

ANALYSIS OF *PAMPEH* LAW IN SAROLANGUN CUSTOMARY DOCUMENTS FROM THE PERSPECTIVE OF *MAQASHID SHARIA*

Ahmad Husairi¹, Kholil Syu'aib², Mashair Idris Kheiralla³

^{1,2}Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi
St. Jambi - Muara Bulian KM. 16, Simpang Sungai Duren, Jambi 36361, Indonesia

³University of Khartoum
JG5R+WXF, Khartoum, Sudan

E-mail: ahmadhusairi1803@gmail.com, kholil_syuaib@uinjambi.ac.id, mashairidris21@gmail.com

Received: 23-09-2024; Revised: 07-11-2024; Accepted: 10-12-2024; Published regularly: December 2024

Abstract: This research aims to analyze the application of *pampek* law in the Sarolangun traditional community, especially in handling cases of negligence that result in death, through the perspective of *maqashid sharia*. The *pampek* law implemented by the Batin tribe in Sarolangun Regency uses criminal sanctions that have been classified proportionally as a form of apology from the perpetrator to the victim's family. This research used a normative juridical method with an analysis approach to traditional documents and *maqashid sharia* theory in Islamic law. The research results showed that *Pampek* law is in line with the principles of *diyat* in Islam, where the main goal is to protect religion, soul, mind, property, and descendants through social reconciliation. However, the effectiveness of fines in creating a deterrent effect and sanctions for intentional and unintentional offenses still needs to be reviewed further, especially for perpetrators with higher economic capabilities. The application of *pampek* law makes a significant contribution in maintaining social harmonization, providing a sense of certainty, justice, and legal benefits for the Sarolangun indigenous community.

Keywords: *pampek*; customary law; criminal fines; *maqashid sharia*

Abstrak: Penelitian ini bertujuan untuk menganalisis penerapan hukum *pampek* dalam masyarakat adat Sarolangun, khususnya dalam menangani kasus kealaian yang mengakibatkan kematian, melalui perspektif *maqashid sharia*. Hukum *pampek* yang diterapkan oleh suku Batin di Kabupaten Sarolangun menggunakan sanksi pidana yang telah diklasifikasi secara proporsional sebagai bentuk permohonan maaf dari pelaku kepada keluarga korban. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan analisis dokumen adat dan teori *maqashid sharia* dalam hukum Islam. Hasil penelitian menunjukkan bahwa hukum *pampek* sejalan dengan prinsip *diyat* dalam Islam, di mana tujuan utamanya adalah menjaga agama, jiwa, akal, harta, dan keturunan melalui rekonsiliasi sosial. Namun, efektivitas sanksi denda dalam menciptakan efek jera dan sanksi dari denda sengaja dan tidak sengaja masih perlu ditinjau lebih lanjut, terutama bagi pelaku dengan kemampuan ekonomi yang lebih tinggi. Penerapan hukum *pampek* memberikan kontribusi signifikan dalam menjaga harmonisasi sosial, memberikan rasa kepastian, keadilan, serta kemanfaatan hukum bagi masyarakat adat Sarolangun.

Kata kunci: *pampek*; hukum adat; pidana denda; *maqashid sharia*

Introduction

Islamic culture views and traditions or customs that develop in society as elements that have legal value.¹ This is reflected in the *fiqh* principle that often serves as a reference in addressing various issues related to customary law within the community, namely *al-'adah al-muhakkamah*, which means that customs can be used as a basis for establishing law.

Customary law remains one of the legal systems that persists in various regions of Indonesia, particularly in areas that uphold traditional values.² The existence of customary law as a living law within society often becomes a subject of debate. Many argue that customary law or living law from time to time is considered too traditional and less effective in overcoming various contemporary problems. However, various research results show that customary law still plays an important role in influencing the formation of positive law and is able to provide solutions to various legal problems in society.³

Cicero stated, "*ubi societas ibi ius*," which means that where there is society, there is law that plays a role in regulating individual behavior within that society.⁴ Law becomes an inseparable part of the cultural evolution of society, so that law is not only a set of rules, but also a reflection of developing cultural values. It is not surprising that there is a view that states that law is a result of the culture of society itself. According to Martin Kryger, law can also be viewed as a tradition "*law as traditio*," which implies that cultural development always goes

hand in hand with legal development.⁵ In this case, the law grows and changes according to cultural changes that occur in a society.

Cicero's and Martin Kryger's statements align with the existence of customary law in Sarolangun Regency, Jambi Province, where there is a customary legal system known as *pampeh* law, applied by the Batin ethnic group. One important application of *pampeh* customary law is in cases of negligence resulting in death, where the perpetrator, even though he did not intend to cause death, is still responsible under customary law.

The sanctions imposed under *pampeh* law vary, corresponding to the consequences caused. This sanction is understood as a form of apology from the perpetrator to the victim's family and aims to create peace and prevent revenge. This concept aligns with the principle of *diyat* in Islamic law, which also recognizes a compensation mechanism as a substitute for *qisas* (retributive punishment) in cases of negligence that result in death. *Diyat* is explained in Surah Al-Baqarah verse 178, which states that forgiveness from the victim's family can be a reason to replace *qisas* with the payment of *diyat*.

This research analyzes the application of *pampeh* law from the perspective of *maqashid sharia*, which are the fundamental principles in Islamic law aimed at protecting five essential elements: religion, life, intellect, heredity, and property.⁶ This research offers a new perspective to bridge traditional values and Islamic norms within the context of customary law in Sarolangun Regency. *Pampeh* law does not only provide sanctions but also emphasizes aspects of peace and the restoration of social harmony, it is in line with the goals of *maqashid sharia* to protect and improve the lives of the community.

This research also evaluates the effectiveness of the imposition of fines in creating a deterrent effect and the contribution of *pampeh* law in maintaining

¹ Agung Setiawan, "Budaya Lokal Dalam Perspektif Agama: Legitimasi Hukum Adat ('Urf) Dalam Islam," *ESENSIA* 13, no. 2 (July 22, 2012): 213. <https://doi.org/10.14421/esensia.v13i2.738>

² Allya Putri Yuliyani, "Peran Hukum Adat dan Perlindungan Hukum Adat di Indonesia," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 9 (Sep 29, 2023): 860-865. <https://doi.org/10.58812/jhhws.v2i09.648>

³ Rakha Adi Pragata, "Analysis Customary Law In The Perspective Of The Constitution and Islamic Law," *Jurnal Fundamental Justice* 5, no. 1, (March 31, 2024): 1, <https://doi.org/10.30812/fundamental.v5i1.3430>

⁴ Syofyan Hadi, "Hukum Positif dan The Living Law (Eksistensi dan Keberlakuan dalam Masyarakat)," *DIH Jurnal Ilmu Hukum* 13, no. 26 (2017): 256 <https://doi.org/10.30996/dih.voio.1588>.

⁵ Martin Kryger, "Law as Tradition," *Law and Philosophy* 5, no.2 (Aug, 1986): 240. <https://www.jstor.org/stable/3504690>

⁶ A. Jalili, "Teori Maqashid Syariah Dalam Hukum Islam," *TERAJU* 3, no. 2 (Sep 27, 2021): 71-80. <https://doi.org/10.35961/teraju.v3i02.294>

social harmony in the community. Thus, this research contributes to the development of a *maqashid sharia*-based dispute resolution model that can serve as a solution to the challenges of the sustainability of Islamic law in facing social changes in the era of globalization.

Method

This research used a normative juridical method, with a qualitative approach to analyze data derived from Sarolangun customary documents and Islamic legal literature, particularly related to *maqashid sharia* and the concept of *diyat*. This approach is used to explore how the customary law norms of the Batin tribe, in this case, the *pampeh* law, align with the principles of justice in Islam and how the application of fines is expected to meet the principles of *maqashid sharia*.⁷

The analysis was undertaken on the norms prevailing in the *pampeh* customary law, as well as the relevance of these laws to the Islamic legal system in terms of *diyat* and the restoration of social relations through fines. The research also examined the effectiveness of the implementation of this customary law in maintaining social balance and creating a deterrent effect for the offenders.

Results and Discussion

Sarolangun Customary Documents and *Pampeh* Law

Indigenous people are part of Indonesian citizens who also require recognition and fulfillment of human rights. Constitutionally, the recognition and protection of customary law in Indonesia is affirmed through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects the unity of customary law communities along with their traditional rights as long as they are still alive and in accordance with societal developments and the

principles of the Unitary State of the Republic of Indonesia. This is the legal basis for the existence of customary law communities and their rights within the framework of the Indonesian constitutional state.⁸

The customary law of Sarolangun is derived from the customary law of Jambi, which has a broad scope in aspects of customary criminal law, customary civil law, customary inheritance law, customary land law, and customary marriage law. Among the various aspects contained in Jambi's customary law, there is a legal foundation commonly referred to as *induk undang nan limo*. *Induk undang nan limo* serves as the basis for the Sarolangun indigenous community to implement the customary law system.

Jambi customary law is an important part of the Indonesian customary law system which has a very deep wealth of philosophy and social norms. In Sarolangun Regency, Jambi customary law is rooted in *Induk Undang Nan Limo*, which serves as the main guideline in resolving customary issues and maintaining social balance. The parts of *induk undang nan limo* are as follows:

a. *Titian Teras Batanggo Batu*

Titian teras batanggo batu is a provision that originates from Islamic law sources, inseparable from the Quran and Hadith, referred to as *syara'*, which serves as a guideline for indigenous communities in implementing customary law.⁹ This is complemented by the customary saying that goes "*adat bersendi syara', syara' bersendi kitabullah, syara' mengato, adat memakai*". The provisions in this proverb illustrate that the decision-making process is carried out in stages, involving customary legal structures that run based on guiding principles and the customary communities that implement them.

⁸ Marzellina Hardiyanti, Sugiyanto, "Relevansi Living Law Theory dalam Masyarakat Adat Pada Sistem Negara Prismatic," *Jurnal Progressive Law and Society* 1, no. 1 (2023): 47. <https://ejournal2.undip.ac.id/index.php/pls/article/view/20870>

⁹ Subhan MA Rachman, Fuad Rahman, "The Dynamic Of Malay Islamic Law The Rise and Practices of Adat Bersendi Syarak, Syarak Bersendi Kitabullah," *Journal of Indonesian Islam* 11, no.2 (2017): 398. 10.15642/JIIS.2017.11.2.389-404

⁷ Kornelius Benuf, Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7, no. 1 (2020): 23, ISSN: 0852-011 DOI: <https://doi.org/10.14710/gk.2020.7504>

b. *Cermin Nan Takabur*

The meaning of *cermin nan takabur* is a provision that has existed since ancient times, proven true and beneficial in protecting society, so this provision is similar to *qiyas* in Islamic law when determining a decision, where the similarity of an event can be used as evidence or guidance.

c. *Jantak Nan Tidak Goyah*

Jantak nan tidak goyah is a term that describes a strong pillar or support. Literally, “*jantak*” means a supporting structure, like the pillars of a traditional house. In customary law, this term symbolizes a strong, stable principle that is not easily influenced by external pressures. This principle ensures that customary law remains grounded in the fundamental values of Indigenous communities, even when faced with changes in times or external cultural influences. This third principle is expressed in several traditional sayings that state “*Beruk dirimbo disusukan, anak dipangku dilatarkan. Lurus benar dipegang teguh, kato benar diubah tidak.*” Straight and true are firmly held, words of truth are not changed. The proverb reflects that there is no favoritism in determining customary law. Indigenous communities believe that everyone is equal before the law.

d. *Nan Tidak Lapuk Karano Hujan, Nan Tidak Lekang Karano Paneh*

Rain and sun are natural phenomena understood by everyone. This principle illustrates the flexible nature of customary law while still maintaining its core values, allowing customary law to adapt to the times without losing its essence of justice.

e. *Kato Saiyo*

Kato saiyo is a very important foundation in determining consensus in deliberation or negotiation, so that customary decisions must be acknowledged, adhered to, and respected together. This is in line with the customary saying that goes “*elok kato karno mufakat, bulat boleh digulingkan, pipih boleh dilayangkan.*”

The five legal foundations above *induk undang nan limo* because they are implemented by traditional leaders with honesty, a sense of responsibility, and a sense of security within the community. The indigenous people recognize the importance of these main legal foundations, which is why the traditional saying goes: “*Negeri aman padi menjadi, aik bening ikannyo jinak, rumput hijau kerbaunyo gemuk, tidak ada kusut yang tidak dapat diselesaikan, tidak ada keruh nan tidak dapat dijernihkan.*”

Induk undang nan limo is not just a legal foundation, but also a reflection of cultural values that maintain social harmony in the Sarolangun community. These principles not only serve as guidelines in maintaining social order but also reflect the flexibility of customary law in facing the dynamics of the times. Therefore, understanding the “*induk undang nan limo*” is key to appreciating and preserving the customary values that form the identity of the local community.

The indigenous people of Sarolangun categorize customs into three types: “*adat nan teradat, adat nan diadatkan, and adat nan sabena adat.*” *Adat nan teradat* are those that originate from actions performed through generations involving many people for the benefit of individuals or groups, *adat nan diadatkan* are those used by every region, while *adat nan sabena adat* are those that comply with sharia provisions, which are inseparable from the Quran and Sunna.

The indigenous people of Sarolangun Regency agree that there are 7 actions classified under the *pampeh* law. The 7 actions are as follows:

a. Traffic accidents resulting in death

In customary law, traffic accidents resulting in death can be considered a form of negligence. The perpetrator’s responsibility is not only criminal but also social, where the party causing the death may be required to provide compensation or other forms of social responsibility to the victim’s family, such as traditional ceremonies or customary fines.

b. Hunting animals in the forest but hitting the wrong target

In cases of hunting that accidentally injure or kill

someone, customary law usually views the act as unintentional but still requires responsibility. The perpetrator may be required to pay a customary fine, and in some communities, customary ceremonies or peace mediation may be performed to restore harmony in the community.

c. Cutting down a tree but hitting a person

This action is considered negligence. Customary law may require the perpetrator to bear social burdens, such as providing material compensation or participating in customary rituals to atone for the mistake, especially if the incident results in serious injury or death.

d. Someone who climbs a coconut tree and does not give a warning, causing something to fall on a person

Negligence in giving a warning that causes an accident is also considered the responsibility of the perpetrator. Customary law will require the perpetrator to provide compensation, either material or symbolic, depending on the level of damage or injury suffered by the victim.

e. The communal effort in building a house, followed by an accident where someone is injured or killed by a falling object.

The communal effort holds significant value in indigenous society, and any accident that occurs in this context is taken seriously. If an accident occurs, customary law considers that the party responsible for the accident, even if unintentional, must be held accountable by providing a fine or customary compensation to the victim or their family.

f. A passenger who falls while riding

In customary law, the driver or the party responsible for the vehicle will be held accountable if a passenger falls. Compensation actions are usually given in the form of customary fines or peaceful settlements, especially if the passenger suffers serious injuries.

g. Someone who fell from a dilapidated staircase

This case can be seen as negligence on the part of the owner or user of the stairs who

failed to ensure the safety of their property. Under customary law, the party responsible for the poor condition of the ladder can be held to compensate the victim, especially if the injury is serious.

In general, the customary criminal law of Sarolangun places more emphasis on restoring social harmony through compensation, reconciliation, and the restoration of relationships between individuals or groups. Although there is an element of fine or punishment, the main focus is on resolving the conflict in a way that not only upholds justice but also maintains balance in society. This is in line with the principles of Islamic law, which aims to provide a sense of justice through reconciliation efforts, long known as *al-Ishlah*, which is one way to resolve a conflict or a crime through peaceful means, namely replacing the punishment with another predetermined punishment.¹⁰

Legal Sanctions of *Pampeh* from the Perspective of *Maqashid Sharia*

Analysis based on *maqashid sharia*, the application of law must be able to protect five fundamental things: religion, life, intellect, lineage, and property. The fines imposed in *pampeh* law aim to protect life (*hifz al-nafs*) by providing compensation to the victim's family and preventing revenge that could harm more people. Additionally, *pampeh* law also aims to protect property (*hifz al-mal*) by imposing proportional sanctions for the violations committed.

The study of *maqashid sharia*, which focuses on the protection of lineage and property in the law of *pampeh*, aims to apply sanctions proportionally. Therefore, there is a classification in the law of *pampeh* regarding the forms of actions ranging from light to heavy as determinants of the size of the customary fines to be paid. This is divided into four levels of actions, as follows:

¹⁰ Ahmad Ropei, "Penerapan Restorative Justice Sebagai Alternatif Penyelesaian Masalah Pidana Berdasarkan Hukum Pidana Islam," *AL-KAINAH: Journal of Islamic Studies* 1, no. 2 (Dec 28, 2021): 40-83. <https://doi.org/10.69698/jis.v1i2.14>.

a. Minor Injury

What is meant by a minor injury is an outcome of someone's actions that causes the skin and flesh to bleed but is not dangerous. The punishment for such an act is one chicken, 5 kg of rice, 2 coconuts, and 1 pair of clothing.

b. Low Injury

A low injury refers to an outcome of someone's actions that causes the skin, flesh, and tendons to tear and bleed but is still in an area that can be covered by clothing. The punishment is 20 kg of rice, one goat, *salemak semanih* (spice), and 2 pairs of clothing.

c. High Injury

A high injury is an outcome of someone's actions that causes a wound in the facial area or other areas that cannot be covered by clothing, thus losing beauty. The punishment is 20 kg of rice, one goat, *salemak semanih* (spice), and 2 pairs of clothing.

d. Severe Injury

If an assault or murder occurs due to someone's actions resulting in the victim being permanently disabled or suffering for more than 3 weeks, or even death. The punishment for causing such disability is that the perpetrator bears the victim's medical expenses until recovery, 20 kg of rice, one goat, *salemak semanih* (spice), but if it results in death, the punishment is 100 kg of rice, one buffalo, *salemak semanih* (spice), and one piece of cloth (30 yard).¹¹

Murder in Islamic law is classified into three categories: intentional murder (*qatl al-'amd*), unintentional murder due to negligence (*qatl ghair al-'amd*), and semi-intentional murder (*qatl shibh al-'amd*).¹² In this study, the researcher focuses on murder resulting in death due to negligence, as intended by the *pampeh* law.

¹¹ Ishaq & Abdul Razak, "Sanksi Penganiayaan Dalam Hukum Pidana Adat Kerinci dan Hukum Pidana Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 19, no. 1, (June 02, 2019): 20. <https://doi.org/10.30631/alrisalah.v19i1.147>.

¹² H. A. Djazuli, *Hukum Pidana Islam (Fiqh Jinayah)*, (Bandung: CV Pustaka Setia, 2000), 116-121.

Then, unintentional murder (*qatl ghair al-'amd* or *al-khatha'*) is the opposite of intentional murder.¹³

According to Sayyid Sabiq, unintentional murder is the lack of intention in both elements, namely the act and the resulting consequence (cause and effect). In intentional murder, there is an intention in carrying out the action, whereas in unintentional murder, the act is carried out without any intention, and the consequence is never desired.¹⁴

The elements of involuntary manslaughter are as follows:

- a. The act committed was unintentional or not premeditated, meaning the perpetrator truly acted out of mistake.
- b. The resulting consequence was not desired, namely the victim's death was never imagined or hoped for beforehand, which distinguishes it from intentional murder.
- c. There is a causal relationship between the act and the death of the victim; if there is no direct or indirect relationship between the act and the victim, then the act cannot be said to be unintentional murder, this can be seen from the difference between the scene of the crime and the consequences of the act.¹⁵

The Batin tribe group applies *pampeh* law to resolve various customary criminal offenses. *Pampeh* law, especially in cases of negligence resulting in death, does not require an element of intent to hold the perpetrator legally accountable. The perpetrator proven to be negligent is subjected to a criminal penalty in the form of a fine of 100 kg of rice and 1 buffalo as compensation and an apology to the victim's family.

¹³ Fathuddin, "Penyelesaian Sengketa Korban Kecelakaan Lalu Lintas Menurut Hukum Pidana Islam dan Hukum Adat Di Kabupaten Batanghari," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 15, no. 1, (2015): 150 <https://doi.org/10.30631/alrisalah.v15i01.385>.

¹⁴ Rijal Mentari, B. M. Saksi Pidana Pembunuhan Dalam Kitab Undang-Undang Hukum Pidana Dengan Hukum Islam. *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 1 (May 15, 2020): 1-38. <https://doi.org/10.33096/aijih.v22i1.33>

¹⁵ Ishaq, "Sanksi Pidana Pembunuhan dalam Hukum Pidana Indonesia dan Hukum Pidana Islam sebagai Kontribusi bagi Pembaruan Hukum Pidana Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 16, no. 1 (2016): 39. <https://doi.org/10.30631/alrisalah.v16i01.334>.

Fines in *pampeh* law are not only intended to punish the perpetrator but also serve as a means to restore disrupted social relationships. In traditional societies, forgiveness holds significant meaning in maintaining social balance and preventing revenge.

‘Abd al-Qadir ‘Audah said that there is an Islamic criminal law expert in Egypt who stated that in Islamic law, there are two main principles: resolving all criminal acts by disregarding the individual, which aims to maintain stability within society, and for the convicted individual, which aims to reform their attitude and behavior. Therefore, according to him, the punishment for all criminal acts must align with public interest and tranquility.¹⁶

Research by Ibrahim shows that in the Islamic legal system, fair and proportional sanctions are key to achieving justice and legal utility. *Pampeh* law, with its fines, can be seen as a form of restorative justice, where the main goal is not only to punish the perpetrator, but also to improve social relations and maintain harmony in society.¹⁷

Reconciliation in *Pampeh* Law and *Diyat* in Islamic Law

Efforts to achieve reconciliation within the concept of *pampeh* law use a mediation system between the victim and the perpetrator through the “*tali tigo sapilin*” which is more commonly known as traditional institutions, the village government, and religious officials or ‘*ulama*’.

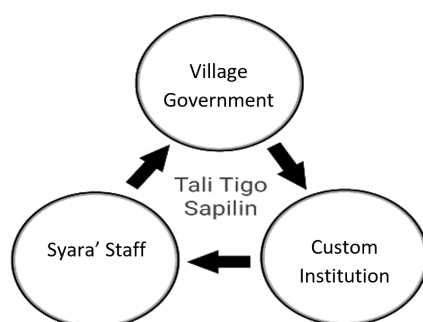


Figure 1. Concept of Tali Tigo Sapilin

¹⁶ Ismail Muhammad Syah, *Filsafat Hukum Islam*, (Jakarta: Bumi Aksara, 1999), 221-222.

¹⁷ R. Ibrahim, “Principles of Maqasid Shariah and Their Application in Islamic Law,” *International Journal of Law and Society* 7, no. 2 (2020): 113-127.

The imposition of fines in *pampeh*, law as a form of apology and social reconciliation, closely aligns with the concept of *diyat* in Islamic law. In criminal law, regulations involving prohibitions and commands must be accompanied by sanctions or punishments to ensure the rules are recognized and obeyed by society.¹⁸

In a narration, it is said that in the pre-Islamic era, as the teachings of Islam were about to be revealed, two Arab tribes were engaged in a fierce war.¹⁹ This conflict caused many casualties, including injuries and deaths among women, children, and slaves, in addition to the soldiers. The brutality of the war spared no one, not even the helpless. However, when these tribes embraced Islam, their desire for revenge was curbed, as the new teachings prohibited vengeance. Despite this, some of individuals vowed they would not be satisfied unless the deaths of slaves were avenged by the deaths of free men or the killings of women were compensated by the lives of men. It was in response to this event that a verse was revealed, establishing the law of *qisas* in Islam, which regulates justice in retribution for lives and injuries.²⁰

Crimes involving harm to humans, such as murder or causing bodily injury leading to death, are explicitly addressed in Islamic law in the Quran, Surah Al-Baqarah, verse 178:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرِّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَىٰ بِالْأُنْثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ﴿١٧٨﴾

¹⁸ Annisa Hafizah, Madiasa Ablisar & Rofiqoh Lubis, “Asas Legalitas dalam Hukum Pidana Indonesia dan Hukum Pidana Islam,” *Mahadi: Indonesia Journal of Law* 1, no. 1 (Feb 10, 2022): 1-10. <https://doi.org/10.32734/mah.v1i1.8311>

¹⁹ A. Muzhiat, “Historiografi Arab Pra Islam,” *Tsaqofah* 17, no. 2 (2019): 129. <https://doi.org/10.32678/tsaqofah.v17i2.3189>

²⁰ Achmad Thorik, Aprili Naufal Anggraeni, Zindan Baynal Hubi, Aldi Darmawan, & Tria Putri Kismala, “Perbandingan Konsep Restorative Justice Dalam Hukum Pidana Islam Dengan Hukum Pidana Indonesia,” *Nomos: Jurnal Penelitian Ilmu Hukum* 4, no. 3 (Jan 31, 2024): 88-96. <https://doi.org/10.56393/nomos.v4i1.2100>

Meaning: O believers! 'The law of' retaliation is set for you in cases of murder—a free man for a free man, a slave for a slave, and a female for a female. But if the offender is pardoned by the victim's guardian, then blood-money should be decided fairly and payment should be made courteously. This is a concession and a mercy from your Lord. But whoever transgresses after that will suffer a painful punishment.

Surah Al-Baqarah, verse 178, emphasizes that in cases of murder or negligence resulting in death, the victim's family is given the choice between qisas or accepting diyat as compensation. *Rahmatullah* highlights that accepting diyat is not merely a material resolution but also a means of fostering peace and reconciliation.²¹

The indigenous Batin community in Sarolangun Regency has a traditional proverb that emphasizes the importance of peace: "*adat lamo pusako usang, orang Kampar bajual kapeh tinggal di pasar Sarolangun, darah terpancar boleh pampeh, nyawo melayang boleh bangun.*" The philosophical essence of this proverb reflects the customary values and local wisdom deeply rooted in the indigenous community of Sarolangun. Below is the meaning of each part of the proverb:

a. *Adat lamo pusako usang*

This proverb refers to age-old customs that are ancestral legacies. Despite their antiquity, these customs are still respected and upheld, reflecting the community's deep reverence for traditions and the customary values passed down through generations.

b. *Orang Kampar bajual kapeh tinggal di pasar Sarolangun*

It symbolizes the interaction and relationships between communities or tribes. The depiction of the Kampar people selling cotton in the Sarolangun market illustrates the socio-economic dynamics, highlighting cooperation and interconnectedness between regions.

c. *Darah terpancar boleh pampeh*

This proverb means that although conflicts or disputes may arise and result in bloodshed, there are customary mechanisms in place to resolve them (*pampeh*). These mechanism built emphasizes the importance of peaceful resolution through customary law or deliberation.

d. *Nyawo melayang boleh bangun*

It means that even though lives may be lost (death occurs), there remains an opportunity to restore harmony through the process of customary reconciliation. This effort underscores the values of peace and social restoration within indigenous communities, aligning with the concept of diyat in Islamic law.

In *pampeh* law, the imposition of fines seeks to foster peace and prevent further conflicts between the perpetrator and the victim's family. It also serves to avert revenge, which could disrupt the social order.

Peace efforts through diyat in this context not only focus on achieving legal justice but also strive to create holistic justice for all parties involved, considering social, personal, and moral dimensions.²² As stated by Marcel A. Boisard, justice in Islamic teachings is at the heart of fundamental moral values.²³ Therefore, justice becomes a fundamental principle of great significance in Islam. The concept of justice in Islam encompasses both individual and social aspects.²⁴ From the perspective of Islamic law, justice is not confined to the mere application of law but always takes into account the moral, social dimensions, and the uniqueness of each individual.

²² Hamzah Hasan, "Diat Dalam Pidana Islam (Antara Hukum Privat dan Publik)," *Al-Daulah* 8, no. 1 (July 15, 2019): 74. <https://doi.org/10.24252/ad.v8i1.8028>.

²³ Samsul Bahri, "HAM dan Aktualisasinya dalam Pendidikan Islam," *ALQALAM* 35, no. 2 (2018): 21. <https://doi.org/10.32678/alqalam.v35i2.388>

²⁴ Samsul Bahri, "Aktualisasi Nilai-Nilai HAM dalam Dunia Pendidikan Islam," *Al-Ashlah: Journal of Islamic Studies* 2, no. 1 (2018): 1–35. <https://staimaarifjambi.ac.id/jurnal/index.php/Al-Ashlah/article/view/13>

²¹ S. Rahmatullah, "Concept of Diyat in Islamic Jurisprudence and Its Relevance in Modern Law," *International Journal of Islamic Legal Studies* 14, no. 3, (2019): 255-270.

The Mediation Mechanism in *Pampeh* Law

Communities that adhere to customary law often rely on mediation mechanisms as the primary means of resolving criminal cases. When a community or family member becomes either the perpetrator of a crime or the victim of immoral acts, the victim's family typically plays an active role in seeking justice.²⁵

The *pampeh* legal mediation mechanism is an effort to achieve peace between the perpetrator and the victim through the "*tali tigo sapilin*" which involves customary institutions, the village government, and *syara'* officials or '*ulama*'. This conflict resolution process prioritizes the approach of customary legal norms outlined in the Sarolangun customary document titled "*Tamu Kito Tentang Adat Istiadat*" serving as the primary guide for the Sarolangun indigenous community. The mediation aims not only to restore the relationship between the perpetrator and the victim but also to uphold social harmony within the indigenous community.²⁶

The mediation mechanism in *Pampeh* law is as follows:

a. Mediation Preparation

The initial process of *pampeh* legal mediation is led by the Village Secretary, who plays a crucial role as the administrative organizer, responsible for preparing documents and recording proceedings during the mediation. The Village Secretary's authority includes three key tasks: creating the mediation attendance list, preparing the meeting minutes, and drafting the peace agreement.

b. Opening of Mediation

The mediation process begins with the village head, who serves as the leader and initiator of the session. As an authority figure, the village head regulates the course of the meeting. During

the opening, the village head is entrusted with the responsibility of explaining the purpose and objectives of the mediation while also ensuring that all parties have the opportunity to be heard.

c. Presentation of the Case

The presentation of the case in the context of customary law is entirely entrusted to the customary institution, which plays a crucial role in providing a moral and social perspective. At this stage, the customary institution outlines the case, detailing the chronology of events based on information gathered from the perpetrator, the victim, and other witnesses. Then the institution explains the prevailing customary values, such as honor, family dignity, and social balance, while also elucidating how the perpetrator's actions have violated customary norms, thus impacting both the victim and the broader community.

d. Explanation of *Pampeh* Legal Sanctions

Pegawai syara' (religious officer) as part of the *tali tigo sapilin*, plays a role in providing a religious perspective on the violation committed. At this stage, the *syara'* officer explains the relevant religious law based on the perpetrator's actions, imposes a fine as a form of peace effort in accordance with the sanctions standards determined by *pampeh* law as a form of the perpetrator's accountability to the victim and society, and sets a deadline for the fine to be paid within a maximum of 15 days after the mediation is completed.

e. Agreement and conclusion of mediation

The final stage of mediation is reaching an agreement between both parties. The content of the peace agreement includes the customary phrase as follows *bulat kato dimufakat, bulat air dipembuluh lah saidak riak jo bergeombang, sailum tepuh dengan pegeh, kok nulat dapat digulung, picak dapat dilaying, bahwa si fulan bin fulan yaitu seorang sopir yang menabrak si fulan bin fulan sehingga meninggal maka atas perbuatannya dikenakan hukum pampeh yaitu beras 100 kg, kerbau seekor, buah keapo seratus*

²⁵ Mufid, "Mediasi Dalam Hukum Adat," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 2, no. 2 (September 07, 2020): 133. <https://doi.org/10.19105/al-manhaj.v2i2.3490>.

²⁶ Riska Fitriani, "Alternatif Penyelesaian Sengketa Melalui Mediasi Dalam Masyarakat Adat Meayu Riau," *Riau Law Journal* 1, no. 2 (November 2017): 227. <http://dx.doi.org/10.30652/rjl.v1i2.4519>.

beserta salemak semanih, kain satu kayu (30 yard).

After reaching a consensus, the final step is the closure of mediation. If both parties agree to and accept the mediation results, a peace agreement is signed. The perpetrator is then responsible for fulfilling the agreed-upon obligations. The village head concludes the mediation by officially declaring that the case of “*luko dipampeh, mati dibangun*” has been resolved in accordance with customary law.

The *tali tigo sapilin* mechanism for resolving customary disputes integrates elements of tradition, village law, and religion within a harmonious mediation framework. This approach not only restores social relationships but also aligns with the principles of *maqashid sharia*. This mediation protects:

- 1) Religion (*hifz al-din*), by ensuring sanctions in accordance with Islamic teachings.
- 2) Life (*hifz al-nafs*), through the prevention of further conflict.
- 3) Intellect (*hifz al-'aql*), by encouraging rational resolution.
- 4) Lineage (*hifz al-nasl*), by preserving the honor of family and community.
- 5) Property (*hifz al-mal*), through fair compensation.

Thus, this mediation is not only achieves customary peace but also fulfills the *maqashid shari'ah*, prioritizing worldly and spiritual justice.

Transformation of Customary Law in the Era of Modernization

Customary law, as a legal system rooted in the local wisdom of Indonesian society, has long been integral to the governance of indigenous communities. However, in an era of modernization marked by globalization, urbanization, and technological advancement, customary law faces significant challenges in remaining relevant and adaptive. Its transformation in this context involves not only changes to the substance of its rules but also to its mechanisms of implementation and its relationship with the national legal system. One

customary law mechanism that has garnered particular attention is *pampeh*, a dispute resolution process rooted in customary-based mediation, which prioritizes reconciliation and social harmony.

a. Modernization and Erosion of Traditional Value

Modernization has significantly influenced the social and cultural dynamics of indigenous communities.²⁷ Traditional values, which serve as the foundation of customary law, are often marginalized by the influx of foreign cultures and modern mindsets.²⁸ For example, there has been a noticeable shift in the practice of traditional mediation in resolving disputes towards formal legal resolution through the courts. This shift is driven by the perception that formal processes are faster and provide greater legal certainty. However, traditional mediation such as *pampeh* contains reconciliation values that are difficult to find in the formal legal system.

Moreover, urbanization has also impacted the practice of customary law. As indigenous communities integrate into urban society, they often face challenges in maintaining their legal traditions. This disruption frequently leads to customary law losing its community base, which serves as its primary foundation. Consequently, key principles of customary law, such as deliberation and consensus, have diminished in relevance within modern, more individualistic societies.

b. Digitalization and Revitalization of Customary Law

In the technological era, the transformation of customary law is increasingly influenced by digitalization efforts. Some indigenous communities have begun leveraging digital technology to

²⁷ Alexander Kevin Gorga, et.al, “Dampak Globalisasi Terhadap Keberlanjutan Hukum Adat di Indonesia,” *Civilia: Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan* 2, no. 2 (July 06, 2023): 4. <https://doi.org/10.572349/civilia.v2i2.555>

²⁸ Dewa Gede Edi Praditha, I Made Bagus Wibisana, “Hukum Kearifan Lokal: Tradisi, Nilai, dan Tranformasi Dalam Konteks Kepemilikan Warisan Budaya,” *Yusthima: Jurnal Hukum Agraria dan Tata Ruang* 4, no. 1 (March 30, 2024): 212. <https://doi.org/10.36733/yusthima.v4i1.8940>

document and disseminate their customary laws. However, many of them are negatively influenced by modernization, which leads to the erosion of traditional values and social norms, causing the identity of a nation to be diminished by following Western culture or westernization.²⁹ This approach not only helps preserve customary law but also opens up opportunities to introduce customary law to the younger generation who are more familiar with technology. One noteworthy aspect is the *pampeh* mechanism, which, despite its high local value, is often not formally documented. Digitalization offers an opportunity to preserve and promote such practices while reinforcing their relevance in a modern context.

In addition, the revitalization of customary law is being pursued through the strengthening of customary institutions. Both government and non-governmental organizations actively support indigenous communities by providing training, legal assistance, and formal recognition of these institutions. This revitalization aims to ensure that customary law remains relevant in addressing the challenges posed by modernization. Customary institutions also play a crucial role in upholding the implementation of *pampeh* law as a community-based dispute resolution mechanism.

The transformation of customary law in the era of modernization is a complex and multifaceted process. Challenges such as the erosion of traditional values, normative conflicts with national laws, and the dynamics of urbanization demand a comprehensive approach. Strengthening customary law through formal recognition, digitization, and institutional revitalization is essential to ensure its relevance and adaptability. By doing so, customary law—particularly mechanisms like *pampeh*—can continue to serve as a vital pillar in preserving social harmony and sustaining local values amidst the waves of modernization.

Evaluation of the Effectiveness of Pampeh Legal Sanctions from the Perspective of *Maqashid Sharia*

The fundamental values inherent in the relationship between Islamic law, as examined through the study of *maqashid sharia*, and local culture or customary law in the Sarolangun district can be categorized into three main interaction patterns: Islamization, Indigenization, and Negotiation. Islamization refers to efforts aimed at purifying Islamic teachings by eliminating customary elements deemed incompatible with Islamic law, thereby fostering mutual relevance between the two aspects.³⁰ This pattern aims to establish Islamic law alongside authentic customs. On the other hand, Indigenization involves integrating Islamic legal norms into local culture, resulting in an acculturated form of Islam where religious teachings and local traditions enrich each other without compromising their respective essences. Meanwhile, the negotiation pattern represents an equal relationship between Islamic law and customary law, fostering a harmonious integration.

This dialectical interaction is clearly evident in the context of customary criminal law in Sarolangun Regency, Jambi. The tradition of customary criminal law in this region remains vibrant and integral to community life, rooted in both local wisdom and Islamic values. The conflict resolution mechanism, which emphasizes deliberation, is significantly influenced by the principles of sharia in Islam. However, the pattern of Islamization often leads to friction, particularly when efforts are made to implement Islamic law in its purest form, which may be perceived as conflicting with local traditions. For instance, differing views on the form and application of certain customary sanctions highlight these tensions. This reflects the ongoing challenge of balancing the authenticity of Islamic teachings with the preservation of local customs.

Nevertheless, the processes of indigenization and negotiation play a crucial role in harmonizing

²⁹ Mohammad Abdullah Masrur, Kinanti Lalita Rahayu, "Pengaruh Modernisasi Terhadap Praktik Waris Adat di Era Revolusi Industri 4.0," *Kultura: Jurnal Ilmu Sosial dan Humaniora* 1, no. 5 (Dec 25, 2022): 268. <https://doi.org/10.572349/kultura.v1i5.557> .

³⁰ Nuraida Fitri Habi dan Atho Mudzhar. "Women, Islamic Law and Custom in Pucuk Induk Undang Nan Limo," *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 234. <https://doi.org/10.15408/ajis.v24i1.38557>

Islamic law and local customs. Indigenization is evident in the acceptance of elements of Islamic law, such as the concept of *diyat* (compensation), which have been integrated into Sarolangun's customary criminal law without eroding local cultural elements. Negotiations, conducted through mediation between religious leaders and customary figures, have resulted in a customary criminal law that embodies universal Islamic values, such as justice and humanity, while preserving local wisdom. Consequently, Sarolangun's customary criminal law serves as a tangible example of the successful integration of Islamic values and local culture within the social framework of modern society.

The effectiveness of fines under *pampeh* law, particularly in deterring offenders, remains evident and has not been diminished by modernization. However, in some cases, fines are perceived as inadequate in providing a strong deterrent effect, especially for offenders from economically privileged backgrounds. Hardianto Djanggih has noted that one of the weaknesses of customary law lies in its lack of clear standards for determining fines, which are often adjusted based on the perpetrator's social status.³¹

The *pampeh* law has clearly classified the magnitude of sanctions imposed on perpetrators in a proportional manner. However, it does not yet distinguish between intentional and unintentional offenses. This lack of differentiation can undermine legal certainty for victims and may unfairly benefit perpetrators who intentionally commit unlawful acts, as they face the same sanctions as those applied to unintentional acts.

From the perspective of *maqashid sharia*, the imposition of sanctions must be fair, proportional, and considerate of their societal benefits.³² Therefore,

a further review of the standard fines for offenders who commit unlawful acts, whether intentionally or unintentionally, under the *pampeh* law is necessary. Such a review would ensure that the imposed sanctions are more equitable and consistent, thereby enhancing their deterrent effect.

Conclusion

The *pampeh* law in Sarolangun shares similarities with the concept of *diyat* in Islamic law, particularly in its emphasis on social responsibility and compensation for victims. The proportional classification of fines, ranging from minor to severe injuries, serves as a form of apology and an effort toward social reconciliation. This approach aligns with the principles of *maqashid sharia*, particularly in preserving life (*hifz al-nafs*) and property (*hifz al-mal*). The fines outlined in the *pampeh* law reflect the principle of *al-maslahah* (public good) in sharia, where punishments are designed to promote the common good and restore harmony within society.

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³¹ Hardianto Djanggih, "Konsepsi Perlindungan Hukum bagi Anak sebagai Korban Kejahatan Siber Melalui Pendekatan Penal dan Non Penal," *Mimbar Hukum* 30, no. 2 (2018): 316. <https://doi.org/10.22146/jmh.32017>

³² Noercholis Rafid, "Nilai Keadilan dan Nilai Kemanfaatan pada Jarimah Qisas dan Diyat dalam Hukum Pidana Islam," *Milkiyah: Jurnal Hukum Ekonomi Syariah* 1, no. 1 (Feb 24, 2022): 8-14. <https://doi.org/10.46870/milkiyah.v1i1.154>

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