

WHEN RULES AND TRADITION COLLIDE

A Human Rights Perspective on Legal Policy Denial on Islamic Javanese Marriage Ethnomathematical Norms

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Abstract: This study focuses on presenting legal anomalies in the protection of ethnomathematical norms of customary marriage norms in Indonesian marriage law. Although various legal provisions appear to protect the existence of customary marriage norms, judge decisions related to disputes over customary marriage norms are proven indifferent to its existence. In this article, legal materials were collected by studying the provisions on the protection of marriage norms and several religious court decisions that rejected them. Normative legal research with a statutory and case approach are used in this research. The research found three main findings, namely: first, the provisions of marriage law in Indonesia recognize and protect the legitimacy of customary marriage including ethnomathematics norms; second, the rejection of ethnomathematical norms in marriage regulations stems from their lack of clear and explicit recognition within Indonesia's legal framework. The third finding of this research reveals that dismissing the existence of ethnomathematical norms conflicts with human rights principles, which are intended to safeguard the fundamental rights of every citizen. These findings indicate the need for legal reform to integrate customary marriage norms into the national legal system to ensure more comprehensive and effective protection of the citizen's rights.

Keywords: Ethnomathematical norms, human rights, Islamic Javanese marriage, legal policies.

Introduction

Understanding ethnomathematical norms is not easy. Ethnomathematical norms, which are usually known in the world of mathematics, apparently have their place in the study of law and other

social sciences. If ethnomathematics was initially tied to the process of learning mathematics, then slowly but surely, legal experts also tried to understand it from the perspective of norms developing in society. Several legal acts and legal events that occur in society apparently use certain decision-making models that are commonly known in ethnomathematics.

Religion, tradition, and law are often seen as three antagonistic poles that are not interconnected. Religion is a belief system structured based on divine norms, whereas tradition is a framework of customs shaped by evolving social facts within specific community groups. The progression of customary norms and social enlightenment may displace religion.¹ On the other hand, the law constitutes social norms established by a state's legislative institutions, independent of specific religious teachings or the interests of particular social groups. Legal norms evolve based on the direction of norms within a state.

However, the antagonistic construction among these three entities does not always occur. In certain conditions, these entities can strengthen each other while displacing others. The interplay between religious values and socio-economic values is effectively captured by Jayeel Cornelio and Erron Medina, who illustrate how new religious values movements can support economic activities,² The interaction of religious norms with governmental political policies,³ and the utilization of traditional values to support religious missions in promoting tolerance,⁴ even in plural context,⁵ as well as combating globalization's negative impacts on specific religious groups are also

¹ Check Snouck Horgronje "The evolution of modern society is going to transfer Islamic religious traditions from the treasury of everlasting goods to a museum of antiquities" in Dietrich Jung and Kirstine Sinclair, "Introduction: Islamic Modernities and Modern Muslim Subjectivities," in Lori G. Beaman and Peter Beyer, *International Studies in Religion and Society*, Vol 35, (Leiden; Brill, 2021), 1-11

² Jayeel Cornelio and Erron Medina, "The Prosperity Ethic: The Rise Of The New Prosperity Gospel" in Jayeel Cornelio et.al, *Handbook of Religion in Global Society* (New York: Routledge, 2021), 65-67

³ Mohamed-Ali Adraoui, "Islam, politics, and legitimacy: the role of Saudi Arabia in the rise of Salafism and Jihadism," in *Ibid.*, 389-390

⁴ Ali Sodiqin and Roehana Rofaidatun Umroh, "Towards an Interreligious Fiqh: A Study of the Culture-Based Religious Tolerance in the Kaloran Community, Central Java, Indonesia," *Al-Jami'ah Journal of Islamic Studies* 61, 1 (2023)

⁵ Kunawi Basyir, "The 'Acculturative Islam' as a Type of Home-Grown Islamic Tradition: Religion and Local Culture in Bali," *Journal Of Indonesian Islam* 13, 2 (2019), 326-349.

examined.⁶ Also, the marriage between religion and local cultures in syncretic ways recorded numerous across the archipelago.⁷

Indonesia experiences tangible contradictions as these three normative entities interact within society. Certain indigenous groups proudly use religious norms to legitimize their customs, asserting that conflicts between tradition and law need no further debate,⁸ or at least justified in one way or another.⁹ The real case presented by Jumarim, for example, shows that the legitimacy of customs and religion actually rises to legal problems in the future. A marriage that is legal according to customs and religious norms cannot provide legal guarantees for this act.¹⁰

The debate surrounding the interplay between law, custom, and religion occurs in many contexts. Arif Sugitanata's work highlights that the legitimacy of customary and religious practices often disadvantages women. The noble goal of imposing customary sanctions, in practice, ends up harming women.¹¹ Similar conclusion is also reached by Wulandari.¹² Interestingly, research has indicated that custom and religion can, in fact, align with and support the objectives of the law. Haerozi's writings further suggest that these diverse traditions hold symbolic meanings connected to the values of Islamic marriage,

⁶ Esteban Rozo and Hugo Cárdenas, "Defending tradition and Confronting Secularity: the Catholic Buen Pastor Institute," *Routledge International Handbook of Religion in Global Society* (New York: Routledge, 2020), 226-235.

⁷ Usman, "Social and Cultural Interpretation of the Maleman Tradition in the Sasak Community of Lombok," *Ulumuna* 27, 1 (2023), 449-466. <https://doi.org/10.20414/ujis.v27i1.774>

⁸ Sofyan A.P. Kau, Nazar Husain Hadi Pranata Wibawa, "Ajub Ishak, Zumiyati Sanu Ibrahim, Gorontalo Tradition of Molobunga Yiliyala: Cultural and Islamic Law Perspectives," *QJIS (Qudus International Journal of Islamic Studies)* 11, 2 (2023).

⁹ Muh. Sholihuddin, Saiful Jazil, and Syamsun Ni'am, "Remarriage in The 'Iddah Perspective of Maqāṣid Al-Ushrah: Study in Wedoro Waru, Sidoarjo, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, 2 (2024).

¹⁰ Jumarim et.al., "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 19, 1 (2024), 27.

¹¹ Arif Sugitanata et.al., "Violation of Women's Rights: The Kawin Magrib Tradition of the Sasak Muslim Community in Lombok, Indonesia," *Journal of Islamic Law* 4, 2 (2023), 198-201

¹² Wahyuni Retno Wulandari, "Why Is Indonesian Islam Important In The Entrenchment Of Women's Rights?," *Journal Of Indonesian Islam* 17, 1 (2023), 169-188.

particularly the values of responsibility and maintaining kinship within the marital relationship.¹³

The Existence of Ethnomathematical Marriage Norms within the Legal Framework in Indonesia

Ethnomathematics is a field that explores the relationship between mathematics and culture. Brazilian mathematician Ubiratan D'Ambrosio introduced the term in the 1970s. It refers to the ways in which different cultural groups understand, teach, and use mathematics in their daily lives.¹⁴ It encompasses the mathematical practices, concepts, and reasoning that are inherent to specific ethnic or cultural communities. D'Ambrósio coined the term ethnomathematics by combining the Greek words *ethno*, *mathema*, and *tica*. The radical "ethno" denotes culture and people; "mathema" denotes comprehension and method; and "tica" denotes method. According to D'Ambrosio, ethnomathematics is transdisciplinary and cross-cultural and acknowledges particular cultural cognitive processes for coping with reality and acquiring information within that culture.¹⁵

D'Ambrosio's explanation shows that the study of Ethnomathematics is not limited to learning studies alone but is tied to culture, social life, and traditional knowledge in society. Ethnomathematics tied to Cultural Context: Ethnomathematics emphasizes that mathematical knowledge is not universal but is influenced by the cultural context in which it is developed and applied. This includes local practices, beliefs, and values that shape how mathematics is perceived and utilized by different groups. In addition, this term promotes practical Applications that involve examining how cultural activities—such as trade, construction, art, and games—integrate mathematical concepts. For example, traditional games can contain mathematical elements that reflect local strategies and problem-solving methods.¹⁶

¹³ Haerozi et al., "Preserving Cultural Heritage in Marriage: Exploring Meanings of Kebon Odeq in the Sasak Community of Central Lombok, Indonesia," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 13, 2 (2023), 204-206.

¹⁴ Ubiratan D'Ambrosio, "Ethnomathematics and its Place in the History and Pedagogy of Mathematics," *Journal For the Learning of Mathematics* 5, 1 (1985), 45-48.

¹⁵ Claudia de Oliveira Lozada, "Ubiratan D'ambrosio and Ethnomathematics: Contributions to the Learning Sciences," *Conference Paper in International Society of the learning Science CLS* (2023) doi:10.22318/icls2023.528764

¹⁶ Indah Wahyuni, *Buku Ajar Etnomatematika* (Jember: UIN Khas Jember, n.d.), 2-4.

Ethnomathematics learning has a big influence in social life. Although initially this learning is tied to the relationship between mathematics and socio-cultural conditions. The development of development shows the opposite fact. The implementation of ethnomathematics penetrates the world of the Model in social life is very diverse. Agriculture activity,¹⁷ building construction method¹⁸ and legal norms are strongly tied to cultural customary practices in society. Research conducted by Sakinah and Yahfizam actually provides field data on how ethnomathematics influence a community group to carry out sales transactions, determine profits, and ensure purchases using ethnomathematics.¹⁹ So, in the end, it can be understood that Ethnomathematics is an approach that applies the idea of mathematical relationships by connecting a culture with the local environment, which is considered to have a different impact on mathematics learning.²⁰

The exposition of ethnomathematics in the wedding culture of Indonesian society occurs in many circles. This method is considered important as a form of effort to ensure couple compatibility and happiness in marriage.²¹ Javanese people have a special reference book containing important formulas for determining a soul mate, commonly known as *bettal jemur adem makna*. This book formulates how to find the

¹⁷ Hery Suharna et al., “Eksplorasi etnomatematika pada aktivitas bercocok tanam dipulau Halmahera Desa Waidamo kecamatan Sahu Timur,” *Delta-Pi: Jurnal Matematika dan Pendidikan Matematika* 13, 2 (2024), 190-192. V. Apiati, Y. Heryani, & SR. Muslim, “Etnomatematik dalam Bercocok Tanam Padi dan Kerajinan Anyaman Masyarakat Kampung Naga,” *Jurnal Pendidikan Matematika* 8, 1 (2019), 107–118 <https://doi.org/10.31980/mosharafa.v8i1.539>

¹⁸ Dian Naila Apriyanti and Putri Nur Malasari, “Etnomatematika Aplikasi Bentuk Bangun Ruang Geometri pada Masjid Astana Sultan Hadlirin,” *Journal Of Mathematics Learning Innovation* 2, 2 (2023), 99-111; YR. Putra, DN. Alviyan, TA. Arigiyati, & KS. Kuncoro, “Etnomatematika pada bangunan Umbul Binangun Taman Sari dalam pembelajaran matematika materi geometri bidang datar,” *Ethnomathematics Journal* 2, 1 (2021), 21-30. <https://doi.org/10.21831/ej.v2i1.36081>

¹⁹ Sakinah Siregar and Yahfizam, “Etnomatematika pada Transaksi Jual Beli Masyarakat Pesisir di Sibolga,” *Jurnal Cendekia: Jurnal Pendidikan Matematika* 7, 2 (2023), 1877-1889

²⁰ K. Sawita & SSB. Ginting, “Identifikasi Etnomatematika: Motif dalam Kain Songket Tenun Melayu Langkat Sumatera Utara,” *Jurnal Cendekia: Jurnal Pendidikan Matematika* 6, 2 (2022).

²¹ Miftahul Huda et al., “Tradition, Wisdom and Negotiating Marriage and Inheritance Disputes on Javanese Muslim,” *Al-Istinbath: Jurnal Hukum Islam* 9, 1 (2024), 25-44.

right soul mate to obtain the desired quality of happiness. This book not only includes marriage predictions based on mathematical numbers but also provides a construction to find the risks during the marriage.²²

A happy marriage is a marriage that occurs if the marriage's *weton* meets a specific number. Meanwhile, a forbidden marriage is a marriage that occurs because the *weton* does not fulfill certain calculations as well. The *Weton* formula refers to the calculation of the day of birth, which is standard and must be followed by couples. Suppose the couple does not fulfill these standards. The couple will resign or the couple's family will file a marriage lawsuit based on the *weton* dispute.²³ Despite having a marriage decided based on love and personality, parents and family still play an important role in selecting a partner. Marriage is a manifestation of devotion to parents, which emphasizes respect and filial piety towards parents²⁴

It is believed that this calculation of a *weton* match can determine whether a couple is about to get married, whether it is good or bad, and whether they are suitable or not. Meanwhile, the procedure for calculating the weapon has a specific pattern. Generally, they need to add up each *weton*. When *weton* calculation mate for marriage finds good, they continue to build marital relation. Unfortunately, if the calculation fails to find good pattern, they abandon and suspend marital relation. The standard formula for *Weton* commonly used by Javanese people can be seen in the following table.²⁵

Table 1. Javanese Ethnomathematics Standard

No	Days	Value	Pasaran	Value
1	Sunday	5	Pon	7
2	Monday	4	Wage	4
3	Tuesday	3	Kliwon	8
4	Wednesday	7	Legi	5
5	Thursday	8	Pahing	9
6	Friday	6		
7	Saturday	9		

²² Niken Wahyu Utami, *Etnomatematika Pada Primbon Betaljemur Adammakna* (Yogyakarta: Bintang Semesta Media, 2023).

²³ Check religious court decision Number 685/Pdt.P/2021/PA.TA

²⁴ Siti Rohmah Nurhayati et al., "A Typology of Marital Quality among Javanese People," *Journal of Family Issues* (2023), 4-5.

²⁵ Niken Wahyu Utami et al., "Math and Mate in Javanese Primbon: Ethnomathematics Study," *Journal on Mathematics Education* 10, 3 (2019), 341-356.

Based on that standard, an ideal marriage occurs when the ideal number is found from the sum of the days and markets of the parties in the marriage. For example, the prospective groom was born on Legi Friday, meaning the number is $6+5=11$. Then the prospective bride was born on Tuesday Kliwon, so the number obtained is $3+8=11$. Then the number of male and female *weton* are added. This means $11+11=22$. After adding up the results, they are then divided by 10 or 7, but the remainder cannot exceed 7. From the results of the pair above totaling 22, the calculation will be divided by 10, because $22:10 = 2.2$ rounded to 2. So the remainder of the calculation is 2. For example, there is a man born on Saturday (value 9) and Pahing (value 9) the number is 18, and there is a woman born on Monday (value 4). The number of Pahing (value 9) is 18, and there is a woman born on Monday (value 4) and Legi (value 5) the number is 9. So the number of 18 from the male count and 9 from the female count is 27. From the female count is 27 So, 27 divided by 4 is 6 and the remainder is 1.²⁶ Suppose *neptu* calculation results appear with the numbers 1, 9, 10, 18, 19, 27, 28, and 36. In that case, the marriage relationship can be grouped into the Pegat category with predictions of problems that are often encountered by couples in the future, including economic problems, social power, and infidelity. Those problems feared that problems in this sparrow couple could lead to separation or divorce.

The intersection between law, custom and constitutional norms in Indonesia is certainly interesting to know because it turns out that the practice of Islamic law, based on the examples above, refers to the Koran and Sunna. Sharia law provisions must accommodate and adapt to several laws that have been implemented in Indonesia, including Islamic law, Customary law and Colonial law. Therefore, the implementation of Sharia law is not fully based on the Al-Quran and Sunnah, sometimes causing new problems in society because of the need to accommodate. The facts show that community traditions, customary law and colonial law are cultures created by humans, while Sharia law claims always refer to holy books and interpretations of the prophet's hadith. Thus, contradictions between Sharia law and laws

²⁶ Kholis Bidayati et al., "Tradition and Fortune: The Anthropology of Javanese Marriage," ICIIS (2019), 5. doi:10.4108/eai.7-11-2019.2294542.

made by humans will occur at any time, including in the interpretation of holy scriptural texts.²⁷

The evidence of conflicting values among customary norms, legal principles, and religious beliefs is particularly pronounced in the context of marriage. The perception that marriage concerns only the couples and their families contrasts sharply with the social norms prevalent in Indonesia. Marital transgressions are viewed as public offenses that necessitate collective societal intervention. From the outset, most Indonesian society has regarded marital transgressions more as breaches of customary norms than violations of legal statutes or religious values. Among the Malay and Javanese communities, marital transgressions are described as beautiful fence destroyers '*perusak pagar ayu*'. At the same time, in Madurese tradition, it is termed '*agjgir ate*' (heartbreaker), and in Buginese tradition, it is referred to as '*siri*' *ripakasiri*', an act that severely dishonors a family and may even lead to death.²⁸

The antagonistic concept of criminal acts within family law has been living, developing, and believed as a customary norm adhered to by most Indonesian society. This behavior is explicitly regulated in customary and religious norms. The Javanese community has long considered interfering with someone else's household as a despicable act that must not be done. Sutoyo refers to a noble Javanese philosophy that prohibits this act: "*Sing sapa seneng ngerusak katentremaning liyan bakal bendu dining Pangeran lan dielebake deneng tumindake dhen*" ("Whoever enjoys disturbing others peace will be cursed by God and defeated by their action"). From the social elite to the ordinary people, the Javanese community shares a common prohibition against disturbing the tranquility of another's household. Anyone who commits this act will incur the wrath of God and will be judged for their actions.²⁹ The norm prohibiting the destruction of another's marriage is universally accepted across all societal groups.

²⁷ Ratno Lukito, "Shariah And The Politics Of Pluralism In Indonesia: Understanding State's Rational Approach To Adat And Islamic Law," *Jurnal Petita; Kajian Ilmu Hukum dan Syariah* 4, 1 (2019), 1.

²⁸ Cahaya Makbul and Ivan Agung, "Self Esteem, Siri', dan Perilaku Agresif pada Suku Bugis: Sisi Gelap Self Esteem Tinggi," *Jurnal Psikologi* 12, 1 (2016), 8-15.

²⁹ Sutoyo, "Integrasi Tasawwuf Dalam Tradisi Kejawa Persaudaraan Setia Hati Terate," *Jurnal Teosofi, Jurnal Tasawwuf dan Pemikiran Islam* 4, 2 (2014), 341.

One of the chronicles of Javanese history, known as the *Serat Paparaton*, contains two exciting stories about the antagonism between customary relationships and religious beliefs. The first story concerns a marriage law crime involving a character named Bhatara Brahma, who had intercourse with Ken Endok's wife despite the explicit knowledge that she was still someone else's wife. Bhatara Brahma also forbade his victim from having intercourse with her legitimate husband, saying, "Do not have intercourse with your husband again. If you do, your husband will die because of the mix with my child".³⁰ This story illustrates how Brahma violated the religious and customary laws that applied to him.

The second story tells of how Ken Angrok's attraction to his superior's wife led him to commit premeditated murder to possess her.³¹ Ken Angrok is then said to have been killed by Tunggul Ametung's son. In this tale, Ken Angrok's desire to possess his superior's wife drove him to violate religious, customary, and legal norms. Ken Angrok not only took another man's wife but also murdered her to achieve his goal. Brahma murdered Ken Endok's husband, while Ken Angrok killed Tunggul Ametung. In these stories, the actions of these individuals not only destroyed households but also resulted in the murder of lawful spouses to fulfill their desires.

In addition to the Javanese, the Madurese have even stricter views. In certain circumstances, marital crimes have the potential to result in death. Victims are allowed to administer severe physical punishment. The Madurese believe that the act of destroying a household is a serious crime that could justify someone having the courage and acceptable reason to kill another person. Some Madurese view the act of taking someone else's wife as an unforgivable crime, one that cannot be settled (*tak bisa ebacco*). While disputes in other matters may be resolved through various considerations, agreements, and reconciliations, the resolution of marital infidelity tends to be singular, involving bloodshed. This crime is not only seen as an issue of loyalty and domestic harmony but also as an affront to family honor and an insult to the husband's existence (*tadasana*).³²

³⁰ R. Pitono Hardjowarno, *Pararaton* (Malang: Brathara, 1962), 12.

³¹ Susanto Yunus Alfian, "Pararaton Sebagai Sumber Sejarah: Pemanfaatannya dalam Pembelajaran di Era Digital," *Jurnal pendidikan Sejarah Indonesia*, JPSI 2, 1 (2019), 42-44.

³² Rokhyanto and Marsuki, "Sikap Masyarakat Madura Terhadap Tradisi Carok: Studi Fenomenologi Nilai-Nilai Budaya Masyarakat Madura," *Jurnal el Harakah* 17, 1 (2015).

The solid adherence to Madurese customs regarding the obligation to protect the family from an intruder can be seen in Decision No. 363/Pid.B/2013/PN.Kraksan. This ruling explains that a father and son committed a crime due to traditional motivations. They dared to kill another person because their warnings to the intruder to stay away from the wife were ignored. The perpetrators believed that disturbing someone's wife was a disgraceful act, and thus, committing murder was part of upholding the family's honor norms.³³ To uphold the customary norms they believed in, they violated the religious prohibition against personal retribution in family crimes and the legal prohibition against vigilantism.

The actions of the father and son who killed another person due to the disruption of their family by an intruder are undoubtedly intriguing to understand. First, their actions have not been proven in court, meaning the legitimacy of the victim's illegal actions has not been established. Second, the existence of the disgraceful act of disturbing another family remains a strong influence on the community's legal beliefs. Third, the perpetrators believed no institution could resolve their issue.

Disturbing a household may not be explicitly listed as a formal or material offense. However, the belief in the inherent immorality of this act is an undeniable social fact. Consequently, communities that perceive the prevailing laws as not protecting their interests may be driven to violate legal norms. This violation should be seen as a reaction to the public's frustration with an established system that does not favor them.³⁴

The harmonization of legal choices adopted by the community in integrating customary provisions with state law can be seen in the resolution of infidelity disputes among the Ngaju indigenous community. The Damang Kepala Adat Ngaju of Jekan Raya District, through his decision in customary ruling Number: 003/DKA-KJR/BA-HPPA/II/2018 concerning the Minutes of Customary Case Hatulang Belum and Tungkun, successfully established customary punishments for the perpetrator. A wife who filed a lawsuit against her husband pursued this lawsuit in the customary court. The Damang

³³ <https://putusan3.mahkamahagung.go.id/direktori/putusan/1eb1fc6aefff9b92d576-808b8a6d617.html> accessed in November 20, 2020.

³⁴ Abdul Manan, *Aspek-Aspek Pengubah Hukum* (Jakarta: Prenada Mulia, 2013), 86-88.

Kepala Adat, who presided over the session, then ruled in favor of the wife.³⁵

This ruling undoubtedly contributes positively to the development of customary law. Unlike the situation in Probolinggo, where there was no customary institution to channel socio-legislative beliefs, the Ngaju indigenous community provides legitimacy to the still-applicable customary laws. Establishing customary sanctions offers an alternative dispute resolution solution for communities seeking to resolve matters outside the state court system.

The customary punishment imposed by the Ngaju customary law is certainly severe. The Ngaju Indigenous community administers severe penalties in the form of hefty fines for the perpetrator. According to Purnama Pratiwi, the customary penalties for someone who dares to take another's husband or wife include: a) Paying twice the customary marriage value (dowry) of the man taken. b) Paying fifteen times the *ramu tekap bau mate* (compensation for dishonor) to the family of the legitimate wife. c) Providing *sinde mendeng* clothing (a set of clothes) to the legitimate wife. d) Paying compensation for the legitimate wife and her family's wedding expenses. e) Bearing the costs of a special customary reconciliation feast (including food and drink and slaughtering two pigs for the local community).³⁶

The genealogy of Indonesia's antagonistic relationship between religion, custom, and law can be traced back to the period before colonial rule. Before the arrival of colonial powers in Indonesia, the laws that prevailed in society could not be separated from the two main poles. First, the religious influence that became the social norm in society, and second, the customary traditions derived from the legal norms that existed before the arrival of religious laws in Indonesia. Some circles even believe these two norms cannot be separated, as various customary provisions originate from their religious beliefs. The interaction between religion and custom gave rise to several forms of social expression. At this stage, the terms "criminal act" and "criminal policy" had not yet existed.

Some believe that the interaction between custom and religion appeared in the form of pragmatic cultural acculturation in Indonesia.

³⁵ Putri Fransiska Purnama Pratiwi et al., "Upaya Hukum untuk Menjerat Tindakan Pelakor dalam Perspektif Hukum Adat Dayak Ngaju," *Jurnal Cakrawala Hukum* 10, 2 (2019), 215.

³⁶ Ibid., 216.

Through this approach, efforts were made to give Indonesian culture an Islamic character, which gives birth to the notion of Indonesian Islam,³⁷ with acculturation efforts carried out by the early Islamic elite who spread Islam in Indonesia. These individuals were usually traders and travelers who happened to stop over in the archipelago. The spread of Islamic law practiced by traders was not merely in the form of doctrines and teachings but directly involved the application of its legal dogmas. Consequently, this led to new practices among the indigenous people that bore Islamic characteristics.

The acculturation process between Islamic law and Indigenous customs can be observed through customary sayings that position Islamic sharia as the foundation of social behavior. For example, the Minangkabau adage “*adat basandi syarak, syarak basandi kitabullah*” (custom based on sharia, sharia-based on the Quran) indicates that the Minangkabau community regards the Quran as the basis for regulating social behavior and as a source of law guiding various aspects of social life. Another adage states: “*adat dan syarak sanda-menyanda, syarak mengato adat memakai*” (custom and sharia support each other, sharia dictates, custom implements). This signifies that custom and Islamic law mutually reinforce each other. Similar acculturation phenomena are observed among other Islamic-majority indigenous communities in Riau, Jambi, Palembang, Bengkulu, Lampung, and other parts of the Nusantara. In these areas, integrating Islamic principles with local customs has created a harmonious blend of traditional and religious practices, shaping social norms and legal systems under customary and Islamic laws,³⁸ in many aspects, including marriage.³⁹

The interaction between customary law and religion later manifested through pragmatic acculturation initiated by early Islamic missionaries. The process of legalizing and dogmatizing Islamic law became evident in various Islamic kingdoms throughout Nusantara. This shift towards formalizing Islamic law occurred after several Islamic kingdoms were established in the archipelago. The elites of

³⁷ Kunawi Basyir, AK. Riyadi, & LC. Warsito, “Islamic Genetics in Indonesia: Tracking the Hindu-Islamic Dialogue Concerning the Growth and Development of Javanese Islam,” *Religió Jurnal Studi Agama-Agama* 13, 1 (2023), 1–19.

³⁸ Depag RI. *Kenang-kenangan Seabad PA di Indonesia* (Jakarta: Ade Cahya, 1985), 5.

³⁹ Fawaizul Umam, Mohammad Ali Al Humaidy, and Moh. Asyiq Amrulloh, “Dialectics Between Islam and Local Culture in Wetu Telu Lombok Muslims’ Merariq Tradition: An ‘Urf Perspective,” *Al-Ibkam: Jurnal Hukum dan Pranata Sosial* 19, 1 (2024)

these kingdoms employed their power, bureaucratic structures, and cultural hegemony to internalize and institutionalize Islamic norms.⁴⁰

Islamic legal bureaucracy can be observed in legalizing Islamic law developed by the Islamic kingdoms in Indonesia. This is reflected in the writings of Ibn Battuta, who describes Sultan al-Malik al-Zahir's role in Aceh's governance. The Sultan was not merely a monarch but also a Shafi'i fiqh scholar widely respected in the Pasei region. Similarly, during his visit to *Peurela* (Perlak), Marco Polo noted that the Sultan had reconciled Acehnese customs with Islamic teachings.⁴¹ The practice of formalizing Islamic law in the Aceh Sultanate significantly influenced Islamic legal practices in other Islamic kingdoms in Indonesia.⁴²

In Indonesia, the socio-legal structure does not separate the concept of law into distinct terms or sections. An act perceived as violating societal and religious norms is a sin that must be punished according to customary law and witnessed by the community. Different regions may have various terms to describe this concept of sin; however, these differences do not affect the legal concept but rather represent actions that violate the commands of the One True God, as most of the society believed. For example, the Bugis people in South Sulawesi view sins against the divine command as "sirri", which must receive retribution. Similarly, the Javanese consider violations of divine commands as actions disrupting the harmony between the macrocosm (Jagad Gede, the afterlife) and the microcosm (Jagad Alit, human life in this world).

Discovering and implementing criminal law during the kingdom era demonstrates a harmonious effort that was effectively achieved. Religious scholars and indigenous communities could discuss the legal norms to be implemented without conflict between the groups. Historically, antagonistic relationships between religious scholars and indigenous communities occurred in some parts of Indonesia. However, these adversarial groups eventually agreed that customary

⁴⁰ Anthony Reids, *The Making of an Islamic Political Discourse in South East Asia* (Victoria: Monash University Press, 1993), 84-107

⁴¹ Soebardi and Woodcroft, "Islam in Indonesia," in Raphael Israeli, *The Crescent in the East: Islam in Asia Minor* (London: Curzon Press, 1989), 181.

⁴² See Anwar Harjono, *Indonesia Kita: Pemikiran Berwawasan Iman-Islam* (Jakarta: Gema Insani Press, 1995), 121; Ayzumardi Azra, *Renaissance Islam Asia Tenggara* (Bandung: Rosda Karya, 1999), 69-71; Mark R. Woodward, *Islam in Java* (Tucson: The University of Arizona, 1989), 55

laws should be derived from religious principles, and religious norms that could be adopted as customs must come from the Quran.

Acceptance and Adaptation of Ethnomathematical Norms in Marriage

Adapting religious norms with customary laws in marriage reveals another intriguing aspect of this process. This adaptation is evident in how certain customary beliefs are considered dominant in regulating legal relationships within marriage. Some customary legal provisions clearly state that violations of customary marriage norms can lead to negative consequences in the marriage. These provisions are unregulated by religious law and lack a proper legal foundation for legitimacy.

The adherence to customary beliefs in marriage continues today. For instance, among the Banjar community, before marriage, there is often a practice of calculating (*babilangan*) the characters in the names of the bride and groom and predicting the future of the marriage. If the names are deemed inappropriate or potentially impact the future of the marriage negatively, the marriage may be canceled or justified through a name change.⁴³

Another determination model within the Banjar community involves selecting the appropriate time for marriage and matching names and birth dates. It is believed that choosing an auspicious time for the marriage is crucial; if the timing is incorrect, it may adversely affect the marriage.⁴⁴ Therefore, individuals preparing for marriage must thoroughly prepare their partners, align their names, and plan the wedding ceremony carefully.

Similar practices can be found in Javanese society, where the tradition of *babilangan* is also used in marriage preparations.⁴⁵ The Javanese believe specific names, days, and numerological calculations can influence the success of a marriage. If the marriage is not conducted correctly, it may lead to severe consequences such as

⁴³ Pre research interview with KH Zainul Wafa, religious teacher in Pesantren al Shadiq, Senin 4 September 2021

⁴⁴ Arni and Nurul Djazimah, *Babilangan Nama Dan Jodoh Dalam Tradisi Banjar* (Banjarmasin: Antasari Press, 2011), 3-6

⁴⁵ Sahid Teguh Widodo and Kundharu Saddhono, "Petangan Tradition In Javanese Personal Naming Practice: An Ethnolinguistic Study," *GEMA Online™ Journal of Language Studies* 12, 4 (2012), 1165-1170.

financial difficulties, marital disharmony, or even the loss of life among the partners or their families.

In addition to the Banjar and Javanese communities, the Bugis people also believe in auspicious and inauspicious days for marriage. These days, they not only predict the success of the marriage but also guide the selection of partners. Specific birth dates are considered unsuitable for marriage, as they are believed to reveal personality traits and potential challenges within the relationship. For instance, someone born on the 1st of a month may be subject to specific rules or expectations.

“Named the Day of the Horse, a child born on this day is believed to have a long life, obey the commands of Allah, follow their parents, and enjoy prosperity due to the birth date of Prophet Adam (peace be upon him). Once something is completed, it should not be started again.”⁴⁶

Different predictions are given for individuals born on other dates. For someone born on the 12th, the community’s perception is as follows:

“Named the Day of the Tiger; considered unfortunate because it is the birth date of Qabil, the son of Adam (peace be upon him). Children born on this day are believed to be disobedient to their parents. It is deemed unfavorable for marriage, planting, and travel due to anticipated difficulties. This is also the day Adam and Eve were expelled from Paradise.”⁴⁷

Specific days for marriage considerations are not limited to Indonesia’s Javanese, Bugis, and Banjar communities. Various other traditional cultures also recognize the practice of determining auspicious and inauspicious times for marriage.

Certain practices related to selecting auspicious and inauspicious days for marriage and predicting marriage outcomes, mainly when conducted at times considered unfavourable for marriage, face two

⁴⁶ The original version says: “*Esso anynyarang asenna, ana-ana jaji malampe sunge’i pegau passurong Puang, matturu’i ripajajianna, masempo dalle’i nasaba esso ripancajinna Nabi Adam. Agi-agi pura tempeddinggi riappammulang.*”

⁴⁷ The original version says: “*Esso macang asenna, nakase’i nasaba esso najajiangnge Kabil ana’na Adam. Ana-ana jaji madorakai ripajajianna, maja’i riappabbottingeng, majai riattanengeng, rilaoanggi mabelanakennai sukkara, iyanaro naripassu’ Adam-Hawa pole ri surugana Puang Allah Tu’ala.*” See Fahmi Gunawan, “Pedoman Simbol Hari Baik dan Hari Buruk Masyarakat Bugis di Kota Kendari,” *Patanjala* 10, 3 (2018), 435-454.

main challenges: the legitimacy of legal choices and the accuracy of legal selection. Legitimacy involves ensuring that these practices align with Indonesian marriage law, as stipulated in Law No. 1 of 1974 on Marriage, which states in Article 2, paragraph (1) that a marriage is valid if conducted according to the laws of each religion and belief system. Accuracy ensures that the practices and predictions are precise and conform to legal standards.⁴⁸

In addition to the provisions outlined in the Marriage Law, the legitimacy of traditional practices can also be seen in the Constitution of the Republic of Indonesia of 1945. Article 18, paragraph (7) states that “The structure and procedures for local government administration are regulated by law”, and Article 18B, paragraph (2) stipulates that “The State recognizes and respects the unity of Indigenous legal communities along with their traditional rights as long as they continue to exist and are following the development of society and the principles of the Republic of Indonesia, as regulated by the Constitution.”⁴⁹

In addition to the provisions of the Marriage Law and the 1945 Constitution of the Republic of Indonesia, the implementation of customary law practices is also regulated by Law No. 6 of 2014 on Villages, which, as outlined in Article 4, aims to preserve and advance the customs, traditions, and culture of village communities.

Despite various juridical legitimacies in marriage ethnography, the courts do not accommodate many. Several marriage disputes presented to religious courts have been rejected due to a lack of clear juridical basis. Judges often disregard objections raised by guardians in cases of *wali adhal*. Decisions in *wali adhal* cases tend to rely more on legal rationality found in the Marriage Law and modern legal thought, which is more individualized, rather than on the communal values of customary marriage.⁵⁰

In addition to juridical legitimacy, ethnomathematics of marriage also hold significant sociological legitimacy that is widespread across Indonesia. Various segments of society continue to employ ethnographic calculation models when engaging in specific actions, not limited to marriage alone. Despite efforts by religious scholars and intellectuals

⁴⁸ Law No. 1 of 1974 concerning article 2 paragraph 1

⁴⁹ Republic of Indonesia Constitution of 1945 article 18 B

⁵⁰ Pre-research telephony interview with Barir Matsna Afifah Islamic court judge, in Sampit, 17 October 2021

to assert the absence of ethnomathematical influences, many still acknowledge and adhere to these practices.

Ethnomathematics Norms and Religious Minority Rights

Ethnomathematics norms of Indonesian customary law can be clustered into minority rights which is protected under international human rights. Human rights protections is not merely about grave crimes such as genocide and ethnic cleansing,⁵¹ it also concerns cultural rights, including in marriage issues.⁵² Ethnomathematics norm, since it is observed by a handful of people nowadays, is considered a minority right.⁵³ Mohammad Between proposes a paradigm shift in understanding the dimensions of minorities within social interactions. Between asserts that minorities should be viewed from two fundamental aspects: substantial minority and mechanical minority. A considerable minority refers to a group that resides within a majority society and faces challenges in terms of racial, ethnic, and religious expression.⁵⁴ In contrast, a mechanical minority arises due to social changes within a community, often affecting political, legal, and cultural aspects.⁵⁵

Ethnomathematics norms often encapsulate the cultural and traditional practices of indigenous communities, including their unique approaches to marriage and kinship calculations. For instance, the Javanese "wetonan" calendar, which is used to determine auspicious dates for weddings, represents a blend of cultural wisdom and mathematical reasoning. Such practices are recognized under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which upholds the right of minority groups to maintain

⁵¹ I. Mardiyanto & H. Hidayatulloh, "The Responsibility to Protect (R2P) Concept as an Attempt for Protection of Human Rights in International Humanitarian Law Context," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, 1 (2023), 103.

⁵² Julie Ada Tchoukou, "The social construction of childhood: is a minimum age of marriage attainable in plural societies?," *International Journal of Law in Context* 20, 4 (2024), 550.

⁵³ Prashant Iyengar, "Modernization and Legal Reform: Muslim Minors and Freedom of Marriage in India," *Islamic Law and Society* 31, 4 (2024), 358.

⁵⁴ F. Farkhani et al., "Legal Protection of Minority Rights: Study on the Implementation of Qanun Number 6 of 2014 Concerning the Jinayat Law in Langsa City, Aceh Special Region Province," *Al-Manabij: Jurnal Kajian Hukum Islam* 17, 2 (2023), 216.

⁵⁵ Mohamed Between, "Non-Muslim in the Islamic State; Majority Rule and Minority Rights," *The International Journal of Human Rights* 10, 2 (2006), 91-92.

and develop their cultural heritage. The protection of these norms under international human rights law underscores the importance of respecting and preserving the cultural identity of diverse communities.

Furthermore, the inclusion of ethnomathematical traditions within the framework of human rights ensures that the rich tapestry of Indonesia's cultural heritage is not only acknowledged but also actively safeguarded. Marriage customs that reflect indigenous calculations or symbolic representations embody both the tangible and intangible aspects of a community's identity. Articles 27 and 28 of the International Covenant on Civil and Political Rights (ICCPR) affirm the right of minorities to practice their culture without discrimination. By linking these customary norms to global human rights standards, Indonesia strengthens its commitment to pluralism, demonstrating that the preservation of local traditions can coexist harmoniously with universal principles of equality and dignity.

Differences between minority and majority groups often present several challenges in social interaction. These challenges may arise from the necessity to adapt to the mainstream lifestyle of the majority, which can hinder individuals from practicing laws originating from their place of origin. Additionally, new norms accepted by minorities might conflict with the legal principles they previously adhered to.⁵⁶

Jocelyne Cesari has highlighted similar issues faced by Muslim minorities in Europe, noting that they experience significant social and religious problems due to differing legal standards. Cases such as Salman Rushdie, the controversy over headscarves, the attacks on the WTC, and the threats against Danish cartoonists who depicted the Prophet Muhammad illustrate how the doctrines understood by Muslim communities can sometimes be at odds with the prevailing social order in Europe.⁵⁷

Ahmad Imam Mawardi pointed out that Muslim minorities living in non-Muslim majority societies encounter various psychological, socio-political, and legal obstacles that prevent them from fully practicing their religion as per the teachings of Islam. Consequently, there is a need for specific legal provisions that ensure Muslim

⁵⁶ Abd Allah bin Mahfudz bin Bayah, *Sina'ah al-fatawa wa al-Fiqh al-Aqalliyah* (Libanon: Dar al-Minhaj, 2008), 163-168

⁵⁷ Jocelyne Cesari, "Islam in The West; From Immigration to Global Islam," *Harvard Middle Eastern and Islamic Review* 8 (2009), 148-150.

communities can interact with their social environments while maintaining adherence to Islamic law.⁵⁸

Peter Radan posits that the prevailing religious beliefs within those nations significantly influence contemporary legal systems. Despite some countries formally asserting that their legal frameworks are devoid of any particular religious affiliation, Radan demonstrates that these legal systems invariably retain a connection to the religion recognized by their legal community. Furthermore, Radan elucidates that some nations explicitly incorporate religious law as a component of their national legal system, even though the practical application of law in these countries may deviate from religious doctrines.⁵⁹ Mohammad Hemmasi and Carolyn V. Prorok elaborate on Radan's perspective in their work "*Demographic Changes in Iran's Officially Recognized Religious Minority Populations since the Islamic Revolution*". They detailed that while the Islamic Republic of Iran explicitly incorporates Islamic law into its Constitution, the practical application of this law often contradicts the spirit of Islamic principles. The Iranian Constitution explicitly prohibits members of the Baha'i faith from practicing their religion. At the same time, minorities such as Zoroastrians, Jews, and Christians are permitted to practice their faith, provided it does not conflict with the ideals of the Islamic Republic of Iran.⁶⁰

Varying conceptualizations of minority status heavily influence the dynamics of minority existence within the state. Graham C. Lincoln defines minority groups as those perceived by elites as distinct and inferior based on specific characteristics, resulting in adverse treatment.⁶¹ Yap Thiam Hien argues that minority status is determined not by numerical representation but by treatment.⁶² Suggesting that a large group can have minority status if treated as such, akin to the

⁵⁸ Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Aqalliyat dan Evolusi Maqasid al-Syari'ah ab dari Konsep ke Pendekatan* (Yogyakarta; LKIS, 2010), 4

⁵⁹ Peter Radan et al., *Law and Religion* (New York: Routledge, 2005), 1-8.

⁶⁰ Mohammad Hemmasi and Carolyn V. Prorok, "Demographic Changes in Iran's Officially Recognized Religious Minority Populations since the Islamic Revolution," *Journal of African and Asian Studies* 1, 2 (2002), 63-73; See also Islamic politics shifts in Vali Nasr, "Regional Implications of Shia Revival in Iraq," *The Washington Quarterly* (2004), 7-24.

⁶¹ Yogi Zul Fadhli, "Kedudukan Kelompok Minoritas dalam Perspektif HAM dan Perlindungan Hukumnya Di Indonesia," *Jurnal Konstitusi* 11, 21 (2014), 355-56

⁶² *Ibid.*, 357

situation of Indonesians during colonial times, where a small number of Dutch individuals held a dominant position. Similarly, Francesco Capotorti, UN Special Rapporteur, describes a minority as: “*A group, numerically inferior to the rest of the population of a state, in a non-dominant position, whose members—being nationals of the state—possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity aimed at preserving their culture, traditions, religion, and language.*”⁶³

The rights of religious minorities, as well as other minority groups, are governed by the International Covenant on Civil and Political Rights (ICCPR) Article 27 of 1966. This article stipulates that “*In those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right to enjoy their own culture, to profess and practice their religion, or to use their language, in community with the other members of their group.*”

Further, minority rights are detailed in United Nations agreements, which state that states are obligated to provide protection for their existence and their national or ethnic identity, as well as cultural, religious, and linguistic identity (Article 1). The right to enjoy one’s own culture, to profess and practice one’s religion, and to use one’s language both in private and in public is outlined in Article 2. Article 2(2) guarantees the right to participate effectively in cultural, religious, social, economic, and public life. Article 2(3) specifies the right to participate effectively in decisions affecting them at the national and local levels. Article 3 ensures the freedom to exercise these rights, individually and in the community, with other group members, without discrimination.

The protection of minority rights, as outlined in the United Nations Declaration, is often far from being realized in practice. Various decisions from religious and civil courts in Indonesia demonstrate this discrepancy. Minorities are required to adhere to written laws in Indonesia, which sometimes conflict with the ethnomathematical norms they believe in and understand. Several cases of guardianship disputes (*wali adhal*) explicitly show that adat-based rules are not accepted or rejected. These cases are dismissed because adat laws are considered incompatible with the juridical

⁶³ Hikmat Budiman, “Minoritas, Multikulturalisme, Modernitas,” Hikmat Budiman (ed.), *Hak Minoritas Dilema Multikulturalisme Di Indonesia* (Jakarta: Yayasan Interseksi, 2005), 10.

structure of Indonesian law, resulting in rejection on the grounds of formal defects (N.O. or *Niet Ontvankelijke Verklaard*).

This rejection contradicts the human rights provisions for minorities, such as the right to enjoy their own culture, which Indonesian human rights laws should protect. For instance, Javanese communities that still recognize and adhere to ethnomathematical norms are not adequately accommodated and are thus rejected. Court decisions that dismiss these cases often claim that the disputes do not align with the structure of Indonesian law.

The right to profess and practice one's religion is a crucial aspect of legal protection for recognizing ethnomathematical norms. The state should not obstruct minority communities from practicing their beliefs. Instead, the state is obligated to protect and regulate these practices to ensure they do not conflict with the religious rights of other communities.

Religious rights recognition in Indonesia's Constitution has been established since independence and is a fundamental part of Pancasila. The First Principle of Pancasila acknowledges the religions practiced in society. This recognition is clearly stated in the Preamble of the 1945 Constitution, which reads: "... thus, the Independence of the Indonesian Nation is established in a Constitution of the State of Indonesia, formed into the Republic of Indonesia with people's sovereignty based on the One and Only God."

Further clarification on the recognition of religious rights is provided in Article 28E, paragraph 1 of the 1945 Constitution, which guarantees that every person has the right to embrace a religion and to worship according to their religion. Additionally, paragraph 2 states that every person has the right to freedom of belief, to express their thoughts and attitudes following their conscience. Article 29 of the 1945 Constitution stipulates: (1) The state is based on the One and Only God. (2) The state guarantees the freedom of every resident to embrace their religion and to worship according to their religion and belief. These constitutional provisions indicate that the rights of religious minorities are considered non-derogable rights. The state cannot reduce, restrict, or interfere with these rights. Once again, the state's role is limited to protecting and regulating these rights.

Further provisions regarding the protection of Javanese ethnomathematical marriage norms are reinforced in Article 4 of Law No. 39 of 1999 on Human Rights, which guarantees the right to life, freedom from torture, personal freedom, freedom of thought and

conscience, religious freedom, freedom from enslavement, recognition as a person before the law, and equality before the law. These human rights cannot be diminished under any circumstances or by anyone. This provision is reiterated in Article 22 of Law No. 39 of 1999 on Human Rights, which guarantees: (1) Every person is free to embrace their religion and to worship according to their religion and belief. (2) The state guarantees the freedom of every person to embrace their religion and to worship according to their religion and belief.

The guarantee of recognition and protection of citizens' rights to belief is further affirmed in Law No. 12 of 2005 on the International Covenant on Civil and Political Rights Ratification. Article 18, paragraphs (1) and (2) state that: (1) Everyone has the right to freedom of thought, conscience, and religion. This right includes the freedom to choose their religion or belief and the freedom, either alone or in community with others, in public or private, to manifest their religion or belief in worship, observance, practice, and teaching. (2) No one shall be subject to coercion that would impair their freedom to have or adopt a religion or belief of their choice.

The recognition of citizens' rights to belief was further reinforced by Constitutional Court Decision No. 97/PUU-XIV/2016, which states that "In this decision, the Constitutional Court included adherents of traditional beliefs within the definition of religion, thereby accommodating the constitutional rights of citizens who adhere to traditional beliefs to access public services, such as obtaining an electronic I.D. card and population registration card".

Conclusion

This study reveals a practical rejection by court decisions of ethnomathematical norms in Islamic Javanese marriage practices. This rejection is clear-cut evidence in the delegitimization of these norms, the enforcement of statutory marriage laws as the sole legal framework, and the marginalization of citizens' rights to practice their ethnomathematical norms. Despite the profound influence of these norms on societal legal practices, they are persistently overlooked within Indonesia's formal judicial system for marriage law. This failure to acknowledge ethnomathematical traditions not only reflects a narrow interpretation of legal standards but also disregards the cultural autonomy of communities whose identities are intertwined with these practices.

The findings underscore the urgent need for a more inclusive and human rights-oriented approach that recognizes the intersection of traditional practices and legal norms. Integrating ethnomathematical traditions into the legal framework would align with Indonesia's obligations under international human rights law, such as the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Such measures would ensure that cultural and religious diversity is respected while also affirming the equal rights of all citizens to participate in their artistic and spiritual heritage without discrimination. By adopting this approach, the judicial system can better balance statutory laws with cultural inclusivity, strengthening the principles of justice and equality. []

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