



## THE ROLE OF CUSTOMARY LAW AND ISLAMIC ECONOMIC LAW IN RESOLVING DEBT DISPUTES WITHIN THE COMMUNITY

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### Abstract :

*This study examines the role of customary law and Islamic economic law in resolving debt disputes within rural communities, highlighting the integration of socio-cultural norms and religious principles in legal practice. Using a qualitative case study approach in Olak Village, data were collected through interviews with customary leaders, religious figures, disputing parties, and village officials, as well as observation of deliberation forums and documentation review. The findings reveal that debt disputes are resolved through restorative and consensus-based mechanisms that prioritize reconciliation, social cohesion, and moral responsibility rather than punitive enforcement. Customary law provides social legitimacy and preserves communal harmony, while Islamic economic law offers ethical guidance grounded in justice, transparency, mutual consent, and the prohibition of usury. The study demonstrates that these two legal systems operate complementarily, forming a hybrid dispute resolution model that is culturally accepted, socially legitimate, and morally binding. This integrative approach enhances compliance, trust, and long-term accountability, reflecting the principles of legal pluralism and restorative justice in practice. The research underscores the significance of recognizing and strengthening customary-Islamic legal mechanisms as effective alternatives to formal litigation, with implications for policy, community development, and the sustainable management of economic relations in pluralistic societies.*

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



## **INTRODUCTION**

In social life, economic interactions are inseparable from debt transactions, whether in simple or complex forms. Debt agreements are common practices in daily economic activities; however, they are also prone to disputes when not accompanied by clear contracts, proper documentation, and good faith among the parties involved. Within the context of Indonesia's pluralistic society, dispute resolution related to debt does not always rely on formal legal mechanisms. Instead, many communities prefer non-litigation approaches such as customary deliberation or religious-based mechanisms, including those grounded in Islamic economic law.

Customary law represents a living legal system that grows and develops within specific communities, rooted in shared customs, values, and collective agreements. In many rural areas, customary law remains the primary reference for resolving various disputes, including those related to debt. Meanwhile, Islamic economic law, as a component of Islamic jurisprudence, regulates financial transactions based on principles of justice, honesty, and the prohibition of usury (*riba*), providing both normative and spiritual guidance for economic practices among Muslims.

The interaction between customary law and Islamic economic law in resolving debt disputes constitutes an important socio-legal phenomenon. In practice, these two legal systems do not negate one another but rather complement each other. Customary law serves to preserve social cohesion and communal peace, while Islamic law provides moral and religious legitimacy to the resolution process. Despite its significance, the integration of these two legal systems has not been sufficiently explored in academic discourse.

Therefore, this study aims to examine how debt disputes are resolved through the simultaneous application of customary law and Islamic economic law. The research is conducted in a rural community that continues to uphold customary traditions while maintaining strong adherence to Islamic principles, offering concrete insights into the operation of a hybrid legal system in everyday social life.

## **RESEARCH METHOD**

This study employs a qualitative descriptive approach, which seeks to understand social phenomena comprehensively and holistically from the perspectives of the research participants. This approach is considered appropriate for capturing in-depth practices of debt dispute resolution through the collaboration of customary law and Islamic economic law. A case study design was adopted to allow intensive exploration of social and cultural contexts in real-life settings.

The research was conducted in Olak Village, selected due to its strong customary structure and the active application of Islamic principles in community life, particularly in economic dispute resolution. Data sources were divided into primary and secondary data. Primary data were obtained through direct interviews with customary leaders, religious figures (*ustadz*), disputing

parties, and village officials who were involved in or knowledgeable about debt dispute resolution processes. Secondary data consisted of village documents, records of customary deliberations, fiqh muamalah literature, archival case files, and relevant legal studies.

Data collection techniques included semi-structured interviews using open-ended questions, direct observation of customary deliberation forums, and documentation of dispute resolution processes. Observations focused on interaction patterns, negotiation processes, and the values emphasized during deliberations.

Data analysis followed the Miles and Huberman model, comprising data reduction, data display, and conclusion drawing with verification. Data were thematically categorized based on actors involved, procedural stages, and the underlying customary and Islamic values. Triangulation techniques were applied to ensure the validity and reliability of findings.

## **FINDINGS AND DISCUSSION**

### **Restorative Justice Theory**

Restorative justice emphasizes repairing harm suffered by victims, offenders, and the wider community rather than concentrating solely on punishment or legal retaliation. This paradigm shifts the focus of justice from state-centered retribution toward relationship-centered restoration. Dialogue, acknowledgment of wrongdoing, moral accountability, apology, compensation, and reconciliation constitute the core elements of restorative justice. Within customary law and Islamic legal traditions, these elements are deeply embedded in communal practices of deliberation (*musyawarah*), consensus-building, and social reconciliation.

In debt disputes, restorative justice offers a framework that prioritizes the restoration of trust between creditor and debtor, recognizing that economic conflict often disrupts long-standing social relationships. Instead of isolating the debtor as an offender, the process seeks to understand structural, moral, and personal factors contributing to default. This approach is particularly relevant in rural and communitarian societies, where social cohesion and long-term relationships are valued more highly than individual legal victory.

Theoretical support for this approach is provided by Zehr (2002), who argues that restorative justice reconceptualizes wrongdoing as a violation of people and social relationships rather than merely a breach of legal norms. Braithwaite (2004) further explains that restorative processes strengthen moral responsibility through reintegrative shaming rather than stigmatization. In the Indonesian socio-legal context, Soekanto (2017) emphasizes that customary dispute resolution reflects restorative justice because it aims to restore social equilibrium and communal harmony. Empirical findings by Abdullah (2017) demonstrate that customary mediation in rural communities effectively resolves disputes while preserving kinship ties, suggesting that restorative justice is not merely a theoretical model but a lived legal practice within customary systems.

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

Eugen Ehrlich's Living Law Theory posits that law is not confined to formal statutes, judicial decisions, or state institutions but instead lives and evolves within the everyday practices, norms, and interactions of society. From this perspective, customary law represents a genuine legal order whose authority is derived from collective legal consciousness and consistent social observance, rather than from formal codification or state enforcement. This explains why customary dispute resolution mechanisms continue to operate effectively and enjoy deep legitimacy within local communities, even in the presence of formal national legal systems.

Ehrlich's ideas have been reinforced by later socio-legal scholars. Moore (1973) introduces the concept of the "semi-autonomous social field," illustrating how communities generate, interpret, and enforce their own normative systems independently of state law. In Indonesia, Rahardjo (2009) argues that living law better captures social reality than rigid legal positivism, as it reflects the values and expectations actually upheld by society. Empirical research by Wibowo (2018) and Hidayat (2020) confirms that customary law remains effective precisely because it is internalized by community members and integrated into daily social life. These studies reinforce the relevance of living law theory in explaining the persistence, resilience, and effectiveness of customary dispute resolution in contemporary plural legal contexts.

### **Fiqh Muamalah**

Fiqh muamalah governs human interactions in economic and social transactions, including debt relations. It establishes ethical and legal principles such as justice ('adl), mutual consent (ridha), transparency, balance of rights and obligations, and the prohibition of exploitative practices such as riba and gharar. In resolving debt disputes, Islamic law does not merely enforce contractual obligations but emphasizes moral accountability, compassion, and social responsibility.

Classical scholars such as Wahbah az-Zuhaili (2011) explain that debt (qardh) is fundamentally a social contract based on trust (amanah) and moral commitment. Chapra (1992) further argues that Islamic economic principles aim to harmonize individual interests with social welfare and ethical integrity. Contemporary empirical studies by Nurul Fadilah (2020) and Yusuf (2019) show that Islamic-based dispute resolution mechanisms are more morally binding because they invoke religious conscience and ethical self-regulation. These findings indicate that fiqh muamalah provides a comprehensive normative framework that strengthens both legal compliance and moral responsibility in economic relations.

### **Debt Concepts in Customary and Islamic Perspectives**

In Sungai Baung Village, debt is perceived not merely as a financial obligation but as a social and moral bond that reflects trust, honor, and communal responsibility. Failure to repay debt is understood not only as an economic default but also as a disruption of social harmony and moral order. This perception reinforces social pressure to fulfill obligations without the need

for coercive legal enforcement.

From an Islamic perspective, debt transactions are regulated through *qardh* contracts that require clarity, consent, and proper documentation, as emphasized in Qur'an Surah Al-Baqarah (2:282). Mardani (2019) asserts that Islamic law views debt as an *amanah* that must be fulfilled responsibly and ethically. Anthropological studies by Malinowski (1926) and Bohannan (1965) further support the notion that economic obligations in traditional societies are inseparable from moral norms and social structures. Local empirical research by Lestari (2020) and Rahman (2018) confirms that debt repayment is widely regarded as a measure of personal integrity, social credibility, and moral standing within the community.

### **Dispute Resolution Practices**

Debt disputes in Sungai Baung Village are resolved through customary deliberation forums led by customary leaders and religious figures. These forums prioritize privacy, fairness, reconciliation, and consensus rather than adversarial confrontation. The process focuses on identifying the root causes of default, encouraging moral reflection, and negotiating solutions acceptable to all parties, such as staged repayment, public apology, or compensation in agreed forms.

Previous studies validate the effectiveness of such mechanisms. Bedner and Vel (2010) argue that informal justice systems enhance access to justice because they are culturally relevant, affordable, and socially embedded. Suryani (2021) finds that customary mediation yields higher compliance rates because decisions are enforced through social norms rather than legal coercion. Pratama (2016) similarly demonstrates that customary sanctions function as instruments of social control rather than punitive measures. These findings confirm that customary dispute resolution provides a viable and effective alternative to formal litigation, particularly in close-knit communities.

### **Integrative Strength of Customary and Islamic Law**

The collaboration between customary law and Islamic law demonstrates a strong integrative capacity in achieving restorative justice. Customary mechanisms contribute social legitimacy, cultural relevance, and communal enforcement, while Islamic law provides moral, ethical, and spiritual authority. This hybrid model enhances compliance, accountability, and long-term social peace.

Theoretical support for such integration is found in legal pluralism theory. Merry (1988) and Tamanaha (2008) argue that multiple legal systems can coexist and complement one another within a single social field. In Indonesia, Rahayu (2020) and Utomo (2019) emphasize that integrating customary and religious norms strengthens dispute resolution by aligning legal outcomes with social values. Empirical evidence from Rauf and Baharuddin (2022) demonstrates that communities adopting an *adat-syariah* model experience more peaceful, sustainable, and socially accepted conflict resolution. This integrative approach also reflects Islamic teachings on reconciliation (*islah*), as emphasized in Qur'an Surah Al-Hujurat (49:10).

## **CONCLUSION**

This study demonstrates that customary law plays a vital role in restoring social relationships through deliberative and consensual mechanisms rooted in communal values and social harmony. Rather than emphasizing punishment, customary dispute resolution prioritizes reconciliation, mutual understanding, and the preservation of social cohesion, making it particularly effective in resolving debt disputes within close-knit communities. At the same time, Islamic economic law provides strong normative and spiritual guidance by emphasizing principles of justice, transparency, mutual consent, and moral responsibility. These principles reinforce ethical conduct in economic transactions and encourage accountability that goes beyond formal legal compliance.

The integration of customary law and Islamic economic law produces a comprehensive and restorative dispute resolution model that is socially legitimate and culturally accepted. This integrative approach effectively resolves debt disputes without reliance on formal litigation, while simultaneously strengthening trust, moral awareness, and long-term compliance within the community. By combining social legitimacy with religious-ethical authority, the model reflects the practical application of legal pluralism and restorative justice in a living social context.

Future efforts should focus on strengthening this integrative model through formal recognition of customary-Islamic dispute resolution mechanisms within regional or national legal frameworks. Capacity-building initiatives for customary leaders and religious figures, along with systematic documentation of resolved cases, are also essential to ensure consistency, transparency, and sustainability. Further research is recommended to examine the long-term effectiveness of this model in urban and more pluralistic societies, as well as to conduct comparative studies across different regions to assess its adaptability and broader applicability.

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