



The Existence and Integration of Customary Law, Positive Law, and Islamic Law in the Midst of Political Dynamics

M. Yasir¹, Irma Mangar², Taniya Shinta Dewi³

Universitas Bojonegoro, Indonesia

E-mail: yasir0333@gmail.com¹, irmamangar403@gmail.com², taniya033@gmail.com³

*Corresponding Author

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Abstract

This research aims to analyze the existence and integration of customary law, positive law, and Islamic law in facing contemporary global political dynamics. The research method used is normative legal research with a qualitative approach through literature studies. The results of the study show that the three legal systems continue to have a strategic role in Indonesia's national legal system despite facing the challenges of globalization, modernization, and the influence of universal values such as democracy and human rights. Customary law survives through cultural legitimacy and local wisdom, positive law through formal state authority, while Islamic law through religious legitimacy and its institutionalization in the national legal system. The study also found that the integration of the three legal systems is necessary to create a harmonious, adaptive, and equitable legal system. Such integration is not unification, but harmonization that allows each legal system to complement each other. The form of integration can be seen in the recognition of customary law, the application of Islamic law in certain fields, and the function of positive law as a link between local values and global norms. However, such integration faces challenges in the form of differences in principles, potential normative conflicts, and pressure on international legal standards. The novelty of this research lies in its integrative analysis based on legal pluralism in the context of contemporary global political dynamics.

Keywords: *customary law, globalization, Islamic law, legal integration, positive law*

Introduction

The development of globalization in the contemporary era has brought very significant changes in various aspects of human life, including in the field of law. Globalization is not only interpreted as a process of economic integration, but also includes the exchange of values, ideologies, and norm systems that cross national boundaries (Silitonga et al. 2020). The increasingly complex global political dynamics are characterized by the strengthening of issues of democracy, human rights, the rule of law, and the intervention of international institutions that indirectly affect the construction and direction of development of the national legal system in various countries, including Indonesia (Puteri et al., 2026). As a country with a pluralistic social and cultural background, Indonesia has a unique legal system, namely pluralism. In this context, there are three main legal systems that live and develop simultaneously, namely customary law, positive law, and Islamic law (Hariri, Dialectics, and Commons, 2024). The three legal systems have different philosophical, sociological, and juridical foundations, but in practice they interact with each other in regulating people's lives.

Customary law is a law that is born and develops from values, norms, and habits that live in local communities. Its existence is inseparable from the roots of culture and local wisdom that have been inherited from generation to generation. Customary law has a dynamic, unwritten nature, and tends to be flexible in adapting to social changes (Safitri et al., 2022). Therefore, customary law is often considered a reflection of the "living law" or the law that is truly alive in the community. On the other hand, positive law is a law that is formally established by the state through a mechanism of legislation and has juridically binding power. Positive law serves as the main instrument in creating legal certainty, order, and justice on a national scale. In its development, positive law in Indonesia is heavily influenced by the Western legal system, especially the colonial legacy, as well as various international conventions adopted in the national legal system.

Islamic law not only regulates formal legal aspects, but also contains strong moral and spiritual dimensions. Although these three legal systems have an important role, reality shows that the interaction between them does not always go in harmony. Differences in paradigms, sources of legitimacy, and value orientation often cause tensions, normative conflicts, and overlaps in their implementation (Ihsan, 2025). For example, there are situations where customary law conflicts with the human rights principles adopted in positive law, or where the application of Islamic law faces challenges within the framework of a modern legal state that upholds the principles of pluralism and democracy.

The dynamics of contemporary global politics further complicate the relationship between the three legal systems. The current of legal globalization encourages countries to adapt their legal systems to international standards, such as the protection of human rights, gender equality, and the principle of non-discrimination. Pressure from international organizations, multilateral agreements, and the influence of developed countries have also shaped the direction of national legal policy (Lubis, Simamora, and Sutejo, 2024). In this condition, the existence of customary law and Islamic law is often faced with the challenge of staying relevant without having to lose their identity. In addition, the development of information and communication technology also accelerates the spread of global values that can affect people's views on the law. People are becoming increasingly critical and open to various legal systems, thus demanding a legal system that not only provides certainty, but also substantive justice in accordance with the values they adhere. This further emphasizes the importance of integrating customary law, positive law, and Islamic law in order to respond to the increasingly complex needs of society.

The goal of law integration in this setting is to find common ground and harmonize Islamic law, positive law, and customary law rather than to eradicate existing distinctions. In order to create a legal system that is not just legally formal but also has great social and moral legitimacy in society, the ideal integration must be able to reconcile local values, national principles, and international norms. However, these integration efforts face various challenges, both conceptually and implementively. Conceptually, a framework of thought is needed that is able to bridge the differences between secular, customary, and religious laws, while in terms of implementation, an inclusive, participatory, and diversity-sensitive legal policy is needed (Muh. Sudirman, 2026). Previous studies have generally only discussed the existence of the three legal systems partially or limited to the relationship between the two legal systems, so they have not comprehensively explained how the integration of the three can be realized in the face of political dynamics.

Furthermore, the place and interaction between Islamic law, positive law, and customary law in Indonesia's national legal system remain unsolved doctrinal concerns. The harmonization mechanism between national ideals, local values, and universal standards particularly those pertaining to democracy, human rights, and social justice has not yet been clearly conceptualized. These circumstances frequently lead to normative disputes in the

creation and application of law, particularly when state law, Islamic law, and customary law have different guiding principles. The dominance of one legal system or even the marginalization of other legal systems could result from improper legal integration.

Based on these conditions, this research offers a scientific contribution in the form of a legal integration model based on legal pluralism that places customary law, positive law, and Islamic law as complementary systems through a harmonized approach, not unification. This research not only analyzes the existence and role of each legal system, but also formulates the concept of integration that is adaptive to developments without ignoring the local and religious values that live in Indonesian society. Thus, this research is expected to make an academic and practical contribution to the development of a national legal system that is oriented towards legal certainty, justice, utility, and respect for diversity in the midst of the ever-growing globalization trend.

Methods

This study employs a qualitative method of normative legal research. This strategy was selected because the study examines legal standards pertaining to the existence and fusion of Islamic law, positive law, and customary law within the framework of current international political dynamics (Wiraguna, 2024). Statutory, conceptual, and comparative approaches are among the methods employed. Primary, secondary, and tertiary legal materials are the sources of the legal materials utilized. Relevant laws and regulations are examples of primary legal materials; books, scientific journals, and the findings of earlier studies are examples of secondary legal materials; and legal dictionaries and encyclopedias that aid in conceptual comprehension are examples of tertiary legal materials. The process of gathering legal materials is done through library research, which involves looking through a variety of books and documents pertaining to the subject of the study. Additionally, the descriptive-analytical technique, which involves characterizing and methodically examining the issues under investigation in order to derive findings pertinent to the research goals, is used to qualitatively analyze legal materials.

Results and Discussion

A. The Existence of Customary Law, Positive Law, and Islamic Law in Facing Political Dynamics

The existence of customary law, positive law, and Islamic law in the context of political dynamics shows that there is resilience as well as challenges that are increasingly complex and multidimensional. The three legal systems not only coexist statically but also continue to interact, negotiate, and even in some conditions compete with each other in responding to rapid social, political, and legal changes. Globalization, modernization, and the strengthening of universal values such as democracy, the rule of law, and human rights have become external factors that affect the direction of development of the three legal systems. In this context, states are required to conform to international norms, but still maintain a national legal identity rooted in local and religious values. This is reflected in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which affirms the state's recognition and respect for customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. These constitutional provisions show that the existence of customary law has a strong basis for recognition in the national legal system. In addition, the existence of Islamic law also gained formal legitimacy through Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts which gives authority to religious courts in resolving certain cases for Muslims, including in the fields of marriage, inheritance, and sharia economics.

Customary law as a law that lives in society (living law) has the main power on its social legitimacy because it grows from social practices, traditions, and community beliefs. In many cases, customary law is able to survive in the midst of modernization because of its flexible and adaptive nature to social change. However, customary law faces challenges in the form of demands for adjustment to human rights principles, especially related to gender equality, inheritance rights, and non-discrimination (Christinawati, 2024). On the other hand, customary law also faces marginalization due to the dominance of state law through the process of codification and unification of national law. However, the recognition of customary law communities has been further strengthened through various decisions of the Constitutional Court, one of which is “the Constitutional Court Decision Number 35/PUU-X/2012 which affirms that customary forests are no longer part of state forests, but are within the territory of customary law communities”. This decision is an important milestone in strengthening the existence of customary law in Indonesia. Meanwhile, positive law occupies a strategic position because it has formal legitimacy and is supported by state power. This is affirmed in “Law Number 48 of 2009 concerning Judicial Power which states that judicial power is exercised to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia”. In practice, positive law serves as the main instrument in maintaining legal certainty as well as being a link between national norms and international legal standards.

Meanwhile, Islamic law has a unique position in the Indonesian legal system because it has not only social legitimacy, but also spiritual legitimacy for Muslim communities. The existence of Islamic law is accommodated in various fields of law, especially through religious courts and the development of the sharia economy. In the face of the times, Islamic law continues to develop through the process of *ijtihad* and contextualization so that it is able to adapt to social changes without losing its basic principles. A moderate approach in the application of Islamic law is an important factor in maintaining harmonization with customary law and positive law. Overall, the existence of customary law, positive law, and Islamic law must be understood as part of a plural and complementary national legal system. Customary law provides cultural legitimacy, positive law guarantees formal certainty, while Islamic law offers moral and spiritual dimensions (Susanti, 2018). In order for the national legal system to be not only contemporary and forward-thinking but also deeply ingrained in the country's identity and capable of meeting the demands of society as a whole, the primary challenge that lies ahead is to maintain a balance between the three legal systems through inclusive, participatory, and sensitive legal policies.

B. Form of Integration Between Customary Law, Positive Law, and Islamic Law in the Legal System in the Midst of the Current Global Political Influence

In order to create a national legal system that not only ensures legal certainty but also has the capacity to offer substantive justice and adapt to changing social dynamics, it is imperative that customary law, positive law, and Islamic law be integrated. In the context of Indonesia as a country with the character of legal pluralism, integration cannot be interpreted as a process of absolute unification or uniformity, but as an effort to harmonize that brings together various different legal systems in one complementary framework (Hidayat and Fajri, 2025). In other words, legal integration must be able to maintain a balance between diversity and unity in the national legal system. Conceptually, legal integration in Indonesia departs from the realization that there is no single legal system that is fully able to answer all the needs of society. Customary law has advantages in terms of proximity to local values and community wisdom, positive law excels in terms of certainty and institutional structure, while Islamic law offers a strong moral and spiritual dimension. Therefore, integration between the three is not only strategic, but also essential in creating a complete and just legal system.

The national legal system's recognition of customary law is one of the most evident examples of integration. The state acknowledges the existence of customary law communities and their customary rights through the constitution and other laws and regulations. This acknowledgement demonstrates that customary law can endure and grow within the limitations of the contemporary legal state. However, this recognition is contingent upon it not being in opposition to higher legal standards, such as human rights, national interests, or the idea of a unitary state. This demonstrates the selective and flexible incorporation of customary law into positive law. Additionally, the incorporation of customary law is represented in public policy and judicial practice in addition to legal acknowledgment. In some cases, judges consider customary values in deciding cases, especially those related to land disputes, inheritance, and social conflicts at the local level. In addition, there are also efforts to revitalize customary law as part of community-based legal development. This shows that customary law is not only an object of recognition, but also an active subject in the formation of national law.

On the other hand, the integration of Islamic law in the national legal system also shows a fairly clear and structured pattern. Through official organizations like religious courts and laws governing specific topics like marriage, inheritance, and sharia economics, the state makes room for the application of Islamic law. In this instance, Islamic law becomes an essential component of national law rather than existing independently of the state legal system. The state's accommodating attitude toward the community's religious goals is reflected in this integration concept (Abdul et al., 2025). Nonetheless, Islamic law is not absolute since its application is still constrained by the constitution and the idea of the state of law. This implies that the state still has the power to decide how much Islamic law can be incorporated into the country's legal framework. Here, there is a dialectic between contemporary legal ideas and religious ideals that needs to be properly controlled to avoid causing disputes.

In the context of contemporary global political dynamics, legal integration is also inseparable from the influence of international norms and standards. The globalization of law encourages countries to adopt various universal principles, such as the protection of human rights, equality, transparency, and accountability. In this process, positive law often plays a key role as a primary instrument for transforming global norms into national legal systems. However, the adoption process cannot be done immediately without considering the local context. Effective integration requires a process of selection and adaptation, in which global values are filtered and adapted to the social, cultural, and religious conditions of society. If not, there will be legal dissonance that has the potential to cause resistance from the community. Therefore, positive law must be able to play a mediator role that bridges global interests with local realities.

In addition to a structural approach through legislation, legal integration also requires a cultural and participatory approach. A law-making process involving a wide range of stakeholders including indigenous peoples, religious leaders, academics, and civil society organizations will result in more inclusive laws and have strong social legitimacy. This dialogical approach is important to avoid the dominance of one legal system over another, as well as to create a fair negotiation space for all parties. In addition, legal integration can also be strengthened through the development of a progressive legal paradigm that is not only oriented to the legal text, but also to the values of substantive justice (Kahar, 2021). In this paradigm, law is not seen as something rigid and final, but as an instrument that continues to develop according to the needs of society. Thus, legal integration does not only occur at the normative level, but also at the praxis level in law enforcement.

However, a number of difficulties and barriers are inextricably linked to the integration process. The primary barriers are frequently the fundamental distinctions between Islamic law, positive law, and customary law in terms of origin, nature, and intent. The flexibility of customary law is often difficult for formal, documented, and uniform positive laws to adapt.

Islamic law, on the other hand, includes a sacred component that makes it difficult to reconcile with secular state law principles because it is normative and revelation-based. In addition, there is also a potential conflict of interest, both at the political and social levels. For example, legal policies that are too accommodating to one legal system can cause dissatisfaction from other groups. As a result, an integration strategy that upholds the values of justice, equality, and respect for variety while avoiding hegemony is required.

Furthermore, integration challenges also arise from accelerating global developments, including technological advances, changes in social interaction patterns, and increasing public awareness of their rights. This condition demands a legal system that is not only integrated, but also adaptive and responsive to the changing times. Thus, the ideal legal integration is one that is inclusive, adaptive, and contextual. Such integration must be able to accommodate local values, national principles, and global norms in a balanced manner. The commitment of all stakeholders to preserve harmony and balance between the many current legal systems is crucial to the success of this integration. Effective integration will eventually produce a national legal system with deep roots in the community's cultural and spiritual values in addition to being contemporary and forward-thinking. Such a legal system will be better equipped to address global issues without losing its sense of national identity, and it will be able to establish justice that is both formal and substantive for all societal levels.

Conclusion

Based on the results of the discussion, it can be concluded that customary law, positive law, and Islamic law still have an existence and an important role in the Indonesian national legal system. The three legal systems interact with each other and contribute to forming a plural legal system, despite facing challenges in the form of globalization, modernization, and the influence of universal values. The existence of customary law obtained constitutional recognition through Article 18B of the 1945 Constitution, positive law functions as the main instrument of law enforcement through state mechanisms, while Islamic law gains legitimacy through institutionalization in the religious justice system. This research shows that the integration between customary law, positive law, and Islamic law is not carried out through unification, but through harmonization that places the three as a complementary system. The doctrinal contribution of this research lies in strengthening the concept of legal pluralism as the basis for the development of an adaptive, inclusive, and equitable national legal system. Practically, this study emphasizes the importance of legal policies that are able to accommodate local values, national principles, and universal norms in a balanced manner in order to create a legal system that has legal certainty as well as social legitimacy in society.

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