

Revitalizing ‘*Urf* in State Legal Development: The Case of Minangkabaunese Marriage Traditions

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Abstract

This article aims at explaining the marriage regulations in several Minangkabau regions which contribute to the enforcement and development of state law. These marriage rules have become a tradition that must be obeyed by the Minangkabaunese and recognized by Sharia, which in this case is categorized as ‘*urf shabih*. This research was conducted by using qualitative method. It was done by inventorying several marriage rules that are still applied by the Minangkabaunese and recognized by Sharia. The data were analyzed for their conformity with the provisions of marriage law established by the state. This research found that several forms of regulations are still applied and contribute to the development and enforcement of state law such as traditions before marriage, the process of getting married and living in the household, as well as when problems arise in the household and divorce. This ‘*urf* needs to be re-actualized to achieve good state law enforcement. This research confirms the need for the state to consider local traditions (‘*urf*) in developing and enforcing laws.

Keywords: ‘*urf*; state law; marriage; Minangkabau

Introduction

Many state regulations regarding marriage are still not implemented by the community such as unregistered marriage (*sirri* marriage)¹, interfaith marriage², unregistered polygamy, child marriage³, extrajudicial divorce, etc. In addition, internal household problems require special attention. Domestic violence, sexual violence against children, divorce, polygamy, and others continue to be a scourge that harms household members, especially those issues related to women and children that are not properly addressed,⁴ although the state has regulated it well through marriage laws and other regulations.⁵ On the other hand, religion has also set the terms of marriage.

In addition to government and religion, customs play a very important role in all aspects of life, including family life.⁶ Domestic life is regulated by custom, from matters of choosing a mate to divorce or the death of a family member.⁷ Some of these customary provisions are recognized by Islam, known as *'urf*.⁸ In the midst of this crisis in family life, customs/traditions play a very important role in upholding the supremacy of religious and state law. Some customary provisions basically confirm religious and state regulations. This is

¹ Anwar Hafidzi et al., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Al-Ahkam: Jurnal Pemikiran Hukum Islam* 32, no. 2 (2022): 153–68, <https://doi.org/10.21580/ahkam.2022.32.2.12789>.

² Y Sonafist and Henny Yuningsih, "Islamic Law, the State, and Human Rights: The Contestation of Interfaith Marriage Discourse on Social Media in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (December 28, 2023): 381–91, <https://doi.org/10.31958/juris.v22i2.10934>; Azhari Akmal Tarigan et al., "Islam and Christianity at Rumah Gadang: The Household Characteristics of Minangnese Interfaith Marriage," *Juris: Jurnal Ilmiah Syariah* 23, no. 1 (2024): 27–39, <https://doi.org/10.31958/juris.v23i1.11926>.

³ Ashabul Fadhli and Arifki Budia Warman, "'Alasan Khawatir' Pada Penetapan Hukum Dispensasi Kawin Di Pengadilan Agama Batusangkar 'Reasons for Concern' on Marriage Dispensation Decisions in Batusangkar Religious Court," *Al-Ahwal* 14, no. 2 (2021): 146–58, <https://doi.org/10.14421/ahwal.2021.14203>.

⁴ Arifki Budia Warman et al., "From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 (2023): 161–84, <https://doi.org/10.18326/ijtihad.v23i2.161-184>.

⁵ Arifki Budia Warman et al., "Reforming Marriage Registration Policies in Malaysia and Indonesia," *Bestuur* 11, no. 1 (2023): 61–74, <https://doi.org/10.20961/bestuur.v11i1.66320>.

⁶ Fitra Arsil and Ryan Muthiara Wasti, "The Role of Ulama, Adat and Government Institutions as the Stability Factors of the Minangkabau System of Government," in *Advancing Rule of Law in a Global Context*, ed. Heru Susetyo, Patricia Rinwigati Waagstein, and Akhmad Budi Cahyono (London: CRC Press, 2020), 8, <https://doi.org/https://doi.org/10.1201/9780429449031>.

⁷ Arifki Budia Warman et al., "Strengthening Family Resilience Through Local Wisdom: Pulang Ka Bako Type of Marriage in Minangkabau," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 253–68, <https://doi.org/10.7454/ai.v34i2.3966.5>.

⁸ M. Noor Harisudin, "'Urf Sebagai Sumber Hukum Islam (Fiqh) Nusantara," *Jurnal Ushuluddin: Media Dialog Pemikiran Islam* 20, no. 1 (2017): 66–86.

like the provisions prohibiting unregistered (sirri) marriages which are customary and have become a community custom. If this provision is not implemented, customary sanctions are imposed.⁹ Basically, this provision supports state laws that require every citizen to register their marriage.

This study seeks to highlight the contribution of 'urf in the enforcement and development of state law, especially family law in Indonesia. There have been many studies on 'urf. These studies can be divided into several perspectives. First, studies that examine 'urf conceptually, especially its position in legal enactment.¹⁰ Second, studies that highlight traditional practices from an 'urf perspective, such as processions before wedding¹¹, Wedding procession and celebration of the wedding¹², dowry¹³, marriage ban¹⁴, resolution of domestic

⁹ Muhammad Khalilurrahman, Eficandra, and Dodon Alfiander, "Sharia-Based Customs in Unregistered Marriage Rules (Case Study in Rambatan Village, West Sumatra)," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 579–96, <https://doi.org/10.1093/ojlr/rwy027.2>.

¹⁰ Agus Moh Najib, "Reestablishing Indonesian Madhhab 'Urf and the Contribution of Intellectualism1," *Al-Jami'ab* 58, no. 1 (2020): 171–208, <https://doi.org/10.14421/ajis.2020.581.171-208>; Januddin Muhammad Yusuf and Nawir Yuslem, "Acehnese Dayah Ulama's Response to the Use of 'Urf in Istinbath of Fiqh Law from Islam Nusantara," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (May 2023): 291–306, <https://doi.org/10.29240/jhi.v8i1.5732>; Soheila Rostami, Wrya Hafidi, and Mehrangiz Roustaie, "The Effect of Urf (Common Law) on Family Laws in Islamic Jurisprudence," *Kufa Journal of Arts* 1, no. 41 (2023): 491–512, <https://doi.org/10.36317/kaj/2019/v1.i41.13447>; Maryam Ibn-Torab, "The Effect of Common Law ('Urf) in Spouses' Rights," *Biannual Journal of Family Law And Jurisprudence* 15, no. 52 (2010): 89–108, <https://doi.org/10.30497/fj.2010.39995>.

¹¹ Anwar Sadat et al., "Determination of Auspicious Days in Wedding Traditions in Mandar, West Sulawesi: Perspective of Islamic Law," *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (July 2023): 1422–46, <https://doi.org/10.22373/sjhk.v7i3.17864>; Ahmad Nuh et al., "Mabbollo Tradition in Bugis Marriage in Bone Regency Urf Perspective," *Journal of Family Law and Islamic Court* 2, no. 1 (2024): 25–34, <https://doi.org/10.26618/jflic.v2i1.13151>.

¹² Zubir Zubir and Kamaruzzaman Bustamam Ahmad, "The Dialectics of Islam and Custom in the Kenduri La'ot Tradition of the Coastal Muslim Community of East Aceh," *Jurnal Ilmiah Peuradeun* 10, no. 3 (September 2022): 899–922, <https://doi.org/10.26811/peuradeun.v10i3.778>; Miftahul Zanah, "An Analysis of Urf in the Betawi Traditional Wedding Procession Tradition in Cibening Village, Bintara Jaya Village, West Bekasi District, Bekasi City.," *QURU: Journal of Family Law and Culture* 1, no. 2 (August 2023): 195–214, <https://doi.org/10.59698/quru.v1i2.118>; Afi Fathma Syamnik, "Analysis of Islamic Law (Urf) on Marriage Traditions in Kenteng Village, Bandungan Sub-District, Semarang District," *QURU: Journal of Family Law and Culture* 1, no. 2 (August 2023): 109–27, <https://doi.org/10.59698/quru.v1i2.90>; Rosdalina Bukido et al., "Harmonization of Customary and Islamic Law in the Gama Tradition of the Muslim Mongondow Community of North Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 2022): 239–54, <https://doi.org/10.18326/ijtihad.v22i2.239-254>.

¹³ Efrinaldi Efrinaldi et al., "Urf Review of The Practice of Gold Marriage Mahar in The Community of Tanjung Senang District Bandar Lampung," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (May 2022): 287–310, <https://doi.org/10.29240/jhi.v7i1.4085>.

disputes¹⁵, property issues¹⁶, and other traditions still practiced by the society.¹⁷ Some of these studies focused only on the conceptual *'urf* and analyzed social traditions from the perspective of the *'urf*. Thus far, there are no studies that specifically highlight the contribution of *'urf* in enforcing state law, especially marriage traditions in Minangkabau. Therefore, this study attempts to fill this gap by uncovering forms of Minangkabaunese marriage traditions that are recognized as *'urf* and in accordance with state regulations. In other words, this study seeks to actualize *'urf* in order to enforce state law, especially in the Minangkabaunese community, which is devout and has strict customary provisions.

The study of the contribution of the *'urf* in enforcing state law, especially Minangkabaunese marriage traditions, is important considering several aspects. First, the legal pluralism in Minangkabau that influences the legal choices of Minangkabaunese in determining their domestic life. It is believed that customary, religious, and state authorities need to be clearly integrated in determining Minangkabaunese domestic lives. Second, to emphasize the existence of custom (*'urf*) as a source of Islamic law and plays a role in enforcing state law. On the other hand, globalization and modernization have eroded the existence of social traditions, causing many traditions to be abandoned. Therefore, it is important to reaffirm the existence of this tradition by stating that this tradition must not only be in accordance with Islamic teachings, but also in accordance with state law. Third, it is important to emphasize in this study that there is basically no conflict between custom, Islam, and the state, especially in the issue of building Minangkabaunese family lives.

¹⁴ Defel Fakhadi and Muhammad Adib Samsudin, "Islamic Law Meets Minangkabau Customs: Navigating Forbidden Marriages in Tanah Datar," *El-Mashlahah* 14, no. 1 (2024): 1–20, <https://doi.org/10.23971/el-mashlahah.v14i1.7364>.

¹⁵ Mursyid Djawas and Sri Astuti Abdul Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 65–84.

¹⁶ Masyitah Mohd Zainon et al., "Jointly Acquired Property of a Working Wife: A Legal Analysis from 'Urf Perspective," *Linguistics and Culture Review* 5, no. S4 (December 2021): 2318–31, <https://doi.org/10.21744/lingcure.v5nS4.1923>; Ali Abubakar et al., "The Postponement of the Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh In The Lens Of 'Urf Theory and Legal Pluralism," *El-Ushrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 411–29, <https://doi.org/10.22373/ujhk.v6i2.10207>.

¹⁷ Dri Santoso et al., "Harmony of Religion and Culture: Fiqh Munākahat Perspective on the Gayo Marriage Custom," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 2022): 199–218, <https://doi.org/10.18326/IJTihad.V22i2.199-218>; Nofiard, "The 'Urf Perspective of Maanta Barih Pasaran: Reinforcing the Kinship System through a Local Wisdom in Nagari Balingka," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 75–92, <https://doi.org/10.29240/jhi.v7i1.4132>; Mega Oktaviany, Nadhirah Nordin, and Rahimah Embong, "Urf In The Charity Culture Perspective In Bima," *LAA MAISYIR: Jurnal Ekonomi Islam* 9, no. 2 (December 2022): 171–92, <https://doi.org/10.24252/lamaisyir.v9i2.33730>.

This study is a literature review with an empirical legal approach. This study mapped the Minangkabaunese marriage traditions (*'urf*) that are recognized by Islamic law and then linked them to state legal provisions. Thus, data for this research were the marriage traditions in the Minangkabau area, starting from the traditions before marriage, the process of getting married and living in the household, as well as when problems arise in the household and divorce. Apart from this, data were also taken from the provisions of Islamic and Indonesian marriage law. The data were collected through literature reviews of previous research that examined Minangkabaunese marriage traditions and field studies of traditions practiced by the Minangkabaunese. The data were then analyzed qualitatively by examining the contribution of these traditions to the enforcement and development of state law, particularly family law in Indonesia.

Discussion

Navigating the Intersection of Adat, Islam, and State Law in Minangkabau

Customs play a very important role in regulating the lives of Minangkabaunese. This is evidenced by many traditions that the society still maintains, especially in the matters of marriage and household. Based on the Minangkabau philosophy, *adat basandi syarak, syarak basandi kitabullah* (customs are based on Sharia, Sharia is based on the Holy Quran), traditions that still exist in Minangkabau must be ratified by the religion (sharia). When this tradition is recognized by Islam, it can become a legal provision applied by the society, which in Islam is known as *'urf*.

Urf is a method of establishing laws based on local customs, traditions, or practices as long as they do not conflict with the basic principles of Islamic teachings. This method is used in the area of muamalah (human relations). There are three ways in Islam to incorporate existing traditions in society.¹⁸ First, *tabmil* (adaptation-completion), which is the attitude of accepting or allowing a tradition to remain valid as long as it is in accordance with Islamic teachings. This tradition may even be perfected by better regulation within Islamic teachings. Examples of traditions absorbed in this way are trade practices and respect for the sacred months. Second, *tabrim* (destructive), which means rejecting the implementation of a tradition in society. This rejection is based on the prohibitions set forth in the verses of the Quran, accompanied by threats to those who violate them. These traditions include gambling, the consumption of alcoholic beverages, the practice of usury, and slavery. Third, *taghyir* (adaptive-reconstructive), which shows acceptance of existing traditions but with modifications to adapt them to Islamic principles so that their basic character is changed. Traditions in this category include women's clothing and private parts,

¹⁸ Ansori, "Prinsip Islam Dalam Merespon Tradisi (Adat/'Urf)," 2020.

marriage and family law, adopted children, inheritance law, and qishash and diyat laws.¹⁹

Based on the rules of *ushul fiqh* الأصل في الأشياء الإباحة (the original law of everything is permissible), Thus, in principle, anything that does not conflict with Islamic teachings is permissible. However, in order to establish tradition as a source of law, four conditions must be met. First, the *'urf* must be continuous or a habit of the majority of the society; second, the *'urf* used as a source of law must exist at the time the legal action is taken; third, there must be no affirmation (*nash*) that contradicts the *'urf*; and fourth, the use of the *'urf* must not override the clear text of the Sharia.²⁰

'Urf can be divided into several categories. Based on its nature, *'urf* is divided into *'urf qauli* (words) and *'urf 'amali* (actions). Based on its acceptance, *'urf* is divided into *'urf shahih* (valid) and *'urf fasid* (broken). Based on its scope, *'urf* is divided into *'urf 'am* (general) and *'urf khas* (special). Besides, the rules of *fiqh* related to *'urf* are العادة محكمة (customs can be made into law) and الاحكام بتغير الازمنة لا ينكر تغير (laws may change over time). These rules show that the ulama consider the *'urf shahih* as a consideration in determining the law, and that differences in tradition can result in differences in law.²¹

Islam truly respects the customs/'urf and culture that live in the society, hence anything that becomes a tradition can be preserved as long as it does not conflict with the religion and principles of the Islamic religion. Likewise, among the Minangkabaunese, some customs or traditions, especially in marriage matters and family matters in general, are still maintained and preserved as long as they do not conflict with Islamic teachings.²² Even though some traditions were initially considered contrary to Islam, Minangkabau traditional leaders and ulama sought the right solution to the problem.

The Minangkabaunese have a unique and intimate combination of custom and sharia in their behavior and legal rules. This can be seen in the Minangkabau traditional philosophy of *Adat Basandi Syara', Syara' Basandi Kitabullah* (customs are based on Sharia or Islamic law, Sharia is based on Kitabullah or the Quran and Hadith). In the course of its development, Minangkabaunese proverbs have emerged that show how the relationship

¹⁹ Ansori.

²⁰ Faiz Zainuddin, "Konsep Islam Tentang Adat: Telaah Adat Dan 'Urf Sebagai Sumber Hukum Islam," *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 9, no. 2 (2015): 379–96, <https://doi.org/10.35316/lisanalhal.v9i2.93>.

²¹ Sulfan Wandu Sulfan Wandu, "Eksistensi Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018): 181, <https://doi.org/10.22373/sjhk.v2i1.3111>.

²² Warman et al., "Strengthening Family Resilience Through Local Wisdom: Pulang Ka Bako Type of Marriage in Minangkabau."

between custom and Sharia is very harmonious and mutually supportive. These sayings include, first, *Syara' mangato, adat mamakai* (Sharia says, customs do), meaning that the guidelines are based on what is said in the Quran, Sunnah, and fiqh, and then practiced or applied according to custom. Second, *Syara' batilanjang, adat basisampiang* (Sharia is uncovered, customs are covered), which means that what Sharia says is firm and clear, but when it comes to customs, the procedures are regulated as best as possible. Third, *adat nan kawi, Syara' nan lazim*, which means customs do not exist unless they are enforced (strengthened), ordinary means obligatory.²³ Fourth, *Syara' mandaki, adat manurun*, which means that religion goes up as a process of converting traditional leaders to Islam, and customs go down to give them knowledge of Minangkabau customs.²⁴

Apart from the combination of custom and Islam in the Minangkabau, the state also plays a role in determining people's lives. The state confirms this role through its regulations. For example, in marriage, the state issues several marriage laws. These marriage laws are the result of the integration of traditional and Islamic values into the national legal system, but sometimes create tensions when these rules conflict with customary practices. The Indonesian state recognizes the existence of customary law and Islamic law, but in practice national law is often the main reference. On the one hand, the state tries to balance various interests, including protecting the rights of indigenous peoples and ensuring the implementation of Islamic law in certain areas, such as Aceh. Similarly, in Minangkabau, the interactions between custom, Islam, and the state continue to evolve, creating space for social innovation and change. This dynamic illustrates how societies can adapt to modern challenges without losing their cultural identity.

Minangkabaunese Marriage Practices: The Interplay Between Customs and Islam

The relationship between custom and sharia is very close and strong in Minangkabau. Customs are based on Sharia (Islamic teachings). This relationship can be seen in several traditions or customs related to household or family matters. However, some traditions are not recognized by Sharia because they are included in *'urf fasid*.²⁵ This study limits several traditions recognized by

²³ Hamka, *Islam Dan Adat Minangkabau* (Jakarta: Pustaka Panjimas, 1984).

²⁴ Yaswirman, *Hukum Keluarga: Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Materineal Minangkabau* (Jakarta: Rajawali Pers, 2013); Erwati Aziz, Mohammad Dzofir, and Aris Widodo, "The Acculturation of Islam and Customary Law: An Experience of Minangkabau, Indonesia," *Qudus International Journal of Islamic Studies* 8, no. 1 (2020): 131–60, <https://doi.org/10.21043/QIJIS.V8I1.7197>.

²⁵ Ramadan Eka Putra and Zulkifli, "Tradisi Bacamin Bangkai Di Jorong Panti Nagari Rambatan Perspektif Hukum Islam," *Jurnal Integrasi Ilmu Syaria* 3, no. 1 (April 30, 2022): 145–49, <https://doi.org/10.31958/jisrah.v3i1.5792>.

Islam by dividing them into three parts: traditions before marriage, the process of getting married and living in a household, and when problems arise in the household and divorce.

First, traditions before marriage. In Minangkabau customs, different regions have different traditions before a wedding. Each nagari has its own traditions, although basically they still refer to Minangkabau customs in general. For example, the tradition of *Timbang Tando* is an agreement between the families of the groom and the bride to marry their children by exchanging signs in the form of objects. The objects used to exchange signs can be gold rings, cloth decorated with gold thread, or heirloom keris. If the engagement is broken, the party who chose to do so will return the object received first, but the other party is not obligated to return the object received. Basically, the tradition of *Timbang Tando* is known in Islam as *Khitbah* (proposal).²⁶ During the application process, there is also a tradition of paying *Palepoh Ambun* money. This tradition requires the prospective groom to pay money to the woman before the marriage to reduce the transportation cost for the *Niniak Mamak* during the marriage process. This is because in Minangkabau custom, *Niniak Mamak* are the ones responsible for taking care of their nephew's wedding.²⁷

There are many other traditions that the Minangkabau must perform before marriage, such as the *Bajapuk* tradition where the prospective groom must be "picked up" by the prospective bride's family with a certain amount of money or goods. The pick-up money is in the form of money or other items given by female relatives to male relatives.²⁸ This tradition is basically beneficial because a woman or family gives a certain amount of capital to her future husband, and the money is also given to the woman. There are also reverse traditions, such as *Sasuduk* money, which is a gift that the prospective groom must give to his future wife and family. This *Sasuduk* money is agreed upon in advance by the woman's *niniak mamak*. For it is the woman's *niniak*

²⁶ A. A Navis, *Alam Terkembang Jadi Guru* (Jakarta: Grafiti Pers, 1984); Sri Mawiyah and Afrian Raus, "Tradisi 'Uang Siriah' Dalam Timbang Tando Di Nagari Langsung Kadap Kecamatan Rao Selatan Kabupaten Pasaman Ditinjau Dari 'Urf,'" *Jurnal Integrasi Ilmu Syariah* 1, no. 1 (2020): 45–56, <https://doi.org/10.31958/jisrah.v1i1.2697>.

²⁷ Tarmizi Taher and Zulkifli Zulkifli, "Uang Palepoh Ambun Dalam Perkawinan Di Tabek Patah Kabupaten Tanah Datar Menurut Perspektif Hukum Islam," *Jurnal Integrasi Ilmu Syariah* 3, no. 2 (August 31, 2022): 307–12, <https://doi.org/10.31958/jisrah.v3i2.6823>.

²⁸ Firmajasari Indah, "Pelaksanaan Perjanjian Uang Jemputan Dalam Perkawinan Di Kenagarian Limau Puruik Kecamatan V Koto Timur Kabupaten Padang Pariaman" (UNIVERSITAS ANDALAS, 2014); Hafizatul Anisa, Aman Aman, and Dyah Kumalasari, "Bajapuk Tradition the Traditional Marriage in Minangkabau," *Budapest International Research and Critics in Linguistics and Education (BirLE) Journal* 4, no. 2 (April 21, 2021): 814–21, <https://doi.org/10.33258/birle.v4i2.1854>; Restia Gustiana, "The Husband Position in Bajapuk Marriage Dynamics in Pariaman," *Jurnal Ilmiah Al-Syir'ah* 18, no. 1 (2020), <https://doi.org/10.30984/jis.v18i1.953>.

mamak who has the right to determine the amount of Sasuduik money, only after it has been agreed upon by the woman's parents.²⁹

There is also a tradition of *mamak* marriage in the Pariaman area. Minangkabau marriages are not only between two people, but also between two tribes or two extended families, and also have a communal marriage agreement that is solemnized by the *mamak* of the bride and groom. This agreement is called the *mamak* marriage. This agreement is made before the marriage between the bride and groom.³⁰ After signing Sharia marriage contract, on the first night of the newlyweds' life, the husband and wife must first perform an inner marriage before consummation. The purpose of this inner marriage is to become closer to Allah and to perfect the marriage practice of a servant.³¹

Apart from the traditions related to the marriage procession, there are several provisions in Minangkabaunese pre-marriage customs, such as marriage prohibitions, for example the prohibition of *sasuku* marriages (marrying someone who belongs to the same tribe).³² In Nagari Talang Anau, Gunuang Omeh Subdistrict, Regency Lima Puluh Kota, there is a prohibition on a woman marrying a man of the same tribe as her ex-husband. This marriage is called *Sipak Baidu* marriage. Although it is not forbidden in Islam, if it continues, the offender will be subject to social sanctions such as being ostracized and not allowed to live in the same place, other sanctions in the form of money or according to the *Niniak Mamak* agreement. Marriage bans in several Minangkabau regions are basically for the future benefit of the family.

Second, the process of getting married and living a domestic life. There are several traditions performed by the Minangkabau people when they get married and live a married life, such as the *Manjalang Janjang* tradition. This tradition is performed by the people of Nagari Batu Payuang, Lareh Sago Halaban Subdistrict, Lima Puluh Kota Regency. *Manjalang Janjang* is the process of picking up the husband from his parents' house by the bride. *Manjalang Janjang* is performed by the bride's family consisting of the bride, close relatives,

²⁹ Annisa Umulhusni and Siti Nur Fathoni, "Uang Sasuduik Dalam Sistem Perkawinan Di Nagari Situjuh Gadang Kecamatan Situjuh Limo Nagari Kabupaten Lima Puluh Kota Provinsi Sumatera Barat," *Jurnal Al-Abwal Al-Syakhsyia: Jurnal Hukum Dan Peradilan Islam* 1, no. 1 (2020): 1–14.

³⁰ Taufik Hidayat and Yusri Amir, "Keunikan Tradisi Pertunangan Masyarakat Padang Pariaman," *Turast: Jurnal Penelitian Dan Pengabdian* 10, no. 1 (June 30, 2022): 1–13, <https://doi.org/10.15548/turast.v10i1.4436>.

³¹ Yusri Amir and Taufik Hidayat, "Praktik Nikah Batin Di Kabupaten Padang Pariaman," *Turast: Jurnal Penelitian Dan Pengabdian* 6, no. 2 (April 8, 2019): 125–35, <https://doi.org/10.15548/turast.v6i2.36>.

³² Busyro Busyro and Zula Malindo, "The Prohibition Sustainability on Marrying a Woman of the Same Ethnic Group as an Ex-Wife in Minangkabau's Tradition," *INNOVATIO: Journal for Religious Innovation Studies* 22, no. 2 (2022): 171–84, <https://doi.org/10.30631/innovatio.v22i2.157>.

friends, in-laws and neighbors. The tradition aims at establishing friendship and respect for the family and to respect the groom as *urang sumando*.³³

The same thing also happens in the tradition in Nagari Simawang, Tanah Datar Regency, it is the Maanta Katupek custom. Maanta Katupek is a tradition in which a husband and his family deliver Katupek (rice cake) to his wife's house after the wedding ceremony. The Maanta Katupek tradition has been passed down from generation to generation by the people of Nagari Simawang.³⁴ There is also the tradition of Turun Sangkak. This tradition is a term for picking up grandchildren by the father's family to spend the night at their house. It is not just picking up, but there are several series of processes, and something is given to the baby, then the father's family must give gold, rice, long cloth, a mattress, and two free-range chickens. If this tradition of Turun Sangkak is not carried out, then the baby is not allowed to be taken to the father's family's house, because here the wife or mother of the baby feels disrespected by her in-laws' family for the birth of the child.

Third, when there are household problems and separation. When there are household problems, one of the Minangkabau traditions is *Maanta Nasi*.³⁵ The resolution of domestic disputes between separated couples must be preceded by a tradition called *Maanta Nasi*. The *Maanta Nasi* tradition requires the woman (wife) to first give rice to the man (husband) after a discussion with *Niniak Mamak* and the family. The rice given is a symbol of good faith for the peace process to take place. Even if the husband and wife have not reached an agreement, the rice is still accepted by the husband's family. This tradition is practiced in Nagari Saruaso, Tanjung Emas Subdistrict, Tanah Datar Regency, and is part of resolving household disputes. In this tradition, the wife is obliged to do *Maanta Nasi* as a sign of willingness to make peace. On the other hand, if the husband wants to make peace but the wife is not ready, the husband must wait for the wife to do *Maanta Nasi*. Even if both do not agree to make peace, this tradition must still be performed, and vice versa. Thus, various possibilities can occur in the implementation of this tradition.

³³ Faida Syukrina, Zulkifli, and Amri Effendi, "Manjalang Janjang Dalam Perspektif Hukum Islam (Studi Kasus Di Nagari Batu Payuang Kecamatan Lareh Sago Halaban Kabupaten Lima Puluh Kota)," *Jurnal Integrasi Ilmu Syariah* 2, no. 1 (2021): 15–23, <https://doi.org/10.31958/jisrah.v2i1.4331>.

³⁴ Nur Azizah and Farida Arianti, "Tradisi Maanta Katupek Di Nagari Simawang Kecamatan Rambatan Kabupaten Tanah Datar Menurut Hukum Islam," *Al Ushuliy: Jurnal Mahasiswa Syariah Dan Hukum* 2, no. 1 (June 30, 2023): 1–12, <https://doi.org/10.31958/alushuliy.v2i1.9838>.

³⁵ Amelia Putri Maisa and Elimartati Elimartati, "Tradisi Maanta Nasi Panambai Dalam Perspektif Hukum Islam (Studi Kasus Di Padang Luar Nagari III Koto Kecamatan Rambatan Kabupaten Tanah Datar)," *JISR AH: Jurnal Integrasi Ilmu Syariah* 2, no. 1 (April 30, 2021): 237, <https://doi.org/10.31958/jisrah.v2i1.3229>.

Apart from this tradition, there is a customary provision that when a dispute arises between the husband and wife, the husband leaves the house and returns to his parents' house. This dispute is called *Baganyi*.³⁶ When this *Baganyi* occurs, the woman's *mamak* or family has to pick up her husband at his parents' house in the traditional way. When the pick-up process occurs, the customary process occurs. This allows the husband to return to his wife's house. The resolution of their dispute is done by consultation and consensus between the families of both parties. When there is a separation or divorce between husband and wife, there is a tradition in Nagari Batu Bulek, Lintau Buo Utara, which requires the husband to wait until the *iddah* period of his ex-wife is over. This tradition is called *Mambasuah Lantai*. This is to give time for husbands and wives to reconsider how they live their domestic life.³⁷

These are some examples of traditions that the Minangkabaunese still maintain in family matters. These traditions are recognized by Islam. There are many other traditions in family matters in Minangkabau, where each region has its own customs, which are used differently in other regions, as the Minangkabau proverb explains "adat salangka nagari" (*customs all around regions*). Apart from family matters, there are several traditions that are also controversial in Minangkabau society, such as *Pagang Gadai*.³⁸ *Pagang Gadai* (Minangkabaunese pawning) is a loan agreement in which the borrower provides collateral and the collateral remains in the hands of the borrower until the debt is paid. This tradition arose amidst the principle of communal land ownership in the Minangkabau matrilineal custom that communal land is the land that is not privately owned and cannot be bought and sold. Thus, the local tradition of pawning is based on a mutually helpful agreement that has a social function because most of the pawners and the pawnbrokers are people who belong to the same clan, tribe, and as far as possible, the same region/place. Islam entered the traditional Minangkabau community when the *Pagang Gadai* tradition became a tradition passed down from generation to generation in the community. However, in some views, there is a conflict between this tradition and what is regulated by Islamic law. One conflict is whether the pawned item can be used by the pawnbroker.³⁹

³⁶ Nofiardi, "Perkawinan Dan Baganyi: Analisis Sosiologis Kultural Dalam Penyelesaian Perselisihan Di Kecamatan Banuhampu Kabupaten Agam," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 13, no. 1 (2018): 49–72, <https://doi.org/10.19105/al-lhkam.v13i1.1613>.

³⁷ Jefri Imelda, "Kesetaraan Gender Dalam Iddah: Studi Terhadap Tradisi Mambasuah Lantai Di Nagari Batu Bulek, Lintau Buo Utara" (Universitas Islam Negeri Mahmud Yunus Batusangkar, 2024).

³⁸ Syukri Iska et al., "Implications of the Pagang Gadai Contract on Disharmony Social Actors in Minangkabau Community," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 27–37, <https://doi.org/10.31958/juris.v21i1.5647>.

³⁹ H. Hasneni, "Tradisi Lokal Pagang Gadai Dalam Masyarakat Minangkabau," *Islam Realitas: Journal of Islamic and Social Studies* 1, no. 1 (2015): 69–81.

Revitalizing 'Urf in Family Law: A Contribution to Legal Frameworks in Indonesia

Family law in Indonesia is still not well enforced. Many people still violate the rules of marriage in Indonesia, such as illegal polygamy, underage marriage, unregistered marriage, illegal divorce, and even domestic violence. This violation is legitimized by Islam, in other words, the perpetrator uses the excuse that it is permissible under Islamic law.⁴⁰ Moreover, the reform of family law in Indonesia has been relatively slow. The demands of the times have not been well taken into account. A new update took place in 2019, which only changed the marriage age to 19 for both men and women. However, this reform was carried out judicially, not legislatively.⁴¹

The enforcement and development of family law in Indonesia requires a very crucial element⁴², namely custom or 'urf. In other words, the state must pay attention to the traditions that still exist in society and integrate them into national law. Like marriage traditions. This marriage tradition can be used as a basis for the enforcement and development of state law. The relationship between customs, Islam and the state can be seen in the following table.

Table 1. Correlation of Customs, Islam, and State in Marriage

| No | Category | Tradition | Islam | State |
|----|---------------------------|---|---|---|
| 1 | Tradition before marriage | - <i>Timbang tando</i> - <i>Uang palepoh ambun.</i> - <i>Bajapuiik</i> - <i>Uang sasuduik</i> - <i>Nikah mamak</i> - <i>Sipak baindu</i> | - Khitbah - Mahar - Household capital | Articles 11-13 Compilation of Islamic Law Articles 30-38 Compilation of Islamic Law Articles 45-51 Compilation of Islamic Law Articles 28 Marriage Law |
| 2 | The process of getting | - <i>Manjalang janjang</i> - <i>Maanta katupek</i> | - Husband and wife | Articles 77-84 Compilation of |

⁴⁰ Jumni Nelli et al., "The Immorality of a Husband as the Cause of a Working Wife to File for Divorce Lawsuit in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (June 13, 2023): 119–32, <https://doi.org/10.31958/juris.v22i1.7392>.

⁴¹ Agustin Hanapi, Sarina Aini, and Cut Endang Puspa Sari, "Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia," *Juris: Jurnal Ilmiah Syariah* 23, no. 2 (2024): 293–308, <https://doi.org/10.31958/juris.v23i2.10712>.

⁴² Fajar Rachmadhani, Mualimin Mochammad Sahid, and Muchammad Ichsan, "The Use of Sadd Al-Dhari'ah on Contemporary Islamic Family Law in Indonesia: Concept and Practice," *Malaysian Journal of Syariah and Law* 12, no. 1 (April 26, 2024): 206–15, <https://doi.org/10.33102/mjssl.vol12no1.505>.

| | | | | |
|---|--|---|---|---|
| | married and living married life | - <i>Turun sangkak</i> | relationship between husband and wife and their families | Islamic Law Articles 30-33 Marriage Law |
| 3 | When there are household disputes and separation | - <i>Maanta nasi</i> - <i>Baganyi</i> - <i>Mambasuah lantai</i> | - <i>Hakamain</i> - Deliberation - <i>Syibbul Iddah</i> | Articles 38-41 Marriage Law Articles 113-162 Compilation of Islamic Law Articles 170 Compilation of Islamic Law Circular Letter of the General Directorate of Islamic Community Guidance Number P-005/DJ.III/HK.007/10/2021 |

Source: Author, 2024

The table explains that several Minangkabau marriage traditions are in accordance with Islam, which can be categorized as '*urf shahih*'. Moreover, these traditions are also in line with the state law on marriage Law No. 1 of 1974 on Marriage (Marriage Law) and the Compilation of Islamic Law. This is the case, for example, in the tradition of *Timbang Tando*. This tradition requires the families of the prospective bride and groom to exchange signs as a form of agreement between the two parties to marry off their children or nephews or nieces. In Islam, this is known as *khitbah* or proposal. The interesting thing about this tradition is that there is an unwritten agreement that if the agreement is not fulfilled, there will be consequences for the continuation of the marriage. This tradition is closely related to the marriage agreement regulated in Article 28 of the Marriage Law.⁴³

Moreover, Islam strongly recommends good relationships in the process of marriage and domestic life. Thus, there are several traditions in Minangkabau that aim to build good relationships not only between husband and wife, but also between the extended families of both parties. These traditions include *manjalang janjang*, *maanta katupek*, *turun sangkak*, and other traditions.

⁴³ Asman Asman, "Recitation of Wedding Agreements in Islam: Study on Sambas Malay Society of West Kalimantan," *Malaysian Journal of Syariah and Law* 8, no. 2 (December 7, 2020): 41–53, <https://doi.org/10.33102/mjssl.vol8no2.226>.

Basically, this tradition prevents conflicts between husband and wife and between extended families. With this tradition, husband and wife will know each other's rights and duties to avoid domestic conflicts. This tradition can confirm the rights and duties of husband and wife in Articles 30-33 of the Marriage Law and Articles 77-84 of the Compilation of Islamic Law.

In Minangkabau society, when disputes and quarrels arise in the household, there is a tradition of *Baganyi*, where the husband leaves his house and returns to his parents' house. The wife's family will come to pick up the old husband according to custom, and their problems will be resolved through deliberation and consensus. This tradition prevents further conflict leading to divorce. This tradition helps to reduce the divorce rate in Indonesia. As Articles 38-41 of the Marriage Law and Articles 113-162 of the Compilation of Islamic Law, which basically make divorce difficult. Meanwhile, if a divorce occurs, there is a waiting period for both women and men. In Minangkabau, there is a tradition of *Mambasuah Lantai* where a man cannot marry another woman if his ex-wife's iddah period has not been completed. This is in line with Article 170 of the Compilation and Circular of the Directorate General of Islamic Community Guidance Number P-005/DJ.III/HK.007/10/2021.

Based on these data, the state must pay renewed attention to these traditions in the context of enforcing and developing national law. *'Urf*, or local customs recognized by custom and religion, is a crucial element in the enforcement and development of state law. In a legal context, *'urf* acts as a bridge between the formal legal system and the traditional practices of society and plays an important role in ensuring that state law is not only relevant but also widely accepted by local communities.

In the context of globalization and legal developments, the integration of local values into the country's legal system is becoming increasingly important. *'Urf*, or recognized traditional customs, play an important role in the enforcement and development of state law. First, it increases legal relevance and community compliance. One of the most important contributions of *'urf* is to increase the relevance of state law to people's daily lives. Laws that are integrated with *'urf* tend to be more accepted by society because they reflect existing local values and practices. When people see that the country's laws respect and accommodate their traditions, they are more likely to comply with and support those laws, which in turn strengthens law enforcement and increases social stability.

Second, preserving local wisdom and cultural identity. Preserving local wisdom is an important aspect of inclusive legal development. Laws that ignore traditional customs often threaten the existence and preservation of local wisdom that has developed in society. By integrating *'urf*, state law not only respects but also preserves cultural identity and traditions that are an integral

part of society. This enriches legal diversity and prevents undesirable cultural homogenization. Third, more contextual and effective dispute resolution. In the context of dispute resolution, *'urf* offers solutions that are more contextual and relevant to local norms. Integrating *'urf* into dispute resolution can increase the effectiveness of the legal process because the methods used are more in line with the practices and values of local communities. This approach not only improves the fairness of the resolution process, but also reduces the potential for conflict between formal law and local traditions.

Fourth, culturally sensitive enforcement. Law enforcement that considers to the local cultural context is an important aspect of the success of the legal system. Law enforcement that recognizes and accommodates *'urf* makes the implementation of the law more harmonious and acceptable to society. This approach reduces resistance to the law and promotes law enforcement that is more effective and accepted by different levels of society. Fifth, it promotes social participation and inclusion. Involving the *'urf* in the development of state laws also encourages community participation in the legislative and law enforcement processes. People are more likely to participate in the implementation and maintenance of laws if they feel that the laws are part of their traditions. This participation not only increases social justice, but also strengthens the relationship between state law and society.

Including *'urf* in the enforcement and development of state law not only enriches the legal system with diverse cultural perspectives, but also ensures that state law is relevant, accepted, and effective. By paying attention to local customs, state laws can be more harmonious with community values, support cultural preservation, and increase justice and social participation. In addition, *'urf* is an important component in creating a fair and inclusive legal system in an ever-evolving global context. Thus, attention to *'urf* in the enforcement and development of state law not only increases the effectiveness and acceptance of law, but also strengthens the relationship between law and society. This allows national laws to be more inclusive and responsive to cultural diversity, reducing the potential for conflict and improving the legal system as a whole. The integration of *'urf* creates harmony between tradition and modernity, promotes social justice, and enriches the legal system with cultural diversity and local wisdom.

Conclusion

The relationship between custom, Islam and the state in Minangkabau is basically good. This is evidenced by many Minangkabau marriage traditions that are ratified or recognized as *'urf shahih* by Islam. This tradition is still maintained by the community. On the other hand, the state plays a role in managing family affairs. Although it cannot be denied that many of these rules are violated, such as unregistered marriages, custom and religion basically support their

enforcement. Several Minangkabau marriage traditions, recognized as *'urf shabih*, have been shown to contribute greatly to the development and enforcement of state law, especially family law. These traditions include pre-marital traditions, the process of marriage and domestic life, and traditions for resolving domestic disputes and divorce. This tradition needs to be revitalized in the context of developing and enforcing state law. Therefore, the state must take local traditions (*'urf*) into consideration so that the state legal system is in the midst of society.

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