

**CONSTRUCTION OF ISLAMIC LAW AND CUSTOMARY LAW  
IN JAVANESE TONDANO SOCIETY**

**Rohmatul Faizah**

Faculty of Law, UPN Veteran, East Java

Email: [rohmatulfaizah.ih@upnjatim.ac.id](mailto:rohmatulfaizah.ih@upnjatim.ac.id)

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**ABSTRACT :** Kampung Jawa Tondano is located in the center where the majority of the population is Christian. For hundreds of years, the people of Jaton Village have lived side by side with the majority of Minahasa tribes which have different religions. Long historical factors make Jaton Village unique. This is because the residents of Jaton Village are direct descendants of Kyai Modjo, who was a religious teacher from Prince Diponogoro who was banished by the Dutch colonialists along with his 63 followers to the Tondano area in 1828. This research aimed to observe the form of Islamic legal construction and the customary law of the Jaton community, whether there is a correlation or contradiction. This study will answer questions about what forms of construction of Islamic law and customary law in the Javanese Tondano community. The method used is qualitative with a case study approach through observation and in-depth interviews. The results showed that the construction of Islamic law and the customary law of the Javanese Tondano people were related and not contradictory. The Jaton community also still adhered to their ancestral culture from Java and uphold the norms of Islamic teachings which are a legacy from their ancestors.

**Keywords :** legal construction; Islamic law and customary law; Javanese Tondano community.

## **INTRODUCTION**

Indonesia is a country that is rich in diversity, each region has different and interesting customs. One of them is the custom of Kampung Jawa Tondano in Minahasa, North Sulawesi, where the Muslim community with its customs and habits is able to survive amid the majority of Minahasa Christians. The Javanese Tondano people until now still adhere to the customs of their ancestors from generation to generation to form a legal construct.

Society is created from various interests in culture, introducing culture and maintaining culture is the task of the community itself, in this case by taking an approach with people who are basically born in a certain place. By forming a social interaction in the life of social groups so that the culture works accordingly.

These customs include beliefs and ritual activities that develop and take root in society so that they become culture. In Islam, custom also defined as laws that are established and structure

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and regulate the relationship between individuals and society, or to create the benefit of the world. The meaning of laws that are born from custom can be understood and always pay attention to 'urf-'urf and benefit and can change according to changes in time, place and situation. Therefore, the law concerning custom (muamalah), most of the laws are whole, in the form of general rules accompanied by their illats.<sup>1</sup>

The Javanese Tondano are a unique minority in Indonesia. As Javanese and Muslim, they are a minority in the area, but nationally they are the majority. The residents of Kampung Jawa Tondano practice Islamic law and do not give up the Javanese customs they got from their ancestors. The Jaton people maintain their soul of students, they still do not choose to become Reformist (puritan) Islam which logically might be more profitable. They still choose to be Javanese santri (traditionally prioritizing Javanese customs). This is what actually makes their presence or existence not considered disturbing or threatens the existence of the majority of Minahasa even though they have different ethnic groups and cultures and even differences in religion with the majority.<sup>2</sup>

Among the various cultures and including non-material culture is custom. Alo Liliweri emphasized that nonmaterial culture is used as a guide or reference in community groups. It means that values, norms and beliefs in a society are the most important elements in a culture, because members of society must follow and submit to this non-material culture in order to be accepted in society.<sup>3</sup>

Meanwhile, the definition of customary law communities according to Ter Haar is a group of people who are organized, live in a certain area, have their own power and have their own wealth in the form of visible or invisible objects, where the members of their respective units experience life in society as a matter. which is natural according to natural nature and not one of the members has the thought or tendency to dissolve the bond that has grown or to leave it in the sense of breaking away from the bond forever.<sup>4</sup>

The customary law community is a group of people who are bound by their customary law order as citizens with a legal partnership because of the same place of residence or on the basis of descent. Based on the above definition, it can be understood that customary law communities are included in the definition of community, but not all communities can be

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<sup>1</sup> Teungku Muhammad Hasbi Ash Shiddieqy, *Pengantar Ilmu Fiqih*, (Semarang: PT. Pustaka Rizki Putra, 1997), h, 20.

<sup>2</sup> Lihat Jurnal Yuniarti Sugio Rahayu.2014, *Masyarakat Jawa Tondano abad XX*, Fakultas ilmu Sosial, jurusan sejarah.

<sup>3</sup> Samovar, Porter, & McDaniel, 2010,

<sup>4</sup> Husen Alting, *Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat atas Tanah*, Yogyakarta, 2010.,hal. 64

classified as the definition of customary law communities. Customary law communities are bound by a customary law order that grows and develops naturally in the community so that it reflects the soul of the community.

Even though it is not a state based on Islam, Indonesia applies Islamic law. Although not all. In the realm of law in Indonesia, the term Islamic law is understood as a combination of the two words law and Islam. Therefore, according to Amir Syarifuddin, in order to understand Islamic law, it is necessary to first know the word "law" in Indonesian, and the word law relies on "Islam". The definition of law in simple terms is a set of rules regarding human behavior recognized by a group of people, compiled by people who are authorized by that community, applicable and binding for all its members.<sup>5</sup>

In Islamic law, custom (*adah*) is one of the sources of legal determination. custom plays an important role in the process of forming Islamic law. The actual role of custom in the creation of laws has always proved more important. This is because many customs matters are proven to be used not only in cases where there is no concrete answer in the Qur'an or Hadith. The facts show that since the beginning of the formation of Islamic law, the criteria for local custom are strong enough to defeat the practice of law that reportedly originated from the Prophet himself. In other words, Islamic jurists eventually accept various forms of custom and then incorporate and become customary law in the building of Islamic law sources with the form and criteria of a certain custom.<sup>6</sup>

## **PROBLEM**

The Muslim community in Kampung Jawa Tondano (Jaton) was initially considered a problem for the existence of Christians, because they live in the midst of the majority. There is even an opinion that their presence can cause weakness in the Christian faith. Meanwhile, the Muslim community of Kampung Jawa Tondano still holds Islamic values as one of the strong fortresses of their faith. This union is inseparable from the background of the arrival of Islam in the land of Tondano, henceforth the development of Islam along with the cultural dynamics in North Sulawesi. The Javanese Muslim community of Tondano who still adhere to their religious beliefs is unique to be a part of research by harmonizing views and awareness related to the construction of Islamic law and customary law, whether there is a correlation between Islamic law and customary law, or is it contradicting each other.

Although there have been many studies related to the Muslim community of Java Todano (Jaton), at least this research can add a reference for observers of history and culture in

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<sup>5</sup> Amir Syarifuddin, *Pembaharuan Pemikiran dalam Hukum Islam*, (Padang: Angkasa Raya, 1993), h. 18

<sup>6</sup> Ratno Lukito, *iPergumulan Antara Hukum Islam dan adat di Indonesia* (Jakarta: INIS, 1998), h,5-6

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Indonesia, especially in North Sulawesi and in particular for the generation of Javanese Tondano (Jaton) descendants wherever they are. For practitioners and government agencies, at least these findings can provide consideration in issuing policies, especially for religious harmony in the Javanese village of Tondano Minahasa to be in a condition of a harmonious religious harmony frame.

## **RESEARCH METHODS**

In line with the problems and objectives to be achieved in this study, the research method is a qualitative method using a historical approach and a sociological approach to uncover and analyze field facts. A qualitative approach according to Suyanto & Sutinah (2013) is appropriate if the research wants to describe the complex settings and interactions of the participants and understand the limited number of situations with a deep and detailed focus.

The qualitative approach was chosen by the researcher because it intends to reveal how the construction of Islamic law and customary law in the Javanese Tondano (Jaton) community in the Javanese village of Tondano, Minahasa, North Sulawesi. The research method used is qualitative. According to Bogdan and Taylor in Moleong qualitative method is a research procedure that produces descriptive data in the form of written or spoken words from people and behaviors that can be observed by directing the setting and the individual holistically.<sup>7</sup>

The approach used is a qualitative case study approach. The case study was chosen because of the unique phenomenon in Kampung Jawa Tondano (Jaton). A case study is a research method when the how (how) and why (why) questions are asked in a study. This method is suitable for further analysis of a phenomenon in detail such as the construction of Islamic law and customary law in the Javanese Tondano (Jaton) community.<sup>8</sup>

The object of this research in this research is the people in Kampung Jawa Tondano (Jaton) Minahasa, North Sulawesi. Specifically, the data in this study were obtained from key informant H. Suyitno (68), a Javanese Tondano (Jaton) elder and the head of the MUI Minahasa, of Javanese descent. Secondly, Djunaidi Lababa (39), a Javanese and ASN Lecturer at IAIN Manado, then Fadhilah Djojuroto (40) ASN Ministry of Religion and Tondano Javanese Social Activist, Nur'ain Thayeb (37) ASN Minahasa Regional Government. The data were obtained through in-depth interviews with sources, because during a pandemic, researchers only conducted interviews with sources via video conferencing media and did not make direct observations. The researcher also added with literature study to strengthen the research results.

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<sup>7</sup> Lexy J. Moleong, D. M. A. *Metodologi Penelitian Kualitatif Edisi Revisi*. (Bandung: PT. Remaja Rosda Karya, 2017)

<sup>8</sup> Yin, R. K. *Case Study Research Design and Methods* (5th ed.). (Thousand Oaks, 2014)

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## DISCUSSION

### **Kampung Jawa Tondano at a Glance of History**

Kampung Jawa Tondano, is located in North Tondano District, Minahasa Regency, North Sulawesi Province. The residents of Jatón Village are descendants of one of the charismatic Javanese War heroes named KH Muhammad Khalifah Modjo or known as Kyai Modjo. Kyai Modjo is the Islamic religion teacher of Prince Diponegoro who fought against Dutch colonialism in 1825-1828.

The Javanese Tondano (Jaton) community is a very important piece of history in the life of the Minahasa people. Since the arrival of Dutch prisoners and people who were exiled from the Java War in 1830, Tondano as the center of activity and life for the Minahasa people has experienced the penetration of a new identity that is very different from the original identity of the Minahasa people. Interestingly, on the one hand, their identity as Javanese and Muslims is still firmly held today in the form of the Javanese Tondano (Jaton) ethnicity. In an effort to maintain their identity and who they are there is a relationship between the construction of Islamic law and customary law in the Muslim community of Java Tondano (Jaton).

Kampung Jawa Tondano is a continuation of the life of Kyai Modjo and his followers after going through the Java War which killed more than 200,000 indigenous people. The Dutch arrested Kyai Modjo who was the uncle and adviser of Prince Diponegoro and exiled him along with 62 other kyai and scholars to Tondano, Minahasa. Kyai Modjo was weakened and exiled because he had a huge influence on the leadership of Prince Diponegoro in the Java war which lasted for five years from 1825 to 1830. Kyai Modjo's entourage eventually had to survive in a place of exile that was very different in natural and cultural conditions. They then formed their

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<sup>9</sup> Yayasan Kiyai Modjo Provinsi. 1979. *Kyai Modjo Sebagai Pahlawan Perjuangan Kemerdekaan*. Manado. h. 20.

<sup>10</sup> Tumenggung. 1997. *Sejarah Masuknya Islam di Minahasa Jawa Tondano dan Sekitarnya*, Manado: Forum Komunikasi Mahasiswa Sulut.

own territory in exile while still carrying their true identity as Javanese Muslims and then had descendants with local residents until finally it became a large village we know today.<sup>11</sup>

Kiai Modjo and his followers were exiled in the Loji Tondano area, Liningaan village now home to the Tonsea and Tondano people. The Dutch chose this area with the assumption that they would experience extinction.<sup>12</sup> The Dutch miscalculated, because the people of Tonsea and Tondano accepted them as friends who both hated the Dutch. The marriage of Minahasa and Tonsea girls by Javanese Muslims is an authentic proof. They eventually formed a family by marrying a woman from the Minahasa area.

The natural conditions of the Minahasa, which are so hard to survive, require efforts to conquer the local environment require careful strategic thinking. Kiai Modjo and his followers designed the construction of a settlement in the exiled area. Initially, the development of agricultural areas from swamp areas, so that they became fertile agricultural areas and could produce bountiful harvests. This process is the first step in the sympathy of the people of Tondano and Tonsea for the immigrants. The sympathy was realized with the acceptance of the winners of Kiyai Tumenggung Pajang and Kiyai Gazali Mojo towards the daughter of the head walak Tonsea. In this event, the bride and groom were converted to Islam, following another marriage by Islamizing the native population.

The Javanese Tondano (Jaton) community consists of a group of Muslims, namely Kiai Modjo and his sixty-three followers, followed by several warriors who are followers of Pangeran Diponegoro. After settling in Tondano, some of the fighters married Minahasa girls who at that time did not know religion. Alifuru followers<sup>13</sup>

As it is known, the sixty-three followers of Kiai Modjo, are all male and some are not married. As a result, the Jatton community and the Minahasa people can mingle with each other to form togetherness as well as accepting Javanese projection traditions and culture which are still being applied by the Javanese Tondano community. They are even able to form Islamic marriages to have children. The result of this descent is what is known today as the Javanese Tondano, namely the combination of the Javanese and the Minahasa (Tondano), which then gave birth to a multicultural and multi-ethnic society.<sup>14</sup>

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<sup>11</sup> Graafland, N. 1869. *De Minahasa: Haar Verleden En Haar Tegenwoordige Toestand, Why & Zonen*, Rotterdam. h. 33.

<sup>12</sup> Balai Arkeolog Manado, 1998. Hal 11

<sup>13</sup> Yayasan Kiyai Modjo Provinsi. 1979. *Kyai Modjo Sebagai Pahlawan Perjuangan Kemerdekaan*. Manado. h. 31

<sup>14</sup> Arbie. 1999. *Cerita Rakyat Jatton di Sulawesi Utara: Suntingan Teks, Terjemahan dan Telaan naratif*. Tesis S2 UGM



The interaction between Kyai Modjo and his followers with the surrounding community made the assimilation of Javanese and Minahasa cultures unavoidable.<sup>15</sup> In this way, the Javanese Tondano (Jaton) people still maintain their Islam and Javanese. Even though later in fact the Minahasa cultural pattern is more dominant than Javanese culture, it is still possible to feel a large Islamic style in the Javanese Tondano (Jaton).

### **Construction of Islamic Law and Customary Law**

The characteristics of Indonesian Islamic law are influenced by an "Arab personality" (Arabic oriented), that the characteristics of Indonesian Islamic law are very dominant colored by an "Arab personality" (Arabic oriented) and are more attached to the traditions of the Syâfi'i school of thought. It can be seen from the majority of the use of fiqh books from the Syâfi'iyyah circles.<sup>16</sup> Indonesian scholars formulated the Compilation of Islamic Law (KHI) which was later ratified by means of Presidential Instruction No.1 of 1991. Thirty-eight books were reviewed by seven State Islamic Institute (IAIN) throughout Indonesia as reference material for the formation of Islamic Law Compilation, mostly have a Shafi'i sect.

Besides relying on fiqh books, we also understand the Shafi'i ushul al-fiqh books. Which among the discussions is about qiyas, apart from about the Koran, hadith, and ijmak. The consequence of using this fiqh and ushul fiqh is to subject all reality to texts (nash), or in other words decide the law on new issues must be looked for links first against existing text. After that look for the illat equation.

According to Hasbi Ash-Shiddieqy, an expert in fiqh or Islamic law, fiqh or Indonesian Islamic law can be applied in accordance with the personality of the Indonesian nation. This means that in the process of formulating Islamic law, it should pay attention to the objective conditions and social aspects or institutions of the life of the Indonesian people so that the results will be suitable for the conditions and needs of the Indonesian people.<sup>17</sup>

In addition to national law (criminal and civil law) and the Compilation of Islamic Law (KHI) in Indonesia, customary law is also recognized, namely laws that depart from community beliefs that are extracted from basic human values and local culture.

According to Soekanto, customary law is "a complex of customs which is mostly not narrated, not codified (*ongecodificeerd*), and is coercive (*dwang*), has sanctions (from that law), so it has

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<sup>15</sup> Babcock. 1981. Muslim Minahasaus with Roots in Java; The people of Kampung Jawa Tondano dalam Indonesia no. 32, tahun 1981, USA: Cornel University. h. 98.

<sup>16</sup> Marzuki Wahid dan Rumadi, Fiqh Mazhab Negara: Kritik atas Politik Hukum Islam di Indonesia, (Yogyakarta: LKiS, 2001), h. 128

<sup>17</sup> Nourouzzaman Shiddiqi, Jeram-jeram Peradaban Muslim, (Yogyakarta: Pustaka Pelajar, 1996), h. 234.

legal consequences (*rechtsgevolg*)."<sup>18</sup> Soekanto's opinion was emphasized by Bushar Muhammad stated that what is called customary law is the whole custom (unwritten) that lives in society, in the form of morals, habits, and customs which have legal consequences.

Meanwhile, according to Islam, literally the word custom (*adah*) means habit, custom or practice. In Arabic, the word is synonymous with the word *urf*, which is something that is known. Abu Sinnah and Muhammad Mustafa Syalaby, for example, mentioned this literal definition to distinguish between the two meanings of the word. Both argue that the word custom means "repetition" or "practice" which has become a habit, and can be used, both for individual (*adah fardhiyyah*) and group (*adah jama'iyah*) habits. Meanwhile, the word *urf* is defined as "a repetitive practice that can be accepted by someone with common sense".<sup>19</sup> It can be drawn from a common thread that *urf* or custom refers more to a custom of the many people in a society, while custom is more related to the habits of a certain small group of people.

There is a difference between Islamic law and customary law. When viewed from the point of view of the sociology of law approach. One of the differences between customary law and Islamic law is that the source of customary law is society, whereas Islamic law is the teaching of God Almighty. However, this does not mean there is a conflict because of the difference in sources. Customary Law and Islamic Law will always interact, where the process is supported by its adherents who are individuals and social groups.

In general, in the traditional Indonesian legal system there are unwritten laws that are not codified. This unwritten law is called Customary Law which is a synonym for customary law. If something is found in writing, it is recorded Customary Law (*beschreven adatrecht*) and documented Customary Law (*gedocumenteerd adatrecht*). In general, recorded customary law is the result of research by scientists which is then recorded in a monograph. Customary law that is documented is a record of Customary Law.<sup>20</sup>

Meanwhile, norms are rules that regulate punishment or reward in the form according to variations in people's social positions in human relations. All human actions have a specific effect object and Norma specifically gives social consequences to a person when he performs that action.<sup>21</sup>

Kampung Jawa Tondano (Jaton) is an area with a Muslim community. Norms that are carried out and also maintained from generation to generation flow along with the times. Habits,

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<sup>18</sup> Soekanto, *Meninjau Hukum Adat Indonesia*, Hukum Adat di Indonesia: Suatu Pengantar untuk mempelajari Hukum Adat, (Jakarta: Rajawali Press, 1981), h. 2.

<sup>19</sup> Abu Zahra, *Ushul al - Fiqh* (Mesir: Dar al-Fikr al-Arabi, 1958), h. 219. Bandingkan dengan Abd al-Aziz al Khayyath, *Nadzariyat al - Urf* (Amman: Maktabah al-Aqsha [t.th.]), h. 24.

<sup>20</sup> Soekanto, Soerjono, *Hubungan Hukum Adat dengan Hukum Islam* (Jakarta: C.V. Rajawali, 1986). Hal. 157

<sup>21</sup> Liliweri, A. (2009). *Makna Budaya Dalam Komunitas Antarbudaya*. Yogyakarta: LkiS



practices and traditions continue to live and develop and are passed on to the next generation. The traditions of the Jaton people's ancestors who came from Java are still being maintained but are not too rigid, because the Jaton people have mingled and adjusted to the surrounding customary law, the prevailing norms are still Islamic.

Based on the results of interviews with informants, that the customary law applied by the Javanese Tondano community is not written but is still valid and implemented by the people of the Javanese Tondano village with full responsibility.

The people of Jaton have been living in the land of Minahasa for more than 150 years, they still uphold the values and norms that are inherited from their ancestors. These values and norms are almost entirely Islamic religious values and norms such as the "asrokalan" tradition or the Jowo prayer. Pilgrimage and cleaning the grave of Kyai Modjo or "pungguan" before the month of Ramadan as is commonly practiced by Javanese people.

The norms that apply to the Javanese Tondano (Jaton) community have begun to mingle with the Minahasa culture. There are no rigid boundaries or rules that limit the harmony between groups. The two groups live in harmony and respect each other. This was partly due to mixed marriages which were quite common between the two groups.

The Javanese Tondano (Jaton) people still hold the cultural values of their ancestors originating from the island of Java, but it seems that if the family has different backgrounds, the values passed are different. Like there is a Jaton family that does not allow their descendants to marry Christians. However, there are families who feel that if their child marries a Christian it is not a problem. This certainly does not contradict Islamic law that is firmly adhered to by the Javanese Tondano people.

## **CONCLUSION**

Religion and customs can influence each other, because both are values and symbols. Religion is a symbol that symbolizes the value of supernatural obedience, while custom is a value and symbol that directs humans to live in their environment. Between Islamic law and customary law can go hand in hand. Thus, the term conflict or legal revolution which is directly aimed at opposing customary law is not known in Islamic law. Al-Qur'an, Prophet Muhammad, the companions of the Prophet, and the mujtahidin in their history, as has been said, did not carry out legal reform as long as the existing laws were in accordance with the principles of fundamental Islamic teachings. The concept of the sunnah taqririyyah is strong evidence that the Prophet allowed some acceptable local customs to prevail. Therefore, the conflict between Islamic law and customary law did not arise naturally or naturally, but was caused in accordance with colonial legal politics, so it was difficult to eliminate it satisfactorily.

The main points of customary law and Islamic law discussed above can be drawn from a common thread, that the relationship between customary law and Islamic law is accommodative. Based on equal positions and equal roles, the two legal systems complement each other without losing their respective identities.

In fact, the two legal systems can have a harmonious relationship in Indonesian society. Accommodation can be characterized as a step that must be taken to bridge the gap between the two legal systems. Likewise this happened to the Javanese Tondano (Jaton) community, which is a descendant of the Javanese Muslim ethnic group, while maintaining the traditions taught by their Muslim ancestors. Which later today becomes unwritten customary law and is in harmony with the implementation of Islamic law.

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