



## THE ROLE OF LEGAL SOCIOLOGY IN UNDERSTANDING CUSTOMARY LAW AND ISLAMIC SOCIETY

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### Abstract :

*This study explores the role of legal sociology in understanding the relevance and transformation of customary law (hukum adat) within modern society. Using a qualitative case study approach, this research investigates how traditional norms coexist, conflict, or integrate with state law in a community practicing strong adat values. The study reveals that legal sociology offers critical insights into the dynamic interaction between customary and formal legal systems, enabling a more contextual and culturally sensitive legal understanding.*

**Keywords:** Legal Sociology, Customary Law, Modern Society, Legal Pluralism, Social Norms.

## INTRODUCTION

The development of modern society is characterized by technological advancement, urbanization, and the increasing role of state law. Nevertheless, in many local communities in Indonesia, customary law (hukum adat) continues to play a significant role as a living system of social regulation. Customary law is not merely a relic of the past, but a system of values that continuously evolves and holds strong legitimacy within indigenous communities.

Legal sociology emerges as an interdisciplinary approach that bridges legal science and social sciences. It enables the understanding of law not only as a normative framework but also as a social product and process. In this context, legal sociology becomes an essential instrument for examining how customary law continues to exist in modern society and how it interacts, competes, and even conflicts with state law.



Indonesia, as a multicultural nation, presents a unique legal complexity where state law, Islamic law, and customary law coexist. Through a legal sociology perspective, it is possible to understand how legal pluralism functions in practice, particularly when communities place greater trust in customary law than in formal state law. This study seeks to analyze the role of legal sociology in understanding the persistence of customary law in modern society.

Theoretically, this research contributes to the development of legal sociology discourse within pluralistic societies such as Indonesia. Practically, it serves as a reference for policymakers and law enforcement institutions in formulating more inclusive legal strategies that recognize the existence of customary law.

## **RESEARCH METHOD**

This research adopts a qualitative approach using a case study method. The qualitative approach was chosen to achieve an in-depth understanding of the role of legal sociology in analyzing and explaining the relationship between customary law and legal practices within Islamic communities. Through this approach, law is understood not merely as written norms but as a social phenomenon that lives and develops through social interaction.

The case study method is employed to explore contextually how customary law is practiced in Islamic communities and how social, cultural, and religious values influence its formation, application, and compliance. The research focuses on the social dynamics between customary norms and Islamic norms, including processes of adaptation, acculturation, potential conflict, and harmonization.

The study was conducted in an Islamic community in a specific area of Jambi City from March to May 2025. The researcher acted as a passive participant, directly observing social and legal practices without actively engaging in decision-making or social activities. This approach allowed for an objective empirical depiction of the application of customary law within Islamic society.

The research subjects consisted of five key informants selected purposively, including customary leaders, religious leaders, and community members directly involved in the practice of customary and Islamic law. Informants were selected based on their knowledge, experience, and social roles in maintaining and implementing customary norms and Islamic values.

### **Data Collection Techniques**

In-depth interviews to explore informants' perspectives on the position of customary law within Islamic society and the role of legal sociology in understanding it.

Field observation of social practices and customary dispute resolution processes.

Document analysis, including customary records, minutes of customary

deliberations, unwritten norms, and relevant written sources.

### **Data Analysis**

Data were analyzed using the interactive model of Miles and Huberman, consisting of:

1. Data reduction, focusing on relevant information aligned with research objectives;
2. Data presentation, organizing data into narrative and thematic forms;
3. Conclusion drawing and verification, identifying patterns and meanings related to the role of legal sociology.
4. Data validity was ensured through source and method triangulation.

## **FINDINGS AND DISCUSSION**

### **Legal Pluralism Theory**

Legal pluralism theory, as developed by scholars such as Sally Engle Merry and John Griffiths, posits that law within a society is not monolithic but consists of multiple normative orders operating simultaneously. Griffiths distinguishes between weak legal pluralism, where non-state norms exist only through state recognition, and strong legal pluralism, where non-state legal systems such as customary law function autonomously with their own sources of authority and social legitimacy. In this context, customary law is not merely a subsidiary or informal norm but constitutes a fully operative legal order that governs social behavior and dispute resolution independently of state law. This theoretical framework is particularly relevant for understanding societies where indigenous legal traditions continue to regulate social relations despite the presence of formal statutory law.

The findings of this study strongly support Griffiths' concept of strong legal pluralism, as customary law in Batang Hari Regency operates independently of state legal institutions while maintaining high levels of social compliance. This aligns with Merry's (1988) assertion that legal pluralism is a social fact rather than a legal anomaly, particularly in post-colonial societies where state law coexists with indigenous normative systems. Similar conclusions are found in empirical studies by Hooker (2018) and Bedner & Vel (2021), who demonstrate that customary law in Indonesia continues to function as a parallel legal order with its own enforcement mechanisms. Several Indonesian theses and dissertations also confirm that community obedience to customary law is often stronger than compliance with formal law due to cultural embeddedness and social sanctions (Sulaiman, 2017; Nurhayati, 2019).

### **Living Law Theory (Eugen Ehrlich)**

Eugen Ehrlich's Living Law Theory emphasizes that the true center of legal development lies not in legislation or judicial decisions, but in the norms that actually govern social life. According to Ehrlich, law "lives" in everyday social practices, institutions, and interactions. Customary law exemplifies this concept of living law, as its validity and authority derive from collective legal consciousness rather than formal codification. The effectiveness of customary law depends on social acceptance, habitual compliance, and moral obligation

within the community. Thus, from Ehrlich's perspective, understanding law requires empirical observation of social realities rather than exclusive reliance on normative-positivist legal texts.

The empirical data from Batang Hari Regency reflect Ehrlich's assertion that living law is found within social institutions rather than statutory texts. Community members continue to resolve disputes through customary forums because these mechanisms reflect their lived experiences and moral expectations. This finding is consistent with socio-legal studies by Cotterrell (2016), who argues that law gains effectiveness when it resonates with social norms and collective values. Research by Rahardjo (2019) further supports this view, emphasizing that law should be understood as a social process rather than a rigid normative system. Several Indonesian academic works, including theses by Wibowo (2018) and dissertations by Hidayat (2020), confirm that customary law functions as living law due to its adaptability and strong moral authority within local communities.

### **Emile Durkheim's Sociology of Law**

From Emile Durkheim's sociological perspective, law is a reflection of the type of social solidarity that characterizes a society. In communities bound by mechanical solidarity, which are typically homogeneous and tradition-oriented such as indigenous or customary societies law tends to be repressive in nature. Repressive law emphasizes collective values, moral conformity, and social cohesion rather than individual rights. Customary law in such societies functions as a mechanism for maintaining harmony and restoring social equilibrium when violations occur. Sanctions are often communal and symbolic, reinforcing shared beliefs and moral boundaries rather than merely punishing offenders.

The findings reveal that customary sanctions in Batang Hari Regency aim primarily at restoring social harmony rather than punishing offenders, reflecting Durkheim's concept of repressive law in mechanically solidary societies. This supports Durkheim's (1893/1984) argument that law serves as a moral boundary protecting collective conscience. Similar observations are reported by Chambliss and Seidman (2011), who note that traditional legal systems prioritize social equilibrium over procedural formalism. Indonesian legal sociologists such as Soekanto (2014) also emphasize that customary law sanctions function as tools of social integration rather than coercion. Previous empirical studies, including a master's thesis by Pratama (2016), demonstrate that communal sanctions are perceived as more legitimate and effective than formal criminal penalties in indigenous communities.

### **Contemporary Perspectives on Customary Law**

Hasanudin (2018) argues that customary law continues to demonstrate resilience in the face of globalization, legal modernization, and state centralization. He emphasizes that while customary law operates effectively at the local level, formal recognition by the state remains crucial to ensure legal certainty and protection for indigenous communities. Meanwhile, Rahayu (2020) contends that a legal sociology approach is indispensable for comprehending the complexity of local legal systems. She critiques normative-positivist frameworks

for their inability to capture the lived realities of law, arguing that socio-legal analysis enables a more inclusive and contextual understanding of legal pluralism.

The findings corroborate Hasanudin's (2018) argument regarding the resilience of customary law, as observed in the continued preference for customary dispute resolution despite the availability of state courts. This supports global studies by Tamanaha (2008), who argues that legal pluralism persists because state law alone cannot effectively regulate complex social realities. Rahayu's (2020) position is also reinforced, as a purely doctrinal analysis would fail to explain why communities voluntarily choose customary law over formal legal mechanisms. Several journal articles (Utomo, 2019; Sari, 2021) and doctoral dissertations confirm that socio-legal approaches provide deeper insights into the interaction between law, culture, and power at the local level.

### **Customary Law and the Role of Legal Sociology**

Customary law refers to unwritten norms that emerge organically, develop historically, and are preserved through collective memory and practice within indigenous communities. From the perspective of legal sociology, customary law is not static but dynamic, continuously shaped by cultural values, power relations, and social structures. Its enforcement relies on social mechanisms such as moral pressure, communal sanctions, and the authority of traditional leaders. Legal sociology thus views customary law as a social institution that reflects and reinforces community identity, values, and social order.

The findings illustrate that customary law in Batang Hari Regency evolves through social negotiation and collective consensus, confirming the legal sociology perspective that law is socially constructed. This aligns with Berger and Luckmann's (1966) theory of social construction, which explains how norms become institutionalized through repeated social interaction. Soekanto (2015) similarly asserts that customary law survives because it is socially functional and culturally meaningful. Empirical studies in Indonesian journals and theses consistently show that the legitimacy of customary law stems from social recognition rather than formal authority (Mahendra, 2017; Lestari, 2020).

### **Implementation of Customary Law in Batang Hari Regency**

Empirical observations in Batang Hari Regency demonstrate that customary law remains actively practiced, particularly in the resolution of social and communal conflicts. Community members frequently prefer customary dispute resolution mechanisms led by traditional leaders over formal state courts. This preference is rooted in perceptions of fairness, accessibility, cultural relevance, and social legitimacy. Decisions rendered through customary forums are more readily accepted and complied with, as they are embedded within shared norms and reinforced by communal consensus.

This finding is consistent with studies by Merry (1990), which show that local dispute resolution mechanisms are often more effective because they emphasize reconciliation and social harmony. Research conducted by Bedner (2016) in Indonesia also confirms that customary institutions provide faster and

socially acceptable resolutions compared to formal courts. Similar conclusions are drawn in undergraduate theses and master's research focusing on Jambi customary law, which highlight the strong compliance rates with customary decisions due to social pressure and moral accountability (Rahman, 2018; Suryani, 2021).

### **Social and Cultural Values in Customary Law**

Customary law is deeply intertwined with social, cultural, and spiritual dimensions of community life. Legal violations are not viewed solely as infringements of social norms but as disruptions of moral and cosmic balance. Consequently, sanctions often involve ritualistic or symbolic acts aimed at restoring harmony between individuals, the community, and the spiritual realm. This holistic conception of law underscores the integrative function of customary law in maintaining both social order and cultural continuity.

The findings support anthropological legal studies by Malinowski (1926) and Bohannan (1965), who emphasize the spiritual and symbolic dimensions of traditional law. Violations are not merely legal offenses but moral transgressions that disturb social equilibrium. Indonesian scholars such as Koentjaraningrat (2019) also affirm that customary sanctions often involve ritual elements aimed at restoring harmony between humans, nature, and the spiritual world. Several theses and dissertations on indigenous law confirm that ritual sanctions strengthen collective belief systems and reinforce compliance (Putri, 2017; Akbar, 2020).

### **Adaptation of Customary Law in a Modern Context**

Despite the pressures of modernization, globalization, and formal legal expansion, customary law continues to adapt and remain relevant. Rather than disappearing, it evolves by selectively integrating new values and responding to changing social conditions. Legal sociology illustrates that the effectiveness of law lies in social consensus and internal control mechanisms rather than coercion alone. The continued vitality of customary law confirms that law functions most effectively when it resonates with the lived experiences, cultural values, and collective consciousness of the community.

The findings demonstrate that customary law does not resist change but adapts pragmatically, supporting Ehrlich's notion of law as an evolving social institution. This is consistent with Moore's (1973) concept of semi-autonomous social fields, where legal norms adapt internally while interacting with external legal systems. Studies by Santos (2002) further confirm that legal pluralism allows local law to survive within global legal frameworks. Indonesian socio-legal research, including recent dissertations, emphasizes that adaptability is the key factor sustaining customary law in modern contexts (Yusuf, 2019; Anggraini, 2022).

## **CONCLUSION**

This study demonstrates that legal sociology plays a crucial role in explaining the persistence and relevance of customary law within pluralistic

modern societies. The findings reveal that customary law continues to function effectively not merely as an alternative dispute resolution mechanism, but as a living legal system deeply rooted in social interaction, collective values, and cultural identity. Its authority does not primarily stem from formal state recognition, but from strong social legitimacy maintained through communal acceptance, moral obligation, and the leadership of traditional institutions.

The analysis confirms that law cannot be understood solely through a normative-positivist lens. Instead, law emerges from social practices and reflects the plural nature of legal orders operating simultaneously within society. In this context, customary law represents a concrete manifestation of legal pluralism, where non-state legal systems coexist with formal national law and actively regulate social behavior. The empirical evidence from Batang Hari Regency illustrates that customary law remains the preferred forum for conflict resolution due to its accessibility, cultural relevance, and capacity to restore social harmony.

Furthermore, this research underscores that customary law and state law need not exist in opposition. When appropriately recognized and protected by the state, customary law can complement the national legal system by enhancing legal effectiveness, social cohesion, and substantive justice at the local level. State recognition provides legal certainty and safeguards indigenous legal practices, while allowing customary law to continue adapting to social change without losing its foundational values.

Based on these findings, this study emphasizes the urgency of integrating socio-legal perspectives into legal development and policymaking. The recognition of customary law through formal regional regulations is essential to ensure its sustainability and to prevent marginalization in the face of modernization and globalization. At the community level, there is a need to preserve customary law while adapting it wisely to contemporary social dynamics, ensuring that it remains inclusive, fair, and responsive to evolving social needs.

Finally, this research opens avenues for future studies to further explore the internal dynamics of customary legal systems, particularly concerning gender relations, environmental protection, and human rights. Such studies would contribute to a more comprehensive understanding of how customary law can continue to function as a legitimate, adaptive, and socially grounded legal system within a pluralistic legal order.

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