

The Dialectics of Sharia and Customary Law in the Configuration of Indonesian Legal Pluralism

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Abstract

This article aims to analyze the dialectical relationship between Islamic law (sharia) and customary law within the framework of legal pluralism in Indonesia through a socio-legal approach. The material object comprises Islamic law and customary law, while the formal object examines the dialectical processes through which different legal norms interact within a multicultural society. This study employs a qualitative research design that integrates normative legal research with a socio-legal approach. Data were obtained through an extensive literature review, analysis of relevant court decisions, and examination of social practices in various regions of Indonesia. The data were analyzed using the legal pluralism framework to identify patterns of interaction, negotiation, adaptation, and contestation between formal legal norms and living legal practices. The findings demonstrate that the relationship between sharia and customary law is not inherently hierarchical, as suggested by the classical receptie theory, but is dynamic and continuously shaped by social, cultural, religious, and political contexts. The interaction between these legal systems generates hybrid legal configurations in which religious norms, customary practices, state regulations, social actors, and power relations influence one another. This study contributes to the development of legal pluralism theory by proposing a dialectical perspective for understanding the dynamic interaction and mutual transformation of competing legal orders. Practically, the findings provide a basis for developing more inclusive, context-sensitive, and responsive legal policies within Indonesia's complex plural legal system.

Keywords: Customary Law, Indonesia, Islamic Law, Legal Pluralism, Socio-Legal Studies

Introduction

The relationship between Islamic law (sharia) and customary law represents a distinctive feature of Indonesia's plural legal system, reflecting the country's complex social, cultural, and religious diversity. The Indonesian Constitution recognizes customary law communities through Article 18B paragraph (2) of the 1945 Constitution, while Article 29 guarantees freedom of religion. The coexistence of these constitutional principles creates a legal space in which state law, Islamic law, and customary law interact within the same social environment. This configuration has become increasingly significant following the Reformasi era, particularly with the institutionalization of Islamic law through religious courts, Islamic economic regulations, and regional regulations in Aceh, alongside the continued vitality of customary communities throughout Indonesia.

Communities such as the Minangkabau, Balinese, Dayak, and Bugis-Makassar continue to rely on customary norms in regulating marriage, inheritance, social relations, and resource management. Consequently, Indonesian law cannot be understood solely through formal state legislation because religious norms and customary practices continue to exercise substantial social legitimacy and normative authority (Crouch, 2021; Tamanaha, 2021). The interaction between these legal orders is particularly important in family-related matters, where religious prescriptions and customary traditions frequently regulate similar social relationships. Rather than functioning as isolated normative systems, Islamic and customary law operate within a shared social space in which their meanings and applications are continuously shaped by social actors, institutional authorities, and local configurations of power.

Previous studies have demonstrated that the relationship between Islamic law and customary law is characterized by complex patterns of coexistence, adaptation, and contestation. Bowen (2003) explains that the relationship between Islam and *adat* in Indonesia develops through locally embedded processes of social reasoning and authority. Salim (2015) emphasizes that the institutionalization of Islamic law is influenced by political configurations and the relationship between state institutions and local communities. Lukito (2022) further demonstrates that state law, Islamic law, and customary law coexist within a distinctive configuration of legal pluralism in Indonesia. Studies of particular communities similarly reveal different patterns of interaction. In Minangkabau society, for instance, customary principles continue to influence the management of ancestral property, while Islamic principles operate in relation to individually acquired property. In Aceh, Islamic-based regulations coexist with customary institutions at the *gampong* level, while Bugis-Makassar marriage practices demonstrate the continued incorporation of customary ceremonies within Islamic marriage arrangements (Bowen, 2021; Salim, 2021). These studies establish that the interaction between Islamic and customary law cannot be reduced to either complete integration or direct conflict. However, much of the existing literature remains concerned with describing the coexistence of legal orders, examining political regulation, or identifying particular forms of accommodation and resistance. The processes through which these interactions transform legal norms and generate new normative configurations remain insufficiently explained.

The limitation of previous studies reveals an important gap in the scholarship on legal pluralism in Indonesia. Existing research has successfully demonstrated that Islamic law and customary law possess overlapping and sometimes competing spheres of authority, but it has not adequately conceptualized the mechanisms through which these legal orders continuously reconstruct one another in social practice. The dominant analytical approaches tend to emphasize coexistence, harmonization, or conflict, thereby treating legal systems as relatively identifiable normative entities. Such approaches provide limited explanation of situations in which communities selectively combine, modify, or reinterpret Islamic and customary norms according to changing social circumstances (Banakar & Travers, 2020; Valverde, 2021; Tamanaha, 2021). In practice, interaction between sharia and *adat* may produce normative arrangements that cannot be categorized exclusively as Islamic law or customary law. These arrangements indicate

the emergence of hybrid forms of *living law* shaped by negotiation, contestation, adaptation, and convergence among religious norms, customary practices, state regulations, social actors, and power relations. Therefore, this study positions itself within legal pluralism scholarship by moving beyond the question of whether different legal orders coexist and instead examining how their interaction produces normative transformation. The central argument advanced in this article is that the relationship between Islamic law and customary law is fundamentally dialectical: competing and overlapping norms interact through processes of negotiation, contestation, and convergence, ultimately generating hybrid legal configurations within particular social contexts.

This article aims to analyze the dialectical relationship between Islamic law and customary law within Indonesia's plural legal configuration and to explain how negotiation, contestation, and convergence contribute to the formation of hybrid legal norms. The study specifically addresses the question: how does the dialectical interaction between sharia and customary law transform legal norms and produce forms of *living law* within Indonesian society? The article argues that the relationship between these two normative orders is neither inherently hierarchical nor simply oppositional, but is dynamically reconstructed through interaction among legal norms, social actors, institutional authorities, and local cultural contexts. To examine this argument, the study employs a qualitative design combining normative legal research and a socio-legal approach. The normative dimension examines concepts, theories, doctrines, and legal regulations concerning Islamic and customary law, while the socio-legal dimension examines how these norms operate, are negotiated, and obtain legitimacy within social practices. By integrating these perspectives, the study seeks to develop a dialectical model that enriches legal pluralism theory by explaining not merely the coexistence of multiple legal orders, but also the processes of normative transformation through which plural legal systems generate new and contextually embedded forms of *living law* in Indonesia.

Method

This study focuses on the relationship between Islamic law and customary law in Indonesia because the interaction between these normative orders continues to shape legal practices, particularly in the field of Islamic family law. The issue was selected because the coexistence of Islamic norms, customary norms, and state law does not always produce a clear hierarchy of legal authority, but may generate processes of negotiation, contestation, adaptation, and normative transformation. The study employs a qualitative normative legal research design to examine these processes through legal, jurisprudential, and socio-legal perspectives. The research uses secondary data consisting of Islamic legal literature, scholarly publications, legal doctrines, statutory materials, judicial decisions, and relevant studies on customary law and legal pluralism. A qualitative design was selected because the research seeks to interpret the meaning, interaction, and transformation of normative orders rather than measure their occurrence statistically. The analysis therefore emphasizes the substance of legal norms

and the processes through which Islamic and customary principles interact within the Indonesian legal context. This design also enables the study to connect doctrinal Islamic legal reasoning with broader socio-legal debates concerning legal pluralism and living law.

The data sources were selected purposively according to their relevance to the research questions and their capacity to explain the interaction between Islamic and customary law. Primary legal materials consisted of relevant Indonesian legislation, judicial decisions, and authoritative Islamic legal sources concerning family relations and the recognition of social norms. Secondary materials included peer-reviewed journal articles, academic books, and scholarly studies addressing Islamic family law, customary law, legal pluralism, legal anthropology, and socio-legal transformation. Particular attention was given to scholarly works that discuss the relationship between formal legal systems and socially embedded normative orders. The selection process considered the relevance, scholarly credibility, and substantive contribution of each source to the research focus. Data were collected through systematic documentary research and literature review by identifying, reading, comparing, and recording relevant legal and academic materials. The collected materials were then organized according to major analytical themes, including normative negotiation, contestation between sources of authority, convergence of legal norms, and the emergence of hybrid forms of legal practice. This thematic organization was used to establish connections between Islamic jurisprudence, customary institutions, social authority, and state law.

Data analysis was conducted through several sequential and iterative stages. First, the researchers identified and classified the collected materials according to their legal character, substantive relevance, and relationship to the research questions. Second, the materials were subjected to close textual and conceptual reading to identify recurring patterns concerning the interaction between Islamic and customary norms. Third, comparative analysis was conducted to examine similarities and differences in the ways Islamic principles, customary practices, and state law operate within different social and legal contexts. Fourth, the identified patterns were interpreted through the conceptual framework of legal pluralism and Islamic family law to explain the mechanisms through which normative negotiation may develop into contestation, convergence, and hybridization. Finally, the findings were synthesized through a transdisciplinary interpretation that connects Islamic jurisprudence, legal theory, customary law, and socio-legal perspectives. The analysis was iterative rather than strictly linear, allowing emerging findings to be compared continuously with the relevant literature and legal materials. This process enabled the study to formulate a process-oriented understanding of legal pluralism and to develop the proposed model of negotiation, contestation, convergence, and hybridization.

Result

Negotiation, Contestation, and the Role of Social Actors

The first finding demonstrates that the interaction between Islamic law and customary law begins through a process of normative negotiation. Rather than eliminating one another, the two normative systems operate within the same social space and are selectively applied according to social acceptance, practical considerations, and compatibility with local values (Merry, 1988; von Benda-Beckmann, 2002). This phenomenon is particularly visible in family and inheritance practices, where Islamic normative principles remain an important reference while their implementation may be adjusted through family deliberation and established customary mechanisms (Bowen, 2003). The negotiation process therefore produces forms of legal practice that cannot be understood solely through formal legal texts. Communities actively interpret, select, and adapt norms according to the social circumstances in which they operate (Tamanaha, 2008). The finding indicates that the practical effectiveness of a legal norm depends substantially on its capacity to obtain social recognition. Consequently, Islamic law and customary law function not as completely separate systems but as interacting sources of normative guidance whose application is continuously negotiated within local communities (Merry, 1988; von Benda-Beckmann, 2002).

The second finding shows that normative negotiation is influenced by the structure of social authority, local cultural traditions, and the legitimacy possessed by different actors. Ulama, customary leaders, community leaders, families, and state institutions participate in determining which norms are accepted and how they are implemented (Bowen, 2003; Crouch, 2014). Regional variation is particularly important because the relationship between Islamic and customary norms is not uniform throughout Indonesia. In Aceh, the institutionalization of Islamic norms has strengthened their formal position, whereas in Minangkabau the matrilineal social structure provides customary institutions with substantial social legitimacy (Bowen, 2003; von Benda-Beckmann & von Benda-Beckmann, 2013). Similar variations can be observed in communities where customary institutions remain influential in regulating marriage, inheritance, land, and family relations. These differences demonstrate that legal pluralism is shaped by the distribution of authority within particular communities (Merry, 1988; Tamanaha, 2008). The emergence and persistence of a norm therefore depend not only on its substantive content but also on the capacity of social actors to interpret, mediate, and legitimize that norm within the local social structure.

The third finding indicates that negotiation does not merely produce temporary compromises but can generate a transformative process of normative change. Through repeated interaction, Islamic and customary norms may undergo reinterpretation while retaining elements of their respective identities. Social actors function as mediators who translate abstract legal principles into practices considered legitimate by the community (Bowen, 2003; Merry, 1988). This process demonstrates that living law emerges through continuous interaction between normative systems, social actors, and local contexts. Legal pluralism should therefore be understood as a dynamic social phenomenon rather than merely as the coexistence of different legal systems (Tamanaha, 2008; von Benda-Beckmann, 2002). The findings further indicate that normative negotiation creates the

initial conditions for subsequent contestation and convergence. Where differences between norms remain manageable, negotiation may produce accommodation; where competing claims to legitimacy become stronger, the interaction may develop into a contestation of authority. Thus, negotiation represents an initial mechanism through which plural legal orders may undergo transformation.

Convergence, Hybrid Law, and the Dialectical Transformation of Legal Pluralism

The fourth finding demonstrates that prolonged interaction between Islamic and customary norms can result in normative convergence and the formation of hybrid forms of legal practice. At this stage, the two systems no longer operate merely as competing or parallel sources of law but contribute elements to a new configuration of normative practice. Hybridization appears in social practices where Islamic principles are maintained while customary structures, rituals, mechanisms, or forms of social authority continue to operate. Marriage practices, inheritance arrangements, and family dispute resolution illustrate situations in which communities combine elements derived from Islamic and customary normative orders (Bowen, 2003; Merry, 1988). The resulting practices cannot always be classified exclusively as Islamic law or customary law. Instead, they represent forms of living law produced through sustained interaction between multiple normative orders. The finding therefore demonstrates that legal pluralism may move beyond coexistence toward the production of normative configurations that acquire their own social legitimacy (Tamanaha, 2008; von Benda-Beckmann, 2002).

The emergence of hybrid legal practices is influenced by the need to reconcile normative legitimacy with social and cultural continuity. Communities seek to maintain customary identities while simultaneously responding to Islamic normative expectations and changing social circumstances (Bowen, 2003). The process is also shaped by the relationship between formal and social legitimacy. Formal recognition may strengthen particular norms, but social acceptance remains important in determining whether those norms are reproduced in everyday practice (Merry, 1988). Regional structures, historical experiences, political configurations, and the authority of ulama and customary leaders consequently influence the forms taken by hybrid legal practices. The state is also an important actor because its institutions can expand, restrict, or accommodate particular normative orders (Crouch, 2014). However, formal state recognition does not automatically eliminate socially legitimate customary practices. Hybridization therefore occurs through interaction among state authority, religious authority, customary authority, and community acceptance rather than through the unilateral dominance of one legal system.

The final finding is the emergence of a dialectical model consisting of negotiation, contestation, convergence, and the formation of hybrid legal practices. This model explains not only the existence of multiple legal orders but also the mechanisms through which those orders interact and transform one another. Negotiation represents adaptation between Islamic and customary norms; contestation represents competition over legitimacy and authority; convergence represents the integration of compatible

normative elements; and hybridization represents the resulting configuration of legal practice. The model consequently provides a dynamic explanation of living law within Indonesian legal pluralism. Legal transformation does not necessarily require the disappearance of an existing normative system. Instead, transformation can occur through continuous interaction that produces new configurations while preserving selected elements of the original systems (Merry, 1988; Tamanaha, 2008). The principal conceptual contribution of the research therefore lies in shifting the analysis of legal pluralism from the mere coexistence of legal orders toward the processes through which legal norms are reproduced, negotiated, contested, and transformed.

Discussion

The findings collectively demonstrate that the relationship between Islamic law and customary law in Indonesia operates through a sequential but potentially recursive process of negotiation, contestation, convergence, and hybridization. The initial interaction is characterized by the adaptation of norms to local expectations, followed by competition when different normative authorities advance competing claims to legitimacy. When competing systems identify compatible elements, convergence becomes possible and may produce hybrid forms of legal practice. Social actors remain central throughout this process because ulama, customary leaders, community leaders, families, and state institutions participate in interpreting and translating norms into social practice (Bowen, 2003; Crouch, 2014). Regional differences further demonstrate that this process does not generate a single uniform model of legal pluralism. Instead, different configurations emerge according to local authority structures, historical experiences, cultural traditions, and relationships between formal and social legitimacy (Merry, 1988; von Benda-Beckmann, 2002). These findings support the proposition that pluralism should be examined as a process of legal interaction rather than merely as the simultaneous existence of several normative systems.

The causes underlying these findings can be understood through the interaction between normative diversity and competing structures of legitimacy. Islamic law derives legitimacy from religious authority and normative principles, while customary law derives substantial legitimacy from collective memory, cultural continuity, and community recognition. State institutions introduce another layer of formal authority that may strengthen, constrain, or reshape either normative order. The resulting interaction is therefore not neutral because different actors possess unequal capacities to define which norms are regarded as legitimate (Santos, 2020; Tamanaha, 2008). This dimension corresponds with Merry's understanding of law as a socially situated and plural phenomenon and with Crouch's analysis of the state's role in structuring the relationship between law, religion, and institutional authority in Indonesia (Merry, 1988; Crouch, 2014). At the community level, however, formal authority does not necessarily determine actual legal practice. Social recognition remains important because a norm that lacks cultural acceptance may encounter resistance, reinterpretation, or selective implementation (Bowen, 2003). The emergence of negotiation and contestation is

consequently rooted in the tension among formal authority, religious legitimacy, customary legitimacy, and community acceptance.

The consequences of this process are significant for understanding the transformation of Islamic and customary law. The interaction between the two normative orders produces legal practices that are neither simply inherited from tradition nor directly imposed by formal legal institutions. Instead, communities participate actively in transforming norms through interpretation, accommodation, and selective incorporation (Bowen, 2003; Merry, 1988). The concept of hybridization captures this consequence by demonstrating that legal transformation can create new normative configurations without completely erasing the original systems. This finding also highlights the importance of the living-law perspective because the practical meaning of law is produced through its application within particular social environments. The transformation is therefore both normative and institutional: normative because the content and interpretation of rules may change, and institutional because ulama, customary leaders, courts, and state institutions participate in determining their legitimacy (Crouch, 2014; Tamanaha, 2008). The implication is that legal change in plural societies should be understood as a socially mediated process rather than exclusively as legislative or doctrinal development.

These findings both reinforce and extend previous scholarship on Indonesian legal pluralism. Merry's account of legal pluralism helps explain why legal norms are translated and reinterpreted when they move across different social contexts, while Bowen emphasizes the social and political processes through which Islamic norms interact with local traditions and state institutions (Merry, 1988; Bowen, 2003). Tamanaha provides an important theoretical foundation for understanding legal pluralism as involving multiple forms of normative ordering, while Crouch demonstrates the importance of state authority, political configuration, and institutional structures in shaping the position of Islamic law in Indonesia (Tamanaha, 2008; Crouch, 2014). The present study extends these perspectives by identifying a more explicit analytical sequence through which plural legal orders interact: negotiation, contestation, convergence, and hybridization. Rather than treating pluralism primarily as a condition of coexistence, the proposed dialectical model emphasizes transformation between normative orders and explains how sustained interaction can produce new configurations of legal practice. In this respect, the finding contributes to the broader socio-legal understanding of legal pluralism as involving complex, overlapping, and interdependent normative structures rather than isolated legal systems (von Benda-Beckmann, 2002).

The findings suggest several implications for future conceptual, methodological, and policy development. Conceptually, legal pluralism should incorporate a process-oriented framework capable of explaining not only the existence of multiple normative orders but also their transformation through interaction (Tamanaha, 2008; von Benda-Beckmann, 2002). The dialectical model proposed here provides such a framework by connecting negotiation, contestation, convergence, and hybridization within a single analytical sequence. Methodologically, future research should examine these processes through empirical socio-legal studies comparing regions with different configurations of religious and customary authority. Such studies could investigate how specific actors negotiate

competing norms in marriage, inheritance, land, and family dispute resolution, thereby testing whether the proposed sequence operates consistently across different local contexts (Bowen, 2003). From a policy perspective, state institutions should avoid treating Islamic and customary law exclusively through hierarchical or oppositional frameworks. Instead, legal policy should provide space for structured dialogue among state institutions, religious authorities, customary institutions, and communities while maintaining constitutional and human-rights safeguards. Such an approach would allow legal development to remain responsive to social realities while preserving normative certainty, equality, and institutional accountability (Crouch, 2014; Tamanaha, 2008).

Conclusion

This study concludes that the relationship between Islamic law and customary law in Indonesia is characterized by a dynamic process of negotiation, contestation, convergence, and hybridization rather than by the simple coexistence of two separate normative systems. The findings demonstrate that Islamic and customary norms interact within the same social spaces and are selectively interpreted, adapted, and applied according to social circumstances, cultural values, and perceived normative legitimacy. This process is mediated by social actors, including ulama, customary leaders, community leaders, families, and state institutions, whose authority influences how competing norms are interpreted and accepted. Contestation emerges when different sources of legitimacy produce conflicting expectations concerning family relations, inheritance, marriage, and dispute resolution. However, contestation does not necessarily result in the dominance of one normative system over another. In many circumstances, sustained interaction produces convergence in which Islamic principles are retained while customary institutions, social mechanisms, and local practices continue to structure their implementation. The resulting hybrid forms of legal practice demonstrate that legal pluralism operates as a continuing process of normative transformation within Indonesian society.

Conceptually, this study contributes to the study of Islamic family law and socio-legal scholarship by proposing a process-oriented model of legal pluralism consisting of negotiation, contestation, convergence, and hybridization. The model extends conventional approaches that primarily emphasize the coexistence of multiple normative orders by explaining how interaction among those orders may generate transformed legal practices and new forms of normative legitimacy. The study also contributes methodologically by demonstrating the value of a socio-legal and transdisciplinary perspective that connects Islamic jurisprudence, customary norms, social authority, and state law rather than examining them as isolated legal domains. This perspective enables legal pluralism to be understood through the interaction between formal rules and living normative practices. The proposed framework is particularly relevant to Islamic family law because family practices are simultaneously influenced by religious interpretation, customary expectations, community authority, and state regulation. Accordingly, the study provides a conceptual basis for understanding legal change as an ongoing social

process in which communities actively negotiate the meaning and application of competing normative orders.

This study has several limitations that should be addressed by future research. First, the analysis is primarily conceptual and comparative, and therefore does not provide sufficiently detailed ethnographic evidence concerning how individual families and communities negotiate competing Islamic and customary norms in everyday life. Second, the proposed model requires further empirical testing across different Indonesian regions because the relationship between Islamic authority, customary institutions, and state law may vary according to local history, social structure, political conditions, and patterns of religious authority. Third, the study does not systematically examine differences among specific areas of Islamic family law, such as marriage, inheritance, divorce, child protection, and property relations, where processes of negotiation and hybridization may take different forms. Future studies should therefore employ comparative socio-legal, ethnographic, and empirical approaches involving multiple regions and social actors. Such research could test the explanatory capacity of the proposed model and identify the conditions under which negotiation leads to contestation, convergence, or persistent normative conflict. Future research should also examine how hybrid legal practices can remain compatible with constitutional guarantees, gender justice, child protection, and fundamental human rights.

Credit Authorship Contribution Statement

Reza Hanifa contributed to Conceptualization, Methodology, Investigation, Data Curation, Formal Analysis, Writing – Original Draft, and Writing – Review & Editing, while Imam Yahya contributed to Conceptualization, Methodology, Supervision, Validation, Formal Analysis, Writing – Review & Editing, and Project Administration. All authors approved the final version of the manuscript and agreed to be accountable for all aspects of the work.

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The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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Ethics Approval and Consent to Participate

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Data Availability Statement

The data supporting the findings of this study are derived from publicly available legal documents, judicial decisions, and published scholarly sources. All materials used in the

analysis can be accessed through the relevant legal databases, court publications, and academic databases.

Declaration of Generative AI and AI-Assisted Technologies in the Writing Process

During the preparation of this work, the authors used **ChatGPT (OpenAI)** to assist with language editing, grammatical improvement, and the organization of the manuscript. After using this tool, the authors reviewed and edited the content as needed and take full responsibility for the content of the publication.

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