



CUSTOMARY MARRIAGE VS ISLAMIC: LEGAL ANALYSIS AND STATE RECOGNITION IN FUNCTIONAL STRUCTURAL THEORY

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Abstract:

This article explores the complex interaction between customary marriage and Islamic marriage within the framework of Indonesian legal pluralism. It seeks to examine the legal validity and state recognition of marriages conducted under customary traditions compared to those performed according to Islamic law. The analysis is grounded in the functional structural theory, which posits that each legal and social institution has a function to maintain societal stability. In Indonesia, where both customary (adat) and Islamic norms operate alongside formal state law, the recognition and regulation of marriage practices become a critical point of inquiry. Through normative-juridical analysis, the study reveals that customary marriages—although socially legitimate within their local communities—often face challenges in obtaining state recognition, particularly in relation to administrative documentation such as marriage certificates and civil rights protections. Meanwhile, Islamic marriages, regulated under the Marriage Law No. 1 of 1974 and administered by the Religious Courts, receive formal recognition when they conform to procedural legal requirements. The article emphasizes the need for the state to harmonize these legal systems to avoid marginalization of indigenous practices while ensuring legal certainty for citizens. Using functional structural theory, the study argues that both customary and Islamic marriage systems serve crucial roles in maintaining social order, identity, and cohesion. Legal pluralism, when managed inclusively, can enhance rather than undermine state authority. Thus, this paper calls for more integrative legal mechanisms that accommodate Indonesia's socio-cultural diversity without compromising legal clarity or individual rights.

Keywords: Customary Marriage; Islamic Law; Legal State; Functional Structural

Abstrak:

Artikel ini mengeksplorasi interaksi kompleks antara pernikahan adat dan pernikahan Islam dalam kerangka pluralisme hukum Indonesia. Ini berusaha untuk memeriksa validitas hukum dan pengakuan negara atas pernikahan yang dilakukan di bawah tradisi adat dibandingkan dengan yang dilakukan menurut hukum Islam. Analisis ini didasarkan pada teori struktural fungsional, yang mengemukakan bahwa setiap lembaga hukum dan sosial memiliki fungsi untuk menjaga stabilitas masyarakat. Di Indonesia, di mana norma adat (adat) dan Islam beroperasi bersamaan dengan hukum resmi negara, pengakuan dan regulasi praktik pernikahan menjadi titik penyelidikan penting. Melalui analisis normatif-yuridis, penelitian ini mengungkapkan bahwa pernikahan adat—meskipun sah secara sosial dalam komunitas lokal mereka—sering menghadapi tantangan dalam mendapatkan pengakuan negara, terutama dalam kaitannya dengan dokumentasi administratif seperti akta nikah dan perlindungan hak-hak sipil. Sementara itu, perkawinan Islam, yang diatur dalam Undang-Undang Perkawinan No. 1 Tahun 1974 dan dikelola oleh Pengadilan Agama, mendapat pengakuan formal ketika sesuai dengan persyaratan hukum prosedural. Pasal tersebut menekankan perlunya negara

untuk menyelaraskan sistem hukum ini untuk menghindari marginalisasi praktik adat sekaligus memastikan kepastian hukum bagi warga negara. Dengan menggunakan teori struktural fungsional, penelitian ini berpendapat bahwa sistem pernikahan adat dan Islam memiliki peran penting dalam menjaga ketertiban sosial, identitas, dan kohesi. Pluralisme hukum, bila dikelola secara inklusif, dapat meningkatkan daripada melemahkan otoritas negara. Oleh karena itu, makalah ini menyerukan mekanisme hukum yang lebih integratif yang mengakomodasi keragaman sosial budaya Indonesia tanpa mengorbankan kejelasan hukum atau hak individu.

Kata Kunci: Perkawinan Adat; Hukum Islam; Negara Hukum; Struktural Fungsional

A. Introduction

Marriage in Indonesia is a complex phenomenon governed by three legal systems at once: state (positive) law, Islamic law, and customary law. The three often overlap or even contradict, causing legal uncertainty for the community. For example, a customary or religiously valid marriage may not necessarily be recognized by the state, while an administratively registered marriage may be considered less culturally valid. This problem has serious consequences, especially in terms of inheritance rights, alimony, child protection, and access to public services. Data from various sources shows that the number of officially registered marriages in Indonesia has experienced a significant downward trend from 2019 to 2024. In 2019, the number of marriages was recorded at 2,033,585 couples, but this number continues to decline every year until it reaches 1,478,424 in 2024 (Bimo Aria Fundrika, 2025). This decline occurs amid an increasing number of people entering the age of marriage, raising questions about the extent to which people undergo and register their marriages legally according to state law.

On the other hand, the practice of child and adolescent marriage is still rampant. Based on data from *the Australia Indonesia Partnership for Justice*, around 400,000 children and adolescents are married every year. However, only about 65,000 cases have filed marriage dispensations with the courts. This means that more than 330,000 child and adolescent marriages take place without going through a legal process, and as a result cannot be officially recorded by the Office of Religious Affairs (KUA) or the Population and Civil Registration Office (Dukcapil). This phenomenon reflects the tension between cultural practices (customary/traditional marriage) and the state legal system that regulates the terms and procedures of marriage (Alam, 2023). In Kediri City, in 2023, there are 10,438 heads of families who do not have a marriage certificate. This number decreased to 9,069 in 2024, indicating an increase in public awareness of the importance of marriage registration (Jis, 2025). On the other hand, the number of marriages in Indonesia shows a consistent downward trend from 2019 to 2024 (Bimo Aria Fundrika, 2025). When compared to the number of people who have entered the age of marriage, the marriage rate is relatively low as shown in the following graph:

Figure 1:
Decline in the Number of Marriages in Indonesia from 2019 to 2024



Based on the table above, the situation shows that there is a duality in the practice of marriage in Indonesian society: on the one hand, there is a state legal system that requires the registration of marriages for the sake of legal certainty and the protection of civil rights; On the other hand, there are traditional or religious marriage practices that are still carried out without formal legal procedures. This tension reflects the gap between cultural norms (customs), religious norms (Islam), and legal-formal norms (the state).

In the perspective of Functional Structural theory, society is seen as a social system consisting of parts that function together to maintain balance and order. However, if one of the subsystems (e.g. the legal system) is unable to respond to the needs or habits of the community (e.g. traditional marriage), then there will be social dysfunction. Therefore, it is important to examine how Islamic law and state law accommodate the practice of customary marriage, as well as how state recognition of unregistered marriages affects the social legitimacy and law of such marriages

Previous studies have examined many legal conflicts in marriage, but there are still research gaps. For example, Fitri Fafianti's (2021) research analyzed that there is a close relationship between customary law and Islamic law in marriage. (Rafianti, F., Dwijayanto, A., & Dali, 2021) Meanwhile, Anggraeni (2023) examines that there are conflicts motivated by customary law and Islamic law (Anggraeni, 2023). The research of Arif Sugitanata (2023) describes the tendency of the Sasak tribe to position customary law over state law (Sugitanata & Hakim, 2023). The next research was conducted by Joko Susiolo (2022) who outlined the mechanisms carried out by the Sasak tribal community to adapt to customary law practices in resolving social conflicts. (Susilo & Safitri, 2022)

Talcott Parsons' functional structural theory becomes relevant to understanding this issue because it offers the lens that customary law, Islamic law, and state law are subsystems that are supposed to support each other to create social order (Parsons, 2017). But in practice, this integration is often not achieved. A clear example can be seen in the Minangkabau people who adhere to the matrilineal system: the rules of customary inheritance are contrary to patrilineal Islamic law, while the state through the Marriage Law No. 1/1974 does not expressly accommodate the matrilineal system. As a result, social dysfunction such as protracted inheritance disputes arise.

In terms of state recognition, systemic tensions are also clearly visible. Although the Constitutional Court through Decision No. 46/PUU-VIII/2010 has recognized the rights of children out of wedlock, its implementation at the bureaucratic level is still discriminatory (Sandra et al., 2016). Children resulting from traditional marriages who are not recorded have difficulty obtaining birth certificates, as found in a field study conducted in Marike Village, Kutambaru District, Lalat Regency, North Sumatra (Marissa Gabriela Hutabarat, Rosnidar Sembiring, 2024). On the other hand, Islamic marriages registered in the KUA also face problems when they clash with local customary rules, such as the prohibition of inter-ethnic marriages in some Batak or Balinese communities.

This research is important because the legal impact of the inharmony of the marriage system is very real. Data from the Jakarta Religious Court (2023) shows that 40% of divorce lawsuits cannot be processed due to the absence of proof of marriage registration, the majority of which come from series or customary marriage couples. Without a systemic solution, people will continue to be trapped in a "legal limbo" where they are culturally recognized as legal partners, but legally the state has no protection.

This study is expected to provide policy recommendations to create harmonization of the three legal systems without ignoring local peculiarities.

B. Research Method

This research employs a library research method, which relies on the collection, review, and analysis of secondary data obtained from academic literature, legal documents, scholarly books, journal articles, fatwas, and statutory regulations relevant to the topic. The study adopts a qualitative approach with both normative and sociological perspectives, aiming to explore and compare Islamic law and customary law regarding marriage, as well as their recognition by the state. The data are analyzed using descriptive-analytical techniques by identifying, classifying, and evaluating the legal norms and institutional responses to both types of marriage practices. The functional-structural theory serves as the analytical framework to understand how legal and social systems interact to maintain societal stability through marriage institutions and how the state functions as a structural agent in harmonizing customary and Islamic marriage laws through regulations that are responsive to societal needs.

C. Discussion

1. State Recognition of Customary and Islamic Marriage in the Indonesian Legal System

The state's recognition of customary and Islamic marriage in the Indonesian legal system reflects a pluralistic and responsive face of the law to the sociocultural realities of society. In this context, the state is not only the holder of legal-formal authority, but also acts as a mediator between national legal norms and local and religious norms living in society (Joel, 2018). Marriage as a social and religious institution has a complex legal dimension in Indonesia due to the diversity of traditions, religions, and local value systems (Al-Sharmani, 2018).

Constitutionally, the recognition of customary law and Islamic law is contained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the state recognizes and respects the unity of 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. On the other hand, Article 29 of the 1945 Constitution guarantees the freedom of the public in practicing their religious teachings, including in the case of marriage. Therefore, both customary law and Islamic law have a constitutional basis in the Indonesian legal system.

In practice, the state's recognition of Islamic marriage is explicitly formalized through Law Number 1 of 1974 concerning Marriage, especially Article 2 paragraph (1) which states that marriage is valid if it is carried out according to the laws of each religion and its beliefs. Thus, marriages that take place according to Islamic law are declared valid in the state if they meet the conditions and get along well according to Islamic teachings (Salma et al., 2022). The registration of the marriage is an administrative obligation as stipulated in paragraph (2) of the same article (Musyafah, 2020).

Traditional marriages, on the other hand, have a unique position. Although it is not explicitly mentioned in the Marriage Law, its existence is recognized through juridical and sociological approaches. The state through the Supreme Court and the Constitutional Court has several times recognized the validity of customary marriage in

certain rulings, as long as it does not conflict with the principles of national law, human rights, and public morals. Some regions even have Regional Regulations (Perda) or local wisdom that regulate and recognize the practice of traditional marriage, such as in Papua, Bali, or parts of Kalimantan and Nusa Tenggara.

Problems often arise when traditional marriages are not administratively registered in state institutions such as the Office of Religious Affairs (KUA) or the Population and Civil Registration Office, resulting in legal losses for the parties involved, especially women and children. This is where the synergy between substantive legal recognition (customary or religious validity) and formal law (recorded by the state) is important (Rina Shahriyani Shahrullah & Violita, 2014). The state, in this case, needs to develop an integrative approach that is not only based on legalism, but also pays attention to the socio-cultural structure of society.

The role of the Religious Court is also very important in the case of unregistered Islamic marriages. Through the *isbat nikah* mechanism, married couples who are married in Islam but have not been registered can submit an application for ratification to the court (Agung, 2023). This is part of the state's efforts to protect the law as well as the state's recognition of the existing social reality. In the context of legal sociology, the practice of *isbat nikah* reflects a form of compromise between religious norms and state norms (Rizqy, Achmad Walif, Ishaq Ishaq, 2024).

In Indonesia's legal pluralism legal system, the state is faced with the challenge of how to accommodate the diversity of laws without losing the principle of national legal unity (Gebeye, 2017). Therefore, it is important to continue to strengthen the dialogue between state law, religious law, and customary law through inclusive regulations and adaptive policies. This effort is also in line with the spirit of empowering customary law communities and respecting the nation's cultural diversity.

Taking into account these dynamics, the approach to marriage can not only be seen from a legal-formal aspect, but also from a sociological, cultural, and religious perspective. This is in line with Max Weber's view that law is the result of social and cultural processes, not just an instrument of power (Zeitlin, 1985). Thus, state recognition of traditional and Islamic marriages is part of a larger social engineering of law, in order to create substantive justice and social harmony in a pluralistic society like Indonesia.

2. Legal Consequences for Unrecorded Marriages

Marriage is a social institution that binds two individuals in legal, moral, and spiritual bonds. In the context of pluralistic Indonesian society, marriage is not only understood in the framework of positive law, but also in the framework of religious and customary law. In practice, not a few people still hold traditional marriages or only according to Islamic law without registering it with state institutions. This raises serious legal implications, especially when the marriage is not recorded in the state's administrative system.

According to Law Number 1 of 1974 concerning Marriage jo. Compilation of Islamic Law (KHI), marriage is considered valid if it is carried out according to the laws of each religion and its beliefs, but in order to have legal force, the marriage must be registered at the Office of Religious Affairs (KUA) or the Population and Civil Registration Office. When a marriage is not registered, the state does not recognize its existence administratively, even if it is legal according to religion or custom. This poses a dilemma, especially for women and children from the result of the marriage.

Legally, the consequence of the non-registration of marriages is the absence of legal protection of civil rights, such as inheritance rights, rights to alimony, and recognition of children. Children born from unrecorded marriages only have a legal relationship with their mother and their mother's family, as stipulated in Article 43 of the Marriage Law before it was revised by the Constitutional Court Decision No. 46/PUU-VIII/2010. Although the ruling expands the recognition of out-of-wedlock children based on biological evidence, the rights of children remain limited if there is no record of the parents' marriage.

From the perspective of functional structural theory, as stated by Talcott Parsons, society consists of social structures that have a certain function in maintaining social order (Parsons, 2017). In this case, a valid and recorded marriage functions as an institution that ensures regularity in reproduction, inheritance of rights, and socialization of values. When marriage is not recorded, these functions are dysfunctional, which has the potential to undermine social stability, especially in the context of children's and women's rights.

Traditional marriages that are not recorded are often based on local values and traditions that are still upheld by certain communities (Marissa Gabriela Hutabarat, Rosnidar Sembiring, 2024). In a society that still holds customs, social legitimacy is more important than formal recognition of the state. However, within the framework of the state of law, the absence of registration leads to the absence of state protection. This is where the tension between state law and customary law becomes apparent, and the state faces the challenge of bridging the two.

Islam as one of the sources of living law in Indonesia recognizes marriages that meet the principles and conditions, even if they are not recorded. However, modern fiqh underlines the importance of recording as part of *maslahah mursalah* (public benefit) to avoid harm in the future (Putri, 2020). Thus, recording is not only an administrative interest, but a form of protection for greater and long-term rights.

The functional structural approach offers a framework for understanding that marriage registration is not just a formality, but part of a social mechanism that supports stability and order (Kim, M., Bao, J., Liu, K., Park, B. Y., Park, H., Baik, J. Y., & Shen, 2021). The state as a formal structure has the function of maintaining the rights and obligations of citizens through the legal system. When marriages are not recorded, this function becomes weak, and results in the birth of legal uncertainty, especially for vulnerable groups. Unrecorded marriages have serious legal consequences, especially with regard to the legal status of husband and wife, child status, and other civil rights. Within the framework of functional structural theory, marriage registration is an important function of the state to maintain social order. Therefore, although customs and religions recognize marriage substantively, formal legality through registration is an essential step for comprehensive legal protection and social justice for all parties.

3. The Relationship of Customary Law, Islam and the State in Functional Structural Theory

Marriage is a social institution that has a multidimensional dimension, involving cultural, religious, and formal legal aspects (Muhammad Lutfi Maulana, 2024). In the Indonesian context, marriage is not only seen as a private bond between two individuals, but also as a social mechanism that bridges the various legal systems that live in society, namely customary law, Islamic law, and state law (Cahya, 2020). The three interact within the framework of a plural social life. Within the framework of

functional structural theory, the relationship between these three legal systems can be understood as part of a mutually supportive social structure to maintain the integration and stability of society.

The functional structural theory developed by Talcott Parsons sees society as a system consisting of parts that have their own function to maintain social order (Chotim, 2022). In the context of marriage, customary law serves to maintain local identity and values, Islamic law directs to religious norms held by the majority of Muslims, and state law provides a legal-formal framework to ensure legal certainty and administrative recognition (Rafianti, F., Dwijayanto, A., & Dali, 2021). The interaction of the three shows that marriage is not only a personal event, but also a social phenomenon that is constructed collectively.

Customary law in marriage functions as an instrument of inheritance of cultural values. In various regions in Indonesia, customs in marriage are very thick to color the procession and the conditions that must be met by couples who want to get married. For example, the existence of traditional dowry, traditional ceremonies, and the involvement of traditional leaders as part of social legitimacy. In functional structural theory, the role of customary law functions to maintain the social cohesion of local communities and strengthen the cultural identity of the community.

Meanwhile, Islamic law provides a normative framework in determining the validity of marriage according to sharia, such as the existence of *ijab qabul*, *wali nikah*, two witnesses, and dowry (Rehman, 2017). In Indonesian Muslim society, Islamic law has a central position because it is the moral basis as well as the spiritual legitimacy of the marriage bond (Santoso, 2016). The function of Islamic law here is to maintain the order of religious values and to form the *sakinah* family which is the ideal ideal in Islam. This suggests that Islamic law does not work in isolation from customary law, but rather interacts and often integrates organically in local practices.

State law, through Law No. 1 of 1974 concerning Marriage and its derivative regulations, is a formal instrument that recognizes and records marriage as a legal event (*Law No. 1 of 1974 concerning Marriage and Compilation of Islamic Law*, 2013). The state functions the law as a tool of control and administrative legitimacy over marriages that have been held customarily and religiously. In functional structural theory, the state functions as a structure that maintains social stability by ensuring that marriage is not only legal according to social and religious norms, but also legally recorded for public legal interests, such as inheritance, civil rights, and child protection.

The relationship between customary law, Islam, and the state in the practice of marriage shows integrative dynamics. The three are not systems that run independently, but complement and interact with each other (Djawas et al., 2024). For example, in some communities, local customs conform to the provisions of Islam, and marriages that are performed in a customary and Islamic manner are then recorded at the Office of Religious Affairs as a form of state recognition. This is in line with the principle of adaptation in functional structural theory, where social structures adapt to change and demands in order to remain functioning effectively.

However, this relationship can also cause tension when there are conflicts of norms, such as customary practices that are contrary to Islamic law or not recognized by state law. For example, in the case of customary marriages that do not meet the formal requirements of Islamic law or are not registered by the state, this can give rise to legal and social problems. In this context, functional structural theory emphasizes the

importance of the process of value integration as an effort to balance the functions between different systems so as not to cause social disintegration.

In a functional structural perspective, the state can play the role of a "mediator" between the customary and Islamic legal systems through the process of legislation and recognition of local practices that do not conflict with national law. The state can codify customary practices that are in line with Islamic values and the constitution, as well as open up space for the recognition of customary law in the implementation of marriage administration. This is a form of latent function of state law in integrating a pluralistic social system.

Thus, the relationship between customary law, Islam, and the state in the context of marriage can be understood as a collective effort to maintain the continuity and cohesion of society through recognition and coordination between legal systems. The functional structural approach allows us to see that each system has a role and function in maintaining social stability. Harmony between these systems is very important, considering the plurality of Indonesian society that makes marriage not only a legal issue, but also an arena for cultural, religious, and identity politics negotiations.

D. Conclusion

Based on the content of the article, it can be concluded that a deep basis in understanding law as a phenomenon that is not only normative but also loaded with values, morality, and socio-cultural context. This article asserts that the development of legal philosophy of thought over time, both in the Western tradition and in the Islamic perspective, shows that law is inseparable from the values of justice, humanity, and the purpose of coexistence. In this context, law is understood not solely as an order of the ruler or a rigid system of rules, but as a means to realize the common good and reflect the noble values of a society. Therefore, it is recommended that the study of law, especially in higher legal education, not only focus on dogmatic or positistic aspects, but also broaden students' horizons through philosophical approaches. It is important that prospective law graduates have sensitivity to the ethical and philosophical dimensions of law and are able to contribute to the formation of a legal system that is more just, humane, and relevant to the dynamics of contemporary society.

E. Recommendations

Based on the findings of this study, it is recommended that the Indonesian government adopt an integrative and inclusive legal approach by amending the Marriage Law to formally recognize customary and Islamic marriages, provided they do not conflict with human rights or public order. To reduce the prevalence of unregistered marriages, especially in rural and indigenous communities, efforts must be made to simplify the registration process through mobile services, digital platforms, and community-based mechanisms in cooperation with local religious and adat leaders. Legal literacy campaigns should be intensified to raise public awareness about the civil implications of unregistered marriages, particularly for women and children. The judicial system must also reform its procedures for marriage dispensations and *isbat nikah* to ensure accessibility and fairness, while local governments should be encouraged to codify and regulate customary marriage practices that align with national law. Moreover, the bureaucratic apparatus must be trained to implement constitutional protections without discrimination, and legal education institutions should expand their

curricula to include sociological and pluralist perspectives on marriage law, ensuring future legal professionals are responsive to Indonesia's complex socio-legal realities.

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