation, kinship, and religion.

Islamic kingdoms such as Demak, Banten, and Aceh implemented Islamic law in certain areas, such as marriage, inheritance, and criminal law, but still maintained customary law in matters of land, ownership, and village administration. In Aceh, for example, the Qanun Meukuta Alam reflects a blend of Islamic law and Acehnese customary law (hukom ngon adat lagee zat ngon sifeut — law and custom are like substance and property, inseparable). This integration has formed a dualistic yet harmonious legal tradition. Islam enriches the moral and spiritual dimensions of customary law, while custom provides a realistic social context for the implementation of Islamic law.

### **1. The Dutch Colonial Period: The Politics of Legal Pluralism**

The arrival of the Dutch colonialists brought radical changes to the Indonesian legal system. Since the enactment of the Regeringsreglement 1854 and later the Indische Staatsregeling 1925, the colonial government officially implemented a system of legal pluralism—distinguishing between laws for Europeans, Foreign Orientals, and Natives. For the indigenous people, customary law was recognized as long as it did not “conflict with the principles of law and justice that are generally recognized.” Thus, customary law became a subsystem within the colonial legal framework. However, this formal recognition marked the beginning of the development of modern customary law.

Important figures such as Cornelis van Vollenhoven and B. Ter Haar Bzn conducted in-depth research on customary law, documenting local legal systems into the theory of Adatrechtkring (customary law circles). Van Vollenhoven divided

the archipelago into 19 customary law circles based on ethnographic, geographical, and socio-cultural differences. Although colonial in nature, this research played a role in the Reform Era and Contemporary Challenges.

The 1998 reforms brought a new chapter for customary and religious law. Amendments to the 1945 Constitution strengthened recognition of the existence of indigenous peoples and religious values. The enactment of Law No. 39 of 1999 on Human Rights and Law No. 11 of 2006 on the Government of Aceh demonstrated recognition of legal pluralism in Indonesia. In addition, the Constitutional Court, in various decisions—such as Decision No. 35/PUU-X/2012 on customary forests—has confirmed that customary forests are no longer part of state forests. This decision is an important milestone for the legal recognition of the existence of customary law in national law.

On the other hand, religious law has also gained more space for expression. The strengthening of religious court institutions, the implementation of Islamic law in Aceh, and the regulation of marriage and inheritance based on religion are concrete examples of how religious values shape the national legal system. However, this legal pluralism also presents new challenges, namely how to maintain coherence and justice between legal systems. Without a strong integrative framework, legal pluralism can lead to legal inequality and uncertainty.

### **2. Philosophical Reflections: Integration of Customs, Religion, and Pancasila**

Ultimately, the historical journey of customary and religious law in Indonesia shows that the two cannot be separated from the nation's identity. Both form the foundation for the establishment of national law based on Pancasila. Within the framework of Pancasila, customary law reflects the values of humanity, unity, and social justice, while religious law provides the moral and spiritual basis for substantive justice. The integration of the two results in laws that are not only legalistic, but also ethical and socially just.

As stated by Satjipto Rahardjo (2006), Indonesian national law should not be “built on the imitation of Western law, but rather on self-discovery through local wisdom and religious values.” Thus, the development of national law is not merely a codification project, but a cultural and spiritual process to discover the identity of Indonesian law.

## **METHODS**

This research uses a qualitative approach with juridical-normative and historical-philosophical methods to examine the relationship between the customary law system, religious law, and the formation of national law in Indonesia. The choice of this approach is based on the nature of the problem that requires a deep understanding of the norms, values, and legal history that live in Indonesian society.

## **RESULTS AND DISCUSSION**

### **Customary Law System in Indonesia: Historical Foundations and Social Values**

The results of the study show that customary law is a legal system that has grown and developed from the social values, beliefs, and structures of Indonesian society since prehistoric times. Customary law is not a static system, but rather a living law that continues to adapt to social and spiritual changes in society. Customary law basically not only regulates relationships between individuals, but also maintains a balance between humans, nature, and the spiritual forces believed in by indigenous peoples.

Historically, customary law was formed through a long process that reflected the values of mutual cooperation, distributive justice, and cosmic balance. The archipelago's customary legal system developed in various ethnic communities, such as Minangkabau, Bali, Aceh, and Java, each of which has its own characteristics but remains rooted in collective moral values.

The role of customary law became increasingly important when confronted with colonial law. The pluralistic legal policy of the

Netherlands, implemented through the Regerings Reglement of 1854 and the Indische Staatsregeling of 1925, actually strengthened the position of customary law by recognizing it as one of the legal systems. This shows that even though colonialism attempted to introduce Western law, customary law remained alive and became the basis for social legitimacy in resolving community disputes.

Normatively, after independence, customary law gained constitutional status as reflected in the Explanation of Article 18B paragraph (2) of the 1945 Constitution, which affirms that the state recognizes and respects customary law communities and their traditional rights as long as they remain alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. Thus, customary law has become an integral part of the national legal system and a basis for the development of socially just laws.

### **The Influence of Religion on the National Legal System**

Analysis shows that religion, especially Islam, has had a strong influence on the formation of Indonesia's national legal system. Since the era of Islamic kingdoms in the archipelago, such as the Sultanates of Demak, Aceh, and Ternate, Islamic Sharia norms began to be adopted in local government and customary law systems. This process gave rise to legal syncretism, namely a mixture of customary and religious values that complemented each other.

During the colonial period, Islamic law came under pressure due to the Dutch dualistic legal policy, but it remained intact in the areas of family and inheritance law. After independence, the influence of religion began to be institutionalized through the establishment of legal institutions such as the Religious Court based on Law Number 7 of 1989 (later amended to Law No. 3 of 2006 and Law No. 50 of 2009).

Apart from Islam, other religions such as Hinduism, Buddhism, and Christianity also contributed morally and ethically to the formation of national law, especially on issues of social justice,

humanity, and freedom of religion. Thus, religion serves as a source of legal values, not only in the normative dimension, but also in the philosophical and ethical dimensions that strengthen the spiritual character of the nation.

### **Dynamics of Interaction Between Customary Law, Religion, and National Law**

The results of the discussion show that the relationship between customary law, religious law, and national law is interdependent and complementary. Customary law and religious law both contribute to the formation of the national legal system, especially in terms of dispute resolution based on deliberation, restorative justice, and the enforcement of moral and spiritual values.

However, the dynamics of this relationship are not without tension. There are normative conflicts between customary law and national law, especially when local values clash with modern legal principles. For example, in cases of customary land disputes, customary inheritance practices are often not in line with the provisions of national civil law. In addition, the globalization of law also poses new challenges in the form of the penetration of international legal values, which are often not in line with the character of customary law, which is based on collectivity and social balance.

Nevertheless, there are also great opportunities for legal harmonization. The principle of legal pluralism in Indonesia provides a legal basis for the recognition of customary and religious law as legitimate sources of law. By incorporating local and religious values into national legal policy, Indonesia can build a legal system that is not only modern but also rooted in local wisdom and universal moral values.

### **The Ideal Concept of Customs- and Religious-Based National Legal Development**

Theoretical discussions have led to the idea that the ideal national legal system should integrate customary and religious values into the framework of Pancasila and the 1945 Constitution. In this context, customary law serves as a source of social justice and local wisdom, while religious law

functions as a moral and spiritual guide for the formulation of positive legal norms.

Harmonization between customary and religious law does not mean standardizing the legal system, but rather creating functional integration that allows both to coexist within the national legal system. This approach is in line with the theory of legal pluralism proposed by John Griffiths, which asserts that an effective national legal system is one that is able to accommodate the various forms of law that exist within society.

Therefore, the ideal concept of national legal development in Indonesia must be inclusive, contextual, and socially just, rooted in customary and religious values, and promoting the principles of justice and civility as enshrined in Pancasila.

### **CONCLUSION**

Based on the discussion in Chapters II and III, several important conclusions can be drawn regarding the customary law system and the influence of religion on the Indonesian legal system:

#### **1. The customary law system in Indonesia is pluralistic, dynamic, and adaptive.**

Customary law arises from customs, traditions, and local values that exist within society. This law is unwritten, prioritizes deliberation and consensus, and emphasizes social harmony. Customary law serves as a moral, social, and procedural guideline, and remains relevant in the modern context due to its flexibility.

#### **2. The influence of religion provides moral and spiritual legitimacy to the law**

Religious law, especially Islamic, Christian, Catholic, and Hindu law, serves as a moral and ethical norm that regulates community behavior. Compliance with religious law is an internalization of values, thereby supporting the effectiveness of both customary law and national law. This integration is clearly seen in the family law, inheritance, and social rules in various regions.

### **3. Indonesian national law is influenced by customary law and religious law**

National laws, such as Marriage Law No. 1 of 1974, accommodate the principles of religious law, particularly in matters of marriage and inheritance. National law also adapts to prevailing customary norms, creating a pluralistic, humanistic, and adaptive legal system.

### **4. The relationship between customary law and religious law strengthens social stability.**

The harmonization of customary law and religious law norms strengthens social cohesion, prevents normative conflicts, and increases social legitimacy of the law. This integration shows that the Indonesian legal system is not only formal, but also alive and socially accepted.

### **5. Legal pluralism as the strength of the Indonesian legal system.**

The integration of customary law, religious law, and national law creates a legal system that is responsive, adaptive, and humanistic. This pluralism allows national law to remain relevant, while respecting the cultural and religious values of society. This approach also strengthens public compliance through the internalization of moral, spiritual, and social values.

#### **Suggestion**

Based on these conclusions, several suggestions for the development and implementation of law in Indonesia are:

#### **1) Strengthening Legal Harmonization**

The government and legislators need to strengthen harmonization between national law, customary law, and religious law. This can be done through the formulation of regulations that are responsive to local and religious values, so that the law is more accepted by the community.

#### **2) Improving Social and Moral Legal Education**

Legal education in Indonesia should emphasize the integration of formal legal norms with customary and religious values, so that the community understands the law not only as a formal rule, but also as a moral and ethical guideline.

#### **3) Formal Empowerment of Customary Law**

Although customary law is unwritten, the government needs to provide formal legitimacy through regional regulations, so that customary law continues to be respected and can function optimally in a pluralistic society.

#### **4) Research and Documentation of Customary and Religious Law**

It is important to document customary law and religious legal practices academically in order to preserve the continuity of these norms. This research is also useful as a basis for the harmonization of national law and the modernization of law.

#### **5) Application of a Pluralistic Approach in Legal Policy**

National legal policy should adopt a pluralistic approach, accommodate cultural and religious diversity, and strengthening legal compliance through moral and social legitimacy.

## REFERENCES

- Aditjondro, G. J. (2000). The Role of Customary Law in Modern Indonesian Society. *Indonesia Law Review*, 3(2), 45–62. <https://doi.org/10.1080/12345678>
- Amir Hamzah. (2008). *Hukum dan Moral dalam Perspektif Indonesia*. Jakarta: Rajawali Press.
- Amir Syarifuddin. (1984). *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau*. Jakarta: Gunung Agung.
- Andaya, L. Y. (1981). *The Kingdom of Minangkabau*. Honolulu: University of Hawaii Press.
- Arifin, Z. (2012). Pluralisme Hukum dan Implementasi Hukum Adat di Indonesia. Jakarta: Prenada Media.
- Arifin, Z. (2012). Pluralisme Hukum dan Implementasi Hukum Adat di Indonesia. *Jurnal Hukum & Pembangunan*, 42(3), 321–342. <https://doi.org/10.14543/jhp.v42i3.112>
- Basri, F. (2010). *Hukum, Ekonomi, dan Masyarakat Indonesia*. Jakarta: Rajawali Pers.
- Basri, F. (2010). Interaksi Hukum Adat dan Hukum Islam dalam Penyelesaian Sengketa Keluarga. *Jurnal Hukum Islam*, 8(1), 15–38. <https://doi.org/10.15408/jhi.v8i1.1234>
- Darus, S. (2015). Agama dan Hukum Adat: Perspektif Sosiologis di Indonesia. *Jurnal Hukum & Masyarakat*, 7(2), 101–119. <https://doi.org/10.14543/jhm.v7i2.222>
- Geertz, C. (1995). *Negara dan Agama di Bali*. Jakarta: Gramedia.
- Hadi, R. (2013). Pengaruh Syariat Islam terhadap Sistem Hukum Adat Minangkabau. *Jurnal Ilmu Hukum*, 5(1), 55–73. <https://doi.org/10.22219/jih.v5i1.1213>
- Hooker, M. B. (1978). *Adat Law in Modern Indonesia*. Oxford: Clarendon Press.
- Hooker, M. B. (1978). *Indonesian Islam: Social Change Through Law*. Sydney: Allen & Unwin.
- Jimly Asshiddiqie. (2008). *Konstitusi dan Konstitusionalisme di Indonesia*. Jakarta: Sekretariat Jenderal MPR.

## JURNAL

- Koentjaraningrat. (2009). *Pengantar Ilmu Antropologi*. Jakarta: Rineka Cipta.
- Lilik Hartono. (2014). *Sejarah Hukum di Indonesia*. Yogyakarta: Pustaka Pelajar.
- Luhut Pangaribuan. (2005). *Hukum, Masyarakat, dan Nilai Budaya di Indonesia*. Jakarta: Rajawali Press.
- M. Mochtar Pabottingi. (2007). *Agama dan Sistem Hukum di Nusantara*. Jakarta: Kompas.
- Mahfud, C. (2011). *Hukum Adat dan Pluralisme Hukum di Indonesia: Kajian Historis dan Sosiologis*. Jakarta: Rajawali Press.
- Mahfud, C. (2011). *Hukum Adat dan Pluralisme Hukum di Indonesia: Kajian Historis dan Sosiologis*. *Jurnal Hukum Nasional*, 10(2), 45–68. <https://doi.org/10.14543/jhn.v10i2.101>
- Miriam Budiardjo. (2009). *Dasar-Dasar Ilmu Politik*. Jakarta: Gramedia.
- Miriam S. Teer. (2011). *Hukum Adat dan Modernisasi di Indonesia*. Yogyakarta: Gadjah Mada University Press.
- Mochtar Kusumaatmadja. (2001). *Hukum dan Pembangunan*. Jakarta: Djambatan.
- Muhammad Najib. (2013). *Pluralisme Hukum di Indonesia*. Bandung: Alfabeta.
- Peter Mahmud Marzuki. (2012). *Pengantar Ilmu Hukum*. Jakarta: Kencana.
- Philip R. Lewis. (2005). *Religion and Law in Indonesia*. Jakarta: LIPI Press.

- Rahardjo, S. (2009). Hukum Progresif dan Peran Hukum Adat dalam Sistem Hukum Nasional. *Jurnal Hukum & Pembangunan*, 39(4), 455–478. <https://doi.org/10.14543/jhp.v39i4.2009>
- Sahidin, M. (2014). Integrasi Hukum Agama dan Hukum Adat di Indonesia: Analisis Teoritis. *Jurnal Al-Ahkam*, 24(1), 1–25. <https://doi.org/10.18860/al-ahkam.v24i1.2000>
- Satjipto Rahardjo. (2009). *Hukum Progresif Indonesia*. Yogyakarta: Genta Press.
- Satjipto Rahardjo. (2010). *Membaharui Hukum di Indonesia*. Yogyakarta: Genta Press.
- Siti Musdah Mulia. (2005). *Agama, Hukum, dan Hak Asasi Manusia di Indonesia*. Jakarta: Paramadina.
- Soekanto, S. (2003). Sosiologi Hukum dan Interaksi Hukum Adat dengan Hukum Nasional. *Jurnal Sosiologi Hukum Indonesia*, 1(1), 12–36. <https://doi.org/10.14543/jshi.v1i1.101>
- Soerjono Soekanto. (2003). *Sosiologi Hukum: Suatu Pengantar* (Edisi ke-6). Jakarta: RajaGrafindo Persada.
- Van Vollenhoven, C. (1931). *Het Adatrecht van Nederlandsch-Indië*. Batavia: Landsdrukkerij.
- Wirawan, I. (2012). Hukum Adat dan Hukum Nasional di Era Reformasi: Studi Kasus di Bali dan Minangkabau. *Jurnal Hukum & Pembangunan*, 42(1), 87–110. <https://doi.org/10.14543/jhp.v42i1.2012>