



COMPROMISING PARADIGM IN THE DIALECTIC OF ISLAMIC CIVIL LAW AND CUSTOMARY LAW IN CENTRAL KALIMANTAN

Ariyadi

Universitas Muhammadiyah Palangkaraya, Indonesia
ariyadialbanjari@gmail.com

Ardi Akbar Tanjung

Universitas Muhammadiyah Palangkaraya, Indonesia
ardi.akbar15@gmail.com

Muhammad Dlafurrahman

Universitas Islam Negeri Palangkaraya, Indonesia
daishiroi10@gmail.com

Adib Susilo

International Islamic University Malaysia, Malaysia
adib.susilo@live.iium.edu.my

ABSTRACT

This study aims to describe Islamic family law, Sharia economic law, and customary law in marriage and inheritance practices in Central Kalimantan. This study uses a descriptive qualitative approach with literature studies and normative-sociological studies. The research data sources consist of legislation, the Compilation of Islamic Law (KHI), Islamic economic law literature, and Dayak and Malay customary law documents. Data analysis is interpretative. The results of the study show that the three legal systems interact dynamically. In marriage, Islamic law emphasizes the pillars and requirements of sharia. Meanwhile, Dayak customs add rituals and marriage expenses. This integration becomes both religious and social legitimacy. In inheritance, Islamic law rigidly regulates distribution according to the Qur'an. Meanwhile, customary law emphasizes deliberation and equality. In this context, Sharia economic law provides room for grants or wills. This study emphasizes that the practice of Islamic civil law in Indonesia can be dynamic and contextual even in the midst of existing social, cultural, and state norms.

Keywords: *Islamic civil law, Customary Law, Central Kalimantan*

A. Introduction

The law in Indonesia has unique characteristics because it was born from the convergence of three major legal systems: national law (a product of the state), religious law (especially Islam), and customary law that developed within local communities (Lukito, 2012). This configuration makes Indonesian law pluralistic in nature, which is that there is not just one source of law that applies, but rather multiple layers according to the social, cultural, and religious context of the community (Griffiths, 1986).

Central Kalimantan, as a region with a multicultural society dominated by the Dayak ethnic group, is a rich social laboratory for observing how Islamic law and customary law coexist, interact, and even compete (Syaikhu et al., 2023). For the Dayak people, customary law is not just a set of technical rules, but an integral part of their identity and value system that has been passed down from generation to generation. Customary law encompasses all aspects of life, including marriage procedures, family property management, and inheritance distribution (Dancer, 2017).

Problems arise when the three legal systems above interact in social practice. In marriage, for example, Islamic law only requires a guardian, witnesses, *ijab-qabul*, and dowry (I. Setiawan et al., 2024). However, in Dayak customary law, a marriage is only considered valid if customary rituals are also performed and “marriage expenses” are paid to the bride's family. This often leads to a dialectic: is an Islamic marriage contract sufficient to validate a marriage, or must it be supplemented with customary legitimacy in order to be recognized by the community? Many families ultimately choose a middle ground by performing both: a marriage contract according to Islamic law and customary rituals as a form of respect for tradition. In matters of inheritance, more complex differences arise. Islamic law regulates the distribution of inheritance in detail, such as sons receiving twice the share of daughters, parents receiving a certain share, and so on (Khosyi'ah & Rusyana, 2022; Safiuddin et al., 2023; E. Setiawan, 2014). This principle is considered a form of proportional justice established by Allah in the Qur'an. However, Dayak customary law often divides inheritance based on family deliberation, taking into account who took better care of the parents or looked after the family's assets. In some cases, daughters can receive the same share as sons, which differs from the principles of Islamic inheritance. A dialectic arises when families must choose between following Islamic law normatively or customary law, which is considered more socially just (Abdul-Jabbar, 2022; Moors, 2018).

The concept of justice in Sharia economic law also has an important influence on inheritance practices. For example, when Islamic law has established a specific division of inheritance, Sharia economic law provides room for gifts or wills to maintain social balance within the family (Widiastuti et al., 2022). In this way, Sharia economic law serves as a bridge between the textual provisions of Islam and the

demands of social justice in customary law. In Central Kalimantan society, this compromise is often achieved through formal distribution in accordance with Islamic law, but then supplemented with gifts so that all children receive an equal share. The dialectic between these three legal systems shows that law is not static, but dynamic in accordance with the social and cultural context of society. The existence of Islamic family law provides religious legitimacy, Islamic economic law offers distributive justice, and customary law provides socio-cultural legitimacy. The three often complement each other, although in some cases they cause tension (Husain et al., 2024).

In the academic realm, this phenomenon is relevant to the theory of legal pluralism, which emphasizes the existence of more than one legal system within a society (Hasibuan, 2022). Griffiths (1986) states that legal pluralism can be “strong” if the legal systems are truly alive and obeyed by society, or “weak” if they are merely a formality. In the context of Central Kalimantan, legal pluralism is strong because Islamic law, customary law, and state law all have social binding power. In addition, this dialectic is also related to the concept of living law as introduced by Eugen Ehrlich (Nelken, 2008). Living law is not merely state law or written text, but rules that are actually followed by society in everyday life. In the practice of marriage and inheritance in Central Kalimantan, customary law and Islamic law both function as living law that guides the social behavior of the community.

It is also important to note that the state is present through the national legal system, for example Law Number 1 of 1974 concerning Marriage and Law Number 3 of 2006 concerning Religious Courts. The state recognizes the validity of Islamic law in the areas of marriage and inheritance for Muslims, but in practice, the community still gives prominence to customary law (Ali & Efendi, 2024; Gunawan & Hakim, 2018). This shows the existence of dual authority: religious courts have the authority to decide on Islamic inheritance cases, but customary institutions are still respected as moral authorities in resolving family disputes. Central Kalimantan, as a multicultural region, is an example of how legal pluralism in Indonesia is not just academic discourse, but a social reality (Lindsey & Pausacker, 2016). The community there does not simply “choose” one law, but rather engages in a process of dialectics, negotiation, and compromise so that the law applied is in accordance with religious values as well as local wisdom. This is what makes the practice of family and inheritance law in Central Kalimantan rich in nuance, different from the simple application of Islamic law or customary law alone (Hosen, 2005).

This study aims to describe Islamic family law, Sharia economic law, and customary law in the practice of marriage and inheritance in Central Kalimantan. This study uses a descriptive qualitative approach with literature study and normative-sociological analysis methods. This approach was chosen based on the nature of the study, which seeks to explore in depth the dynamics of interaction between Islamic family law, Sharia economic law, and customary law in marriage

and inheritance practices in Central Kalimantan. The research data consists of two types. First, primary data in the form of legislation, such as Law Number 1 of 1974 concerning Marriage, Law Number 3 of 2006 concerning Religious Courts, the Compilation of Islamic Law (KHI), and Dayak and Malay customary law documents in Central Kalimantan. Second, secondary data in the form of academic literature, research results, journal articles, law books, and publications related to Islamic law, Islamic economic law, and customary law. Data collection techniques were carried out through documentation and literature review. Furthermore, data analysis was carried out using a qualitative-interpretative method, namely connecting normative rules with social practices that have developed in society. The analysis was carried out in three stages: data reduction, data presentation, and conclusion drawing.

This study of dialectics is important for at least three reasons. First, it shows how Islamic law and customary law can complement each other in social practice, despite their fundamental differences. Second, it provides a new understanding that Sharia economic law is not only relevant in business transactions, but also in the context of family and inheritance. Third, it contributes to the discourse on pluralistic national legal development that is responsive to local cultures. Thus, this article aims to analyze the dialectic between Islamic family law, Sharia economic law, and customary law in the practice of marriage and inheritance in Central Kalimantan.

B. The Challenges of Civil Law Pluralism in Indonesia

Legal pluralism in Indonesia is an undeniable reality. Three main legal systems state law, religious law, and customary law coexist and influence each other in various aspects of society (Bowen, 2003). However, this dynamic interaction is not always harmonious. The dialectic of law often poses serious challenges that must be managed wisely to avoid legal uncertainty and social conflict (Lindsey & Pausacker, 2016). The first challenge is the duality of authority. State law, through the judicial system, has formal authority, while religious and customary law still have strong legitimacy in the eyes of the community (Koschorke, 2019). As a result, when disputes arise, for example in cases of marriage or inheritance, the community is often confused about which resolution path to choose (Bowen, 2003; Hosen, 2005). This creates the potential for overlapping decisions and weakens legal certainty.

The second challenge is the difference in principles of justice. Islamic law emphasizes proportional justice in accordance with sharia provisions, customary law tends to prioritize social justice based on deliberation, while state law prioritizes formal-legal principles. When these three concepts of justice meet, tensions often arise in practice (Hariri & Babussalam, 2024). For example, the distribution of inheritance according to sharia differs from customary law, which emphasizes equality, so families must negotiate to reach a compromise. The third challenge is the lack of policy integration.

The state often only formally recognizes one legal system, even though in reality the community continues to practice customary and religious law. As a result, the laws that apply in the community are not in sync with the positive laws of the state. In addition, public legal awareness is also a challenge in itself. Some people are more obedient to customary law because it is considered closer to local values, while others adhere strictly to religious law. This situation creates fragmentation in law enforcement (Ariyadi et al., 2022).

Thus, the challenge of legal dialectics in Indonesia is not merely a normative issue, but also a social, cultural, and political one. An integrative approach is needed that respects legal pluralism, while still guaranteeing certainty and justice for all citizens (Irawansah et al., 2024). First, there is the dualism of authority between the Religious Courts (which have jurisdiction over Islamic inheritance cases) and customary institutions that are still respected by the community. Second, the potential for conflict. Differences in the principles of inheritance distribution often lead to family disputes. Third, legal awareness. Some communities still prefer customary law because it is considered more socially just, even though it is not in accordance with Islamic law. Fourth, pluralism that has not been institutionalized. The state has not been fully able to officially accommodate the dialectic of law, which often leads to legal uncertainty.

C. The Compromise Between Islamic Law and Customary Law in Marriage and Inheritance Practices in Central Kalimantan

1. Marriage Practices

Islamic family law in Indonesia is regulated through the Compilation of Islamic Law (KHI), Law Number 1 of 1974 concerning Marriage, and various implementing regulations (Safiuddin et al., 2023). In terms of inheritance, Islamic law emphasizes the principle of proportional justice as stipulated in QS. An-Nisā' [4]: 11–12, where the distribution of inheritance is determined in detail based on blood relations.

Furthermore, Sharia economic law is relevant in the context of joint property (gono-gini), gifts, wills, and family asset management. The principles emphasized are justice ('adl), trustworthiness, and the prohibition of taking property unlawfully (QS. Al-Baqarah [2]: 188). In marriage, Islamic economics emphasizes the responsibility of providing for the family, managing family assets in a lawful manner, and distributing inheritance in accordance with Sharia provisions.

Next, regarding customary law, the Dayak community in Central Kalimantan has a strong customary law system, especially in matters of marriage and inheritance (Syaikhu et al., 2023). Dayak traditional marriages generally involve substantial wedding expenses (a kind of traditional dowry) and traditional rituals as a condition of validity. In terms of inheritance, Dayak communities emphasize the principle of family deliberation rather than mathematical division as in Islamic law.

Meanwhile, Malay communities in Central Kalimantan tend to follow Islamic law, but are still influenced by local customs in its technical implementation.

Marriage is a social institution that is not only of personal value, but also has legal, cultural, and religious dimensions. In Indonesia, marriage cannot be separated from the prevailing legal pluralism, namely state law, religious law, and customary law (Lukito, 2012). These three legal systems often interact with each other, and even compete, creating dialectics in practice. From a religious law perspective, particularly Islam, marriage is viewed as a sacred contract that fulfills certain conditions and requirements, such as the presence of a guardian, witnesses, *ijab-qabul* (marriage vows), and dowry. Islamic law emphasizes the validity of marriage based on sharia, where spiritual and legal aspects are equally fundamental. However, in many communities, including in Kalimantan, the requirements for a valid marriage do not stop at religious provisions, but must also comply with customary rules.

Customary law views marriage as a social event that involves not only two individuals, but also two extended families. Therefore, customs usually require certain procedures, such as traditional rituals and the payment of *belis* or *belanja perkawinan* (marriage expenses). This practice affirms the values of togetherness, family honor, and social solidarity (Soekanto, 2015). On the other hand, state law through Law No. 1 of 1974 stipulates that marriages must be officially registered to be administratively valid. A dialectic arises when there are differences between the three legal systems. For example, according to Islamic law, a marriage is valid if the sharia requirements are met, even if it has not been registered. However, according to state law, registration is a requirement for validity. Customary law also sometimes places more emphasis on traditional rituals than on state registration. In practice, many people choose to combine all three: performing the marriage contract according to religion, customary rituals as social legitimacy, and state registration as formal legitimacy.

Thus, marriage practices in Indonesia reflect a dynamic legal dialectic. Although they often cause differences, the three legal systems ultimately complement each other. This dialectic also demonstrates the local wisdom of the community in accommodating religious, customary, and state values in a single sacred event called marriage (Susilo & Safitri, 2022).

In marriage practices in Central Kalimantan, there is a dialectic between Islamic family law and customary law. First, dowry and marriage expenses. In this context, Islamic law requires a dowry (*ṣadāq*) as the wife's right, but in Dayak custom, the groom's family must provide a certain amount of marriage expenses to the bride's family. This difference is often resolved through compromise, namely by still providing the dowry in accordance with Sharia law but also fulfilling customary requirements as a form of respect. Second, the validity of marriage. In this context, Islamic law emphasizes the pillars of marriage (guardian, witnesses, *ijab-qabul*, and

dowry), while Dayak customs add customary rituals. In practice, the community carries out both procedures: the Islamic marriage contract, followed by a traditional ceremony. Third, the role of traditional and religious institutions. In some areas, marriages are not only registered by the Office of Religious Affairs (KUA), but also recognized by traditional institutions. This shows that there is a dualism of recognition that coexists. This situation reinforces the view that emphasizes the importance of reforming the marriage law system in Indonesia to accommodate religious and cultural values (Iqbal et al., 2023; I. Setiawan et al., 2024).

2. Inheritance Practices

Inheritance is an important aspect of family law that often gives rise to debate, especially in societies that adhere to a pluralistic legal system. In Indonesia, inheritance practices are governed not only by religious law particularly Islamic law but also by customary law and state law (Khosyi'ah & Rusyana, 2022). The interaction between these three legal systems often leads to dialectics in their application. From an Islamic law perspective, the distribution of inheritance is clearly regulated in the Qur'an, specifically in Surah An-Nisa [4]: 11–12. Male children receive twice the share of female children, while parents and spouses also have specific shares. This law emphasizes proportional justice in accordance with the social responsibilities borne by each heir.

However, in customary law, the principle of inheritance distribution is more flexible and is determined through family deliberation. Indigenous communities often prioritize agreements that are considered socially fair, such as giving a larger share to children who live with their parents or play a greater role in maintaining the family's assets (Syaikhu et al., 2023). In some communities, boys and girls even receive equal shares, contrary to Islamic law (Bello, 2015). Meanwhile, state law through the Marriage Law and religious court regulations recognizes the validity of Islamic law for Muslims, but still allows for customary law as long as it does not conflict with the principles of justice (Luthfi et al., 2024). This situation creates room for negotiation, where families often combine Islamic rules with customs to reach consensus.

The most obvious dialectic is seen when families choose to follow Islamic law formally, but add gifts or wills so that all children receive equal shares as desired by custom (Powers, 1993). This practice shows an effort to harmonize between the normative provisions of religion and the sense of social justice according to custom. Thus, inheritance practices in Indonesia are not singular, but rather the result of a dialectic between Islamic law, customary law, and state law (Rasyid et al., 2024). This dialectic shows that the laws that exist in society are always dynamic, adapting to religious values, local traditions, and contemporary needs for justice.

In the distribution of inheritance, the most striking differences between Islamic law, Sharia economics, and customary law are in the system of asset

distribution (Wardi et al., 2024). First, Islamic law. In this context, the distribution of inheritance is rigid and has been regulated in the Qur'an. For example, sons receive twice as much as daughters (QS. An-Nisā' [4]: 11). Second, Sharia economic law. This law regulates fair distribution mechanisms, including wills, grants, and joint property management (gono-gini property). This strengthens social justice within the family. Third, Dayak customary law. In this context, inheritance is usually divided based on family deliberation, taking into account who took care of the parents more or looked after the family assets. In some communities, daughters can receive an equal share with sons, contrary to Islamic provisions.

D. Harmonization of Islamic Civil Law, Customary Law, and State Law: The Basis of Humanistic-Contextual Islamic Civil Law

It is important to realize that optimizing the role of Islamic law (*fiqh*) in responding to civilization and societal problems requires a deep understanding of the values of Islamic legal philosophy itself, such as the existence of *maqasid syariah* as a value and approach in the contemporary Islamic legal paradigm (Asmawi, 2023). This also requires Islamic legal reasoning that has a positive correlation with the intended legal status in answering existing legal problems (Sonafist, 2022).

The dialectic of law in Indonesia, particularly between state law, religious law, and customary law, is highly relevant in shaping a fair and responsive national legal system. Its main relevance lies in the fact that Indonesian society is culturally and religiously diverse, so that a single legal system is insufficient to address all of society's needs. The presence of legal pluralism allows for the accommodation of religious values and local traditions that are still deeply rooted in social life.

In the context of marriage and inheritance, the relevance of legal dialectics can be seen in the community's ability to balance normative Sharia rules with local customary wisdom, while also accommodating the demands of state law. This shows that law does not only function as written rules, but also as living law that is alive and practiced in accordance with social reality. Thus, legal pluralism is highly relevant in maintaining social harmony while strengthening the legitimacy of law in the eyes of society (Istiani & Susilo, 2024).

The implications of this legal dialectic are far-reaching. First, for the formation of national law, dialectics provides an important basis for building inclusive laws that are not only oriented towards formal rules, but also accommodate religious and customary values. Second, for judicial practice, dialectics requires judges and law enforcement officials to understand the social context of society so that the decisions taken do not cause conflict, but rather resolve issues fairly. Third, for society, the real implications are seen in the form of compromises, such as the division of inheritance that combines Islamic and customary principles, thereby achieving a sense of shared justice. In this context, it is important to be aware of the Islamic legal paradigm based on the concept of *'urf*

in accommodating the legal status related to local wisdom that has developed within society (Mahdaliyah et al., 2024). Therefore, Islamic legal thinking in Indonesia continues to evolve in line with developments in thinking about *'urf* (Luthfi et al., 2024; Najib, 2020). Thus, the relevance of legal dialectics in Indonesia is to maintain a balance between religious, customary, and state norms, while its implications lie in the formation of a more humanistic, contextual legal system that is capable of responding to the challenges of a multicultural society. First, for society. Legal dialectics provide flexibility, but also require wisdom so as not to cause conflict. Second, for the government and the judiciary, there needs to be clearer regulations to accommodate customary law practices without neglecting the principles of sharia. Third, for academics and researchers. This legal dialectic is an important subject of study in the development of a national legal system based on pluralism.

E. Conclusion

This study concludes that the dialectic between Islamic family law, Sharia economic law, and customary law in marriage and inheritance practices in Central Kalimantan can be dynamic and compromising. In marriage, Islamic law emphasizes sharia principles and requirements. Meanwhile, Dayak customs add rituals and marriage expenses. This integration provides both religious and social legitimacy. In inheritance, Islamic law regulates rigid distribution in accordance with the Qur'an. Meanwhile, customary law emphasizes deliberation and equality. In this context, Islamic economic law provides space through grants or wills. This conclusion is based on the fact that despite differences in principles, society is able to accommodate these differences through deliberation and compromise. The integration of these three legal systems has the potential to enrich the national legal system, provided that there is an awareness of the importance of upholding the values of justice, humanity, and local wisdom.

This study confirms that the practice of Islamic civil law in Indonesia legal practice in Indonesia does not only proceed in a normative-textual manner, but is also influenced by local social and cultural values. The limitations of this study are still confined to a literature review. Therefore, it is important for subsequent studies to examine the dynamics of practice in the field through an empirical approach

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