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Author for correspondence:

R. Mulyana Jaya Sumpena

NIM : 210022300009

E-mail: iankigulung@gmail.com

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Recognition of Customary Rights in the Baduy Customary Law System of Indonesia and Egypt Islamic Sharia Perspective

R. Mulyana Jaya Sumpena

Fakultas Hukum, Program Studi Doktor Ilmu Hukum, Universitas Trisakti, Indonesia

This article discusses the comparison of legal systems for the recognition of customary rights in the implementation of customary law of the Baduy people in Indonesia and the customary law of the Bedouin/Badawi people in Egypt in the perspective of Islamic sharia law. Customary rights are the collective rights of indigenous peoples over certain territories that are inherited from generation to generation. In Baduy society, customary rights play a central role in maintaining ecological balance and cultural sustainability. This research explores how customary rights are recognized and protected within the framework of Baduy customary law, as well as how Islamic values applied by the Bedouin/Bedouin tribe in Egypt can provide additional perspectives in understanding and respecting these rights. The research method used is qualitative with a comparative approach and literature analysis. The results showed that despite differences in geographical and cultural contexts, the principles of justice and social welfare in Islamic sharia can support the recognition and protection of customary rights. This article recommends closer intercultural dialogue and legal interaction to strengthen the protection of indigenous peoples' rights by comparing a system that includes the same legal substance, legal structure, and legal culture, but there are some similarities and differences in the context of implementing customary law and Islamic sharia.

1. INTRODUCTION

Customary land law is a law that regulates land rights that apply in each region. As we know, customary land law is still often used in transactions in buying and selling land in Indonesia. However, behind the enactment of customary land law in each region here also applies national agrarian law, which is regulated in Law of the Republic of Indonesia Number 5 of 1960 concerning "*Basic regulations of Agrarian principles*" in the regulation has been regulated in agrarian law.

In the customary view of our community, land has a very important meaning, namely as a place to live and maintain life, a means of binding the community in an alliance, and as the main capital in a fellowship. A fellowship has customary rights. Customary rights are rights owned by a customary law alliance, to control land and all its contents within the territory of the alliance. Customary rights are the highest land rights in customary law. Land cultivation by the community in the alliance if it is done jointly under the head of the alliance or carried out by individual residents.

Working together can be in the form of a bluburan system, a mathok galeng system in the form of a wong turn and a math wong. In addition to customary rights, there are also individual rights consisting of the right to enjoy results, voting rights, property rights/real rights, purchasing rights and office compensation rights. Customary rights and individual rights have a relationship known as limiting/urging, /mulur-mungkret, /deflating, endlessly. Which means that the more developed and free the population in agricultural business, the stronger individual rights will be so that customary rights will be weaker. But on the contrary, if the land is abandoned so that the existing individual rights are weakened, then the land returns to customary land (customary rights strengthen).

The Baduy people are pure farmers, because farming is the main focus of their livelihood. The tradition of the Baduy people recognizes five types of huma based on their functions, including; huma serang, huma Puun, huma Tangtu, huma tuladan, and huma Panamping.

Customary rights are the collective rights of indigenous peoples to land and natural resources that have been passed down for generations, playing an important role in maintaining the cultural identity and ecological sustainability of indigenous peoples. In Indonesia, customary rights are known in various customary law systems, including in the Baduy community who are famous for their adherence to customs and traditions. On the other hand, Egypt, with its Muslim majority, applies Islamic sharia principles in regulating land and natural resource rights.

However, there is a *research gap* in understanding of how customary rights are recognized and protected in the context of Baduy customary law compared to the Islamic sharia perspective in Egypt. Most previous research has focused on a single legal system, without exploring the possibility of integration or dialogue between customary law and Islamic sharia. In addition, cross-cultural studies on the recognition of customary rights are still limited, especially those that relate the Indonesian and Egyptian contexts.

The urgency of this research lies in the need to strengthen the protection of indigenous peoples' rights within a more inclusive and equitable legal framework. With increasing pressure on customary lands due to development and globalization, a more comprehensive understanding of customary rights protection mechanisms has become increasingly important. Integrating Islamic sharia perspectives can offer alternative solutions that are more holistic and in line with social justice values. This study aims to, among others:

- Identify and analyze how customary rights are recognized and protected in the customary law system of the Baduy people in Indonesia.
- Explore the Islamic sharia perspective on the recognition of land and natural resource rights in Egypt.
- Comparing the two legal approaches to find similarities and differences that can enrich the understanding of customary rights protection.

Theoretically, this research is useful to add to the literature on customary law and Islamic sharia, especially in the context of recognizing customary rights. In practical terms, this study provides recommendations for policymakers in Indonesia and Egypt to improve the protection of customary rights through a more inclusive and integrative approach. In social studies, this research is useful to increase awareness about the importance of maintaining customary rights as part of preserving the culture and ecology of indigenous peoples.

This research is expected to encourage cross-cultural and legal dialogue, and inspire more equitable policies in recognizing and protecting the rights of indigenous peoples in various parts of the world.

2. RESEARCH METHODS

This study uses a qualitative approach with a comparative method to examine the recognition of customary rights in the customary law system of the Baduy community in Indonesia and the perspective of Islamic sharia in Egypt. This research method

involves several main stages as follows:

Data Collection

a. Studi Pustaka

- Collect relevant literature on customary law of the Baduy people, including legal documents, books, scientific articles, and field reports.
- Collect literature on Islamic sharia relating to land rights and natural resources, especially in Egypt. These include classical and modern sharia texts, fatwas, as well as legal policies implemented in Egypt.
- Reviewing literature that discusses the integration between customary law and Islamic sharia.

b. In-depth Interview

- Conduct interviews with Baduy traditional leaders to gain a deeper understanding of the implementation of customary rights in daily life.
- Conduct interviews with Islamic jurists in Egypt, including scholars and academics, to understand how sharia principles are applied in the context of land and natural resource rights.

c. Field Observation

- Conduct direct observations in the Baduy community to observe daily practices related to customary rights.
- Visit relevant locations in Egypt to observe the application of sharia principles in land and natural resource management.

Data Analysis

- Data obtained from literature studies, interviews, and observations were analyzed using a thematic approach. The analysis steps include coding the data, identifying the main theme, and interpreting the meaning behind the data.
- A comparative analysis was conducted to find similarities and differences between the recognition of customary rights in the Baduy customary law system and the Islamic sharia perspective in Egypt. This approach helps in understanding how the two legal systems can complement each other in terms of customary rights protection.

Through this research method, it is hoped that a deeper and comprehensive understanding of the recognition and protection of customary rights can be obtained, as well as how the principles of justice in Islamic sharia can be implemented to

support the sustainability of indigenous peoples' rights.

3. ANALYSIS, DISCUSSION AND RESEARCH RESULTS

3.1. Recognition of Customary Rights in the Indonesian Legal System

Recognition of the existence of customary rights by Article 3 of the UUPA is natural, because customary rights and customary law communities existed before the formation of the Indonesian state. However, various cases of customary land arising on a regional and national scale, will never obtain a complete settlement without the objective criteria needed as a benchmark for determining the existence of customary rights and their implementation. The determining criteria for the existence of customary rights consist of three elements, namely the existence of certain customary law communities, the existence of certain customary rights that become the environment and place to take the needs of the customary law community, and the existence of customary law orders regarding the management, control and use of customary land that applies and is obeyed by customary law communities. To be said to be a Customary Right and recognized at least fulfill the following three things:

- 1) As far as the reality is, customary law communities still exist.
- 2) In accordance with national and state interests.
- 3) Does not contradict higher laws and regulations.

a) Recognition of Indigenous Peoples in Legal Perspective in Indonesia

Initially, the term indigenous peoples was introduced by van Vollenhoven to denote indigenous people *or* indigenous tribes of Indonesia. This relates to the release of the Dutch Government's political policy based on Article 131 IS (*Indische Staatregeling*) 1939, then Indonesian citizens at that time were divided into indigenous citizens (*Irlanders*), Europeans and Foreign Easterners. The recognition of the differences of citizens has the consequence of the emergence of legal diversity (*Pluralstic legal systems*). Customary Law is "*a law that does not originate from regulations made by the former Dutch East Indies Government or other instruments of power that became its joints and were held by the Dutch power itself*".

As one element of community unity, customary law is *an independent branch of law* that cannot be separated from the structure of society. The position of customary law is parallel to Islamic law and the inheritance law of the Dutch Government in force in Indonesia. Even in the process of forming national law does not accommodate the principles of customary law, the national legal regulation is not in accordance with the

soul of the nation (*volkgeist*).

The national seminar organized by BPHN and the Faculty of Law, Gadjah Mada University, concluded that customary law is the original Indonesian law that is not written in the form of legislation of the Republic of Indonesia which here and there contains religious elements. Customary law experts agree that customary law contains religious elements, and magic (*magic religious*), keajegan (*constant*), cash (*concrete*) and flexible (*flexible*). Iman Sudiyat, defining the existence of concrete customary law as evidenced by Village Regulations, the King's orders, is the entire regulation that is incarnated in the decisions of legal functionaries (in the broad sense) who have *authority (Macht and Authority)* and influence in their implementation immediately (*spontaneously*) and are obeyed wholeheartedly.

From the literature review, several concepts or operational definitions were obtained that were used in this study. First, talking about customary law is inseparable from the concept of *living law* in society. Classified as the oldest law ever used by Indonesian society, in addition to Islamic law and colonial inheritance law. Therefore, living law is synonymous with customary law. According to Cornelis van Vollenhoven, the whole rule of positive behavior that on the one hand has sanctions (law) and on the other hand is in a state of non-codification (custom). Positive behavior has a legal meaning that is stated to apply here and now. While the sanction in question is a reaction (consequence) from the other party for a violation of the norm (law).

b) Procedure for Transfer of Baduy Customary Land Rights

Procedure means the stage of activity to complete an activity, while transition means change, then what is meant by the procedure for transferring rights to Baduy customary land is every action carried out by residents of the Panamping community with several stages of activity resulting in the transfer / change of ownership rights over land to other parties between fellow Panamping communities.

The transfer of land rights occurred in the panamping community, not in the inner Baduy community (*Tangtu*), because land in the inner Baduy area should not be recognized as private property. In this case, the panamping community transfers ownership rights to land through three ways, namely: land grant, land inheritance, land sale and purchase.

c) Activities of Customary Law Peoples on the Legal Position of Customary Land in UPA and Customary Forests

Constitutional Court Decision 35/2012 brought a radical change to the "*conception*" of customary forests in Indonesia. Previously, the Forestry Law categorized

customary forests as state forests. In this conception, Customary Forest is a state forest (forest that is not encumbered with land rights) that is handed over to management to Customary Law Peoples. Thus, the position of Customary Law Peoples is only as a *"power of state"* that merely obtains the right to *"manage"* Customary Forests.

After the Constitutional Court Decision 35/2012 which determined that forests are rights forests and not state forests, Customary Law Peoples are recognized as owners of Customary Forests and not just managers of related Customary Forest areas. This certainly means a lot for the recognition of Indigenous Peoples and respect for the rights of Indigenous Peoples who now have a stronger position over their Customary Forests.

Recognition of Customary Forests is part of the Social Forestry Management System where communities act as the main actors or main partners in forest management to achieve forest welfare and sustainability without changing the status and function of the forest. In the context of Customary Forests, MHAs are positioned as the main actors, because they act as owners and managers of Customary Forest areas.

Customary forests can come from state forests and/or non-state forests. As the main functions of forests in general are contained in the Forestry Law, Customary Forests have similar main functions, namely:

- a. Conservation function;
- b. Protective function; and/or
- c. Production function.

Customary Forests *are "owned" and "managed"* by Customary Law Peoples through a Customary Forest Recognition Determination. It should be underlined that Recognition of Customary Forests is an *accessoir* action that must be preceded by a preliminary action of *"recognition of Customary Law Peoples"*. Thus, recognition of Customary Law Peoples is a preliminary requirement that must be met before an Application for Recognition of Customary Forests can be submitted.

In the discussion above, there are conditions regarding the fulfillment of customary land or customary land so that it can be said to be customary land. If it does not meet the above requirements, the land cannot be called customary right land. And the subjects of this *ha ulayat* are indigenous peoples. Customary land law has been promulgated in a new regulation, namely the basic agrarian law known as UUPA. In the formation of this law, customary law is the main source in the formulation of the UUPA because it is a source of extracting materials needed for the development

of national land law. Customary land law has the position of customary land law in the UUPA namely that the national customary land law is prepared based on customary law on land, stated in consideration of the formulation of the UUPA, the Statement on Customary Law in the UUPA discusses about:

1. General explanation of number III (1)
2. Article 5
3. Explanation of article 5
4. Explanation of article 6
5. Article 56 and indirectly also in
6. Article 58

Here it can be seen that all customary land law issues are practically accommodated by laws and regulations made by the government. And customary land law itself has its position as the main source in the extraction of materials and then used as material in making UUPA. The explanation of the UUPA paragraph emphasizes that customary law referred to in the UUPA is *"customary law that is refined and adapted to the interests of the community in a modern state and in international relations, and adapted to Indonesian socialism"* so that land law as the main source of national agrarian law is the principles of customary law construction in Indonesia that are used.

3.2. Recognition of Customary Rights in the Islamic Sharia System in Egypt

a) The Concept of Customary Rights in the Perspective of Islamic Sharia

In Islamic sharia, rights to land and natural resources are governed based on the principles of justice, ownership, and responsible management. Hak ulayat, traditionally known in customary contexts, can be found in the concepts of *iqta'* (granting land by the state to individuals or groups with certain conditions) and *hima* (conservation areas protected for the benefit of the community). These principles support the collective management and conservation of natural resources for the well-being of the people.

According to research by El-Gawhary (1996), Islamic sharia provides a comprehensive framework for land management that includes moral and ethical aspects, with the aim of preventing oppression and ensuring a fair distribution of resources. El-Gawhary, A. (1996). *The Land Tenure System in Egypt: Implications for Sustainable Development*. [Harvard International Law Journal, 37(2), 321-352]. The concept of *"iqta"* for example, reflects the form of customary rights in the form of land management rights granted by the state to communities or individuals with certain obligations, similar to the way customary rights are recognized in customary systems.

b) Implementation of Islamic Sharia in Egyptian Agrarian Policy

In Egypt, the application of sharia in agrarian policy reflects the integration between Islamic law and the positive law of the state. Egypt's agrarian laws have undergone various changes that seek to accommodate sharia principles, such as social justice and land redistribution. One important example is the agrarian reform in 1952 which aimed to reduce the concentration of land ownership and improve the welfare of small farmers.

According to Fahmy (2002), this policy, although secular, is influenced by the principles of social justice in sharia, such as zakat (alms obligation) and *waqf* (waqf), which encourage wealth redistribution and land utilization for public use [Fahmy, N. (2002). Egypt's Agrarian Reform: Analysis and Impact. Middle Eastern Studies, 38(3), 107-1. These reforms reflect efforts to harmonize between modernization needs and sharia principles that support economic and social equity.

c) Challenges in Recognizing Customary Rights in Islamic Sharia

Despite the principle alignment between customary rights and concepts in Islamic sharia, its implementation in Egypt faces various challenges. One of the main challenges is the conflict between local customary law and national policies that often ignore the traditional rights of indigenous peoples. In addition, rapid political and economic changes often lead to inconsistent regulations and a lack of effective protection of customary rights.

Gamal (2014) points out that political instability and global economic pressures cause the Egyptian government to sometimes set aside sharia principles in land management to pursue foreign investment and infrastructure development [Gamal, M. (2014). Land Rights and Political Stability in Egypt. [Journal of Agrarian Change, 14(2), 145-160] . This often results in the marginalization of indigenous peoples and the loss of their customary rights, which should be protected under sharia principles.

d) Recommendations for Strengthening Recognition of Customary Rights

To strengthen the recognition of customary rights in Egypt's sharia-based legal system, a holistic and inclusive approach is needed. *First*, legal reforms that recognize customary rights must be drafted taking into account sharia principles such as justice, equality, and public welfare. *Second*, more effective mechanisms are needed to involve indigenous peoples in decision-making processes related to land and natural resource management.

Abdelrahman (2019) suggests that the establishment of a special institution that oversees the application of sharia principles in agrarian policy can be an important

step to ensure customary rights are recognized and protected [Abdelrahman, H. (2019). Integrating Sharia Principles in Modern Agrarian Law: Lessons from Egypt. *Islamic Law Review*, 35(4), 229-250]. In addition, education and raising public awareness of their rights under sharia can help in strengthening the protection of customary rights.

Through collaborative efforts between governments, indigenous peoples, and religious institutions, sharia principles can be more effectively implemented to support the recognition and protection of customary rights in Egypt. This will not only improve the welfare of indigenous peoples but also strengthen the legitimacy of law and social justice within the framework of Islamic sharia.

e) Application of the legal systems of both countries in the context of customary law

Based on the Comparison of the Legal Systems of the Two Countries between Indonesia and the State of Egypt, there are similarities adhering to three legal systems at once that live and develop in society, namely the Civil Law legal system, the Customary Law System, and the Islamic Law System. The Civil Law system adheres to the idea of codification partly because for the political interests of the Roman Empire, in addition to other interests outside it, codification is needed to create legal uniformity in and in the midst of legal diversity. The Baduy people in Banten Province, Indonesia, run their government system based on customary law "*pikukuh karuhun*" with three different customary leaders, providing a deep understanding of the relationship between the Baduy Customary Law People's system of government and the legal framework of customary institutions in regulating village government and Baduy customary government itself, by adhering to the religion of "*Sunda Wiwitan*" literally Sunda Wiwitan belief adheres to Prophet Adam or they call it *the Prophet Adam Singular*. The Baduy people believe that *the Prophet Adam Tunggal* was the first person to come down to earth where the fall was right in the Baduy area. This belief also considers the south direction as a sacred direction, the "*Sunda Wiwitan*" belief stream, in the context of beliefs also adheres to monotheists, their worship is aimed at *Sang Hyang Keres*a (The Almighty) who is referred to as *Batara Tunggal*, *Batara Jagat* and *Batara Seda Niskala*, while the Bedouin / *Badawi* Tribe Community In ancient Egypt the ancient Egyptians adhered to *polytheism* during the Old Kingdom, Middle Kingdom, to the New Kingdom, but in 2010, based on contested 2006 Census data, an estimated 94.9% of Egypt's population was Muslim, 5.1% Christian, and less than 1% Jewish, Buddhist, or other religions, while the *Badawi/Bedouin* tribe in Egypt The majority adhered to the Islamic Sharia religion.

3.3. Comparison of Recognition of Customary Rights in the Baduy Customary Law System of Indonesia and Egypt Islamic Sharia Perspective

1. Philosophical Foundations and Basic Principles

Baduy Customary Law

Customary rights in the Baduy customary law system are based on the principles of natural balance and cultural sustainability. The Baduy community has a very close relationship with nature, where land and natural resources are considered as ancestral heritage that must be maintained and preserved. The main principles in Baduy customary law include local wisdom, togetherness, and collective responsibility. According to Suparlan (2003), these principles reflect the Baduy worldview that places harmony between humans and the environment as a top priority [Suparlan, P. (2003). *Socio-Economic Life of Baduy People*. [Indonesian Torch Foundation] .

Islamic Sharia in Egypt

On the other hand, in the perspective of Islamic sharia in Egypt, the right to land and natural resources is governed by the principles of justice, common ownership, and social responsibility. Sharia emphasizes the productive and beneficial use of land for the Ummah, as well as the prohibition of hoarding or misuse of resources. The principles of *hima* (protection zone) and *iqta'* (grant of land by the state with certain conditions) are forms of recognition and management of customary rights that reflect justice and social welfare in Islam. According to El-Gawhary (1996), sharia provides a comprehensive legal framework to regulate fair and sustainable ownership and use of land [El-Gawhary, A. (1996). *The Land Tenure System in Egypt: Implications for Sustainable Development*. [Harvard International Law Journal, 37(2), 321-3] .

2. Mechanism for Recognition and Protection of Customary Rights

Baduy Customary Mechanism

The recognition of customary rights in the Baduy community is based on customary law passed down from generation to generation. Customary leadership, through tribal chiefs and customary institutions, plays a role in maintaining and regulating land use and resolving disputes. Any decision regarding land management must be approved by the community through deliberation. According to research by Kurniasih (2010), this mechanism ensures that decisions are always considered in consideration of collective interests and environmental sustainability [Kurniasih, N. (2010). *Baduy Indigenous Peoples and Environmental Conservation*. [Indonesian Journal of Anthropology,

71(2), 45-58】 .

Implementation of Sharia in Egypt

In Egypt, the mechanism of recognition and protection of customary rights involves the integration of positive law and sharia. The state plays a role in providing land titling and regulating land use through agrarian policies that are in line with sharia principles. Agrarian reform implemented in the mid-20th century is one example of how the principle of social justice in sharia was implemented to redistribute land to smallholders and reduce the concentration of land ownership. Fahmy, N. (2002). *Egypt's Agrarian Reform: Analysis and Impact*. 【Middle Eastern Studies, 38(3), 107-128】 .

3. Challenges and Conflicts Faced

Challenges in Baduy Society

The Baduy community faces challenges in maintaining their customary rights amid external pressures such as infrastructure development and exploitation of natural resources by outsiders. Conflict often arises when commercial interests conflict with customary values. The government often does not fully understand or respect customary law, leading to marginalization and violations of customary rights (Suparlan, P. (2003). *Socio-Economic Life of Baduy People*. Indonesian Torch Foundation).

Conflict in Egypt

In Egypt, conflicts over the recognition of customary rights are also frequent, mainly due to political instability and economic pressure. The influence of globalization and foreign investment often overrides local interests and sharia principles. According to Gamal (2014), inconsistent policy changes and lack of effective protection mechanisms lead to marginalization of smallholders and indigenous peoples, as well as loss of their land 【Gamal, M. (2014). *Land Rights and Political Stability in Egypt*. 【Journal of Agrarian Change, 14(2), 145-160】 .

4. Recommendations for Strengthening the Protection of Customary Rights

Strategy in Indonesia

To strengthen the protection of customary rights in Indonesia, especially in the Baduy community, formal legal recognition that integrates customary law within the national legal framework is needed. Governments should involve indigenous peoples in decision-making processes and provide effective protection mechanisms against external threats. Education and awareness raising about the importance of

customary rights are also important to ensure cultural and environmental sustainability [Kurniasih, N. (2010). Baduy Indigenous Peoples and Environmental Conservation. [Indonesian Journal of Anthropology, 71(2), 45-58] .

Steps in Egypt

In Egypt, recommendations to strengthen recognition of customary rights include policy reforms that are more consistent with sharia principles and local community participation in land management. The establishment of a special institution that oversees the application of sharia in agrarian policy can help ensure that customary rights are recognized and protected. Education and raising public awareness of their rights under sharia are also very important to support social and economic sustainability [Abdelrahman, H. (2019). Integrating Sharia Principles in Modern Agrarian Law: Lessons from Egypt. [Islamic Law Review, 35(4), 229-25] .

With a collaborative and inclusive approach, both in Indonesia and Egypt, the protection of customary rights can be strengthened to ensure the welfare and sustainability of indigenous peoples as well as respect for the principles of justice and welfare in Islamic sharia.

4. CONCLUSION

From a comparison of the recognition of customary rights in the Baduy customary law system in Indonesia and the perspective of Islamic sharia in Egypt, it can be concluded that although the cultural and legal contexts differ, there are similarities in the principles underlying the recognition of customary rights. Both in the Baduy community and in the application of their respective customary laws, but in the application of Islamic sharia between the Baduy indigenous tribe in Indonesia and *the Badawi* / Bedouin indigenous tribe in Egypt are similar but not the same in their carrying out activities, the principle of each country with a comparison of legal systems on the recognition of customary rights is seen as part of cultural heritage that must be maintained, as well as an instrument to maintain ecological balance and justice social towards the welfare of its people.

However, both systems also face similar challenges in their implementation practices. Conflicts with external interests, lack of recognition from the government, and unstable political change often threaten the customary rights of indigenous peoples. Therefore, to strengthen the protection of customary rights, a *holistic* and *inclusive* approach that integrates customary law principles with sharia principles is needed. Education and active participation of indigenous peoples are

also important in ensuring the sustainability of their rights. Thus, joint efforts between governments, indigenous peoples, and religious institutions can help ensure that recognition of customary rights is not only normative but also has a real impact in maintaining cultural and environmental sustainability.

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