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HARMONIZATION OF ISLAMIC LEGAL INSTITUTIONS AND CUSTOMARY LAW IN MARRIAGE DISPENSATION CASES AT THE PANYABUNGAN RELIGIOUS COURT

Abstract: Harmonization between customary Law and Islamic Law (fiqh) has long occurred in our homeland. This study aims to illustrate the Harmonization between Islamic legal institutions and customary institutions. This research is empirical legal research. Empirical legal research is research whose object of research is the practice of legal events or occurrences. The approach used in this study is a socio-legal approach that is used to analyze the social interactions between the Panyabungan Religious Court and customary institutions in implementing age dispensation. The results of this study show that this Harmonization had run well between Islamic legal institutions and customary institutions. There is a harmonization of existing norms or rules that apply in society. In substance making Islam more widespread in society and the State, from the understanding of classical jurisprudence to other legal products, namely qadla, Islamic Law in substance continued to develop and acquire all regulations towards the rule of Islamic Law as a whole. The similarity of certain functions within the customary law system, the Islamic legal system, and the national legal system, according to the scope of their duties, determines the extent to which Harmonization occurs. The method of Harmonization between Islamic Law and Customary Law can be achieved in three ways, namely first, Harmonization of understanding; Second, Harmonization is carried out actively. Third, Passive Harmonization.

Keywords: Harmonization, Islamic Law, Customary Law, Marriage Dispensation, Religious Courts

INTRODUCTION

One form of Harmonization of Customary Law, Islamic Law, and National Law that can be used as a common lesson is in the case of marriage dispensation at the Panyabungan Religious Court. The Panyabungan Religious Court has issued a marriage dispensation involving local customary institutions.¹ A letter from a *hatobangon* or local traditional leader explaining that the bride and groom were already in a state of urgency to be married the consideration of the judge deciding on the marriage dispensation. The judge of the Panyabungan Religious Court explored the laws of living in the community as legal considerations when determining marriage dispensation. Thus, we can see a harmonization between the State represented by the Panyabungan Religious Court as the executor of judicial power and Hatobangun (traditional figures) representing the local community.²

Indonesia as a state of Law (*rechtsstaat*)³ does not necessarily exist just like that; in it, there is customary Law, which is the embodiment of socio-cultural values derived from the local wisdom of the indigenous people of the Indonesian nation.⁴ In addition, fiqh also applies in people's daily lives, which applies from generation to generation, and some have become customary Law.⁵ Each country always has unique legal characteristics in it. These characteristics occur through the long course of the cultural history of their people; even each nation has a superior identity that is different from the characteristics of other societies. The cultural history of the community then became material in the formation of

¹Putusan Pengadilan Agama Panyabungan terkait permohonan dispensasi, maka akan ditemukan hampir disemua putusannya mempertimbangkan surat keterangan dari hatobangon. Contoh putusan No. Nomor 1/Pdt.P/2020/PA.Pyb.

²Putusan Nomor 243/Pdt.P/2020/PA.Pyb

³Penggunaan istilah *Rechtsstaat* (diawali R besar) sebenarnya berasal dari bahasa Jerman, kemudian dibawa masuk ke dalam bahasa Indonesia melalui bahasa Belanda *rechtsstaat* (diawali r kecil). *Recht* bisa diterjemahkan sebagai "hukum" dan *staat* sebagai "negara", akan tetapi dalam mengartikan *Rechtsstaat* tidak bisa diterjemahkan sebagai "negara hukum". Terjemah yang lebih baik yaitu "negara berdasar atas hukum". Hal ini bisa juga kita lihat pada bagian penjelasan umum UUDN RI Tahun 1945. Para pakar hukum di Inggris juga seperti Kenneth H. F. Dyson tidak mengartikan *Rechtsstaat* dengan *Law State*, tetapi *State Governed by Law*. Di Indonesia seorang pakar hukum seperti A. Hamid S. Attamimi juga cenderung menerjemahkan "*Rechtsstaat*" dengan "negara berdasar atas hukum", lihat A. Hamid Attamimi, dalam Seminar Dies Natalis UNTAS Jakarta ke 42, 9 Juli 1994 berjudul "*Der Rechtsstaat* Republik Indonesia dan Perspektifnya menurut Pancasila dan UUD 1945" dikutip oleh Zaherman Armandz Muabezi dalam "Negara Berdasarkan Hukum (*Rechtsstaats*) Bukan Kekuasaan (*Machtsstaat*)". *Jurnal Hukum dan Peradilan*. Vol. 6 No. 3 (2017), h. 421-446. DOI: <http://dx.doi.org/10.25216/jhp.6.3.2017.421-446>.

⁴Yanis Maladi, "Eksistensi Hukum Adat Dalam Konstitusi Negara Pasca Amandemen UUD 1945". *Jurnal Hukum dan Pembangunan*. Vol. 41 No. 3 (2011), p. 421-440. DOI: <https://doi.org/10.22146/jmh.16235>.

⁵Muwardi Muzamil dan Anis Mashdurohatun, *Perbandingan Sistem Hukum* (Semarang: Madina Semarang, 2014), p. 59-62.

the national legal system,⁶ Therefore, the Law is not born suddenly, but the soul of the people builds this national Law.

Harmonization of customary Law and Islamic Law has long been happening in our homeland.⁷ The relationship between the two is very close in society, especially for people who embrace Islam. This familiarity in various regions is reflected in the proverbs they issue, such as in Acehnese language, the Law of *ngonaadat hantom cre*, *lagee zatangonasipeut* means that Islamic Law with customary Law cannot be separated because of the very close relationship such as the relationship of substances with the nature of an item or thing. In the Minangkabau language, there is a traditional saying and sharia 'sanda menyanda, the condition for customary use is to use: customary Law and Islamic Law are very closely related to each other because the so-called adat that is truly adat is sharia 'itself'.⁸ In Sulawesi society, the customary term *hula-hulaaato syaraa, syaraahula-hulaa to adati*; customary jointed *syara'adan syara' jointed custom*.⁹ In the Mandailing area, the same thing happened; after years of contact with Islam, Mandailing culture began to merge with Islamic teachings,¹⁰ So came the expression "lumar do adat *dohot ugamo*", which means "custom and religion go hand in hand".¹¹ Such is the relationship between religion and custom that occurs in Mandailing.

Today, there has been a harmony of customary Law and Islamic Law (fiqh) in society. This does not mean that harmonization efforts have stopped, now the problem is to what extent can Harmonization of Islamic Law (other than jurisprudence), such as *qanun* and *qadla*, which are part of national Law be accepted by customary Law as part of Islamic Law? There are still many people who prefer to perform marriage 'underhand' because they consider *qanun* and religious courts to be state law instead of Islamic Law. This dualism of understanding occurs because of the lack of public understanding regarding the products of Islamic Law.¹²

Harmonization between Islamic Law, Customary Law, and National Law can have a positive impact on the progress of the nation and State. All three systems have the same goal, which is to seek the best benefit. Harmonization between the customary law system,

⁶Oka Parwata, et.al.. *Memahami Hukum dan Budaya* (Bali: Pustaka Ekspresi, 2016), p. 43-49.

⁷Sajuti Thalib, *Receptio a Contrario*. (Jakarta : Bina Aksara, 1985), p. 4.

⁸Hamka, *Hubungan Timbal Balik antara Adat dan Syara' di dalam Kebudayaan Minangkabau*" Panji Masyarakat Nomor 61/IV/1970, p. 10.

⁹Lihat <https://warisanbudaya.kemdikbud.go.id/?newdetail&detailCatat=7060>. Diakses 20 Juli 2022 Jam 15.35 WIB.

¹⁰Susan Rodgers, *Print, Poetics, And Politik: a Sumatera epic in the Colonial Indies and New Order Indonesia* (Leiden: KITLV Press, 2005), p. 105.

¹¹Muhammad Syukri Albani N, "Analisis Kompilasi Hukum Islam Tentang Tipologi Pelaksanaan Hukum Keluarga Islam di Mandailing Natal". *Jurnal al Manahij: Jurnal Kajian Hukum Islam*. 9.1 (2016), h. 31-50. DOI : 10.24090/mnh.v9i1.2015.pp 31-50.

¹²Zahratul Idami, "Faktor yang mempengaruhi harmonisasi antar lembaga penegak hukum dalam penegakan hukum di Indonesia", *Padjadjaran Journal of Law Volume 5 Number 1 Year 2018*, DOI: <https://doi.org/10.22304/pjih.v5n1.a9>.

the Islamic legal system, and the customary law system that has occurred even though it has not been maximized must be maintained. Based on this, researchers feel interested in conducting research related to the method of Harmonization of the legal system in marriage dispensation cases at the Panyabungan Religious Court.

RESEARCH METHODOLOGY

The research method used in this study is the qualitative research method. This study used empirical legal research. Empirical legal research is research whose object of research is the practice of legal events or occurrences.¹³ This research will examine the Harmonization of Islamic Law and Customary Law in Mandailing Natal. The research approach used is the socio-legal approach. The socio-legal approach¹⁴ will look at the social interaction that occurs between customary institutions and Islamic legal institutions in matters of marriage dispensation. The primary data used were interviews from Mr. Hasanuddin, S.A as Chairman of the Panyabungan Religious Court and Mr. Askolani as Secretary of the Mandailing Natal Indigenous and Cultural Stakeholders Institution. The data collection process uses documentation and interview techniques. The data obtained, edited to match varied answers and then analyzed qualitatively, namely describing or explaining the data obtained to show how harmonized the Panyabungan Religious Court and Customary Institutions in Mandailing Natal.

RESULTS AND DISCUSSION

Harmonization in Arabic¹⁵ is called armonization, Hor in English is called *مواعاة*¹⁶ which means harmonious effort or process. According to Nobes C, Harmonization is the process of achieving compatibility while respecting the specificity of the entity or jurisdiction. Harmonization implies that there is a willingness to converge towards a common solution to promote comparability.¹⁷ Harmonization of the legal system is a joint effort or process to achieve harmony between the elements that make up the legal system while respecting the specificity of each entity or jurisdiction and made before entities that have the authority to achieve these legal objectives.

Some of the benefits of the Harmonization of legal systems are first; Creating consistency of laws, regulations, standards, and practices so that the same rules will apply

¹³Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum*, cet. Ke-1 (Bandung: PT. Citra Aditya Bakti, 2004), p. 52-53.

¹⁴Meuwissen, *Pengembangan Hukum, Ilmu Hukum, Teori Hukum dan Filsafat Hukum*, alih bahasa B. Arief Sidharta (Bandung: PT. Rafika Aditama, 2008), p. 35.

¹⁵Dalam bahasa arab harmonisasi bisa disebut *مواعاة* (muwaa'amah), *اِتِّلَافِي* (I'tilafi), *مُتَنَاسِب* (mutanaasib), *مُطَابِق* (mutaabiq), dan *مُلاَئِم* (mulaatsim).

¹⁶Kamus online, diakses melalui <https://context.reverso.net>, tanggal 07 Januari 2022 pukul 21.00 WIB.

¹⁷Nobes C, Parker R (2000) *Akuntansi internasional komparatif*, edisi ke-6. FT-Prentice Hall, London, p. 66.

to more than one legal system and the creation of legal compliance nationally. Second; Creating solutions to various problems between tribes, religions, countries, and other groups to realize harmony. Third; Bridging the gap between laws and standards prevailing in society in their practical application. Fourth; can understand each other's different laws. Fifth; The creation of beauty, as well as the Harmonization of sounds in music. Sixth; The creation of *masalah ammah*, which contains the value of the benefits of the world and the hereafter and there is no *mudharat* contained in it.

The Contribution of Islamic Law and Customary Law in the Case of Marriage Dispensation

Contribution is defined as a donation,¹⁸ participation, involvement, or self-involvement. According to Soerjono Soekanto, contribution is a role¹⁹ or contribution to an activity, such as input ideas and so on. The contribution of Islamic Law can be seen from three elements consisting of structure, substance, and culture.

As one of the judicial institutions, this court has existed for a long time in the archipelago, it's just that its form has indeed changed and developed in every era. In the early days of Islam in Indonesia, if there was a dispute between Muslims, it would be handed over to someone who was considered to have Islamic knowledge. This also applies to solving problems such as the marriage contract of a woman who does not have a marital guardian, such a solution is commonly called *tahkim*.²⁰ The Religious Court in the Indonesian national judicial system is one of the executors of judicial power. The institution, which at that time was called *tahkim*, then grew and developed with the Indonesian Muslim community.

In the case of marriage dispensation, the Panyabungan Religious Court tried its best to implement the applicable regulations by considering the values that live in society. As stated by the former Chairman of the Panyabungan Religious Court Mr. Yunadi:

*"In Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, applications for marriage dispensation are increasingly tightened, so we see more and more considerations. One of the things we take into consideration is the *marlojong* custom because we explore the values that live in the community. In addition, here (in the new assignment) I am working with the Regional Government, the Women's Empowerment and Child Protection Office, the Social Service, the Manpower Office, and the Health Office to solve the dispensation and post-determination problems. Hopefully, his efforts will be realized soon. Do not let after the dispensation then divorce and this happens here (the new place of duty)"²¹*

¹⁸KBBI online, lihat <https://kbbi.kemdikbud.go.id/entri/kontribusi>, 18 Juli 2022.

¹⁹Soerjono Soekanto, *Metodologi Reseach jilid 1* (Remaja Rosdakarya : Bandung, 1999), p. 99.

²⁰Zaini Ahmad noeh, *Sebuah Perspektif Sejarah Lembaga Islam di Indoensia , 1900-1942* (Bandung: Almaarif, 1980), p. 9.

²¹Personal Interview With Yunadi, 10 Oktober 2021.

The existence of the Panyabungan Religious Court in Mandailing Natal Regency provides peace of mind for Muslim justice seekers, the impasse in solutions to problems that occur encourages the community to seek mediators according to their beliefs. Impasse issues that cannot be resolved through customary institutions will usually be resolved through religious courts. In addition, state demands related to the legality of status and rights make people try to meet state regulations. Through the decision or determination of the Religious Court, the community will have a strong basis regarding its rights and status, both in the eyes of religion, custom, and the State. Thus, the existence of this Religious Court is a mediator between the laws that apply in the community (customary Law) and state law. This shows that Islamic legal institutions have independence and are recognized both customarily and state-wise.

The contribution of the Panyabungan Religious Court does not stop there, from the results of an interview with Mr. Yunadi, S.Ag, this Harmonization continued until the formation of a Regent Regulation Number 17 of 2021 concerning Guidelines for Case Resolution with the Three Pillars of Government (Umaro), Religious Leaders (Ulama/Religious Leaders), and Indigenous Leaders of Mandailing Natal Regency. As he said when he said the issuance of the regent regulation;

"That was the beginning when there was a marriage dispensation we involved traditional leaders, then we contacted the king in Madina, then from the results of the deliberation requested that the local government prepare a place in the Religious Court, then before further implementation, the Padang City Government wanted a comparative study even though in Madina it only involved marriage dispensation, but I have conveyed it to traditional leaders and local governments to be developed to other issues. On the eve of my farewell at the pendopo (transfer to the Other Religious Court), the Regent ordered assistant 3 to make a perbub about the preservation and role of customary institutions".²²

In addition to the Religious Court, there is also the Ministry of Religious Affairs of Mandailing Natal Regency through the Office of Religious Affairs taking an active role in marriage dispensation cases. If there is an underage couple who wants to marry, the Office of Religious Affairs will direct the prospective couple to apply for marriage dispensation at the Religious Court. KUA will provide a letter of refusal (Model N7), this letter will later be used as a basis for requesting marriage dispensation at the Panyabungan Religious Court. As stated by Mr. Husnan Nasution as KUA Kec. Naga Juang;

"When it comes to age, for these six months we have rejected three because it is below umur. So we sent them to Court. Anyway, we can't get married if it's not according to the procedure. Of the three who were rejected, no one ever came again, and some even planned to change the family card."²³

In terms of prevention, KUA provides counseling to target villages and schools regarding the impacts of early marriage. And play an active role in providing Guidance for

²²Personal Interview With Yunadi, S.Ag, 21 November 2022.

²³Personal Interview With Drs. Husnan Nasution, 8 Juli 2022.

Marriage-Age Youth (BRUN) and School-Age Youth Guidance (BRUS). BRUS is carried out by guiding schools, one of the materials is the impact of early marriage. This was conveyed by the Head of KUA Kec. Siabu:

*"For this year we have a program called BRUS, School Age Youth Guidance. Previously there was only BRUN, Guidance for Marriageable Age Adolescents. In that guidance, we usually include early marriage material in schools"*²⁴

In addition to the Religious Court and KUA, MUI also plays an indirect role in marriage dispensation cases, this is as stated by Mr. H. Ahmad Zaenal Khobir, S.Ag, MM (Secretary of MUI for the 2021-2026 service period), he said;

*"After the marriage limit law came out, we coordinated with the Chairman of the PA at that time (Mr. Yunadi, S.Ag) that there was a marlojong tradition while the age limit was not yet 19 years old, so how?, so we sat together at that time with traditional leaders at that time (Mr. Ali Rahman, SH), I represented from the ministry of religious affairs as the Islamic bimas section and as secretary of the MUI and Mr. Yunadi (from the Panyabungan Religious Court), Although the resulting law is not written we recognize it together"*²⁵

From his words we can understand that MUI is involved in harmonization deliberations between Islamic Law and customary Law, as he said next, namely *"I brought the name of the Ministry of Religion and MUI, from the Ministry of Religion there are our efforts regarding the age limit, then related to community leaders from the ulema council, right"*

In addition, the structure of educational institutions, namely Higher Education and Pesantren is very influential in shaping community understanding. As stated by KUA Kec. Hutabargot:

"Pesantren here are very influential in shaping the understanding of fiqh in society, this understanding is unfortunately used as the only law, many hatobangon (traditional figures) do not understand the concept of Indonesian Jurisprudence, namely KHI". He continued, "those who have entered higher education and have a lot of reading will understand this as a form of jurisprudence, not sharia. Because people here assume that jurisprudence is Sharia".

In the jurisprudence taught by pesantren, they know no age limit except puberty. The size of puberty according to jurisprudence is menstruation for women and wet dreams for men. This taught understanding froze in society for many years. As stated by KUA Kec. Hutabargot, Mr. Aman based on his experience:

"Once there came parents from the community who would marry their children, then I refused based on the Marriage Law, that the age limit for marriage was 19 years for men and women. Then the mother replied: Sir, I used to be married for 15 years and everything is going well until now and my household is still fine. There are many of our children, indeed now I am a widow because my husband has died, meaning there is no problem wanting to marry at any age". Then I replied "In the past and today it is different if in the past the level of self-employed people was high, they thought

²⁴Personal Interview With Abdurahmat Nasution, Selasa 12 Juli 2022.

²⁵Personal Interview With H. Ahmad Zaenal Khobir, S.Ag., MM, 23 November 2022.

about nothing except work and work, there were not as many temptations as today. Nowadays, there are many temptations, especially for young people such as cell phones, games, and internet cafes. In the past, the children were married, and they could be independent, it is difficult now if the mother does not believe in the mother, and just marries the mother's child, later every day, there must be something that the child asks to speed."²⁶

The struggle of the Office of Religious Affairs to harmonize Islamic Law in society with Islamic Law passed by the State is not easy and full of challenges, even to the point of violent attacks by the community both from physical and supernatural forms. One of the cases that has occurred is that experienced by Mr. Aman (Head of KUA Hutabargot), he said:

"Once it happened in my community to marry a couple who had divorced talaq one in the Court after I was visited by the local community to be tried because they considered the couple to have triple talaq, so they could not be married directly"

Islamic Law provides opportunities for customary Law to develop a culture that does not conflict with Islamic Law. as explained by the Head of KUA Kec. Nagajuang, he said;

*"Islamic law and customary law have been integrated here, even Islamic law takes precedence over custom, that is for example if in which custom one clan can be"*²⁷

One of them is marlojong. Marlojong culture has been known for a long time by the Mandailing people and even existed before the arrival of Islam to the Mandailing Natal Area.²⁸ Although the presentation of marlojong is very small when compared to marriages that are not marlojong, this culture still lives on in society.²⁹ This is by Article 5 paragraph (1) of Law No. 48 of 2009 affirming that Judges and Constitutional Judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society.

In substance in the decision of marriage dispensation, Islamic Law is the main basis for whether or not a petition is accepted. For example, in the judgment of judges always consider whether or not there is a religious prohibition to hold a marriage. Likewise, the conditions for consummating the marriage with redaction "the conditions for consummating the marriage both according to the provisions of Islamic law and applicable laws and regulations have been fulfilled unless the age requirement for the Applicant's child has not reached the age of 19 years".

The substance of Islamic Law used as a basis as every judgment begins with the words "Bismillahirrahmanirrahim", affirms that the two parties are not related mahrom, the witnesses used are 2 qualified men, the bride-to-be is not in the custody of another man, if not married worried about committing acts prohibited by the provisions of Islamic Law,

²⁶Personal Interview With Aman, Jum'at 23 Juli 2022 .

²⁷Personal Interview With Drs. Husnan Nasution, Senin 18 Juli 2022.

²⁸Personal Interview With Askolani sebagai Budayawan di Mandailing Natal.

²⁹Personal Interview With Abdurrohmat Nasution, KUA Kec. Siabu, 12 Juli 2022.

avoiding attempts at smuggling the Law, the desire to marry a prospective bridegroom is based on consensual not coercion, Islam, Marriage Law in Islam, using *kiab fiqh* as a reference, using jurisprudence rules such as efforts to close the way of damage (سد الزريعة) from disgrace in the eyes of society, rules that read (ما لا يتم الواجب إلا به فهو واجب), hadith commonly used لا ضرر ولا ضرار.

In addition to Islamic Law, there is also customary Law, customary Law is a law that reflects the personality and soul of the nation. Integrating indigenous peoples is not a simple matter, but it requires serious thought about the implementation and implications of integrating various customary law systems into national legal systems, including in Mandailing Natal.

Customary Law has a structure that is not bound but recognized in the Mandailing Natal community. Each of these communities essentially has obedient citizens, and has its customary law structure and regulations. Actually, in Mandailing society, there are several structures in carrying out the customary law system such as the King, the King here is not an absolute King as in a big kingdom, the King here is more of someone who is considered an elder (traditional elder) who has a position one step higher than the community. Usually, this King represents a small area in Mandailing Natal Regency, the process of electing the King cannot be separated from the process of forming a village (*huta*), thus these Kings are only limited to small areas due to the existence of a *Huta* (village). But over time many new villages, villages, villages did not have a *Huta* (King), because the formation process was different. However, other elements practice this customary Law in each village (*huta*) such as *hatobangon* (*tobang-tobang*) and *dalihan na tolu*.

Hatobangon is a person who is considered capable and wise in deciding problems that occur in society, especially marriage and household problems.³⁰ *Hatobangon* was chosen directly by the local people through recognition as a person who was deceived or gilded and an ingenious scholar who was wise and wise. In addition, there is also *dalihan na talu* consisting of *Kahanggi*, *Anak Boru* and *Mora*. In deliberation, to have a good decision, it must involve *hatobangon* and *dalihan na tolu*. Because *hatobangon* is considered a person who is familiar with customary Law and religious Law. In other words, *hatobangon* as mediators and judges in indigenous environments. In each *huta*, there is always a *hatobangon* and the number varies each *huta* (village).

Raja and *hatobangon* are elements of customary institutions that play an important role in providing legal considerations in society. The higher the *hatobangon* education, the more mature it will be in giving consideration. In the case of marriage dispensation, usually, *hatobangon* will lead to two paths, namely *nikah siri* or applying for dispensation. This is where the *hatobangon* contributes to the application for marriage dispensation, for those

³⁰Rahmad Efendi, Laporan Penelitian: *Kewenangan Malim Kampung dan Hatobangon dalam Menyelesaikan Konflik Rumah Tangga Pada Masyarakat Tanjung Mompang Kec. Panyabungan Utara Mandailing Natal* (Medan: FASIH UINSU, 2020), p. 8.

who suggest applying for marriage dispensation, usually the hatobangon will issue a certificate that the marriage is urgent because it has violated customary Law such as marlojong. For men and women who violate customary laws such as marlojong marriage, they must be married immediately. Otherwise, society will sanction and be ostracized in society. However, if this is allowed to continue, applications for marriage dispensation at the Panyabungan Religious Court will increase.

The marlojong marriage tradition obliges men and women to marry, if they are not married they will get sanctioned and ostracized in society. This was then evidenced by a certificate from the hatobangon (traditional figure) which explained that the two were in an urgent situation to be married immediately because both of them had lived together and had received dowry from the male side.

The majority of Mandailing Natal people are Muslims, therefore in traditional ceremonies the influence of Islam is very large. It can be said that Mandailing customary Law is customary Law that has adapted to Islamic Law. In traditional ceremonies, Mandailing provisions deemed contrary to the religion of Islam have been abandoned.³¹ Because there is a customary philosophy that says Hombar do adat dohot Ibadat which means custom and religion cannot be separated, adat must not conflict with Islam. In the implementation of marriage ceremonies which although have been carried out according to religious Law are still always accompanied by marriage ceremonies according to custom, this shows that these two legal systems are interrelated.³²

As stated by Sayuti Talib in his theory entitled Receptie a Contrario, stated that the Law of Adatu only applies if it does not contradict Islamic Law. If the customary Law does not conflict with Islamic Law, then the customary Law automatically becomes Islamic Law, for the Muslim community. By the rules of al-adatu muhakah (adat is considered in establishing laws), meaning that what is considered good and right by humans in general (al'adah al'ammah) is done repeatedly so that it becomes a habit that can be used in establishing laws.

The existence of marlojong marriage in Islamic Law, especially in the marriage dispensation ruling, illustrates that adat is the source of Islamic Law, adat that has become Islamic Law such as marlojong is a law that lives in society and has been tested with Islamic legal sources from generation to generation and gets legality from the Muslim community. In addition, this customary Law shortens one issue, namely related to wali adhal. A person who commits marlojong must be married even if the guardian is reluctant because of customary Law which considers it taboo if a woman who has marlojong is not married off and returned to her parents' house.

Harmonization Method of Legal System

³¹ Pandapotan Nasution, *Adat Budaya Mandailing*, p. 2

³² Pandapotan Nasution, *Adat Budaya Mandailing*, p. 2

Harmonization of Law is not an unfamiliar term in terms of Islamic Law and Islamic legal dictionaries, but it is indeed a rarely used word.³³ Harmonization has been applied since Islam came during the time of the Holy Prophetsa and his companions, then continued by his successors to the present. However, the problem is that no harmonization project has ever reached completion. It is because of its harmonizing nature that it is designed to combine different legal systems under a basic framework.

This is the appeal of Harmonization, taking into account local factors but applying general principles to create a consistent legal framework. It generally combines local factors under a relatively unified framework. One of the objects of discussion of Harmonization of the legal system is the method of achieving harmony. Harmonization is not a new concept. However, the problem is that none of the harmonization projects have ever reached completion.

Harmonization can be achieved by three events, namely Harmonization of understanding, active Harmonization, and passive Harmonization. Harmonization of understanding is related to understanding between conservative thinking and liberalist thinking, the result of Harmonization of this understanding is moderate. Active Harmonization is Harmonization through the ratification of laws and regulations and other regulations under laws and regulations by incorporating the principles of Harmonization into its legal regulations. Passive Harmonization is Harmonization through laws and regulations or convergence of legal cases, passive Harmonization is Harmonization that tends to be voluntary. The following is an explanation of the three harmonization methods;

1. Harmonization of Understanding

Harmonization of understanding should start from Islamic Education Institutions both from the Pesantren level to the Higher Education level, as stated by Mr. Aman as KUA Kec. Hutabargot:

"Educational institutions, especially Islamic boarding schools, must have a special curriculum to study Indonesian jurisprudence because the average hatobangon is those who graduated from musthafawiyah Islamic boarding schools. And only referring to the jurisprudence they are studying now. So they don't accept other jurisprudence, some have begun to open"³⁴

This was also conveyed by Mr. Husnan Nasution as KUA. Kec. Naga Juang said:

"I think it is necessary to use the tool again so that people comply with the Compilation of Islamic Law because the problems that occur in society are still many malim who have not studied the Compilation of Islamic Law. We must first invite these ustadz because they also do not know, that there are still many of their ideas that are common in society, and many who do not study the

³³Buzidaah Adil, *المواصلة التشريعية: آلية لعولمة القانون الجزائري*, مجلة الاجتهاد القضائي , Volume 13, Numéro 1, Pages 169-186. <https://www.asjp.cerist.dz/en/article/142685>.

³⁴Personal Interview With Aman, 22 Juli 2022.

Compilation of Islamic Law and because they may not know who compiled it, why it was formed, what its purpose was. But, if those who have just graduated from the Musthafawiiyyah pesantren or any pesantren, those who do not go to college, those who do not study the KHI then they will reject this KHI³⁵

After the completion of the Harmonization of understanding at the level of Islamic education, we move to understanding the process of planning national legislation. Planning the legislative process that is not mature, and seems rushed without paying attention to in-depth analysis and evaluation covering aspects of principles, norms, institutions, and implementation will hurt national legal development planning. Therefore, it is better in the process of discussing legislation to cover all aspects of principles, norms, institutions, and implementation so that mutual agreement is reached, not voting. Collective agreement is much more neutral than voting which seems full of influences and interventions of certain parties. However, to reach a mutual agreement, it is necessary to harmonize the understanding related to the basis of the State, namely Pancasila. Pancasila is a basic rule in the State, but nowadays it seems that it needs to be elaborated again in several branch rules related to guidelines for the formation of laws and regulations and this needs to be ratified by Law.

Thinkers in both the Western and Islamic worlds began to study the Harmonization of Law because it was considered important to harmonize the Law according to its function.³⁶ In the Islamic world, one of them is Yusuf Al-Qardhawy who discusses the characteristics of Islamic Law, by trying to harmonize between elements that are bereft tsabat (consistent) and murunah (changeable).³⁷ This basic concept must first be embedded in every Islamic thinker in all fields. The elements that are sabbatical are first; The sabbath in goals and objectives, second; Tsabat in terms of fundamental rules, third; Šabat in terms of religious and moral values. As for the elements that are murunah (changing), namely first; Murunah in terms of means and uslub (way/technique), secondly; Murunah in terms of furu' and juz'iyat matters, third; Murunah in terms of worldliness and knowledge. After knowing these elements, thinkers or policymakers must be able to harmonize these elements.

This shows that Harmonization occurs through a common desire to solve problems faced by society. This common desire is carried out through coordination or deliberation to reach a common understanding. This can be done by making mutual agreements and collaborating with related institutions such as the Manpower Office, P2TP2A, Health Office (often asked for recommendations), Social Services, and Education Offices. The results of the deliberations and mutual agreements can be in written form (such as an MoU)

³⁵Personal Interview With Husnan Nasution, 8 Juli 2022.

³⁶ Bouchelaghem, S. (2021). ضوابط الموازنة بين الشريعة الإسلامية والقانون وعوائقها، مع نماذج تطبيقية من قانون الأسرة الجزائري. *مجلة العلوم القانونية والاجتماعية*. 6(3), 1141-1153. <https://www.asjp.cerist.dz/en/article/162615>.

³⁷Yusuf Al-Qardhawy, *Al-Khoshooish Al-Ammah lil Islam* terj. Rofi' Munawwar Cet. 5 (Surabaya: Risalah Gusti, 2000), p. 241.

and also unwritten, although they are not written this then becomes a joint guideline for the participants of the deliberations.

2. Active Harmonization

Efforts are actively carried out by the process of forming laws and regulations. Active Harmonization carried out through the national legislation process and the process of forming regulations under it requires legal reference both materially and legal thinking methods. This is where the role of academic education can contribute adequate theoretical foundations so that it can build national Law as expected by Pancasila and the NRI Constitution of 1945.

In this legislative process, we have seen the process of forming regulations for Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage.³⁸ In the process of its formation, we see that there is Harmonization of several ministries that also provide input in drafting the bill. However, after the Law was formed, it did not continue with the Harmonization of the regulations under it. The process of forming laws and regulations under the Law must also harmonize, starting from RPP, R Permen, and R Perda. Thus, regulations will have highly beneficial power for society.

The process of planning national legislation that is not mature, and seems rushed without paying attention to in-depth analysis and evaluation covering aspects of principles, norms, institutions, and implementation will hurt national legal development planning. We recommend that in the process of discussing legislation reached by mutual agreement, this is better than lobbying and voting. Collective agreement is much more neutral than lobbying and voting which seem full of influences and interventions of certain parties. This will be achieved if there is a harmonization of understanding related to the basis of the State, namely Pancasila. Pancasila is a basic rule in the State, but today it seems that it needs to be elaborated again in several branch rules related to guidelines for the formation of laws and regulations.

The process of active Harmonization is very thick with the role of politics and the tug-of-war of interests in discussing and passing regulations. Political Configuration Law consists of determinants to law and law determinants to politics. That is, both are interdependent and influential in their application. Political configuration is the real and existing political forces in a political system. This political configuration is usually depicted in the form of political parties. If these political parties play a real role in the prevailing political system in making policies (decisions) such as the formation of laws or other policies, then it is mentioned that this political configuration is classified as a democratic political configuration. Whereas if the existing political party cannot play a role in

³⁸Muhamad Hasan Sebyar, *Politik Hukum Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*. Jurnal IUS: Jurnal Ilmu Hukum, Vol. 10, No. 1 Maret 2022. DOI: <https://doi.org/10.51747/ius.v0i01.963>.

determining decisions or determining the policy, then this kind of political configuration is called non-democratic.³⁹ In Indonesia, the political configuration is a mutual tug-of-war between democratic and authoritarian, while the resulting legal products always reflect conservative or modernist attitudes.⁴⁰

Harmonization is actively carried out usually through the passage of laws that incorporate the principles of Harmonization into local Law. In Mandailing Natal, Harmonization can be actively shown by the Regent Regulation Number 17 of 2021 concerning Guidelines for Case Resolution with the Three Pillars of Government (Umaro), Religious Leaders (Ulama/Religious Leaders), and Traditional Leaders of Mandailing Natal Regency.

Mutual agreement (through consensus deliberation) is a maximal method of active Harmonization, although it is done semi-authoritarianly. However, there is still mutual agreement and at least do not ignore suggestions from various sides. With active Harmonization that succeeds in reaching this mutual agreement, laws and regulations under the Law, as well as other implementing regulations will be much more effective, this is because it is done by a process of mutual agreement between many institutions that have the same interests.

3. Passive Harmonization

This passive Harmonization is carried out by the Judiciary in responding to new problems in society. The product of passive Harmonization is jurisprudence (rulings that have been justified by the Supreme Court through Cassation and Review Decisions and have been recommended as jurisprudence).

Changing the paradigm of rule formation. Previously, there was an assumption that every problem that arose in society had to be made a regulation. This paradigm needs to be replaced by opening up the possibility of using other alternatives outside of forming regulations, for example by making more use of jurisprudence on court decisions.

Legal concepts in National law derived from customary Law undergo a process of translation into National law. For example, marlojong culture is used and recognized as a consideration for the judges of the Panyabungan Religious Court. Indonesia is influenced by three internal legal systems at once that live and develop in society, namely the civil law system, customary law system, and Islamic legal system. Islamic Law influences the style of Law in Indonesia because the majority of the population in Indonesia adheres to Islam which allows Islamic Law to become an important and influential part of the legal system in Indonesia. Customary Law as the original Law that grows and develops from community customs affects the process of law enactment in Indonesia. The values embodied in

³⁹ Bintang Ragen Saragih, *Politik Hukum* (Bandung, CV. Utomo, 2006), p. 33.

⁴⁰ Moh. Mahfud MD., *Membangun Politik Hukum, Menegakkan Demokrasi* (Jakarta: LP3ES, 2006), p. 64.

customary Law and Islamic Law in Indonesia are used in the formation of jurisprudence in the Supreme Court.⁴¹

The legal gap that exists in society can be overcome by using the Judiciary system. Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power affirms that: "Judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society." The judge is the mouthpiece of propriety, justice, public interest, and public order. In this context, the judge must pay attention to the values that live in society so that the judge's decision is by the Law and the sense of justice of the community.

In Indonesia, there is an unwritten legal system, namely the customary law system. The customary law system has been linked to the Islamic legal system, this mixed legal system is the development of a legal system. Legal pluralism exists in Indonesia, although some unwritten laws can unify, become a solution and even create peace in the association of people's lives.⁴² Legal pluralism in Indonesia dynamically follows the development of its society while still relying on the characteristics of indigenous peoples. The value of customary Law is used in resolving both civil and criminal disputes with the development of a method or approach known as the restorative approach⁴³.

This fact shows that the conception and mindset of Law that lives in society is not only still relevant but also an inspiration for the Judiciary to develop laws to meet the sense of justice of the community. Indigenous peoples have the same pattern in resolving conflicts in the community, namely controlling life in the community and imposing sanctions if violated so that recovery becomes very effective.⁴⁴

In Indigenous peoples and Islamic societies, dispute resolution through deliberation is a living and known Law in almost every legal circle (rechecking). Dispute resolution through deliberation always involves the head of the people (traditional leaders), both in preventing violations of the Law (preventive rechtszorg) and restoring the Law (rechtsherstel).⁴⁵ Therefore, it is very appropriate if judges can explore the values that live in the community to be used as a form of contribution to building national Law.

⁴¹Zaka Firma Aditya dan Rizkisyabana Yulistyaputri, *Romantisme Sistem Hukum Indonesia: Kajian atas Kontribusi Hukum Adat dan Hukum Islam terhadap Pembangunan Hukum di Indoensia*. Jurnal Rechtsvinding. Vol. 8 No. 1, April 2019.

⁴²Dian Apriana dan Nanda Silvia, "Imbalance of Rights and Obligations of Husband and Wife in the Family," *MILRev : Metro Islamic Law Review* 1, no. 2 (27 Desember 2022): 214–30.

⁴³Romli Atmasasmita, *Globalisasi Kejahatan Bisnis* (Jakarta: Kencana Prenada Media Group, 2010), p. 190.

⁴⁴Desi Tamarasari, "Pendekatan Hukum Adat Dalam Menyelesaikan Konflik Masyarakat Pada Daerah Otonomi", *Jurnal Kriminologi Indonesia*. Vol. 2 No. 1 (2002), p. 37-47. DOI: <http://dx.doi.org/10.33331/rechtsvinding.v8i1.305>.

⁴⁵Soepomo, *Bab-Bab Tentang Hukum Adat* (Jakarta:Pradnya Paramita, 2003), p. 70.

The importance of customary Law including Islamic Law in bringing order to community life, an effort is needed to involve customary Law and Islamic Law as part of the source of national law formation. In Mochtar Kusumaatmadja's view, the Law must be sensitive to the development of society and that it must be adapted and adapted to circumstances. In progressive legal theory, it is affirmed that a process of forming laws and regulations is necessary to take care of the values and legal norms that live and apply in society (living law).

The romanticism of the enforceability of customary Law, Islamic Law, and state law (civil Law) can be seen from the mutual harmony of the three legal systems. As explained earlier, the application of rigid and static civil Law has created a legal gap in society. This legal can be overcome by using an unwritten legal system that is flexible always following the times, namely through the norms and values of customary Law and Islamic Law. Von Savigny in his masterpiece entitled *Von Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* says that laws are not made, but grow and develop with society (*Das Recht wird nicht gemacht, es ist und wird mit dem Volk*). Customary Law and Islamic Law have been growing and developing in society long before the enactment of civil Law. The current development of Indonesian Law cannot be separated from the values contained in customary Law and Islamic Law.

It can be concluded that this passive harmonization method is carried out by the Judiciary to overcome problems that arise by recognizing the structure and values that live in society. This is so that judges in deciding cases are not only by the Law but also create a sense of justice for the community.

CONCLUSION

There is Harmonization of existing norms or rules that apply in society. In substance making Islam more widespread in society and the State, from the understanding of classical jurisprudence to other legal products namely qanun and qadla, Islamic Law in substance continued to develop and acquire all regulations towards the rule of Islamic Law as a whole. The similarity of certain functions within the customary law system, the Islamic legal system, and the national legal system according to the scope of their duties determines the extent to which Harmonization occurs. Although it is quite good, Harmonization like this cannot run optimally because of budget problems. The method of Harmonization between Islamic Law and customary Law can be achieved in three ways, namely first; Harmonization of understanding, this method of Harmonization of understanding is carried out through joint deliberation, discussion, coordination, or training, the results of Harmonization of understanding can be stated in written or unwritten Law. Second; Harmonization is carried out actively, efforts are actively carried out by the process of forming laws and regulations that are carried out on an ongoing basis. Harmonization is actively carried out through the national legislation process and the process of forming regulations under it. Third; Passive Harmonization is carried out by the Judiciary in

responding to problems that are new in society. Previously, there was an assumption that every problem that arose in society had to be made a regulation. This paradigm needs to be replaced by opening up the possibility of using alternatives outside of forming regulations, for example by making more use of jurisprudence on court decisions.

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