

BATIMBANG SALAH IN THE CUSTOMARY COURT IN KENAGARIAN TALANG BABUNGO PERSPECTIVE 'URF

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Abstract: This research examines the *Batimbang Salah* Tradition in Talang Babungo Kenagarian in terms of the perspective of 'Urf. The *Batimbang Salah* tradition is a customary tradition of the surrounding community in which there are several things that are contrary to the concept of *U'rf* and Islamic Law, one of which is that if you have not done this tradition, the younger siblings of the party concerned cannot carry out the custom of marriage in the Talang Babungo village, this kind of custom is clearly contrary to the concept of *U'rf* and Islamic Law, the research method that the author uses is a qualitative approach. This type of research (field research) is conducted in the field. The research was conducted in Kenagarian Talang Babungo, District Lembah Gumanti, Solok Regency. This research uses empirical law. The result of this research is that in Islamic law, everyone is recognized based on their religious

identity. Meanwhile, in the customs of Kenagarian Talang Babungo and *Minangkabau* in general, the identity of the community is its customs and customs are the rules of daily life that have been going on for a long time and are still maintained to this day. For the people of Kenagarian Talang Babungo, to live without obeying the rules is to be uncivilized. Whereas the custom that becomes his daily clothes is *adat basandi syarak, syarak basandi Kitabullah* (the basic joint custom is syarak (Islamic shari'at) and the basic syarak is the Koran). but with regard to the consequences of not being carried out

Key word: Batimbang Salah, Adat, U'rf

INTRODUCTION

The *Minangkabau* tribe is very thick with customs, customs and syarak are very much in line with the habits of the *Minangkabau* people. The traditional saying "*Adat basandi syarak syarak basandi kitabullah, syarak mangato adat nan mamakai*" must be the foundation of traditional life in Minangkabau. There is also the term syarak batilanjang which means there is no bargaining in stating what is wrong and right. "*Adat basisampiang*" means being given clothes by syarak and the bulk is in adat, how to say something right or wrong so as not to get out of control.¹

Custom is a habit for communities and community groups that gradually makes the habit a custom that applies to community members without exception with applicable rules in the form of customary sanctions. The customary rules in a Nagari are different, where there is a *Minangkabau* proverb saying "*lain lubuak lain ikan lain lading lain ilalalang*", which means that wherever the place is the custom must be different from the customary rules of other Nagari, according to the term *adat salingka Nagari*.²

The community of Nagari Talang Babungo also has a custom called the Batimbang Salah tradition, according to the name of the tradition, *Batimbang Salah* means weighing wrong or weighing whatever the mistake is. This tradition is one of the oral traditions found in nagari Talang Babungo, Lembah Gumanti District, Solok Regency. This

¹ Muhamad Rizky Setiawan et al., "ANALISIS HUKUM ISLAM TERHADAP SANKSI ADAT PERKAWINAN SESUKU DI MASYARAKAT MINANGKABAU," *Journal of Sharia and Law* 2, no. 2 (2023).

² Darmawati Darmawati, "Makna Kearifan Lokal Adat Peusijek Masyarakat Aceh Kecamatan Sukamur Kabupaten Aceh Besar," *Serambi Konstruktivis* 1, no. 3 (2020), <https://doi.org/10.32672/konstruktivis.v1i3.1774>.

tradition is a manifestation of the implementation of customary justice from existing customary law in *Minangkabau* related to the implementation of customary sanctions against social behavior in a village. This customary law is enforced if there is one member of the community who makes a mistake or violates customary norms. Violations of these norms include adultery, *manikah sasuku*, *malawan ka mamak*, *malawan ka urang tuo*, and *malawan ka dunsanak*. The implementation of the *Batimbang Salah* tradition is carried out in the Talang Babungo traditional hall.³

The implementation of this tradition was attended by all traditional leaders, *niniak mamak* of all tribes in the Talang Babungo Nagari. The *Batimbang Salah* tradition is deliberately carried out in the open with the hope that the community will be deterred and obey the customs that apply in Nagari. Therefore, this tradition is called *batimbang salah* because there is a deterrent effect that wants to be applied to community members who have done wrong and so on, it is also hoped that similar mistakes will not be made by other residents.⁴

The wrongdoer who will be weighed wrong in the village must be present and follow the entire series of implementation of the *Batimbang Salah* tradition. If the person is not present to follow the *Batimbang Salah* tradition, the person and all his family members are ostracized in the social life of the Talang Babungo community. Whatever activities held by his extended family will not be attended by the community and vice versa, the defendant's family is also not allowed to visit other community homes when holding an event within the scope of custom. The *Batimbang Salah* procession is one of the parts of customary law included in the Duo Puluah Law in *Minangkabau* customary law.⁵

People who are punished through the *batimbang salah* tradition are required to bring a condition depending on the mistake they have made. If the mistake is pregnancy outside marriage, he is required to bring a goat as a fine. The goat will then be cooked by her relatives to be served to the audience who follow the *Batimbang Salah* tradition.

In fact, this kind of tradition is also found in other parts of *Minangkabau*. In the Ulakan Pariaman area there is also a tradition similar to this *Batimbang Salah* tradition, especially for cases of pregnancy outside marriage. The object that is a condition of the fine in Ulakan is cement.

³ Vinni Annisa Putri, "TRADISI BATIMBANG SALAH DI NAGARI SALIMPEK," *Jurnal Elektronik WACANA ETNIK* 6, no. 2 (2017), <https://doi.org/10.25077/we.v6.i2.72>.

⁴ *Ibid*

⁵ Wali Nagari Talang Babungo, "Wawanara" (2021).

Meanwhile in Darmastraya, for similar cases, the wrongdoer is expelled from the village according to the agreement of the *niniak mamak* of his community. And also found in Kenagarian Salimpek Solok. However, currently the implementation of customary sanctions against wrongdoers is increasingly rare.

On the other hand, in Talang Babungo village, the implementation of customary sanctions against citizens who do wrong is still ongoing. The *Batimbang Salah* tradition, which has always been one of the customary laws that until now still survives in the midst of its community, aims to create a better society and nagari. This tradition aims to show the wider community that every mistake has a punishment. Through this tradition, the process of weighing mistakes is carried out and the person who made the mistake gets advice from the tribal *niniak mamak* in Kenagarian Talang Babungo.

This tradition can be categorized as customary law. The term customary law comes from the Arabic words *huk'm* which means command or regulation and *adah* which means custom. So customary law can be interpreted as customary law. However, customary law is generally understood as rules or regulations that are respected and obeyed by the community as binding legal provisions. The *Batimbang Salah* Customary Court means the sanction given to a person who wears a customary title or a people who violate a customary rule who is then sanctioned but refuses to pay the sanction for their actions. The form of sanction imposed is by being abandoned in all kinds of customary affairs by the nagari except in religious affairs. Another term for this customary sanction is *ditinggaan sapanjang adat*.⁶

Of course, from the explanations and sources obtained regarding the *Batimbang Salah* tradition. Considering the *Batimbang Salah* tradition which is still being carried out today, is there a clear relationship in Islamic law and sharia and the study of '*Urf*' in the application of this tradition, therefore the author is interested in further research on the *Batimbang Salah* tradition in terms of '*Urf*', and the prohibition of marriage for siblings from parties who have not *Batimbang Salah* which is still being carried out in Kenagarian Talang Babungo, Lembah Gumanti District, Solok City, West Sumatra.

As for some research related to the author's research and become literature review for the author including: Research from Mr. Zainal

⁶ Badri Badri and Fatmawati Fatmawati, "PELAKSANAAN SANKSI PIDANA ADAT DI GAMPONG KAMPUNG PAYA KECAMATAN KLUET UTARA KABUPATEN ACEH SELATAN," LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum 7, no. 1 (2018), <https://doi.org/10.22373/legitimasi.v7i1.3963>.

Azwar,⁷ Vinni Annisa Putri,¹⁰ Badri Badri and Fatmawati Fatmawati,¹¹ Nurul Miqot,¹² Darmawati,¹³ Andriyaldi¹⁴

The author uses qualitative research methods, which make it possible to obtain thorough and in-depth data through the research process.¹⁵ This research falls into the category of field research, which involves research conducted directly in the field and direct interaction with the local community.¹⁶ The research was conducted in Kenagarian Talang Babungo, Lembah Gumanti District, Solok Regency, where the *Batimbang Salah* customary court tradition is commonly practiced. This research adopts an empirical legal method that focuses on human customs, either through direct interviews in the field or direct observation.¹⁷

Primary data is obtained directly from the field through interview interactions with local residents,¹⁸ The sources consisted of the Wali Nagari Talang Babungo, the Secretary of the Wali Nagari Talang Babungo, and local community leaders. Meanwhile, secondary or

⁷ Arysman Arysman et al., "TANAH ULAYAT DI MINANGKABAU DITINJAU DARI HUKUM ADAT DAN HUKUM ISLAM," SUPREMASI: Jurnal Pemikiran, Penelitian Ilmu-Ilmu Sosial, Hukum Dan Pengajarannya 18, no. 1 (2023), <https://doi.org/10.26858/supremasi.v18i1.42256>.

⁸ Zainal Azwar et al., "Dynamics Encounter of Tradition and Religion in the Wedding Parade (Baarak Bako) in Solok City West Sumatra," Mazahib 22, no. 2 (December 17, 2023): 399–430, <https://doi.org/10.21093/mj.v22i2.5517>.

⁹ Zainal Azwar, Firdaus Firdaus, and Muhammad Nafis, "The Role of the Malay Customary Institution in Off-Court Divorce Mediation: A Case Study in Rantau Pandan, Jambi," Al-Risalah 20, no. 1 (May 28, 2020): 59, <https://doi.org/10.30631/al-risalah.v20i1.561>.

¹⁰ Putri, "TRADISI BATIMBANG SALAH DI NAGARI SALIMPEK."

¹¹ Badri and Fatmawati, "PELAKSANAAN SANKSI PIDANA ADAT DI GAMPONG KAMPUNG PAYA KECAMATAN KLUET UTARA KABUPATEN ACEH SELATAN."

¹² Nurul Miqat et al., "Local Wisdom of Customary Law Community to Realize Food Sovereignty in Central Sulawesi," Jambura Law Review 3, no. 2 (2021), <https://doi.org/10.33756/jlr.v3i2.10167>.

¹³ Darmawati, "Makna Kearifan Lokal Adat Peusijek Masyarakat Aceh Kecamatan Sukamakmur Kabupaten Aceh Besar."

¹⁴ Andriyaldi Andriyaldi, "Al-'Urf Theory and Its Relevance to Contemporary Jurisprudence Issues," Al Hurriyah : Jurnal Hukum Islam 6, no. 2 (2022), <https://doi.org/10.30983/alhurriyah.v6i2.4784>.

¹⁵ Sugiyono, "Memahami Penelitian Kualitatif & Kuantitatif," Bandung: Alfabeta, 2018.

¹⁶ Muhammad Rijal Fadli, "Memahami Desain Metode Penelitian Kualitatif," HUMANIKA 21, no. 1 (2021), <https://doi.org/10.21831/hum.v21i1.38075>.

¹⁷ Mukti Fajar ND and Yulianto Achmad, Dualisme Penelitian Hukum, Yogyakarta. Pencil Komunika, vol. 1, 2007.

¹⁸ Ali Geno Berutu, "Metodologi Penelitian Noeng Muhajir," ResearchGate, no. December (2017).

supporting data is collected from journal books and scientific papers relevant to this research.¹⁹

Discussion

Division And Types Of 'Urf

'Urf in the linguistic sense refers to a custom commonly practiced by a group or community. In terms, 'Urf refers to traditions that become part of people's lives and are commonly practiced in the form of deeds and speech among them. This includes 'Urf *amaly* (traditions in deeds) and *Qauliy* (traditions in speech). In other words, 'Urf is anything that is recognized by people and practiced among them, including in the form of words, deeds, or the act of leaving something.²⁰ In another context, custom or 'Urf is something that has become a habit practiced by humans and applied in various aspects of life. Most scholars accept 'Urf as a basis for law, but there are differences of opinion in establishing it as an independent basis for law.²¹

Although the culture or tradition of a society is different, such as in Indonesia which consists of various ethnic groups, each culture has similar characteristics or traits. These traits are not specific, but universal. This means that these cultural traits will have the same characteristics for all human cultures regardless of race, natural environment, or education. This means that there are traits that are common to all cultures everywhere.²² In Islamic law, there are four conditions that must be met in order for a custom to be used as a legal basis: first, the custom must not conflict with one of the *nash shari'ah* (provisions of Islamic law); second, the custom must apply and be applied generally and consistently; third, the tradition must have existed since the beginning of its implementation; fourth, there must be no words or actions that contradict the substantial values contained in the tradition.²³ Breaking community traditions is considered bad unless the traditions are forbidden by religion.²⁴

¹⁹ Putra, "PENGERTIAN DATA: Fungsi, Sumber, Jenis Jenis Data Dan Contohnya | Salamadian," Salamadian.Com, 2020.

²⁰ Andriyaldi, "Al-'Urf Theory and Its Relevance to Contemporary Jurisprudence Issues."

²¹ Edi Kurniawan, "KONSEP DAN METODE IJTIHAD IMAM AL-SYAUKANI," Jurist-Diction 6, no. 2 (2011).

²² Ratna Nyoman Kutha, "Metode Penelitian Kajian Budaya Dan I Lmu Sosial Humoria Pada Umumnya," Metodologi Penelitian, 2010.

²³ Noor Achmad, "Istishlah Sebagai Metode Formulasi Hukum Dan Relevansinya Dengan Pembaharuan Hukum Islam Di Indonesia," Disertasi (2006).

²⁴ Azwar, Firdaus, and Nafis, "The Role of the Malay Customary Institution in Off-Court Divorce Mediation: A Case Study in Rantau Pandan, Jambi."

1. The division of *'Urf* is viewed from the aspect of quantity coverage of many and few people who use:

- a. General *'Urf*

General *'urf* refers to customs that apply to all people in different regions in a particular matter, such as in *istisna* contracts that have become common practice for fulfilling needs, *muatha* sale and purchase transactions, and the process of ordering goods such as shoes, clothes and others. The current way of ordering goods covers various types of products, including the ordering of factories, ships and buildings.²⁵

- b. Specialized *'Urf*

Typical *'Urf* refers to customs used in a particular country or by a particular group. There are countless different types of typical *'Urf* because needs and ways of fulfilling them are always changing. For example, the payment of a portion of a lawyer's fee in advance in cases, while the remainder is contingent on the outcome of the case, and is given after the final decision of the case has been made and implemented.²⁶

Among the scholars, there is no difference between specific *'Urf* and general *'Urf* in terms of its validity as a source of law, provided that both have become common practice and are carried out continuously. In fact, Imam Abu Hanifah stated that *qiyas* can be abandoned when general *'Urf* prevails, and *'Urf* can also limit the application of *shar'i* evidence, such as in *istishna* contracts, *salam* contracts, and *bai al-muatha* transactions.²⁷

2. *'Urf* in terms of its placement or field of meaning

- a. *'Urf qauliy* (words)

'Urf of words is a phenomenon that occurs when a common word or set of words is used by many people to convey a certain meaning, so that when the words are spoken without any specific context or clue, the meaning is quickly understood by their minds. An example of this is the word "*dirham*" which means the prevailing money in a country. However, in everyday usage, it also

²⁵ Sunan Autad Sarjana and Universitas Darussalam Gontor, "Konsep *'Urf* Dalam Penetapan Hukum Islam," TSAQAFAH 13, no. 2 (2017).

²⁶ T.M. Hasby Ash-Shiddieqy, Pengantar Ilmu Fiqh, 1974.

²⁷ Ach Maimun, "Memperkuat *'Urf* Dalam Pengembangan Hukum Islam," AL-IHKAM: Jurnal Hukum & Pranata Sosial 12, no. 1 (2017), <https://doi.org/10.19105/al-lhkam.v12i1.1188>.

includes paper money, although the original meaning of “dirham” was metal money of a certain weight.²⁸

b. *Urfi`liyy* (action)

While *Urf* of action refers to a common custom practiced by many people in the culture of Arab society. An example of *Urf filiy* can be found in buying and selling transactions without the process of *ijab* and *qabul*, known in *fiqh* terms as *baial-mu`atha*, which has become a common practice. Because it is easy to carry out, this custom is considered commonplace and is almost practiced by all levels of society. Therefore, it is not surprising that the *qaul mukhtar* permits this type of transaction, provided that it only applies to goods with low nominal prices,²⁹ because this kind of tradition has become a habit that is difficult to avoid in society.

In representative transactions (*wakalah*), there are examples related to this situation. For example, a person delegates the purchase of meat to another person, but using words that are general in nature³⁰ For example, “buy me meat”, without specification of the type of meat in question. However, since the meat commonly consumed by the community is beef, the representative may not buy chicken or any other type of meat other than mutton. This is because the expression “buy me meat” from the proxy indicates that the meat in question is beef, in accordance with the local custom.³¹

3. The position of *Urf* of words (*qauliy*) and *Urf* of deeds (*fi`liy*)

a. Position of *Urf* Words (*qauliy*)

The importance of the *Urf* of words in Islamic law is that the words spoken by a person must be interpreted in accordance with the language and customs prevailing at the time, even though they may be contrary to their original meaning, because of a change in custom that later changed the meaning of the words according to the *Urf* which is recognized as a valid interpretation of the original meaning. If the meaning of the words must be interpreted literally

²⁸ Andriyaldi, “Al-’Urf Theory and Its Relevance to Contemporary Jurisprudence Issues.”

²⁹ Amelia Safitri Instiningtyas, “Perspektif ‘Urf Terhadap Tradisi Larangan Perkawinan Mlumah Murep Dalam Adat Jawa (Studi Kasus Di Desa Crabak Kecamatan Slahung Kabupaten Ponogoro),” *Skripsi*, 2020.

³⁰ Roos Nelly, “WAKALAH, KAFALAH DAN HAWALAH,” *Juripol* 4, no. 2 (2021), <https://doi.org/10.33395/juripol.v4i2.11138>.

³¹ Ahmed Rizal, “Akad Wakalah Dalam Jual Beli,” *Al-Hiwalah : Journal Syariah Economic Law* 1, no. 1 (2022), <https://doi.org/10.47766/alhiwalah.v1i1.906>.

and not according to the 'Urf intended by the speaker, then this places an additional burden on the words, such as in contracts of confession, oaths of divorce, and so on. Based on this principle, the fuqaha' have established a rule of law which states that "*the essential meaning can be ignored based on custom*".³²

b. The position of behavior that has become tradition (*'Urf filiy*)

The fuqoha's view on the role of *'Urf filiy* is that it has relevance in various aspects, including individual remedies and civil affairs. *'Urf* plays an important role in establishing the law as well as regulating the boundaries of responsibilities and obligations based on conditions that may occur, provided that it does not contradict the principles of sharia. However, if there is a conflict between *'Urf* and sharia, then there will be an in-depth discussion to resolve the issue.

Thus, 'urf is considered a valid source of law and evidence as long as there is no other Shara's evidence. Imam al-Syarkhasi stated that custom has the same status as the written law (*altayin bil 'urf ka-ta'yin bin Nassi*).³³ For example, the influence of custom on the determination of legal actions and legal agreements can be seen in the amount of maintenance for the wife that the husband is responsible for, because this depends on the standard that is usually applied between husband and wife and is adjusted to the financial capabilities of both of them. If they are a moderate family, then the amount of maintenance is adjusted to that standard. However, if they are rich or poor, then the amount of maintenance is adjusted to their level of wealth or poverty. Thus, the customs of the community in terms of lifestyle have set certain limits for the husband in providing maintenance in accordance with what is required by sharia.³⁴

If a law is determined based on custom, then the law tends to change along with the change in custom. This is because in Islamic jurisprudence, a ruling may or may not change depending on the cause or reason behind it (*illat*). Therefore, they established the

³² Fitra Rizal, "Penerapan 'Urf Sebagai Metode Dan Sumber Hukum Ekonomi Islam," AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam 1, no. 2 (2019), <https://doi.org/10.37680/almanhaj.v1i2.167>.

³³ Faiz Zainuddin, "KONSEP ISLAM TENTANG ADAT: Telaah Adat Dan 'Urf Sebagai Sumber Hukum Islam," LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan 9, no. 2 (2015), <https://doi.org/10.35316/lisanalhal.v9i2.93>.

³⁴ Dr. Husni Mubarrak A. Latief, "Pengantar Sejarah Legislasi Hukum Islam (TARIKH TASYRI)," Lembaga Kajian Konstitusi Indonesia (Lkki), 2020.

principle that changes in the law due to changes in the times should not be denied (*la yunkaru taghayyurul abkam bitaghayyurul azman*)³⁵

4. 'Urf is viewed from the aspect of being taken into account or not taken into account as a legal basis.

a. 'Urf that is not good (*fasid*)

'Urf *fasid* (*corrupt*) refers to a custom that is commonly practiced by people, but is contrary to the principles of the Shariah, such as legalizing the forbidden or canceling the obligatory. An example is the custom of people committing unlawful acts at parties. By law, 'Urf *fasid* is not required to be maintained because maintaining it may result in contradicting the principles of sharia or ignoring the rulings of sharia. This is because this corrupt custom may lead to violating the prohibitions of the Shariah.

b. 'Urf (*Shabih*)

'Urf *shabih* (good) is a custom that is commonly practiced by people and is in accordance with the principles of sharia, does not contradict sharia law, does not forbid what is forbidden, and does not cancel what is obligatory. For example, the custom of people ordering goods in accordance with local customs, as long as it does not violate sharia law, as well as giving gold jewelry to a wife that is usually not included as part of the dowry. The presence of sound 'Urf must be safeguarded and preserved in establishing rulings, making legal decisions, and so on.³⁶ *Mujtahids* must maintain and consider 'Urf (custom) in the process of *ijtihad*, and for judges, must pay attention to 'Urf in enforcing the law. This is because what the people know and what they practice can be used as evidence, especially if it relates to their agreement and benefit. As long as the custom does not contradict the Shari'ah, it is important to maintain it. Shari'ah takes into account the validity of Arabic 'Urf in its rulings.

Tradition *Batimbang Salah*

In Minangkabau, adat and sharia do not contradict each other but go hand in hand. The principle is “adat follows sharia, sharia follows the Quran”. Sharia is the foundation for the implementation of adat in

³⁵ Baiq Hija Farida, “Qaidah Khusus Dalam Ekonomi Islam,” The Journal Of Pelita Nusa 1, no. 1 (2021).

³⁶ Syekh Abdul Wahab Khalla, ILMU USHUL FIKIH, News.Ge, 2005.

Minangkabau. The concept of “*yarak batilanjang*” shows that there is no room for bargaining in determining truth or error. While “*adat basisampiang*” shows that adat is regulated by sharia and the process is contained in adat, so that control over truth or error is maintained.

According to the explanation of Mr. Hafizur Rahman, Wali Nagari Talang Babungo, this tradition has been born and runs according to its rules based on a mutual agreement between the village apparatus and *niniak mamak*. In 2004, the indigenous community made a decision through the Nagari Talang Babungo Customary Density which was then formalized as a customary rule of the Nagari. This decision was based on a situation where the role of *niniak mamak* was increasingly neglected by the community, so all *niniak mamak* and traditional leaders of Talang Babungo nagari gathered with the hope of restoring the role and function of *niniak mamak* in the community. The goal is to increase the sense of respect and belonging to the Talang Babungo nagari, so that the role of *niniak mamak* can be more significant in creating a better society and obeying the rules that have been set.

The hope is that this Nagari regulation will be respected. After being socialized to the community for three months, the Nagari regulation was enacted and is still in effect today. The *Batimbang Salah* tradition aims to prevent deviant behavior and violate the rules, as well as maintain the dignity of *niniak mamak* in Nagari Talang Babungo. In its implementation, if there are actions that violate the role of *niniak mamak*, customary law can be applied. *Niniak mamak* plays an important role in the formation of customary law, which is based on their agreement. They are also given knowledge about customary law so that they understand the principles contained therein. Today, the *niniak mamak* regularly hold meetings to evaluate the behavior of the younger generation and improve understanding of adat. The key to success is the *niniak mamak*'s openness to change, as long as it does not contradict applicable laws.

The establishment of this customary law does not contradict the formal law applicable in the Republic of Indonesia, from the investigation process to the enforcement of punishment. However, because the *Batimbang Salah* tradition is based on Minangkabau customary law, it must refer to the Minangkabau Law, known as the *Duo Puluh Law*.³⁷

³⁷ Nurjanah Nurjanah, Isra Mardiah, and Turmudi Turmudi, “Ethnomathematics Study of Minangkabau Tribe: Formulation of Mathematical Representation in the Marosok Traditional Trading.” *Ethnography and Education* 16, no. 4 (2021), <https://doi.org/10.1080/17457823.2021.1952636>.

*Undang-undang nan dua puluh*³⁸ that is, *Minangkabau* legislation discusses the customary law of delict.³⁹ In *Minangkabau*, this relates to regulations regarding customary criminal law. In addition, people are also aware of other laws that are referred to by special names such as “*negeri and luhak laws*”, “*undang-undang dalam negeri*”, “*undang-undang sembilan pucuk*”, and so on. However, these do not encompass the full picture of the law, more like a collection of moral teachings or life instructions than a law book. The Law of the Twenty is divided into two parts, *the Law of the Salapan* and *the Law of the Duobaleh*. *Undang-undang Salapan* defines the acts that are considered crimes, while *Undang-undang Duobaleh* describes the evidence that shows a violation of *Undang-undang Salapan*.⁴⁰

Batimbang salah is a form of oral tradition that aims to resolve problems in accordance with applicable customary law. A person who commits an act that is considered wrong according to custom and religion is required to follow a series of certain processions involving all parties in Nagari Talang Babungo. The process is intended to show that the person and his entire family recognize the mistakes that have been made and as a form of apology to the *niniak mamak* and the general public.⁴¹

After the *Batimbang Salah* tradition is carried out, the *niniak mamak* and the community will accept back the individual who previously made a mistake. The way of accepting involves and includes the person in activities with the community, such as parties or baralek. However, if a person is proven to have made a mistake and refuses to undergo the *Batimbang Salah* tradition, then he and his family will be kept away in accordance with customary rules. This decision is a form of social law. Being kept away according to custom means being exiled, expelled, and the exiled individual is considered not involved in social activities, as expressed through the term “*indak dibaok sailie-samudiek*” in community activities.

There are several requirements in the *batimbang salah* tradition that must be fulfilled, among others:

³⁸ Asmui Asmui et al., “Implementasi Restorative Justice Dalam Penyelesaian Sengketa Hukum Pidana Di Masyarakat Minangkabau,” *SALAM: Jurnal Sosial Dan Budaya Syar-I* 9, no. 3 (2022), <https://doi.org/10.15408/sjsbs.v9i3.26294>.

³⁹ Achmad Ali, “Menguak Tabir Hukum,” *Menguak Tabir Hukum*, 2020.

⁴⁰ Yulianti Yulianti, Amung Ahmad Syahir Muharam, and Fathia Lestari, “Undang-Undang Sumatera Barat (Minangkabau) Tahun 1837-1862,” *Historia Madania: Jurnal Ilmu Sejarah* 4, no. 1 (2020), <https://doi.org/10.15575/hm.v4i1.9185>.

⁴¹ Putri, “TRADISI BATIMBANG SALAH DI NAGARI SALIMPEK.”

1. The existence of a person whose guilt will be weighed is the main requirement in the implementation of the *Batimbang Salah* tradition. Without a defendant, this tradition cannot be carried out.
2. The defendant must be able to pay a fine determined according to the type of offense by the Nagari Talang Babungo *niniak mamak*. This fine is usually in the form of livestock such as chickens, goats, cows, or buffaloes.
3. After the defendant has paid the fine and is ready to be weighed, he must report to the *niniak mamak* of his people to start the *Batimbang Salah* process.
4. The *niniak mamak* then agree on the time of the *Batimbang Salah* tradition and are present at the event. After the defendant reported to the *niniak mamak* of his clan, the report was conveyed to the *niniak mamak* of Nagari Talang Babungo at their regular meeting every two weeks. At that meeting, it was agreed when *Batimbang Salah* would be held against the defendant.

In the implementation of the *Batimbang Salah* tradition, there are certain procedures.

1. *Niniak mamamak* of the kaum tribe go mamanggia, which if the defendant is from the Malay tribe, then the *niniak mamamak* of the Malay tribe go mamanggia, while those who are called are all the *niniak mamamak* of other tribes in Nagari Talang Babungo.
2. The process of slaughtering animals is part of the fine that must be paid by the defendant, which is determined based on the type of offense and the age of the defendant. For example, if a teenager becomes pregnant out of wedlock, they are fined one goat due to a perceived lack of supervision from parents. However, if the act is committed by an adult or previously married person, the fine is one cow, as adults are expected to better understand the consequences of their actions. This process is carried out in the morning at the defendant's home and is attended by the *niniak mamak* of the tribe.
3. After the animals are slaughtered, the defendant's family is responsible for cooking them, and they are not allowed to be assisted by anyone else. The result of the cooking can be *rendang*, soup, or other meat dishes. The tradition continued by entering the traditional hall of Nagari Talang Babungo, attended by all the *niniak mamak* of the Nagari, who sat according to their *kelarasan*, namely the *Koto Piliang and Bodi Caniago kelarasan*.
4. Finally, the defendant and his family enter the traditional hall and are required to attend the *Batimbang Salah* ceremony. This process begins with an opening by the *niniak mamak* of the tribe, followed by

a welcome by the *niniak mamak* of other tribes, based on levels in adat, such as *dubalang*, *manti*, *malin*, *cadiak pandai*, *panghulu*, and *urang nan tuo*.

The *Batimbang Salah* tradition involves several people in the implementation of the *Batimbang Salah* tradition. *Niniak mamak* from the *Malay tribe*, *Niniak mamak* from the *Caniago* tribe, *Niniak mamak* from the *Kutianyia* tribe, *Niniak mamak* from the *Tanjuang* tribe, the defendant and his family, the community.

The *Batimbang Salah* tradition is carried out in the traditional hall, where modest dress is the main thing when entering the hall. The *niniak mamak* wears his great clothes, namely black clothes, while the family who made the mistake, both men and women, wear clothes according to their respective genders; men wear *koko* and women wear *baju kurung*. This is because this tradition is part of a very sacred customary law ceremony for the Talang Babungo community.

The *Batimbang Salah* tradition is usually carried out at night starting at 21.00 WIB until completion, and takes place at the traditional hall of Nagari Talang Babungo. However, if the mistake is considered minor, such as "*talonsong kecek ka mamak*", the process can be carried out at the defendant's family home. In the implementation of the *Batimbang Salah* tradition in the traditional hall of Nagari Talang Babungo, the *niniak mamak* are divided based on their *kelarasan* into two groups that sit facing each other. The first group consists of the *Caniago* tribe and the *Malayu* tribe, which belong to the *Bodi Caniago* family, while the second group consists of the *Kutianyia* tribe and the *Tanjuang* tribe, which belong to the *Koto Piliang* family. Each group's seating is divided into several levels, such as the *dubalang* who sits in front of the entrance (on the ground floor of the hall), the tribal *niniak mamak* who sit on the first level from the ground floor, the *manti* and *urang tuo* who sit on the second level, and the *penghulu* who sits on the first level at the top.

The process of implementing the *Batimbang Salah* tradition is carried out against the background of the following factors, Problems, Complaints, Determination of sanctions, Problems submitted to the village council, Implementation of sanctions

The *Batimbang salah* tradition does not happen spontaneously; it has a background problem involving one of the community members who is considered to have violated the customary values and norms in the *kenagarian*. Actions deemed as wrongdoing will be investigated by the *niniak mamak* to ascertain the truth. If proven, deliberations will be held immediately to determine the resolution of the problem, which usually takes the form of carrying out a *Batimbang Salah* procession. One source

of information about problems in the community can come from complaints by affected community members. Sometimes, problems in the community can also go unnoticed by the *niniak mamak*. Therefore, in addition to the role of the *niniak mamak*, active participation from other community members in monitoring and reporting wrongdoing is essential. When wrongdoing occurs, it is immediately reported to the tribal *niniak mamak* for investigation. After gathering evidence and facts, the *niniak mamak* will determine whether someone is guilty or not, and if found guilty, the matter will be resolved immediately.

The determination of sanctions in the *batimbang salah* tradition is based on the Nan Duo Puluah Law. The method is to hold a deliberation in the traditional hall, where all *penghulu* judges and *kadia* in the *nagari* gather to discuss the mistakes made by one of the members of the Talang Babungo community. Determination of the punishment is done by consensus. Once the sentence has been determined, the defendant has the right to accept, reject, or appeal to a higher level. However, to date, the *niniak mamak* of Talang Babungo *nagari* have been able to resolve all issues without the need to appeal to a higher level.

The sanctions given to violators are determined by *niniak mamak* from all tribes in *Nagari Talang Babungo*, based on the *Nan Duo Puluah Law*. After looking at the article violated, the *niniak mamak* determine the appropriate sanction for the violator. For example, the offender may be fined a cow and 100kg of rice. In addition, the offender and his or her entire family are required to undergo a *batimbang salah* procession and attend a hearing at the traditional hall, as well as welcome guests from the *nagari*.

Batimbang Salah In The Perspective Of 'Urf

In the *Ushul Fiqh* literature, '*Urf*' and '*Adat*' are often the topic of discussion. Both words are of Arabic origin. The word '*Adat*' has been adopted into the formal Indonesian language. '*Urf*' comes from the word '*arafa ya'rifu*' which means something that has been recognized, in line with '*Adat*' from '*ada ya'udu*' which means something that is repeated or common in society. In fact, there is no difference between the two concepts, because an action that has been repeatedly done becomes known and recognized by many people, and vice versa, because the action is known and recognized by many people, it is done repeatedly.

Therefore, among Arabic linguists, there are those who equate the word 'Adat with 'Urf because the two words are synonymous (*mutaradij*).⁴²

al-'Urf refers to things that are already known and practiced by many people, whether in the form of words, actions, or things that are left behind. This is also known as *al-'Aadah*. In the context of *shari'ah* language, there is no difference between *al-'Urf* and *al-'Aadah* (custom).⁴³

Mustafa Salabi notes the difference in the scope of use of the two terms. The term “*Urf*” always refers to actions or customs that are commonly practiced by a group of people, while “*adah*” can refer to the customs of individuals other than a group of people, although it also applies to a group of people. If an individual is accustomed to doing an action, then that action is considered the “custom” of that individual, not the “*Urf*” of that individual.⁴⁴

Similarly, *'Urf* and *ijma* are similar in that they are both established by agreement without rejection. However, the difference lies in *ijma* which involves an event or occurrence that requires determining its ruling, where the mujtahids discuss it and agree on the same opinion. Whereas in *'Urf*, the event or incident has occurred, then one or more members of the community agree to follow it.⁴⁵

Research in Islamic law on tradition focuses on the method of deriving law, which involves using *'Urf* (tradition or custom) as a source of law. Custom can be considered law if it meets certain conditions, assuming that a widely recognized custom can become binding customary law.⁴⁶ Can be firmly accepted by the community with firm conviction, based on wise considerations and in accordance with human instincts, has become a common custom recognized in the community and is constantly practiced. Does not deviate from the teachings of the Quran or the Sunnah of the Prophet.

This principle is based on a hadith from Ibn Mas'ud transmitted by Ahmad: “*Whatever Muslims consider good is also good in the sight of Allah.*” The use of *'Urf* as a source of law has played a significant role in the

⁴² Musa Aripin, “Eksistensi Urf Dalam Kompilasi Hukum Islam,” *Jurnal Al-Maqasid* 2, no. 1 (2016).

⁴³ Muhammad Furqan and Syahril Syahril, “Kedudukan 'Urf Sebagai Sumber Hukum Dalam Mazhab Syāfi'i,” *Jurnal Al-Nadhair* 1, no. 2 (2022), <https://doi.org/10.61433/alnadhair.v1i2.9>.

⁴⁴ Amir Syarifudin, *Ushul Fiqh II*, Jakarta: Logos Wacana Ilmu, 2001

⁴⁵ Kamal Mukhtar, *Ushul Fiqh*, jilid I, 1995, h. 147., lihat juga Hanafi, *Ushul Fiqh*, Jakarta: Wijaya, tt, h. 155.

⁴⁶ Muslim, “Pembaharuan Hukum Islam Di Indonesia: Refleksi Pemikiran Ahmad Azhar Basyir Tentang Aktualisasi Hukum Islam,” *Al-Fikra: Jurnal Ilmiah Keislaman* 4, no. 1 (2005).

development of Islam in the archipelago, which is rich in cultural heritage. However, at the same time, 'Urf can also dampen attitudes against local traditions.⁴⁷ Basically, the implementation of *Batimbang Salah* does not contradict the principles of Islamic law, although there is no explicit explanation in the Qur'an and Sunnah. Its implementation brings benefits, such as sanctioning custom violators, and its existence allows for maintaining traditions. However, non-implementation of *Batimbang Salah* could potentially contradict the 'Urf of the people of Kenagarian Talang Babungo, which means maintaining customs and respecting religious and customary values.

CLOSING

The *Batimbang Salah* tradition is one form of customary law found in Nagari Talang Babungo, Lembah Gumanti District, Solok Regency. This tradition is in the form of giving fines by *niniak mamak* to people who make mistakes or violate customary norms. *Batimbang salah* has a very important role in controlling the lives of the people of Talang Babungo, therefore this *Batimbang Salah* tradition is described and analyzed based on its function. The *Batimbang Salah* tradition series is held because of a problem in the midst of the community which is then complained to the tribal *niniak mamak* and negotiated with the *niniak mamak* nagari so that it can be decided what fines must be met by people who make mistakes as a form of re-acceptance efforts in the community.

In Islamic law, everyone is recognized based on their religious identity. Meanwhile, in the customs of Kenagarian Talang Babungo and *Minangkabau* in general, the identity of the community is its customs and its customs are the rules of daily life that have been going on for a long time and are still maintained to this day. For the people of Kenagarian Talang Babungo, to live without obeying the rules is to be uncivilized. Whereas the custom that becomes their daily clothes is *adat basandi syarak, syarak basandi Kitabullah* (the joint (basic) custom is syarak (Islamic law) and the basic syarak is the Koran). Therefore, *Batimbang Salah* as a custom has become the daily clothing of the Talang Babungo Kenagarian community because the value contained in the implementation of the *Batimbang Salah* custom is not only the existence of customs in general and maintaining existing customs.

'Urf as a legal argument plays an important role in the development of Islam in the archipelago which is full of cultural treasures. On the other hand, 'Urf can be a damper for people who are against local

⁴⁷ Maimun, "Memperkuat 'Urf Dalam Pengembangan Hukum Islam."

traditions.⁴⁸ Basically, the implementation of *Batimbang Salah* is not at odds with the principles of Islamic shari'a even though this is not clearly regulated in the Qur'an and Sunnah. The implementation of *Batimbang Salah* has a value of benefit (goodness) such as the deterrence of custom violators and the existence of *Batimbang Salah*, but regarding the consequences of not carrying out this custom can be contrary to 'Urf, the people of Kenagarian Talang Babungo can maintain habits and uphold religious and traditional values.

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⁴⁸ Maimun.

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