JURNAL AL-DUSTUR
Volume IX No. 2, December 2026
E ISSN: 2686-6498 II P ISSN: 2622-5964
Published by: Department of Constitutional Law, Postgraduate Program of IAIN Bone
Addres: Jln. HOS Cokroaminoto, Watampone, South Sulawesi - Indonesia
Email: jurnal.aldustur@gmail.com / jurnal.aldustur@iain-bone.ac.id

FIQH AS A SILENT NORM: NORMATIVE HYBRIDITY IN TOLAKI CUSTOMARY MARRIAGE REGULATION

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Keywords:
Normative Hybridity, Silent Norm, Legal Pluralism, Socio-Legal Studies, Customary Law

Received:
April 28, 2026
Accepted:
November 13, 2026
Published:
November 21, 2026

ABSTRACT
Conventional legal pluralism frameworks, which focus on coexistence, have not adequately explained how the interaction between Islamic law, customary law, and state law within local regulations generates new operational norms. This study addresses that gap through a case study of Konawe Regency Regulation No. 1 of 2018 concerning the Sara Merapu customary marriage law of the Tolaki ethnic group. The research employs a qualitative socio-legal design based on document analysis and semi-structured interviews with 15 key informants consisting of customary leaders, religious authorities, community leaders, and local officials. The findings reveal that the regulation does not directly formalize Islamic law; rather, it reflects a process of normative hybridity through three stages: selection, translation, and reconfiguration. Sara Merapu is selectively formalized by the state, while Islamic law operates as an implicit normative framework (a silent norm: uncodified yet operative) that shapes implementation. At the implementation level, actors negotiate legal provisions through three hybrid patterns—additive, competitive, and layered—resulting in new normative configurations that cannot be reduced to any single legal system, although hybridity remains partial. Theoretically, this study develops normative hybridity as a post-pluralist framework that complements legal pluralism by explaining the formation of integrated and operational norms, and it extends the concept of living fiqh by showing that the continuity of fiqh lies in its flexibility as an uncodified normative source. These findings inform the understanding of legal transformation in plural societies and the design of local regulations sensitive to normative complexity, though testing beyond this single case is needed.

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How to cite:
Iqbal, M., Asni, Diab, A. L., Reskiani, A., & Ahmad, M. Y., (2026). FIQH AS A SILENT NORM: NORMATIVE HYBRIDITY IN TOLAKU CUSTOMARY MARRIAGE REGULATION. Jurnal Al-Dustur, 9(2). 414-442, https://doi.org/10.30863/aldustur.v9i2.11675.

INTRODUCTION

The relationship between religious law, customary law, and state law constitutes one of the most complex issues in contemporary socio-legal studies, particularly in Muslim-majority societies undergoing processes of decentralization and democratization.[1] In Indonesia, this complexity has intensified since the 1998 Reformasi era, when regional autonomy created opportunities for local governments to incorporate socially embedded norms—including religious and customary values—into formal regulatory frameworks.[2] As a result, local regulations have become arenas of identity contestation in which multiple normative orders interact, negotiate, and compete for legitimacy.[3] This phenomenon is especially visible in the regulation of marriage, where Islamic law, customary law, and state law simultaneously shape legal practices and social expectations.[4]

Socio-legal scholarship has long relied on the framework of legal pluralism to explain the coexistence of multiple normative systems within a single social space.[5] Although this approach successfully challenged state-centered conceptions of law, analytically it remains limited in explaining how interactions among such systems generate new and operational legal forms.[6] Much of the literature continues to focus on coexistence or parallelism among legal systems, and

[1] Hoko Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection," *Journal of Human Rights Practice* 12, no. 3 (2020): 501–23.

[2] Nila Trisna, Muhammad Reza Aulia, and Nouvan Moulia, "The Role of the Aceh Customary Council in Implementing Hak Langgeh: Navigating Between Sharia and Customary Law," *As-Siyasi: Journal of Constitutional Law* 5, no. 1 (2025): 87–98.

[3] Abdullah Syamsul Arifin, Muhammad Fauzinudin Faiz, and Muhammad Lutfi Hakim, "Aligning Religious Law and State Law: Negotiating Legal Muslim Marriage in Pasuruan, East Java" (Taylor & Francis, 2023).

[4] Zainal Arifin H Munir, "Equality (Kafa'ah) In Marriage: A Dialogue of Islamic, State, and Customary Law in Indonesia," *Journal of Law and Sustainable Development* 11, no. 11 (2023): e1495–e1495; Ilyya Muhsin and Muhammad Chairul Huda, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (2024): 27–52.

[5] John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55; Brian Z Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences* (Oxford University Press, 2021); Sally Engle Merry, "Legal Pluralism and Legal Culture," *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*, 2012, 66–82.

[6] Bertram Turner and Melanie G Wiber, "Legal Pluralism and Science and Technology Studies: Exploring Sources of the Legal Pluriverse," *Science, Technology, & Human Values* 48, no. 3 (2023): 457–74.

is therefore less capable of capturing the integrative and transformative processes through which norms are selected, adapted, and recomposed in practice.[7]

Local regulations in decentralized states represent a particularly significant arena for examining legal transformation because they serve as institutional spaces where multiple normative orders are translated into enforceable governance mechanisms.[8] Unlike national legislation, local regulations are more directly shaped by community practices, political negotiation, and socio-cultural legitimacy. Consequently, they provide a unique opportunity to observe how legal norms evolve through interaction rather than through hierarchical imposition.[9] Similar dynamics have been identified in several Muslim-majority jurisdictions where local governance accommodates customary and religious norms while remaining subject to constitutional constraints.[10]

A similar limitation can be found in the concept of living law, which shifts attention from formal legal texts to social practices.[11] While this approach effectively demonstrates the dynamic nature of norms operating within society, it does not fully provide the analytical tools needed to explain how such norms are translated into formal legal structures or how they interact with state institutions.[12]

In the context of Islamic law, fiqh, as the product of interpretive and dynamic ijtihad, continuously adapts to changing social contexts.[13] The concept of living fiqh offers an important advance by positioning Islamic law as a contextual normative practice continuously negotiated through interactions among texts, religious authority, and social realities.[14] Nevertheless, this approach tends to focus primarily on processes of adaptation and therefore does not fully explain

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[7] Emmanuel Lohkoko Awoh, "Beyond the State's Reach: Legal Pluralism, Conflict and Hybrid Governance in Africa's Peripheries," *Canadian Journal of African Studies/Revue Canadienne Des Études Africaines*, 2026, 1–23.

[8] Ana Maria Vargas Falla et al., "Decentralisation and Legal Pluralism in Small Towns in Uganda," *Public Administration and Development* 45, no. 4 (2025): 332–43.

[9] Arief Fahmi Lubis, "Legal Pluralism and Social Identity: An Analysis of State and Religious Law Interaction in Local Dispute Resolution in Indonesia and Pakistan," *Lex Localis: Journal of Local Self-Government* 23, no. 11 (2025).

[10] Martin Ramstedt, "Towards an Epistemological Decolonization of Legal Pluralism: The Case of Indonesia," *Oñati Socio-Legal Series* 15, no. 5 (2025): 1717–48.

[11] Stefan Machura, "The 'Living Law' 100 Years after Eugen Ehrlich: Two Workshops in Paris and Frankfurt," 2023.

[12] Muhamad Yofhan Wibianto, Hartiwiningsih Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani, "Real Justice, Real Impact with the Prosecutors in Action," *Journal of Human Rights, Culture and Legal System* 5, no. 3 (2025): 1015–41.

[13] Omar Farahat, "Reason-Giving and the Duty to Obey: Perspectives from Classical Islamic Jurisprudence," *Journal of Law and Religion* 36, no. 1 (2021): 5–28; Zelfeni Wimra et al., "The Living Fiqh: Anatomy, Philosophical Formulation, and Scope of Study," *Juris: Jurnal Ilmiah Syariah* 22, no. 1 (2023): 185–98, https://doi.org/10.31958/juris.v22i1.9491.

[14] Samy A Ayoub, "A Theory of a State? How Civil Law Ended Legal Pluralism in Modern Egypt," *Journal of Law and Religion* 37, no. 1 (2022): 133–52.

how the outcomes of such processes are stabilized within formal legal frameworks, or how fiqh is institutionalized within state law.[15]

Because neither legal pluralism nor living fiqh explains how cross-system interaction generates new normative configurations that possess both social legitimacy and operational force, this article proposes the concept of normative hybridity as an analytical framework for understanding the integrative and transformative dynamics of legal interaction. Unlike approaches that treat legal systems as separate coexisting entities, normative hybridity views law as the product of processes of selection, translation, and reconfiguration across normative systems. From this perspective, legal norms are not merely adopted or recognized, but are actively constituted through negotiation among actors within diverse institutional and cultural contexts.[16]

Five terms are central to this framework. *Normative hybridity* refers to the process through which norms originating from Islamic law, customary law, and state law are combined through interaction into new operational norms that cannot be reduced to any of their parent systems. A *silent norm* is a norm that is uncodified in formal legal texts yet operative in practice, in the sense that it shapes how actors interpret and apply the law without being cited as a legal source. *Selection* denotes the state's selective incorporation of those customary norms that are compatible with national law, Islamic values, and human rights principles. *Translation* denotes the reformulation of the selected norms into formal legal provisions. *Reconfiguration* denotes the continuous renegotiation of these provisions during implementation by customary authorities, religious leaders, and state officials.

Indonesia provides a highly relevant context for examining this phenomenon, because regional autonomy has allowed customary and religious norms to be incorporated into local regulations that are often framed as representations of community identity and social values.[17] Such incorporation, however, does not amount to the direct formalization of Islamic law; it involves complex mediation through customary law and local social structures, producing legal

[15] Mursyid Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, no. 1 (2025): 64–82.

[16] Maarten Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (September 1, 2024): 328–48, https://doi.org/10.1080/27706869.2024.2377447.

[17] Keebet von Benda-Beckmann, "Trajectories of Legal Entanglement Examples from Indonesia, Nepal, and Thailand" *Legal Pluralism and Critical Social Analysis* 54, no. 1 (July 25, 2022): 13–30, https://doi.org/10.1080/27706869.2022.2056372.

configurations that are negotiated rather than doctrinal in character.[18] Local regulation is therefore an ideal arena for analyzing how normative hybridity operates in practice.

Based on this theoretical framework and empirical context, this study poses the central question: how is normative hybridity formed through the interaction of Islamic law, customary law, and state law in local marriage regulation? This question is elaborated into four sub-questions: (RQ1) how is fiqh mediated through customary law in the formation and implementation of Konawe Regency Regulation No. 1 of 2018? (RQ2) what socio-cultural factors and legal-political dynamics shape this process? (RQ3) what patterns of hybridity emerge when local actors negotiate the regulation in practice? and (RQ4) to what extent does the concept of normative hybridity provide a more adequate analytical framework than classical legal pluralism for explaining cross-system legal integration?

Through these questions, the article makes two principal contributions. Theoretically, it develops the concept of normative hybridity as a post-pluralist framework capable of explaining the formation of integrated new legal norms beyond mere coexistence. Empirically, it demonstrates that the institutionalization of fiqh does not always occur through formal codification, but may instead operate as an implicit normative force—a silent norm—within hybrid legal practice. Accordingly, this study offers a broader understanding of legal transformation in plural societies while providing implications for the design of local regulations that are sensitive to normative complexity in Muslim communities.

METHODS

This study employs a qualitative approach with a socio-legal design to analyze how the interaction between customary law, state law, and Islamic law shapes normative configurations in marriage regulation in Konawe Regency. A socio-legal approach was selected because the objective is to understand not only the legal content of Konawe Regency Regulation No. 1 of 2018 but also the social processes through which legal norms are interpreted, negotiated, and implemented by multiple legal actors, which a purely doctrinal analysis would be insufficient to explain. The approach is also appropriate for investigating legal pluralism, because the implementation of law in plural societies is shaped not only by statutory provisions but also by cultural legitimacy, institutional interaction, and local legal consciousness. Accordingly, the research combines documentary analysis with empirical inquiry to capture both the formal legal structure and the practical operation of customary marriage regulation.

[18] Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward a New Perspective?," *Indon. JLS* 3 (2022): 1.

The research was conducted in Konawe Regency, Southeast Sulawesi, with a particular focus on the implementation of Regional Regulation No. 1 of 2018 concerning Customary Marriage. Konawe is inhabited by the Tolaki ethnic group, whose customary marriage law, *Sara Merapu*, the regulation governs. Konawe Regency had a population of 269.62 thousand in 2024. The *Pu'utobu* serves as a customary leader at the subdistrict level, although the position is not organised as a formal institution. Other customary figures include the Toonomatu'o, a respected elder; the Pabitara, who represents the bride's family; and the Tolea, who represents the groom's family. Sara Merapu regulates customary marriage procedures and provides for sanctions when customary rules are violated, as stipulated in Regional Regulation No. 1 of 2018. Konawe was selected as the research site because it is among the regions that have enacted a regional regulation specifically governing the implementation of Tolaki customary marriage.

Research participants were selected purposively based on their relevance to the processes of norm formation and implementation. A total of 15 key informants were interviewed, comprising customary leaders (n = 7), including *Pu'utobu* (n = 2), Pabitara (n = 1), *Tolea* (n = 1), and *Toonomatu'o* (n = 3); religious figures (n = 2); community leaders (n = 4); and local government officials (n = 2). Informants were selected based on their respective roles, normative authority, and empirical experience in negotiating the relationship between customary law, religion, and state law in marriage practices. Their selection considered their involvement in and knowledge of the implementation of Sara Merapu and customary marriage regulations in Konawe Regency. Community informants were aged between 30 and 50 years. Information regarding the gender distribution and educational backgrounds of the informants was not available. The interviews continued until the data provided sufficient information to address the research objectives. However, the specific point at which conceptual saturation was reached was not documented.

Data were collected through two principal techniques. First, document analysis was conducted on Regional Regulation No. 1 of 2018 and related supporting documents in order to identify the formalization of customary norms within legal texts. Second, in-depth semi-structured interviews were carried out to explore informants' perspectives regarding implementation practices, normative conflicts, and negotiation mechanisms occurring in the field. The interview protocol covered four themes: the formation of the regulation and the selection of customary norms; informants' concrete experiences in dealing with cases such as violations of customary rules, marriages conducted without customary procedures, and conflicts between customary norms and religious principles; the considerations, including religious ones, invoked in resolving such cases; and the relations among customary leaders, marriage registrars,

and local government officials. All interviews were conducted in Indonesian, lasted approximately 60 minutes, and took place at the informants' homes between June and July 2024. The interviews were audio-recorded; the transcription procedure was not specified in the information provided.

Data were analyzed through an iterative interpretive strategy that combined thematic analysis with the constant comparative method, using manual coding supported by Microsoft Word and Microsoft Excel. Rather than testing predetermined hypotheses, the analysis sought to identify the mechanisms through which legal norms were constructed during implementation. The analysis proceeded in four steps. First, legal documents were coded to identify the formally codified provisions on customary marriage, which established the regulatory framework governing *Sara Merapu* within the regional regulation. Second, interview transcripts were open-coded to identify recurrent themes concerning legal interpretation, institutional authority, religious considerations, customary legitimacy, negotiation, and conflict resolution. Third, the constant comparative method was applied at three levels: codes were compared across transcripts, then across the two data sources (documents and interviews), and finally against the theoretical literature on legal pluralism, institutional change, and living law. Fourth, open codes were developed through axial coding into broader analytical themes.

From this process, three recurring mechanisms emerged inductively rather than being imposed from existing theory: selection, translation, and reconfiguration, as defined in the Introduction. Three patterns of normative hybridity (additive, competitive, and layered) were then identified and examined within this framework. This iterative movement between empirical evidence and theoretical interpretation allowed the concept of normative hybridity to emerge from the interaction between field evidence and conceptual analysis rather than from a predetermined analytical model.

The trustworthiness of the findings was ensured through methodological triangulation, comparing legal documents with interview data, and source triangulation, comparing legal interpretations across customary leaders, religious authorities, marriage registrars, and local government officials. Limited member checking was undertaken by reconfirming the researcher's interpretations with several key informants to ensure consistency of meaning. Emerging analytical categories were refined through iterative comparison until conceptual saturation was achieved, and analytical validity was further strengthened through transparency in the coding process and coherence between empirical data and theoretical interpretation.

The researcher's position as part of the social context under investigation may influence the interpretation of data. Reflexivity was therefore maintained by consciously distinguishing

between the researcher's normative perspective and the empirical narratives of informants, by considering potential biases in the interview and analytical processes, and by continuously evaluating how theoretical assumptions regarding legal pluralism might influence interpretation. This helped ensure that the concept of normative hybridity was grounded primarily in empirical evidence rather than in predetermined theoretical expectations.

This study has several methodological limitations. As a single-case study, it supports analytical rather than statistical generalization, and the framework requires testing in other settings. Purposive sampling may over-represent informants who hold established authority and under-represent the couples and families who experience the regulation, and it reflects the researcher's own judgment of who is relevant. The interview data are self-reported and may reflect informants' wish to present their roles or institutions favorably, or to present practice as more consistent with legal and religious ideals than it is; triangulation with documents mitigates this risk but does not eliminate it. Finally, the researcher's insider position, discussed above, may shape interpretation despite the reflexive safeguards.

RESULTS AND DISCUSSION

Normative Hybridity in Tolaki Customary Marriage in Konawe

The findings demonstrate that Konawe Regency Regional Regulation No. 1 of 2018 concerning the implementation of the *Sara Merapu* customary marriage law does not merely represent the formalization of customary norms or the direct incorporation of Islamic law. Rather, it constitutes the product of a process of normative hybridity emerging through complex and layered interactions among customary law, state law, and Islamic law. This process does not end at the legislative stage; instead, it continues to evolve and undergo reconfiguration in practice through negotiations mediated by local actors who possess overlapping forms of normative authority, that is, actors who speak for more than one normative order at the same time. A *Pu'utobu* who settles a case of pregnancy outside marriage may require the customary settlement while also reasoning in religious terms about the protection of lineage, and a KUA registrar who records a marriage on behalf of the state may be expected by the community to ensure that customary procedure is also observed.

These findings support the argument that legal production in plural societies is interactive and continuous, rather than the result of complete and final codification.[19] This study identifies three principal patterns of normative hybridity, which are examined in turn below and

[19] Anggi Purnama Harahap et al., "Legal Pluralism and Customary Justice in Indonesia: Reconstructing Adat Law under State Legal Dominance," *Littera Legis: Journal of Law, Society, and Justice* 1, no. 1 (2025): 1–16.

summarized in Tables 1 to 3. The patterns differ along two dimensions: whether the interacting norms are in conflict, and whether they converge on a single outcome. In the additive pattern, norms from different sources are not in conflict and converge on one outcome, so that their effects accumulate and the outcome carries legal validity, religious justification, and customary settlement at once.[20] In the competitive pattern, by contrast, norms prescribe incompatible outcomes in a concrete situation and one must give way to another, so that the result is a situationally negotiated hierarchy rather than a stable one.[21] The layered pattern is also free of conflict, but unlike the additive pattern the norms do not converge: each operates on a distinct plane, with the state conferring formal validity and custom conferring social legitimacy, so that an outcome may be complete on one plane and incomplete on the other.[22] The broader literature on legal pluralism likewise emphasizes that such relationships are dynamic, contextual, and shaped through ongoing social negotiation.[23] However, the present findings go further by showing that these interactions do not merely produce coexistence, but also generate new normative arrangements that become operational in everyday legal practice. In this sense, the Konawe case illustrates how local regulation functions not simply as a legal instrument of state governance, but also as a site where multiple normative traditions are selectively combined, contested, and stabilized into hybrid legal forms.

The additive pattern: the Bite Nggukale case. The Bite Nggukale case, a pregnancy outside marriage, shows three normative sources working toward one outcome (Table 1). Law No. 1/1974 supplies the legal validity of the marriage that follows, while the objective of fiqh to protect lineage (ḥifẓ al-nasl) supplies a moral justification that encourages the marriage. Sara Merapu adds a customary settlement centred on mowindahako. Under Article 13 of the regulation, the Bite Nggukale settlement has two stages.[24] In the first, the groom's spokesman (tolea) presents the customary offerings to the village authorities, the *Toonomatu'o*, and the bride's spokesman (pabitara), and customary items acknowledging the woman's pregnancy are laid down; in the second, mowindahako is performed. Under Article 8, mowindahako is the stage in which the groom's family delivers the customary contents (pu'uno patonggasu) to the

[20] Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (2024), https://doi.org/10.21580/walrev.2024.6.2.25566.

[21] Franz Von Benda-Beckmann and Keebet von Benda-Beckmann, "The Dynamics of Change and Continuity in Plural Legal Orders," *The Journal of Legal Pluralism and Unofficial Law* 38, no. 53–54 (2006): 1–44; Merry, "Legal Pluralism and Legal Culture."

[22] Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences*.

[23] Ido Shahar and Karin Carmit Yefet, "Rethinking the Rethinking of Legal Pluralism: Toward a Manifesto for a Pluri-Legal Perspective," *Law and History Review* 42, no. 2 (2024): 223–35.

[24] Konawe Regency Regional Regulation No. 1 of 2018 on the Implementation of the Sara Merapu Customary Marriage Law of the Tolaki Ethnic Group in Konawe Regency, art. 13.

bride's family in a prescribed sequence that ends with a prayer confirming the ceremony (pohueno osara).[25] Hasniran et al. add that mowindahako is a sacred stage of Tolaki customary marriage that must be completed before the Islamic marriage contract, and that the dowry and prescribed items left undelivered remain a debt of the groom.[26] None of these norms negates the others, and the resulting hybrid norm is a marriage that is valid religiously and legally and is accompanied by customary settlement obligations. Fiqh is silent in this case in the sense that it appears neither in the regulation nor in the settlement, yet it shapes the decision to marry.

Table 1. Additive Pattern of Normative Hybridity: The Bite Nggukale Case

Operational mechanism	Customary, state, and religious norms operate simultaneously without negating one another.
Interacting norms	Regional Regulation (Arts. 8 and 13): *Mowindahako* as the concluding stage of the customary settlement.
Empirical case	*Bite Nggukale* case (pregnancy outside marriage).
Resulting hybrid norm	Marriage is valid religiously and legally, accompanied by customary settlement obligations.
Position of fiqh	Fiqh functions as a moral justification (*silent norm*) encouraging marriage.

Source: Authors' analysis of interview data and Konawe Regency Regulation No. 1 of 2018.

The competitive pattern: the Article 23 case. The Article 23 case, which concerns the detention of a corpse before customary obligations are settled, shows norms that prescribe incompatible outcomes (Table 2). Article 23 of the regulation provides that where a husband has not settled the mowindahako owed to his wife's parents and either spouse dies, the corpse may not be buried until that mowindahako is settled.[27] This provision conflicts with the obligation under fiqh, expressed in the principle of ikrām al-mayyit, to expedite burial, and with the human rights prohibition on withholding a corpse. Because these norms cannot be satisfied simultaneously, actors invoke religious and humanitarian arguments to rank them, and burial proceeds promptly while the customary obligation is deliberated with the family, which bears it. Fiqh here acts as a counter-norm that overrides a formal provision, yet the outcome is still hybrid: a customary obligation that survives but is transferred to the family Resulting hybrid norm.

[25] Regional Regulation No. 1 of 2018, art. 8.

[26] Hasniran, Abdul Khawiyu, and Heni Heni, "Mowindahako From an Islamic Law Perspective: An Ethnographic Study of the Tolaki Community," *Jurnal Al-Hikmah* 28, no. 01 (2026): 50–63, https://doi.org/10.24252/al-hikmah.v28i01.68048.

[27] Konawe Regency Regional Regulation No. 1 of 2018, art. 23.

Table 2. Competitive Pattern of Normative Hybridity: The Article 23 Case

Operational mechanism	Fiqh and human rights norms are used to correct or override formal provisions in the Regional Regulation.
Interacting norms	Regional Regulation (Art. 23): burial barred until the husband's *mowindahako* is settled
Empirical case	Article 23 case (detention of a corpse before settlement)
Resulting hybrid norm	Customary obligations are settled through the family so that burial can proceed promptly.
Position of fiqh	Fiqh functions as a counter-norm overriding formal provisions.

Source: Authors' analysis of interview data and Konawe Regency Regulation No. 1 of 2018.

The layered pattern: marriage conducted only through the KUA. A marriage conducted only through the KUA, without a customary ceremony, shows norms that do not conflict but also do not converge (Table 3). Law No. 1/1974 and registration by the KUA make the marriage legally valid, whereas *Sara Merapu* confers social validity only when the customary ceremony is performed. The marriage is therefore complete on the legal plane but incomplete on the social plane. This is what separates the layered pattern from the additive pattern: in the *Bite Nggukale* case the customary sanction is attached to the legal outcome and completes it, whereas here the customary requirement remains unmet and the two planes run in parallel. Fiqh aligns with state law, since the marriage is valid, but cannot by itself supply social legitimacy. the customary settlement is attached to the legal outcome and completes it.

Table 3. Layered Pattern of Normative Hybridity: Marriage Conducted Only through the KUA

Operational mechanism	Legal legitimacy is distributed: the state provides formal validity, while custom provides social legitimacy.
Interacting norms	Law No. 1/1974 and KUA: legally valid marriage Customary law: social validity through *Sara Merapu*
Empirical case	Marriage conducted only through KUA without customary ceremony
Resulting hybrid norm	Legally valid, but not yet socially recognized.
Position of fiqh	Fiqh aligns with state law, but is insufficient for social legitimacy.

Source: Authors' analysis of interview data and Konawe Regency Regulation No. 1 of 2018.

Normative Selection: The State as a Filtering Actor

The formation of Regional Regulation No. 1 of 2018 in Konawe Regency demonstrates that the formalization of customary law was not a process of passive recognition, but rather a structured normative intervention carried out by the state through a systematic mechanism of

selection. These findings confirm that the state functions as a *norm entrepreneur*, actively determining which norms are suitable for formalization based on criteria of practical applicability, compatibility with national law, and conformity with human rights principles. This phenomenon supports the argument that state recognition of customary law is always accompanied by processes of normative reconstruction that are politically non-neutral.[28]

In the post-decentralization Indonesian context, the state no longer operates merely as an institution recognizing normative plurality, but as an actor that actively shapes, regulates, and limits the relationships among existing normative orders. From the perspective of contemporary legal pluralism, this dynamic reflects the state's role within a relational structure characterized by power and agency, that is, a setting in which the state holds the power to decide which norms count as law, while customary leaders retain the agency to interpret and apply them in practice. In the Konawe case, local government actors decided which *Sara Merapu* provisions were administratively enforceable and which were left out of the regulation, while *Pu'utobu* remained the interpreters through whom those provisions were applied; the boundaries between recognized and unrecognized norms were thus constructed through institutional interaction.[29] This process of selection also reflects pressures arising from decentralized governance structures that demand administrative standardization and accountability, requiring fluid and contextual customary norms to be transformed into measurable and verifiable legal provisions.[30]

Contrary to assumptions within classical legal pluralism that view the state as one normative system coexisting on equal terms with others, the Konawe case demonstrates that the state occupies a dominant position in shaping the operative legal configuration. *Sara Merapu* norms were not adopted in their entirety; rather, they were reduced to those aspects that could be operationalized within formal legal frameworks and monitored through administrative mechanisms. Elements of *Sara Merapu* that sit in tension with human rights principles were not wholly filtered out: Article 23, for example, conditions the burial of a deceased spouse on the settlement of the husband's *mowindahako*, and in practice this provision continues to be negotiated. This finding reinforces critiques of legal pluralism for its tendency to overlook asymmetrical power relations in processes of legal recognition.[31] Accordingly, recognition of

[28] Rezky Ananda et al., "Decentralization and the Challenge of Policy Alignment: Lessons from Financial Regulation," *JISRAH: Jurnal Integrasi Ilmu Syariah* 6, no. 01 (2025): 73–79; Nurus Zaman, Nia Kurniati, and Raphael D Jackson-Ortiz, "Constitutional Recognition of Adat Law Communities to Create Legal Certainty," *Journal of Indonesian Constitutional Law* 3, no. 1 (2026): 1–27.

[29] Merry, "Legal Pluralism and Legal Culture"; Griffiths, "What Is Legal Pluralism?"

[30] Fernanda Pirie, "Beyond Pluralism: A Descriptive Approach to Non-State Law," *Jurisprudence* 14, no. 1 (2023): 1–21.

[31] Turner and Wiber, "Legal Pluralism and Science and Technology Studies: Exploring Sources of the Legal Pluriverse."

customary law is always selective and politically embedded, producing what may be termed state-version custom: a sanitized version adjusted to administrative logic and state interests.[32] This dynamic is consistent with comparative findings from other Southeast Asian contexts, where state formalization of customary law tends to produce controlled hybridity rather than genuine normative autonomy.[33]

The implication is that normative hybridity at this stage is state-led, in which Islamic law does not yet appear as an explicit normative source in the regulatory text. However, this absence does not indicate the marginalization or irrelevance of fiqh. Rather, it reflects a subtler normative strategy: the postponement of its operationalization to the stage of implementation, as often occurs where Islamic law functions outside formal codification.[34] This strategy enables fiqh to preserve its flexibility and adaptability, avoiding the rigidity of formal codification that might later restrict interpretive space.[35] These findings are consistent with studies by Alfarisi et al.[36] and Jumarim et al.[37] on the operation of religious authority within state legal systems in Muslim societies of Southeast Asia. Their work shows that fiqh maintains relevance not through institutional domination, but through the provision of moral and epistemic frameworks internalized by actors responsible for legal implementation. In other words, the absence of fiqh from regulation does not mean the absence of fiqh from law.[38]

Translation and Reconfiguration: From Codification to Negotiation

The codification of customary norms into legal provisions did not terminate normative dynamics; rather, it shifted the arena of flexibility from the text to practice. This finding challenges

[32] Eirik Hovden, "Understanding and Framing Change in Islamic Law: Potentials and Possible Pitfalls of the Concepts of Canonization and Codification," *Oxford Journal of Law and Religion* 12, no. 3 (2023): 289–313.

[33] Ahmed Gad Makhlouf, "Continuity and Change of Traditional Islamic Law in Modern Times: Tarjı̄h: As a Method of Adaptation and Development of Legal Doctrines," *Oxford Journal of Law and Religion* 12, no. 1 (2023): 55–74, https://doi.org/10.1093/ojlr/rwad010; Habib Ahmed, "Islamic Normative Legal Theory: Framework and Applications," *Journal of Law and Religion*, 2025, 1–31.

[34] Muhammad Adib Alfarisi et al., "Negotiating Customary Law and Fiqh Norms: The Transformation of the Mepahukh Tradition in the Indigenous Marriage Practices of the Alas People in Southeast Aceh," *Indonesian J. Sharia & Socio-Legal Stud.* 1 (2025): 72; Muhsin and Huda, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women."

[35] Zulfitri Zulkarnain Suleman et al., "Negotiating Islamic Moderation: The Interplay of Sharia and Local Culture in Gorontalo, Minangkabau, and Banten," *Jurnal Ilmiah Al-Syir'ah* 23, no. 1 (2025): 50–69; Mansur Ahmad and Lalu Muhammad Nurul Wathoni, "Sociocultural Dynamics of Islamic Legal Reform Across Muslim-Majority Countries: A Comparative Perspective," *DIKTUM: Jurnal Syariah Dan Hukum* 23, no. 2 (2025): 214–31.

[36] Alfarisi et al., "Negotiating Customary Law and Fiqh Norms: The Transformation of the Mepahukh Tradition in the Indigenous Marriage Practices of the Alas People in Southeast Aceh."

[37] Jumarim, Ilyya Muhsin, and Muhammad Chairul Huda, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 19, no. 2 (2024): 27–52, https://doi.org/10.19105/al-lhkam.v19i1.10522.

[38] Larissa Vetters, Carolien Jacobs, and Sophie Andreetta, "Legal Pluralism and the Production of (Un) Certainty in Lived Migration Orders," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024): 557–82; Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences*; Shahar and Yefet, "Rethinking the Rethinking of Legal Pluralism: Toward a Manifesto for a Pluri-Legal Perspective."

the instrumentalist assumption that legal formalization produces linear and predictable normative stability. Instead, the results are consistent with scholarship showing that formal law is frequently reopened and renegotiated in social practice (*law in action*).[39] This phenomenon is further confirmed by recent studies on legal implementation in contexts of normative pluralism, which emphasize that the gap between *law in the books* and *law in action* is not merely a manifestation of enforcement deficits, but a productive space in which new norms are generated through negotiation.[40] In the Konawe case, this gap is filled by fiqh as an unwritten yet operational moral reference in decision-making by *Pu'utobu* and marriage officials.

The three patterns should not be read as a typology of outcomes alone; they also show different ways in which fiqh enters implementation. In the additive pattern, fiqh supplies a moral justification that complements the legal and customary elements. In the competitive pattern, it becomes a counter-norm invoked, together with humanitarian arguments, to outrank a codified customary provision. In the layered pattern, it aligns with state law but cannot supply the social legitimacy that only custom confers. The layered pattern thus indicates that formal legality is not identical to social legitimacy, a finding consistent with studies on plural legal authority in societies undergoing institutional transition.[41] Which pattern emerges appears to depend on the intensity of normative conflict, the configuration of actors, and the contextual relevance of each norm, which is why normative hybridity is better understood as a spectrum of processes than as a singular phenomenon.[42]

Collectively, these patterns show that legal practice in plural societies cannot be reduced to the linear application of a single norm, but instead emerges from situational negotiation involving multiple normative systems simultaneously. Within this context, fiqh functions as a *silent norm*, providing a framework of moral judgment and epistemic guidance for local actors who must make decisions amid the ambiguities of formal legal texts. This finding reinforces and empirically confirms the argument that Islamic law often operates as a *discursive tradition*, living within social practice through the internalization of values and the formation of normative

[39] Filip Reyntjens, "Legal Pluralism and Hybrid Governance: Bridging Two Research Lines," *Development and Change* 47, no. 2 (2016): 346–66.

[40] John Gillespie and Hong Thi Quang Tran, "Legal Pluralism and the Struggle for Customary Law in the Vietnamese Highlands," *The American Journal of Comparative Law* 70, no. 1 (2022): 1–42; Benda-Beckmann, "Trajectories of Legal Entanglement Examples from Indonesia, Nepal, and Thailand."

[41] Hovden, "Understanding and Framing Change in Islamic Law: Potentials and Possible Pitfalls of the Concepts of Canonization and Codification"; Makhlouf, "Continuity and Change of Traditional Islamic Law in Modern Times: Tarjı ̄h: As a Method of Adaptation and Development of Legal Doctrines."

[42] R Lohlker, "Fiqh Reconsidered: Indigenization and Universalization of Islamic Law in Indonesia," *... Journal for Religion and Transformation in ...*, 2021.

habitus, rather than solely through the enforcement of formal texts.[43] Moreover, these findings add a new empirical dimension to the theory of living fiqh by concretely demonstrating how fiqh operates through social internalization mediated by hybrid religious-customary authorities such as *Pu'utobu* and marriage registrars, rather than through formal institutionalization in state legal texts (see the interview excerpts below).[44] This mechanism shows that religious norms maintain their relevance precisely through informal pathways that remain invisible in official legal documents.[45] It further suggests that the normative strength of fiqh lies not in codification, but in its capacity to be interpreted and applied contextually by key actors.

Two excerpts illustrate how these actors themselves account for their decisions. On the detention of a corpse before customary obligations are settled, a *Pu'utobu* explained how he reconciles the customary and the religious demands:

> *"Dalam Islam jenazah harus segera dimakamkan, jadi urusan adat kami musyawarahkan kepada pihak keluarga, agar mereka yang menanggungnya. Jadi persoalan adatnya diselesaikan, anjuran jenazah dimakamkan segera juga terlaksana." (Pu'utobu, interview at the informant's home, June 2024)*
>
> *["In Islam the deceased must be buried promptly, so we deliberate the customary matter with the family, so that they bear it. In this way the customary issue is settled, and the recommendation that the deceased be buried promptly is also fulfilled."]*

On marrying a woman who is already pregnant, a KUA marriage registrar grounded the practice in the Compilation of Islamic Law (KHI):

> *"Pernikahan antara seorang lelaki dengan wanita yang dihamili dibolehkan dalam KHI, selama yang menikahinya itu adalah lelaki yang menghamilinya, jadi kami tetap menikahkan, karena tidak ada yang dilanggar." (KUA marriage registrar, interview, July 2024)*
>
> *["Marriage between a man and a woman he has made pregnant is permitted under the KHI, as long as the man who marries her is the one who impregnated her, so we still marry them, because nothing is violated."]*

Both accounts show religious reasoning operating at the point of decision rather than in the regional regulation. The *Pu'utobu* invokes the Islamic duty of prompt burial as the ground for shifting the customary obligation onto the family, so that the customary settlement and the religious duty are both met. The registrar relies on the KHI[46], not on the regulation, to justify solemnizing a marriage that the regulation classifies as abnormal. Together they suggest that

[43] Tody Sasmitha Jiwa Utama, "Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 4, 2021): 269–89, https://doi.org/10.1080/07329113.2021.1945222.

[44] Shahar and Yefet, "Rethinking the Rethinking of Legal Pluralism: Toward a Manifesto for a Pluri-Legal Perspective."

[45] Vetters, Jacobs, and Andreetta, "Legal Pluralism and the Production of (Un) Certainty in Lived Migration Orders."

[46] Compilation of Islamic Law, Presidential Instruction No. 1 of 1991, Art. 53.

Islamic law enters implementation through different channels for different actors: as an unwritten moral reference for customary leaders, and as a codified compilation for state officials. This is consistent with the claim that fiqh operates through social internalization mediated by hybrid religious-customary authorities.

Limits of Hybridity: Unresolved Tensions and Alternative Explanations

The case for normative hybridity should not obscure the situations in which hybridity is partial or fails. Two of the patterns identified above already point to such limits. In the layered pattern, the marriage conducted only through the KUA remains legally valid but socially unrecognized: legal and customary norms coexist without producing a shared operational norm, and the gap between formal legality and social legitimacy remains open. In the competitive pattern, the postponement of customary obligations resolves the immediate conflict over burial but does not extinguish the customary expectation. Likewise, Article 23 itself conditions burial on the settlement of *mowindahako*, yet, as noted above, this provision continues to be negotiated in practice against religious and humanitarian obligations, which indicates that the formal text and local practice have not been fully reconciled.

Alternative explanations should also be considered. The outcomes described above could be attributed to the constraints of national law and human rights norms rather than to fiqh as a silent norm, since the corpse-detention case, for example, also engages the prohibition on withholding a corpse. They could reflect the personal religiosity of individual *Pu'utobu* and registrars rather than a shared normative framework. They could also be redescribed, within approaches to legal pluralism such as inter-legality, as ordinary negotiation among legal orders. The present data cannot fully exclude these readings. What favors the hybridity reading is that fiqh enters implementation through different principles in different cases (*ḥifẓ al-nasl* in the *Bite Nggukale* case and *ikrām al-mayyit* in the Article 23 case) and through different actors (customary leaders and KUA registrars), yet in each case the outcome is a combined norm that none of the parent systems would produce alone; this is harder to attribute to a single legal constraint or to the piety of a single individual. Even so, the claim is made for this case and warrants testing elsewhere.

Normative Hybridity: From Coexistence to Productive Integration (A Post-Pluralist Framework)

Taken as a whole, the findings of this study demonstrate that the interaction among customary law, state law, and Islamic law in the Konawe context does not end in static coexistence. Rather, it actively generates new operational norms that cannot be reduced to their

parent legal systems.[47] Hybrid norms emerging from this process—such as the construction of "a marriage valid under religion and state law accompanied by customary settlement obligations," or "customary obligations may be postponed to fulfill principles of the sharia"—constitute new normative configurations possessing dual legitimacy and lacking equivalence with any one of the systems from which they are derived.[48] This finding underscores a fundamental limitation of classical legal pluralism, which places greater emphasis on diversity and coexistence among legal systems than on their integrative and transformative processes.[49] More specifically, it responds to critiques that descriptive approaches to legal pluralism often fail to explain the mechanisms through which cross-system norms are produced, thereby confirming the need for an analytical framework capable of capturing the productive dimension of normative interaction.[50]

Within this context, the concept of normative hybridity developed in this article offers substantial analytical advantages because it explains how new norms emerge through iterative and contextual processes of selection, translation, and reconfiguration. This approach is consistent with broader developments in legal and social theories of hybridity, which emphasize mixing, negotiation, and normative transformation as generative rather than merely dysfunctional phenomena.[51] More specifically, the concept enables a more precise analysis than simply noting the simultaneous existence of multiple legal systems, because it traces the concrete mechanisms through which elements of different systems are integrated, negotiated, and reassembled into new operational norms.[52] This contribution is particularly relevant to recent developments in socio-legal theory calling for post-pluralist approaches capable of explaining the production of norms rather than merely mapping systems. The Konawe case further demonstrates that normative hybridity is not symmetrical, but unfolds within unequal power relations among the state, customary authorities, and Muslim communities. As a result, the norms produced reflect selective state dominance at the stage of codification and contextual fiqh dominance at the stage of implementation.[53]

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[47] Jorge Luis Fabra-Zamora, "The Conceptual Problems Arising from Legal Pluralism," *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société* 37, no. 1 (2022): 155–75.

[48] Pirie, "Beyond Pluralism: A Descriptive Approach to Non-State Law."

[49] Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia."

[50] Carolien Jacobs, Danielle Chevalier, and Michiel Stapper, "Legal Pluralism in the Urban Realm: An Introduction," *Legal Pluralism and Critical Social Analysis* (Taylor & Francis, 2024).

[51] R D Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints. Ahkam: Jurnal Ilmu Syariah, 23 (1), 25–48," 2023.

[52] Tamir Moustafa, "Islamic Law, Secularism, and the Modern State: Recasting a Scholarly Debate," *Law & Social Inquiry* 48, no. 2 (2023): 713–17.

[53] Wimra et al., "The Living Fiqh: Anatomy, Philosophical Formulation, and Scope of Study."

In addition, these findings significantly expand and deepen the concept of living fiqh by showing that the continuity of Islamic law under conditions of normative pluralism does not depend on formalization or codification, but on its ability to function as a flexible and adaptive source of normative legitimacy.[54] The success of fiqh in maintaining relevance as a *silent norm*—capable of influencing legal implementation without textual presence in formal regulation—demonstrates that the normative resilience of Islamic law lies in its epistemic flexibility rather than its coercive force. This finding strengthens and develops the view that the authority of Islamic law in modern societies is distributed, contextual, and mediated by religious figures operating at the intersection of multiple normative systems. More specifically, it adds an institutional dimension to the concept of living fiqh by showing that fiqh does not merely survive in informal social practice, but also operates actively within the semi-formal space between state legal texts and their implementation in the field.[55] Thus, living fiqh in this context is not simply Islamic law as practiced; rather, it is a normative mechanism strategically mediating between the rigidity of formal texts and the fluidity of social reality.[56]

The theoretical implications of these findings are fundamental: legal dynamics in plural societies should be understood not as static interactions among pre-existing systems, but as continuous and situational processes of new norm production.[57] The framework of normative hybridity therefore offers a paradigmatic shift—from asking who dominates to asking how norms are produced, a question far more relevant for understanding legal governance in contexts of intense normative diversity. Practically, these findings highlight the importance of regulatory design that is adaptive and responsive to normative plurality—not merely recognizing the existence of multiple legal systems, but proactively facilitating legitimate mechanisms of negotiation among them.[58] In the context of local regulation in Indonesia, this means that the effectiveness of regional regulations is determined not solely by textual completeness, but by the extent to which they accommodate and facilitate ongoing normative negotiations among customary communities, religious authorities, and state officials.[59]

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[54] Sita Hidayah, "From Unity in Diversity to Culture Wars? Aceh Women's Mastery over Adat, Islam, and the State Inheritance Laws," *Women's Studies International Forum* 103 (2024): 102881, https://doi.org/https://doi.org/10.1016/j.wsif.2024.102881.

[55] Neil Walker, "Legalising Inter-Legality," *European Law Open* 1, no. 1 (2022): 216–27.

[56] Wahyudi and Abdurrauf Umar, "Integration of Islamic Law and Customary Law and Its Application in the Indonesia Legal System: Opportunities and Challenges," *Sortuz* 16, no. 1 (2026): 89–111, https://doi.org/10.35295/SZ.IISL.2422.

[57] Katherine Becerra Valdivia, "Legal Pluralism, Interlegality and the Principle of Interculturalism in Latin America: Developing the Concept of Intercultural/Legalities," *Law and Critique*, 2025, 1–19.

[58] Idham Idham, Efa Rodiah Nur, and Agus Hermanto, "Dynamic Development of Family Law in Muslim Countries," *Al-'Adalah* 19, no. 1 (2022): 161–78.

[59] Samy A Ayoub, "A Theory of a State? How Civil Law Ended Legal Pluralism in Modern Egypt," Journal of Law and Religion 37, no. 1 (2022): 133–52.

Normative Hybridity and the Future of Post-Pluralist Legal Theory

The findings of this study extend contemporary debates on legal pluralism by demonstrating that interactions among Islamic law, customary law, and state law should not be understood solely as the coexistence of multiple normative orders. Classical legal pluralism has provided an important foundation for explaining the simultaneous operation of different legal systems within a single social space. More recent scholarship has broadened this perspective through concepts such as *inter-legality*, hybrid governance, and legal assemblages, emphasizing that legal authority is produced through continuous interaction rather than institutional hierarchy. Nevertheless, these approaches still pay greater attention to the existence and negotiation of legal plurality than to the institutional mechanisms through which new operational norms are generated.

The empirical evidence presented in this study suggests that legal interaction is fundamentally productive. The processes of selection, translation, and reconfiguration reveal that normative interaction does not simply preserve multiple legal orders but actively transforms them into new institutional arrangements capable of guiding legal practice. In this respect, the concept of normative hybridity complements existing legal pluralism by shifting analytical attention from the coexistence of legal systems to the production of hybrid norms. Rather than replacing legal pluralism, normative hybridity provides an analytical extension capable of explaining how legal authority is reconstructed through iterative interaction among customary institutions, religious actors, and state agencies.

This theoretical contribution also enriches broader socio-legal discussions concerning legal transformation in plural societies. Similar processes of legal adaptation have been observed in diverse contexts where religious norms, indigenous traditions, and state regulations intersect. However, many comparative studies continue to interpret these dynamics primarily as accommodation or negotiation between distinct legal systems. The present study argues that such interpretations remain incomplete unless they also account for the emergence of integrated operational norms that possess their own institutional logic. Consequently, the analytical framework proposed here may, with appropriate caution, serve as a heuristic for examining legal governance in other decentralized and legally plural societies, although its wider relevance beyond the Indonesian context remains to be tested through comparative research.

The concept of normative hybridity also has important implications for understanding the evolution of Islamic family law. Rather than viewing legal development as a linear process of codification, the findings demonstrate that legal authority may continue to evolve through institutional practice, interpretive negotiation, and culturally embedded mechanisms of

legitimacy. This perspective broadens contemporary understandings of Islamic legal change by highlighting that transformation may occur not only through legislative reform but also through everyday interactions among state institutions, religious authorities, and customary communities. Accordingly, legal transformation should be conceptualized as an ongoing process of normative reconstruction in which multiple legal traditions jointly contribute to the production of legitimate and operational legal norms.

Comparative Perspective: Hybrid Legal Governance beyond the Indonesian Context

The findings of this study contribute to a broader comparative understanding of the interaction between Islamic law, customary law, and state law in plural legal systems. Previous studies from Indonesia and other Muslim-majority jurisdictions have consistently demonstrated that customary practices are rarely displaced by formal legal institutions. Instead, they are continuously negotiated alongside religious and state norms.[60] Research on Aceh, for example, illustrates how Islamic law has been institutionalized through regional qanun, thereby creating a stronger formal relationship between religious norms and state regulation.[61] In contrast, studies on Sasak, Minangkabau, and Alas customary marriage emphasize the coexistence and negotiation of adat and fiqh within local communities rather than the production of new legal configurations.[62] Similar observations have also been reported in Malaysia and Brunei, where Islamic family law is primarily administered through centralized religious institutions despite the continuing influence of local customs.[63]

Konawe differs from these cases in the institutional configuration through which customary and Islamic legal norms interact. Unlike Aceh, where special autonomy provides a legal basis for codifying Islamic law through qanun[64], Konawe's Regional Regulation No. 1 of 2018 formalizes Sara Merapu without explicitly incorporating fiqh as a normative source. While studies of the Sasak community examine the interplay of adat, fiqh, and state marriage law [65], Minangkabau research explores interlegality and negotiations among customary, Islamic, and

[60] Wahyudi and Abdurrauf Umar, "Integration of Islamic Law and Customary Law and Its Application in the Indonesia Legal System: Opportunities and Challenges," *Sortuz* 16, no. 1 (2026): 89–111, https://doi.org/10.35295/SZ.IISL.2422.

[61] Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism."

[62] Jumarim, Muhsin, and Huda, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women."

[63] Idham, Nur, and Hermanto, "Dynamic Development of Family Law in Muslim Countries."

[64] Husni Jalil, Teuku Ahmad Yani, and Mohd Daud Yoesoef, "Implementasi Otonomi Khusus Di Provinsi Aceh Berdasarkan Undang-Undang Nomor 11 Tahun 2006," *Kanun Jurnal Ilmu Hukum* 12, no. 2 (2010): 206–34.

[65] Jumarim, Muhsin, and Huda, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women."

state law [66]. This configuration also differs from Malaysia and Brunei, where Islamic family law operates through established legislative and religious administrative frameworks.[67] In Konawe, the interaction involves customary authorities, particularly the *Pu'utobu*, and state religious institutions through the Office of Religious Affairs (KUA). Thus, this study contributes by explaining how Islamic legal considerations operate as implicit norms in implementing formally codified customary marriage law.

The present findings extend these comparative discussions in two important respects. First, unlike studies that primarily describe legal coexistence, this research demonstrates that interaction among legal orders generates new operational norms through identifiable institutional mechanisms. Second, the empirical evidence indicates that Islamic law may exercise substantial normative authority without explicit codification. Rather than functioning solely through formal legislation, fiqh influences legal implementation as a silent norm interpreted by customary authorities, marriage registrars, and religious actors. This finding suggests that the dynamics of Islamic legal authority are more flexible and context-dependent than is commonly assumed within state-centered models of legal development.

Consequently, the study contributes to comparative socio-legal scholarship by demonstrating that hybrid legal governance should be understood not merely as the coexistence of different legal systems but as a productive process through which new normative arrangements emerge in response to local institutional and cultural contexts.

Implications for Islamic Family Law Theory

Beyond its empirical contribution, the findings also carry important implications for the development of contemporary Islamic family law theory. Much of the existing literature continues to conceptualize Islamic family law through codified statutes, judicial decisions, or formal institutional arrangements. While these dimensions remain significant, the Konawe case suggests that the unit of analysis for Islamic family law theory should be extended to the actors and implementation practices through which fiqh acquires operative force. As argued in the preceding sections, this does not require codification; it depends on the capacity of fiqh to provide normative legitimacy during the implementation of law.

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[66] Zelfeni Wimra et al., "An Interlegality-Based Ethnography of Living Fiqh in Minangkabau Marriage Practices," *Akademika : Jurnal Pemikiran Islam* 30, no. 2 (2025): 175–86, https://doi.org/10.32332/akademika.v30i2.11259.

[67] Kerstin Steiner, "Branding Islam: Islam, Law, and Bureaucracies in Southeast Asia," *Journal of Current Southeast Asian Affairs* 37, no. 1 (2018): 27–56.

This perspective also enriches debates concerning legal pluralism and Islamic legal reform. Rather than viewing interaction between adat, state law, and Islamic law as a source of normative conflict, the findings indicate that such interaction may generate productive legal integration. The mechanisms of selection, translation, and reconfiguration explain how different normative systems are continuously negotiated without eliminating their distinctive characteristics. Accordingly, Islamic family law should not be understood as a fixed body of formal rules but as an adaptive normative tradition capable of responding to changing social realities while maintaining its religious legitimacy.

From a theoretical perspective, the concept of normative hybridity therefore complements rather than replaces legal pluralism. Whereas legal pluralism explains the existence of multiple legal orders, normative hybridity explains the institutional mechanisms through which those legal orders interact to produce new operational norms. This distinction provides a more dynamic analytical framework for understanding legal transformation in plural societies and contributes to ongoing debates on post-pluralist approaches within socio-legal studies.

Broader Implications for Legal Governance in Plural Societies

The theoretical implications of this study extend beyond the specific context of customary marriage regulation. Across many plural societies in the Global South, legal governance increasingly involves interaction among statutory law, religious law, customary norms, and informal community institutions. These interactions are frequently characterized as legal pluralism, yet the present findings suggest that such characterization remains incomplete unless attention is also given to the mechanisms through which new norms are generated and legitimized.

For policymakers, the findings indicate that effective legal reform should not rely exclusively on comprehensive codification. Codification carries specific risks: it can freeze fluid customary norms into a state version of custom, shift interpretive authority from customary and religious actors to administrators, widen the gap between law in the books and law in action, and leave local actors without a legitimate channel for negotiation when a codified provision conflicts with religious or humanitarian obligations, as the Article 23 case shows. Regulations designed without consideration of local normative practices therefore risk weakening both legal legitimacy and institutional effectiveness. Instead, legal design should create space for continuous negotiation among state officials, customary authorities, and religious actors while maintaining compliance with constitutional principles and human rights standards. Such space can be created through concrete mechanisms, for example: (1) a standing deliberative forum at the sub-district

level, convened by the local government, in which *Pu'utobu*, KUA registrars, religious scholars, and village officials discuss contested cases before customary sanctions are enforced; (2) a priority clause in the regulation specifying that customary obligations are to be postponed when they conflict with religious duties or human rights, such as the duty to bury the dead promptly; and (3) a periodic, participatory review of the regulation that draws on recorded cases of negotiation. Negotiation is not risk-free, since it unfolds under unequal power relations, so these mechanisms should ensure the representation of those least able to press their claims, including women and the families directly affected. Such an approach is particularly relevant for decentralized governance systems where local regulations serve as the primary interface between formal state institutions and community-based normative orders.

More broadly, the framework of normative hybridity developed in this study offers analytical potential beyond Islamic family law. It may also contribute to future research on environmental governance, indigenous rights, conflict resolution, digital regulation, and other policy fields characterized by overlapping legal authorities. By shifting analytical attention from the coexistence of legal systems to the production of operational norms, normative hybridity provides a broader theoretical lens for examining institutional adaptation and legal transformation in contemporary plural societies.

CONCLUSION

This study demonstrates that marriage regulation under Konawe Regency Regional Regulation No. 1 of 2018 is the result of a gradual process of normative hybridity rather than the direct formalization of fiqh. Using the analytical framework of selection, translation, and reconfiguration, the study finds that the norm formally codified was *Sara Merapu*, while fiqh operated as a *silent norm* mediating implementation. The state played an active role at the stage of selection, acting as a *norm entrepreneur* that filtered customary norms according to practical applicability, compatibility with national law, and human rights principles, and subsequently translated them into more rigid legal provisions. This filtering was incomplete, however: Article 23, which conditions burial on the settlement of *mowindahako*, remained in the regulation and continues to be negotiated in practice. At the stage of reconfiguration, local actors—particularly *Pu'utobu* and KUA marriage registrars—renegotiated these norms by invoking principles of fiqh (*ḥifẓ al-nasl* and *ikrām al-mayyit*), the Compilation of Islamic Law, and humanitarian considerations, thereby producing operational hybrid norms that were additive, competitive, and layered in character.

Furthermore, this process of hybridity was not merely structural, but was shaped by the interaction of decentralization legal politics, which demanded the administrative standardization of customary norms, and the overlapping normative authority of local actors who speak for more

than one normative order. Hybridity was also asymmetrical: the norms produced reflect selective state dominance at the stage of codification and contextual fiqh dominance at the stage of implementation. In this case, the concept of normative hybridity appears to offer added explanatory value to classical legal pluralism, which it complements rather than replaces, because it helps explain how post-codification normative interaction does not end in coexistence, but instead generates new norms that cannot be reduced to their parent systems, as in the marriage that is valid religiously and legally yet accompanied by customary settlement obligations (the *Bite Nggukale* case) and the postponement of customary obligations to allow prompt burial (the Article 23 case). Hybridity is nevertheless partial: in the layered pattern, a marriage conducted only through the KUA remains legally valid but socially unrecognized, so the gap between formal legality and social legitimacy stays open. This claim rests on a single case, however, and alternative explanations, such as the constraints of national law and human rights norms, the personal religiosity of individual actors, or a more elaborate account of inter-legality, cannot be fully excluded; the claim should therefore be tested in other settings. In addition, this approach captures the role of *silent norms*—particularly fiqh—which, although not formally institutionalized, appear to shape legal practice through negotiation at the implementation stage, entering as an unwritten moral reference for customary leaders and as a codified compilation for state officials.

Theoretically, these findings suggest that interactions among legal systems may lead to productive integration rather than mere coexistence, while also confirming that formalization does not eliminate the dynamics of *living law*, but instead relocates them into the sphere of practice. For *living fiqh*, the findings suggest that its continuity lies not in codification but in its flexibility as an uncodified normative source, mediated by hybrid religious–customary authorities. Practically, the results highlight the need for regulatory design that recognizes the role of *silent norms*, such as fiqh, as important sources of legitimacy and mediation, and that is sensitive to normative hybridity. This entails: (1) avoiding excessively rigid codification that may disregard the nuance and flexibility of customary and religious norms; (2) creating mechanisms for sustained negotiation among customary, religious, and state stakeholders, such as a standing deliberative forum at the sub-district level and a periodic, participatory review of the regulation; and (3) including a priority clause under which customary obligations are postponed when they conflict with religious duties or human rights, such as the duty to bury the dead promptly. Because negotiation unfolds under unequal power relations, these mechanisms should also ensure the representation of those least able to press their claims, including women and the families directly affected.

Despite these contributions, this study has several limitations. The analysis focuses primarily on a single regional regulation and is grounded in the perspectives of customary leaders, religious authorities, community leaders, and local government officials within one socio-cultural setting. Purposive sampling may over-represent informants who hold established authority and under-represent the couples and families who experience the regulation, the interview data are self-reported, and the researcher's insider position may shape interpretation despite reflexive safeguards. Although this design provides rich insights into the mechanisms of normative hybridity, the findings should not be generalized uncritically to other legal contexts characterized by different institutional arrangements or configurations of customary authority. Future research should therefore adopt comparative and multi-sited legal ethnography to examine whether the analytical framework of selection, translation, and reconfiguration operates similarly across diverse regions and legal traditions. Comparative studies involving other Indonesian customary communities, as well as Muslim-majority jurisdictions in Southeast Asia, the Middle East, or Africa, would further clarify the broader applicability of the concept of normative hybridity. In addition, other policy fields characterized by overlapping legal authorities, such as environmental governance, indigenous rights, and digital regulation, present promising avenues for extending this framework. Exploring these developments would contribute not only to refining the theoretical understanding of hybrid norm production but also to designing adaptive legal institutions capable of responding to increasingly complex normative environments in contemporary plural societies.

ACKNOWLEDGEMENT

The authors wish to Muh. Abdul Rajab, a student of the Islamic Family Law programme at UIN Kendari, for her assistance in collecting the research data. The authors also gratefully acknowledge the Ministry of Religious Affairs of the Republic of Indonesia for the financial support extended through the LITAPDIMAS research grant programme during the course of this research.

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