



# HARMONIZATION OF CUSTOMARY LAW AND NATIONAL LAW BASED ON THE PRINCIPLE OF 'URF: A CASE STUDY OF THE CUSTOMARY VILLAGE AND NAGARI SYSTEMS

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## ABSTRACT

This study examines the harmonization of customary law and national law through the principle of 'urf as a normative approach that can bridge the differences between local norms and the state legal system, particularly in the context of traditional villages in Bali and nagari in West Sumatra. Using a qualitative method based on literature analysis, this study compares Islamic normative sources such as the Qur'an, hadith, tafsir, and syarah hadith with contemporary academic findings related to customary law practices and state regulatory dynamics. The results show that sahiih 'urf has strong potential as an instrument of harmonization as long as it meets the criteria of social acceptance, consistency, and conformity with the principle of maslahah, as evidenced by its implementation in awig-awig in traditional villages and the ABS-SBK principle in nagari. This research confirms that the integration of customary law into national law requires normative evaluation mechanisms, formal recognition, and the participation of indigenous communities to ensure harmony between local wisdom and modern legal principles, while also providing theoretical and practical contributions to the development of living law-based policies.

**Keywords:** 'Urf sahiih; customary law; legal pluralism in indonesia; harmonization of national and local law; desa adat and nagari governance

## 1. INTRODUCTION

Indonesia is a country with high socio-cultural diversity, reflected in the sustainability of customary law systems that still function as living norms in various local communities. Research on the integration of customary law shows that "customary law continues to function as a living norm in many regions of Indonesia."<sup>1</sup> More than 1,300 customary communities are recorded as still maintaining customary norms in regulating social life, including in the structure of customary villages and nagari. At the same time, the implementation of national law often causes overlapping authorities, land disputes, and differences in principles between communal

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<sup>1</sup>Yenny Febrianty et al., "Integration of Customary Law in The National Legal System Comparative Study of Malaysia and Indonesia" 30, no. 4 (2024): 379–401.

customary norms and legal-formal national law. This condition reflects the urgency of harmonizing the two legal systems.

Conceptually, the scientific debate on the integration of customary law into the national legal system shows two main trends. The first view places customary law as a norm that has legal relevance because it is rooted in stable community practices. Lubis asserts that 'urf "has legal significance when it is based on established social practices."<sup>2</sup> This view supports the recognition of customary law as part of the national legal system. Conversely, the critical view states that some customary practices have the potential to conflict with the principles of legal modernity, human rights, and the principle of legal certainty. As noted in the mapping of contemporary Islamic legal thought, some customary practices "potentially contradict human rights and modern state law principles."<sup>3</sup> These differences in perspective reveal an epistemological dilemma between local wisdom and modern legal structures.

Previous studies on the relationship between customary law and national law have mostly focused on the contribution of Islamic law to the development of national law,<sup>4</sup> mapping contemporary Islamic legal thought, and mechanisms for the recognition of customary law by the state. Studies that use 'urf, as a principle of ushul fiqh that recognizes customs as the basis for determining law as long as it does not conflict with sharia, as a theoretical framework for harmonizing customary law and national law are still limited. Hasbi Yasir's research emphasizes that 'urf "functions as a contextual bridge that harmonizes customs with the objectives of Islamic law."<sup>5</sup> Thus, there is an academic gap in previous studies that have not systematically examined the role of 'urf in the context of customary government systems such as traditional villages and nagari.

This study has significant theoretical and practical implications. Theoretically, this study aims to develop a model of legal harmonization based on valid customs that can integrate principles of local wisdom with the national legal structure. In practical terms, the results of this study are expected to provide policy recommendations for the government in formulating regulations that are adaptive to local values, in line with the findings that the renewal of customary law must be "based on the values of Pancasila and local wisdom."<sup>6</sup>

This study aims to develop a legal harmonization model that can bridge the interaction between customary law and national law through the 'urf sahiih approach. The specific objectives of this study include: (1) identifying the principles of 'urf that are relevant to the integration of customary law into the national legal framework; (2) analyzing the implementation of these principles in the local government systems of customary villages and nagari; and (3) formulating challenges and best practices in integrating local wisdom with the modern legal system. In terms of benefits, this research contributes theoretically by expanding the discourse on legal integration

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<sup>2</sup>Ade Irma Putri dan Azwani Lubis, "A Review of the ' Urf on the Law Governing the Customary Marriage Practice of Pakake Anak Daro in the Mandailing Tribe" 27, no. 2 (2024): 320–35.

<sup>3</sup>Zulfa, F. A., Achmad, M., Soyly, D., & Fadhil. (2025). MAPPING CONTEMPORARY ISLAMIC LEGAL THOUGHT IN INDONESIA : A DIALOG BETWEEN FIQH AND THE CULTURE OF. *Jurnal Syariah dan Hukum*, 7.

<sup>4</sup>Silfiah, R. I. (2020). KONTRIBUSI HUKUM ISLAM DALAM MEMBANGUN HUKUM NASIONAL BERWAWASAN MULTIKULTURAL. *ARENA HUKUM*, 13(1), 77–96.

<sup>5</sup>Yasir, E., & Bendadeh, S. (2021). 'Urf Sebagai Metode Istimbath Hukum Islam (Pemikiran Hasbi Ash-Shiddieqy Dengan Fiqh Indonesiannya). *Syariah: Journal of Islamic Law*, 3, 14–36.

<sup>6</sup>Ashfiya Nur Atqiya et al., "Nilai-Nilai Pancasila dalam Pembaruan Hukum Adat Tantangan dan Peluang dalam Era Globalisasi Pascasarjana Universitas Sebelas Maret , Indonesia Program Doktor Ilmu Hukum UNS , Indonesia hukum nasional Indonesia . Integrasi ini harus menghormati keragaman," *Pemuliaan Keadilan* 1, no. 4 (2024): 230–39.

through the perspective of *ushul fiqh*, while also providing practical benefits for policymakers and local governments in designing regulations that are able to accommodate local wisdom without neglecting the principles of legal certainty and justice. This research is also expected to provide a methodological reference for similar studies examining the relationship between customary law, national law, and Islamic legal principles.

Based on the theory of *'urf*, the initial hypothesis of this study is that customary law in traditional villages and *nagari* can be integrated into national law if it meets the criteria of *sahih 'urf*, namely that it is socially accepted, consistent, and does not conflict with the principles of justice and public interest. This is in line with the view that community customs can be a strong source of law when they are "in harmony with higher legal objectives."<sup>7</sup> Therefore, traditional villages and *nagari* are relevant objects for testing the potential for *'urf*-based legal harmonization in Indonesia's local government system.

## 2. METHODS

This study uses a legal-normative approach by examining primary and secondary literature related to *'urf*, customary law, and the national legal framework. The analysis focuses on identifying the principles of *'urf* and their relevance to the concept of living law in Indonesian customs. This method was chosen to assess the coherence of the integration of *'urf* into the discourse of national legal harmonization.

The study was conducted through conceptual, comparative, and evaluative analysis. Conceptual analysis outlined the definitions and characteristics of *'urf* and *adat*, while comparative analysis mapped the commonalities between the two. Evaluative analysis was used to assess the feasibility of *'urf* as a normative basis for legal harmonization.

The data were analyzed qualitatively through deductive-inductive reasoning. The deductive approach was used to derive the theoretical basis from the literature on *fiqh* and legal pluralism, while the inductive approach was used to draw generalizations from customary practices that were in line with the principle of *'urf*. Validity was enhanced through triangulation of Islamic literature, customs, and national regulations.

## 3. RESULTS AND DISCUSSION

### A. The 'Urf principle can serve as a bridge between customary law and national law

*'Urf* is not synonymous with customs as a whole, but refers to practices that are commonly accepted in society, collectively recognized, and repeatedly carried out. *'Urf* can take the form of expressions such as words, terms, or the use of specific terminology, as well as social actions and practices carried out in everyday life. In the context of Islamic law, *'Urf* can be used as a source of law, especially in conditions where there is no explicit text from the Qur'an or Hadith. The use of *'Urf* as a legal argument requires that the custom does not conflict with the principles of Sharia, is widely known, and is widely accepted in society.<sup>8</sup> However, not all customs or traditions automatically have legal force. These customs can only be used as a basis for law if they are in

<sup>7</sup>Fauzi. (2024). *'Urf and Its Role in The Development of Fiqh: Comparative Study of Family Law Between Egypt and Indonesia*. *El-Usrah*, 7(1), 346–371. <https://doi.org/10.22373/ujhk.v7i1.23968>

<sup>8</sup>Rizhan, A. (2024). *Kedudukan Al- ' Adah Dan Al - ' Urf sebagai Sumber Hukum Islam*. *GAGASAN HUKUM*, 6(01). <https://doi.org/10.31849/jgh.v6i01.19526>

accordance with the principles of Sharia. Customs that contradict Sharia are categorized as 'Urf fāsid and cannot be used as a source of law.

Customary law reflects diverse local cultural values and plays an important role in dispute resolution, natural resource management, and the protection of indigenous peoples' rights. Thus, customary law not only serves as a social guideline, but also forms the basis for the development of national law. As part of an unwritten legal system, customary law lives and develops in the collective consciousness of the community, demonstrating its existence as "living law."<sup>9</sup>

This characteristic allows customary law to serve as a bridge between local social norms and formal/national law, thereby helping to form the foundation of a national legal system capable of integrating tradition and formal regulations in Indonesia. Therefore, the existence of customary law within the framework of the Indonesian state must be maintained and strengthened, given its role as a dynamic component of law that is inseparable from the lives and values of Indonesian society today.

One of the issues surrounding customary land disputes can be found in Nagari Supayang, Salimpaung District, Tanah Datar Regency, West Sumatra. This dispute arose in relation to claims of ownership of customary land, which is a communal heritage asset and is managed collectively by the local indigenous community. The conflict is resolved through customary law mechanisms, with the involvement of customary leaders and institutions as mediators, in line with the principles of Minangkabau customary law, which emphasizes deliberation and consensus as the main approach to dispute resolution.<sup>10</sup>

Then in 2023, plans to develop the Rempang Eco-City PSN sparked a dispute between indigenous peoples who had inhabited Rempang Island for more than 200 years and the government and developers.<sup>11</sup> This conflict arose because the customary rights of indigenous peoples were not formally recognized, resulting in forced relocation plans without consultation or fair compensation. This case highlights the need for recognition of customary rights, transparent verification mechanisms, and effective legal protection to prevent similar agrarian conflicts.

## **B. 'Urf sah is applied in local governance (traditional villages & nagari)**

The awig awig enforced in traditional villages contain binding norms that require all villagers to comply with the regulations applicable in their respective customary areas. Any violation of these awig awig is subject to predetermined sanctions, whether moral, social, fines, or other forms of punishment.<sup>12</sup> The implementation of and compliance with the awig awig by the Krama Desa affirms the continuity of customary law and formal recognition of the legitimacy of customary law in the Traditional Village of Bali.

<sup>9</sup>Purnomo, V. D., Supeno, B. J., & Lisdiyono, E. (2024). The Role of Customary Law in the Development of National Law in the Modern Era. *Formosa Journal of Sustainable Research (FJSR)*, 3(10), 2143–2154. <https://doi.org/https://doi.org/10.55927/fjsr.v3i10.11945>

<sup>10</sup>Aini, Q., Ramadhani, R., Kamilah, A., Mulyana, A., & Yulianah, Y. (2025). *Harmonisasi Hukum Negara dan Norma Adat: Analisis Sosiologis atas Penyelesaian Sengketa Tanah Adat di Indonesia*. Publishing, 209–222. <https://doi.org/https://doi.org/10.47134/lawstudies.v2i3.3363>

<sup>11</sup>Lubis, I., Siregar, T., Indah, D., Lubis, S., Adawiyah, R., & Lubis, A. H. (2025). Integrasi Hukum Adat dalam Sistem Hukum Agraria Nasional: Tantangan dan Solusi dalam Pengakuan Hak Ulayat. *Tunas Agraria*, 8(May), 143–158. <https://doi.org/DOI: https://doi.org/10.31292/jta.v8i2.401>

<sup>12</sup>Agus, K., Pradnyana, S., Windu, I. P., Sujana, M., & Landrawan, I. W. (2023). Jurnal Dinamika Sosial Budaya Awig-Awig Sebagai Hukum Adat Di Wilayah Desa Adat Provinsi Bali. *Jurnal Dinamika Sosial Budaya*, 25(1), 293–296. <https://journals.usm.ac.id/index.php/jdsb>

Violations of the awig awig will be subject to predetermined sanctions, including moral and social sanctions, fines, and other forms of punishment. In Asak Village, Karangasem Regency, a sanction known as 'kesepekan' is applied, which is social exclusion of the offender. All village residents refrain from social interaction with the individual concerned. This practice reinforces the mechanism of customary law enforcement through collective social pressure.<sup>13</sup>

From this description, the ABS-SBK principle can be understood as the main source of customary law that forms the basis of nagari autonomy. This philosophy also forms the basis for Minangkabau customary law in regulating nagari institutions. Based on West Sumatra Provincial Regulation No. 7 of 2018, nagari institutions consist of the Nagari Customary Council, the Nagari Government, and the Nagari Customary Court.<sup>14</sup> The Nagari Customary Council, which includes representatives of niniak mamak, alim ulama, cadiak pandai, bundo kanduang, and parik paga, functions as the highest consultative body. Meanwhile, the Nagari Government is led by the Kapalo Nagari (Nagari Head) and his staff to carry out governance, development, public services, and community empowerment, while the Nagari Customary Court resolves disputes over inheritance, customary civil cases, and imposes customary sanctions.

With the application of the right approach and careful methodology, the two legal systems, namely constitutional law and customary law, have the potential to be synergized effectively. This synergy enables the creation of Regional Regulations (Perda) that are constitutionally valid, while maintaining normative legitimacy. Furthermore, the application of this harmonization ensures the social relevance of Perda in the eyes of the local community.<sup>15</sup>

Thus, the regulatory drafting process not only meets formal legal requirements, but also accommodates prevailing cultural values and practices. This approach demonstrates that the integration of the two legal systems can proceed without diminishing the authority of either.

Customary law in Bali continues to exist due to a combination of formal recognition, community compliance, and its social function. The traditional village community complies with the awig awig because of their belief that these rules are correct and worthy of preservation, maintaining the balance of customs and legal culture. The traditional village institution is legally recognized through regulations, including Article 7 paragraph (1) of Law No. 12 of 2011, which gives it the authority to hold traditional courts.<sup>16</sup> Community compliance is manifested through sanctions that stabilize religious-magical life and restore imbalances caused by violations. Despite facing challenges in balancing traditional authority with human rights principles, customary courts are now more dynamic with efforts to promote peace and protect the rights of offenders.

The integration of customary law into the national legal system faces challenges due to conflicting norms, overlapping authorities, and the dynamics of globalization that demand regulatory adaptation. Harmonization can be achieved through the active participation of

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<sup>13</sup>Agus, K., Pradnyana, S., Windu, I. P., Sujana, M., & Landrawan, I. W. (2023). Jurnal Dinamika Sosial Budaya Awig-Awig Sebagai Hukum Adat Di Wilayah Desa Adat Provinsi Bali. *Jurnal Dinamika Sosial Budaya*, 25(1), 293–296. <https://journals.usm.ac.id/index.php/jdsb>

<sup>14</sup>Purnomo, V. D., Supeno, B. J., & Lisdiyono, E. (2024). The Role of Customary Law in the Development of National Law in the Modern Era. *Formosa Journal of Sustainable Research (FJSR)*, 3(10), 2143–2154. <https://doi.org/https://doi.org/10.55927/fjsr.v3i10.11945>

<sup>15</sup>Budiadinata, I. K., & Adnyana, S. (2023). DIKELUARKAN OLEH KERTA DESA ADAT DI BALI. REFLEKSI HUKUM, 7(April), 187–210. <https://doi.org/DOI:https://doi.org/10.24246/jrh.2022.v7.i2.p187-210>

<sup>16</sup>Budiadinata, I. K., & Adnyana, S. (2023). DIKELUARKAN OLEH KERTA DESA ADAT DI BALI. REFLEKSI HUKUM, 7(April), 187–210. <https://doi.org/DOI:https://doi.org/10.24246/jrh.2022.v7.i2.p187-210>

indigenous peoples and respect for local wisdom, thereby maintaining legal harmony and cultural preservation.

### **C. Challenges and best practices related to the integration of local wisdom in modern systems**

The integration of customary criminal law into the national legal framework often faces normative challenges, particularly when the sanctions or procedures applicable in customary law are not in line with national legal principles, including statutory provisions and human rights standards. This incompatibility requires a harmonization mechanism that can maintain a balance between local traditions and formal legal obligations. Regulatory gaps and implementation practices are significant obstacles to the recognition of customary criminal law.<sup>17</sup> Although national law formally recognizes its existence, the lack of technical guidelines, standard procedures, and inter-agency coordination mechanisms often hinders the consistent and effective application of customary law. The utilization of the principle of living customary law through customary criminal law contributes significantly to the national judicial system. This approach enables the implementation of restorative and contextual justice that is in line with local values, thereby upholding the law while strengthening social and cultural legitimacy in indigenous communities.

Customary criminal law has become the focus of legal reform in Indonesia, in line with decentralization and constitutional recognition of indigenous communities, and has the potential to strengthen the law enforcement system through restorative and contextual justice that is in harmony with local values. Despite challenges of harmonization, legality principles, and limited capacity of customary institutions, regional regulations governing customary criminal law can increase the legitimacy and effectiveness of law enforcement at the local level.

The integration of customary criminal law is a strategic focus in legal reform in Indonesia, in line with the process of decentralization and constitutional recognition of indigenous communities. The application of customary criminal law has the potential to strengthen the national law enforcement system through restorative and contextual justice that is in line with the local values of indigenous peoples. Although there are still challenges related to harmonization, the principle of legality, and the capacity of customary institutions, regional regulations governing customary criminal law can significantly increase the legitimacy and effectiveness of customary law enforcement.

## **4. CONCLUSION**

This study shows that *sahih 'urf* has the normative power to bridge the differences between customary law, which is based on communal practices, and national law, which is legal-formal in nature. This principle allows local values to be integrated harmoniously as long as they fulfill social consistency and the goal of public interest.

Implementation in traditional villages in Bali and *nagari* in West Sumatra shows that deliberative mechanisms, restorative dispute resolution, and social legitimacy are concrete forms of living *'urf sahih*. This practice successfully connects customary norms with the formal legal framework without eliminating local cultural identity

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<sup>17</sup>Ilmu, J., & Volume, H. (2025). Integration of Customary Criminal Law into the National Legal System: Opportunities and Challenges. SEAN INSTITUTE, 15(02), 607–618. <https://doi.org/10.58471/justi.v15i02>

However, this integration still faces obstacles such as overlapping authorities, differences in customary interpretations between regions, and limited technical guidelines for regulatory implementation. Best practices such as collaborative governance, regulatory adaptation, and periodic evaluation show that harmonization requires the active participation of indigenous peoples and institutional coordination.

This study contributes to the development of a harmonization framework based on 'urf, and provides recommendations for policymakers in strengthening the sustainability of customary law. The limitations of this literature-focused study open up opportunities for more in-depth field studies and comparative analyses to strengthen its findings and practical applications.

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