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**Minangkabau's *Doro* Tradition:  
Coexistence of Customary Law and Islamic Law in Caning Punishment**

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**Abstract:** The present study intends to investigate the coexistence of customary law and Islamic law in *doro* tradition of Minangkabau Tribe. It poses three research questions as follows: (1) How is the philosophy of “*Adat Basandi Syarak, Syarak Basandi Kitabullah*” manifested in the *doro* tradition?; (2) In which ways do the customary law and Islamic law coexist in the *doro* tradition?; (3) How are the implications of *doro* tradition in the prevention of adultery vis-à-vis the principles of justice and human rights? The research used a qualitative design and gathered the data through observation and in-depth interviews. The findings show that the *doro* tradition refers to, and thus, accentuates the Minangkabau philosophy of “*Adat Basandi Syarak, Syarak Basandi Kitabullah, Syarak Mangato Adat Mamakai*”. The coexistence of customary law and Islamic law in the tradition occurs is emphasized in the implementation of caning and cumulative fines. The *doro* tradition is regarded as very effective as a punishment for adultery cases, as it also does not conflict with the principles of justice and human rights.

**Keywords:** coexistence, customary law, Islamic law, adultery.

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**Abstrak:** *Tulisan ini bertujuan untuk menjelaskan koeksistensi hukum adat dan hukum Islam dalam adat doro dengan mengajukan tiga pertanyaan penelitian. Pertama: Bagaimana wujud ekspresi filosofi “adat basandi syarak, syarak basandi Kitabullah” dalam adat doro? Kedua: Bagaimana koeksistensi hukum adat dan hukum Islam terjadi dalam adat doro? Ketiga: Bagaimana implikasinya terhadap pencegahan perbuatan zina vis a vis keadilan dan hak asasi manusia (HAM)? Penelitian ini merupakan penelitian kualitatif dan data utamanya didapatkan melalui observasi dan wawancara mendalam. Hasil penelitian menunjukkan beberapa hal. Pertama: Adat doro pada kenyataannya didasarkan kepada nilai-nilai yang terkandung dalam filosofi “adat basandi syarak, syarak basandi kitabullah syarak mangato adat mamakai.” Koeksistensi antara hukum adat dan hukum Islam dalam adat doro terjadi pada pelaksanaan hukuman berupa cambuk dan denda secara akumulatif. Ketiga: Hukuman ini sangat efektif dalam penanggulangan perzinahan dan tidak bertentangan dengan prinsip keadilan dan hak asasi manusia.*

**Kata Kunci:** *koeksistensi, hukum adat, hukum Islam, perzinahan*

## Introduction

The *doro* tradition refers to the punishment in the form of caning, fines, and *buang sepanjang adat* (social exclusion) given to men and women who commit adultery in the Nagari Sialang Minangkabau. The tradition is regarded as the byproduct of the coexistence of customary law and Islamic law in the region. Such coexistence takes place as the community of Nagari Sialang Minangkabau has a deeply rooted attachment towards the Minangkabau tradition as well as the principles of Islam. This is emphasized in the Minangkabau aphorism of “*Adat Basyandi Syarak, Syarak Basandi Kitabullah*” (tradition intertwines with Sharia, and Sharia intertwines with the Quran and Sunnah). The *doro* tradition is still commonly practiced in the community despite the massive social changes that occurred along with the modernization. Traces of *doro* tradition practices report that it is still practiced at least in the recent ten years. This is in line with Al-Haj that emphasizes coexistence as a requirement of individuals and the community. Coexistence is the medium of communication between civilizations, cultural exchange, and interactions of nations for the betterment of humanity,<sup>1</sup>

Studies on the relationship of Islamic law and customary law has been

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<sup>1</sup>Thābet Aḥmad Abū Al-Ḥāj, “Peaceful Coexistence between Muslims and Christians: The Case of Jerusalem,” *International Journal of Humanities Social Sciences and Education (IJHSSE)*, 2015.

one of the main concerns within the academia. There are at least three trends of scholarly discussions in this topic that arise. First, the conflict and tension between Islamic law and customary law have been examined closely<sup>2</sup>, particularly in the aspects to which the Islamic law and customary law conflict with each other. Second, discussions of integration between Islamic law and customary law<sup>3</sup> have instigated the emergence of several theories, such as *Receptio in Complexu* by Lodewijk Willem Christian van den Berg (1845-1927), *Receptie* by Christian Snouck Hurgronje, and *Seceptio a contrario* by Sayuti Thalib. Third, research on dominance of customary law on Islamic law (or vice versa)<sup>4</sup> highlight the zero-sum nature of the contestation between Islamic law and customary law. However, the exploration of how and in what ways customary law can coexist with Islamic law remains a rarely discussed topic. Most of the research focus on the conflictual relationship that takes place between the two different legal system, dominance of one legal system to another, or the integration of both systems. In this case, however, both of the Islamic law and the customary law are practiced harmoniously, and they do not conflict with each other, dominate each other, or integrate with each other into a new legal system.

The present study puts forward its significance to account for the limited research available on the coexistence of Islamic law and customary law. It seeks to investigate three questions: (1) How is the philosophy of “*Adat Basandi Syarak, Syarak Basandi Kitabullah*” manifested in the *doro* tradition?; (2) In which ways do the customary law and Islamic law coexist

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<sup>2</sup>Jnd Anderson, “Colonial Law in Tropical Africa: The Conflict Between English, Islamic and Customary Law,” *Ind. LJ* 35, no. 4 (1959); Nurul Hakim, “Konflik Antara Al-`Urf (Hukum Adat) Dan Hukum Islam Di Indonesia,” *EduTech* 3, no. 2 (2017): 54–63; William Roff, “Customary Law, Islamic Law, and Colonial Authority: Three Contrasting Case Studies and Their Aftermath,” *Islamic Studies* 49 (January 1, 2010): 455–62.

<sup>3</sup>Ratno Lukito, *No TitlePergumulan Antara Hukum Islam Dan Adat Di Indonesia* (Jakarta: Jakarta : Institute of Public Administration, The University of Michigan, 1998, 1998); Jamiu Muhammad Busari, “Shari‘a as Customary Law? An Analytical Assessment from the Nigerian Constitution and Judicial Precedents,” *Ahkam: Jurnal Ilmu Syariah* 21, no. 1 (2021): 25–44; Khairil Azmi Nasution, “Traditional Existence in Islamic Law | Khairil Azmi Nasution,” *Journal of Law Islamic Maqashid Al-Ahkam Volume* 1, no. 1 (2022): 25–37; Rachmi Sulistyarini et al., “The Contact Point of Customary Law and Islamic Law (Legal History Perspective),” *International Journal of Social Sciences and Management* 5, no. 2 (2018): 51–59.

<sup>4</sup>Muhammad Jazil Rifqi and Muhammad Jazil Rifqi, “The Superiority of Customary Law over Islamic Law in the Settlement of Inheritance : Reflections on Snouck Hurgronje’s Reception Theory - Superioritas Hukum Adat Atas Hukum Islam Terhadap Eksistensi Waris: Refleksi Teori Resepsi Snouck Hurgronje” 21, no. 1 (2021): 217–52.

in the *doro* tradition?; (3) How are the implications of *doro* tradition in the prevention of adultery vis-à-vis the principles of justice and human rights? The exploration of these three questions is essential to portray the coexistence between customary law and Islamic law in the cases of adultery and to elaborate the implication of *doro* tradition in the prevention of adultery.

The study was conducted in Nagari Sialang Minangkabau as the region where *doro* adultery punishment is still practiced as the local tradition, in which the tradition is regarded as the collaboration between customary law and Islamic law. It employed a qualitative design and gathered the primary data through observation and in-depth interview. The data collection went through three stages. The first stage was desk-review, i.e. a review on journal articles and news publications related to the topic discussed in this study. This stage allowed the researchers to compose the research questions and to determine the informants to be interviewed. The second stage was to conduct an observation on the practices of *doro* tradition in the study area, as it enabled the researchers to map out the required data related to the study. The third stage entailed an in-depth interview to the informants that were classified into four categories, i.e. traditional leaders, religious leaders, local government or *wali nagari*, and academics.

The classification of informants into the four categories is elaborated in the following table.

Table 1. Classification of Informants

No	Category	Justification
1	Traditional leaders	To describe the <i>doro</i> tradition in Nagari Sialang Minangkabau and to explain the philosophical meaning of the tradition
2	Religious leaders	To describe the foundations of Islamic Sharia that underlies the <i>doro</i> tradition
3	Local government	To explore the government's perspective on the tradition as a complementary to the national law regarding prevention and punishment of adultery cases.
4	Academics	To analyze the tradition based on the perspective of modernity.

The data obtained through the previous stages are further analyzed by Spradley model<sup>5</sup> by focusing on a systematical data testing towards a notion to determine any sections, the relationship between the sections, and the correlation of the sections to the whole study. The data analysis involved four steps: 1) a domain analysis is conducted to obtain an overview regarding the implementation of *doro* tradition in Nagari Sialang Minangkabau; 2) a taxonomy analysis is focused on the parts of *doro* tradition ritual; 3) a componential analysis is performed to identify any correlations that might contrast one another between the domains, this process is performed to analyze the formation process of *doro* tradition in Nagari Sialang Minangkabau; 4) a thematic analysis is carried out to examine the correlation between domains in order to obtain a comprehensive overview regarding the validity of the *doro* tradition.

The study posits that the coexistence of tradition and Islamic principles is the expression of the philosophy of “*Adat Basandi Syarak, Syarak Basandi Kitabullah*” that is continued to be upheld by the Minangkabau community. It argues that the coexistence between tradition and Islamic law in the *doro* tradition implicates towards the prevention of adultery cases within the community. The maintenance of the *doro* tradition still persists as the existing national law is viewed as ineffective to deal with adultery cases, and that the national law is incompatible with the local tradition and the Islamic Sharia that the community upholds. As a result, the practices of *doro* tradition tends to rule out the assumption that it might violate human rights principles on the basis that the tradition is based on the principles of religion and tradition for the greater good.

## Results and Discussion

### ***Doro* Tradition: Expression of the “*Adat Basandi Syarak, Syarak Basandi Kitabullah*” Philosophy**

The *doro* tradition refers to a series of processes of caning punishment imposed to men and women who are proven guilty for adultery, usually for those who have extramarital pregnancy. The tradition is practiced in the community of Nagari Sialang, Kapur IX District, Limapuluh Kota Regency, West Sumatera Province. It is pointed out by Informant 1 (70 y.o.) that the term “*doro*” refers to the word “*dera*” (lashes), translated from “*al-jild*” in Arabic. It is interesting to note that the tradition features both of Islamic law and customary law in terms of the punishment. By Islamic law, the offenders

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<sup>5</sup>James P. Spradley, *Metode Etnografi* (Yogyakarta: Tiara Wacana, 1997).

are punished by 100 lashes. By customary law, they are punished with a fine of money worth of a goat (or Rp1,500,000) and declared *dibuang sepanjang adat* or ostracized from the Minangkabau community, in which the offenders are no longer allowed to participate in traditional events or banquets. Aside from that, the customary title of the tribe leader (*datuk*) of both of the offender's tribe are temporarily revoked until the caning punishment are carried out and the fines are paid by the offenders. The temporary revocation of the customary title is ceremonially marked by the submission of the honorary *keris* (traditional dagger) to the customary institution of Kerapatan Adat Nagari (KAN) in an official meeting in the Majelis Pimpinan Nagari (or Assembly of Village Leaders). The meeting is held in the second week after a member of the tribe is proven guilty of committing adultery.

The *doro* tradition comprises three stages, i.e., preparation, execution, and post-execution. The location in which the whole processes take place is an-Nur Great Mosque in Sialang. The executor of the caning is the chief priest or Imam Nagari as the chief of the Lembaga Syara' Nagari (LSN), or Village Sharia Council, by giving ten lashes to the offender using ten pieces of bamboo sticks tied into one. The execution is carried out on Friday, a week before the month of Ramadan and is witnessed by the Wali Nagari (village leaders), Ninik Mamak (traditional leaders), Islamic clerics, and the people present. After the execution, the family of the offender invites the Nagari leaders to a dinner in their house, in which the family pays the fines to the traditional leaders and redeem their honorary *keris* of their *datuk* (Informant 2, 54 y.o.). When the whole processes of *doro* tradition have been completed, the offender and his/her family are declared free from the punishments imposed to them.

Table 2. Implementation of *Doro* Tradition

Year	Numbers of Couples Punished
2012	6 couples
2013	7 couples
2014	5 couples
2015	6 couples
2016	5 couples
2017	7 couples
2018	4 couples
2019	6 couples
2020	5 couples

2021	4 couples
2022	2 couples

Source: Wali Nagari Office of Nagari Sialang (2022)

The findings as indicated in Table 2 are threefold. First, the *doro* tradition has been carried out each year up to 2022. The practices can be traced back since the introduction of Islam to the community. Informant 1 pointed out that:

“We have been consistently practicing the *doro* tradition since then until today. I have witnessed the execution since when I was a kid up until now. It has been carried out each year whenever an adultery case occurs, and usually there is always a couple who commit the adultery each year.”

Second, there are no single rejections or refusal from the couples accused to commit adultery of *doro* punishment if they are proven guilty. The number of couples punishable by *doro* tradition as indicated in Table 1 is exactly the number of couples who are proven guilty of committing adultery in the years where the tradition was conducted (Informant 2). Third, there is a declining trend of number of couples that served *doro* punishment, particularly in the last four years. This is in line with the statement of Informant 3 (38 y.o.), that the tradition serves an influential deterrent effect to the community, as proven with the decreasing number of adultery offenders.



Great Mosque of an-Nur, Sialang, the location in which the Doro tradition is organized.

Customary law, including *doro* tradition, is by nature a law that lives, grows, and develops in society. It is formed as a part of the identity of the ethnical similarities within a particular culture.<sup>6</sup> C. van Vollenhoven (1874-1933) divides the Nusantara archipelago into 19 zones of customary law based on the diversity of customs, cultures, languages and traditions. The Minangkabau ethnic, with heavily accentuated Islamic influence in its language, customs, culture, and traditions, is categorized separately by Hoven.<sup>7</sup> One of the distinctive aspects of Minangkabau tradition from other cultures is the philosophy of *Adat Basandi Syarak, Syarak Basandi Kitabullah* (tradition intertwines with Sharia, and Sharia intertwines with the Quran and Sunnah).<sup>8</sup> This aphorism serves as the underlying philosophy for the Minangkabau society in their daily lives.<sup>9</sup> The Minangkabau people always frame all events and phenomena from the perspectives of tradition and Islam.<sup>10</sup>

As a part of the Minangkabau customary law, the *doro* tradition is very much influenced by the Minangkabau philosophy as the foundation of the tradition in Nagari Sialang. Thus, it is safe to say that the tradition is an expression of a Minangkabau way of thinking that emphasizes customs and Islamic principles. From Sharia perspective, the *doro* tradition is a part of Islamic Sharia law as mentioned in the Quran and Hadith. In the meantime, the tradition also features Minangkabau customs principle that views adultery as a misconduct that is punishable by heavy sanctions in the form of fines and social exclusion.

The *doro* tradition still persists in the modern Minangkabau community due to its roots to the culture and Islamic perspective, particularly regarding the punishment for adultery. This very much echoes Adenisatrawan, stating that the presence of a religious value in a tradition

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<sup>6</sup>Al Muatasim Said Saif Al Maawali, "The Omani Experience of Multi-Religious Coexistence and Dialogue: A Historical Approach to the Omani Principles and Its Luminous Examples," *Journal of Islamic Thought and Civilization* 11, no. 1 (2021): 60–78.

<sup>7</sup>Roy M Purwanto, Atmathurida, and Gianto, "Hukum Islam dan Hukum Adat Masa Kolonial: Sejarah Pergolakan Antara Hukum Islam dan Hukum Adat Masa Kolonial Belanda," *An-Nur: Jurnal Studi Islam* 1, no. 2 (2005): 1–19.

<sup>8</sup>H. Hafizah et al., "Implementation Of Abs Sbk Value in Life of Minangkabau People," *European Journal of Education Studies* 8, no. 7 (2021): 220–30.

<sup>9</sup>Rosdiana Rosdiana and Ulum Janah, "Penerapan Restorative Justice dalam Tindak Pidana Perzinaan Pada Masyarakat Kutai Adat Lawas," *Jurnal Bina Mulia Hukum* 5, no. 1 (2020): 53–73.

<sup>10</sup>Ahmad Kosasih, "Upaya Penerapan Nilai-Nilai Adat dan Syarak dalam Penyelenggaraan Pemerintahan Nagari Ahmad," *Humanus* XII, no. 2 (2013): 107–19.



makes it longlasting.<sup>11</sup> In addition, the presence of councils such as Lembaga Syarak Nagari, Kerapatan Adat Nagari, and Wali Nagari also contributes to the continuous practice of the tradition.

### ***Doro Tradition: Coexistence of Customary Law and Islamic Law***

Coexistence refers to the recognition of the presence of other groups whose goals, values, ideology, religion, race, ethnicity, and domain differ from one another.<sup>12</sup> These groups bear the same rights to live at peace by acknowledging the legitimation of difference among them.<sup>13</sup> This attitude is developed by conducts of tolerance, empathy, sympathy, social skills, and avoiding stereotypes.<sup>14</sup> In reality, it is very challenging for coexistence to take place as the diverse social setting is usually vulnerable to conflicts and disagreements that can threaten the cohesion of the community. The community, however, is prepared to form negotiation mechanism to resolve any disputes.<sup>15</sup> Coexistence in a community serves to achieve peace as the ultimate goal of a society, i.e., a state without violence, either direct or structural. Hence, it will further strengthen the social dynamics and interaction within the community.<sup>16</sup> One might argue that coexistence is a fundamental necessity in a social setting, as it is the medium of communication between civilizations, cultural exchange, and interactions of nations for the betterment of humanity.<sup>17</sup>

In all aspects of life, particularly in a region with a diverse social setting, the development of coexistence becomes of paramount

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<sup>11</sup>Adenisatrawan, "Eksistensi dan Resistensi Hukum Adat Perkawinan Suku Tolaki dalam Era Digital (Studi Kasus: Kabupaten Konawe Selatan)," *Esensi Hukum* 3, no. 2 (2021): 101–22.

<sup>12</sup>Peter. O. O. Ottuh and John A. Onimhawo, "A Critical Assessment of the Role of Religion Towards Peaceful Coexistence in Nigeria," *Pinisi Discretion Review* 4, no. 1 (2020): 21–32.

<sup>13</sup>Alexander N. Varlamov, "The History of the Coexistence of Religions and the Prospects for Worldview Traditions in Evenki Society," *Religiovedenie*, 2021.

<sup>14</sup>Maawali, "The Omani Experience of Multi-Religious Coexistence and Dialogue: A Historical Approach to the Omani Principles and Its Luminous Examples."

<sup>15</sup>Hendar Riyadi, "Koeksistensi Damai dalam Masyarakat Modernis Liberal dan Progresif," *6 Yang Lebih* 1, no. 1 (2016): 18–33.

<sup>16</sup>Md Touhidul Islam, Maria Hussain, and SR Khan Orthy, "Cultural Diversity and Peaceful Coexistence: A Reflection on Some Selective School Textbooks," *Social Science Review* 37, no. 2 (2020): 59–86.

<sup>17</sup>Al-Hāj, "Peaceful Coexistence between Muslims and Christians: The Case of Jerusalem."

significance.<sup>18</sup> The implications of coexistence in relation to a peaceful community are threefold. First, it instigates an advanced social development.<sup>19</sup> It has an elemental role to a peaceful cooperation and is crucial to the maintenance of unity and harmony in various religious, racial and cultural communities in all multi-religious and multi-racial countries.<sup>20</sup> Second, it promotes social harmony within regions with a heterogeneous social setting.<sup>21</sup> This opens up the space for consolidation and interaction between different identities and prevents the escalation of disagreements and wide-scale conflicts.<sup>22</sup> Third, it creates a multicultural social atmosphere.<sup>23</sup> This refers to the coexistence as a condition in which multiple entities that grow collectively within a particular geographical, social, and political space, in which explicit actions are needed to stay together.<sup>24</sup> In general, the aftermath of coexistence refers to a peaceful and accommodative society that strives to maintain equality of rights relative to any position within the community.

One can argue that *doro* tradition is the combination of Islamic law and customary law. From Islamic perspective, the tradition is a realization of Verse 2 of Surah An-Nur, stating that “both male and female who commit adultery are punishable by 100 lashes for each of them”. In addition, from Minangkabau customs perspective, the adultery offenders were punished by

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<sup>18</sup>Mutawali, “Moderate Islam in Lombok the Dialectic between Islam and Local Culture,” *Journal of Indonesian Islam* 10, no. 2 (2016): 309–34.

<sup>19</sup>Mohd Roslan Mohd Nor, Issa Khan, and Mohammad Elius, “Analysing the Conceptual Framework of Religious Freedom Andinterreligious Relationship in Islam,” *Indonesian Journal of Islam and Muslim Societies*, 2018.

<sup>20</sup>Hichem Kadri, “Relationship between Development and Peaceful Coexistence among Multireligious and Multiracial Communities in an Islamic Perspective -Malaysia as a Case Study,” *Journal of Islamic, Social, Economics and Development*, no. 11 (2018): 59–156.

<sup>21</sup>Alessandro Ghio and Roberto Verona, “Accounting Practitioners’ Attitudes toward Accounting Harmonization: Adoption of IFRS for SMEs in Italy,” *Journal of International Accounting Research* 17, no. 2 (2018): 103–22.

<sup>22</sup>Xiaohong Wei and Qingyuan Li, “The Confucian Value of Harmony and Its Influence on Chinese Social Interaction,” *Cross-Cultural Communication* 9, no. 1 (2013): 60–66.

<sup>23</sup>Fidel Molina and Núria Casado, “Living Together in European Intercultural Schools: The Case of the Catalan School System (Spain),” *European Journal of Education* 49, no. 2 (2014): 249–58.

<sup>24</sup>Ali Fuat Birol, “The Sense of Being-in-Common and International Relations,” *Journal of International Political Theory* 18, no. 2 (2022): 225–43.

finer and social exclusion, while the honorary status of the offenders' tribe leaders (*datuk*) is temporarily revoked. These punishments must be imposed altogether as the tradition and Islamic Sharia is inseparable. Informant 1 stated that:

“Here, both of the tradition and Sharia apply altogether and are practiced consistently. This is different from other regions where they choose to implement tradition only or Sharia only. In short, we very much hold on to our philosophy of *adat basandi syarak syarak basandi kitabullah, syarak mangato adat memakai*. This *doro* tradition is the proof that Sharia and customs are implemented altogether consistently.”

Informant 3 explains that the consistent implementation of *doro* tradition highly relies on the three pillars of leadership in Nagari Sialang, i.e., the *urang syarak* (Islamic clerics) in the Lembaga Syara' Nagari, the *ninik mamak* (traditional leaders) in the council of Kerapatan Adat Nagari, and the local government (Wali Nagari) of the region. These three councils in the local context are also known as *tali tigo sapilin, tungku tigo sajarangan*. The relationship between the three entities is reflected from the aphorism “*syarak mangatukan, adat mamakaikan*”, which indicates that “the Sharia commands, the tradition executes, and the government facilitates and ensures the implementation”.

From the notion above, it is safe to conclude that the *doro* tradition accentuates a mutual reinforcement between the customary law and Islamic law. In other words, the Islamic law cannot be implemented if it is not supported by customary law, and vice versa. The parties responsible for implementing the *doro* tradition are the Lembaga Syarak Nagari (consisting of the clerics, priests, and *malin*, or Islamic leaders of each tribe), the Kerapatan Adat Nagari (consisting of traditional leaders or *datuk*), and the local government. Informant 3 says that the three councils are referred to as *tungku tigo sajarangan*, implying three inseparable pillars.

The coexistence of customary law and Islamic law in the *doro* tradition reflects a recognition of the existence of both legal systems in resolving adultery cases. In customary law, an adultery offender is punishable by fines and status of *buang sepanjang adat* or ostracized from the community.<sup>25</sup> Meanwhile, the punishment for adultery offenders in Islamic law is by giving 100 lashes for unmarried male or female (*bikr*), and stoning for

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<sup>25</sup>R Bagus Irawan et al., “Analisis Yuridis Penyelesaian Kasus Perzinahan Berdasarkan Hukum Adat Minangkabau dan Hukum Adat Batak,” *De Juncto Delicti: Journal of Law* 1, no. 1 (2021): 1–16.

married male or female (*muhsan*).<sup>26</sup> Both forms of punishments are implemented cumulatively in the *doro* tradition. The coexistence of customary law and Islamic law as portrayed in the tradition is not quite as common. In fact, the traces of history show that both of the legal systems more often than not are conflictual to each other. Van den Berg, a Dutch law scholar, introduces a theory of Receptio in Complexu and argues that the most common law that applied in Dutch Indies period of Indonesia was Islamic law.<sup>27</sup> This opinion is contested by Snock Hurgronje, who opines that the law that applies in Indonesia is customary law. He further exclaims that the Islamic law is accepted by the community and applies if it could be integrated into the customary law. His theory is also known as Receptie theory. Sayuti Tholib with his theory of Receptio a Contrario refutes Hurgronje's theory and criticize the theory as "devilish".<sup>28</sup> Different from the three previous concepts, the *doro* tradition indicates a harmonious interaction between Islamic law and customary law instead of conflicting and contesting against each other. The caning punishment in the *doro* tradition is inspired from the Islamic law as stated in Surah An-Nur, while the fines and status revocation are adopted from the customary law. Hence, the tradition legitimates and recognizes both customary law and Islamic law, to which the coexistence is regarded to take place.

This study identifies several underlying factors of the coexistence of customary law and Islamic law in *doro* tradition. First, the philosophical factor, in which both of the customs and religious values are upheld by the community and become the basis of reasoning and action for the community of Nagari Sialang. Second, the historical factor, where the tradition has been practiced for a very long time and passed down from generations. Third, the sociological factor, in which an integration takes place between the traditional elites, the religious elites, and the local government. Such mutual reinforcement occurs between the traditional elites and the religious elites in

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<sup>26</sup>M Said jamhari, "Efektifitas dan Efisiensi Hukuman Had Tentang Zina dalam Pidana Islam dan Hukuman Penjara pada Hukum Pidana Positif," *Al-'Adalah* 10, no. 1 (2012): 291–300.

<sup>27</sup>Irmawati, "Teori Belah Bambu Syahrizal Abbas: Antara Teori Reception In Complexu, Teori Receptie dan Teori Receptio A Contrario," *Jurnal Petita* 3, no. 2 (2017): 128–36.

<sup>28</sup>Muh. Haras Rasyid, "Dinamika Hukum Islam dan Aktualisasi Teori-Teori Berlakunya Hukum Islam di Indonesia," *Jurnal Hukum* 11, no. 1 (2013): 15–23; Moh Zahid, "Perpaduan Hukum Islam dan Hukum Adat (Upaya Merumuskan Hukum Islam Berkepribadian Indonesia)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 1, no. 1 (2019): 57–68.

*doro* tradition in spite of some clashes between both parties in other affairs, such as in the distribution of inheritance. This echoes Maawali's argument that the coexistence can thrive if stereotypes can be avoided within a community.<sup>29</sup> Therefore, the coexistence of customary law and Islamic law in the *doro* tradition is expressed in the recognition of both customary law and Islamic law in resolving adultery cases. The coexistence that takes place between two different legal systems, in which both are upheld by the community, is essential to promote a harmonious society,<sup>30</sup> which in this context refers to a social life that is free from adultery and other misconducts.

### ***Doro* Tradition as a Social Control**

The continued practices of *doro* tradition serve to prevent any adultery misconducts within the society in spite of adultery cases that seem to always happen each year. In 2022, a punishment was given to two couples. This is seen as the very least prevention measure taken by the local leaders. Informant 4 (29 y.o.) stated that:

“I think that the caning punishment for adultery offenders must continue to be practiced. It is because *doro* tradition is the teachings of Islamic Sharia and our customs, and it is effective as a deterrent effect to other people. As far as I know, no one would oppose this tradition in this village, be it the *ninik mamak* (traditional leaders), the government, the academics, or the community in general.”

In terms of the implementation of *doro* tradition, Informant 2 pointed out that:

“When I served as the executor of the caning, I hit the lashes hard enough to leave a mark on the offenders' back. I also forbids them to treat the mark as a proof that they have served the caning punishment. This is to warn others not to do the same misconduct.”

In addition, Informant 2 does not consider *doro* tradition as violating to the principles of justice, since it is very relevant to the Sharia as elaborated in

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<sup>29</sup>Maawali, “The Omani Experience of Multi-Religious Coexistence and Dialogue: A Historical Approach to the Omani Principles and Its Luminous Examples.”

<sup>30</sup>Ghio and Verona, “Accounting Practitioners' Attitudes toward Accounting Harmonization: Adoption of Ifrs for Smes in Italy.”

the Quran. The Islamic law in the Quran puts the principle of justice at the forefront. Instead, if the *doro* tradition is abandoned based on the assumption that it will violate the principle of justice and human rights, the leaders in Nagari Sialang will feel “indebted” by Sharia and by tradition. Informant 2 also added:

“As this tradition adopts Sharia law, it refers to the Verse 2 of Surah An-Nur in the Quran, you can read it later on. In case of national law, it refers to the principles of human rights, while here we do not refer to human rights principle as much.”

This is in line with Informant 3's statement, who said:

“This tradition might indeed be incompatible with the human rights principles. However, since the tradition is a commonly accepted consensus, we cannot abandon it just like that. The people up to this date also do not try to refute the tradition, in fact, they begin questioning us when the tradition is abandoned.”

Informant 4 argued that:

“The *doro* tradition is in fact compatible with human rights principles. Because every basic right embedded within a human being is limited by any applying law, including the customary law. One might argue that the tradition is a form of torture, but I see that the tradition is still within reasonable limits. What's more, the government, the local leaders, and all the community are the proponents of this tradition. Thus, it does not deprive any human rights. Instead, *doro* is a consequence to the community whenever they cross the line (committing adultery).”

Social control refers to the supervision by an individual or a particular group that functions to direct the conducts of individuals or groups as a member of society. It strives to promote the ideal and harmonious social setting as expected. It can be also viewed as a mechanism to prevent social deviations and a call to the society to behave and act according to the applying norms

and values.<sup>31</sup> The Minangkabau community considers *doro* tradition as a means of social control that they view capable of preventing and resolving adultery cases. In sociology, all laws, including customary law, are an effective means of social control in order to promote harmony between stability and changes in the society.<sup>32</sup> Differing from the positive law (Criminal Code), the *doro* tradition emerges from the philosophical values within the community that also upholds Islamic Sharia. As a result, the presence of the Criminal Code as a positive law does not diminish the significance of *doro* tradition. Based on philosophical and sociological perspectives, the stipulation regarding the adultery as in Article 284 of the Criminal Code does not go hand in hand with the community's perspective regarding prohibition and legal punishment of adultery. The community views adultery as a sexual relationship between a man and a woman outside marriage, while the Criminal Code only considers adultery as a sexual relationship between two married people or at least one person is married.<sup>33</sup>

Data for the last ten years (see Table 1) shows the effective role of the *doro* tradition in reducing the number of cases of adultery in Nagari Sialang. Thus, the *doro* Tradition with its customary and religious values has in fact become a social control institution that is quite effective in preventing adultery and promoting a harmonious society. For some communities, customary law such as the *doro* tradition is seen as compliant to the principles of justice and legal certainty as the punishments given are compatible with the values that persists in the society.<sup>34</sup> At the same time, it negates the assumption that it violates human rights. The tradition also refutes the assumption of it as a torture when juxtaposed with the *rajam* punishment (stoning to death), which only applies to the offenders where both are married to their own spouse (*muhsan*). *doro* tradition is only imposed to an unmarried man and an unmarried woman who are proven to have committed adultery, or for the woman to be pregnant before marriage.

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<sup>31</sup>Zakiatul Ikhwan, I., Hasaniah, "Kontrol Sosial Lembaga Adat Terhadap Kenakalan Remaja," *Jurnal Pendidikan Tambusai* 5, no. 2 (2021), p. 4658–65.

<sup>32</sup>Dewi Iriani, "Hukum Sebagai Alat Kontrol Sosial Dan Sistem Supremasi Penegakan Hukum," *Justicia Islamica* 8, no. 1 (2016), p. 139–59.

<sup>33</sup>Usman Usman, Sri Rahayu, and Elizabeth Siregar, "Urgensi Penyerapan Nilai Hukum Islam dan Hukum Adat dalam Pengaturan Tindak Pidana Perzinaan," *Undang: Jurnal Hukum* 4, no. 1 (2021), p. 125–57.

<sup>34</sup>Irawan et al., "Analisis Yuridis Penyelesaian Kasus Perzinahan Berdasarkan Hukum Adat Minangkabau dan Hukum Adat Batak."

## Conclusion

The customary law and Islamic law feature very different legal systems which are hard to integrate. In the *doro* tradition, however, they both coexist with each other. The punishment for the adultery offenders are caning, which refers to Sharia law, in addition to fines and social exclusion, which is inspired by the Minangkabau customary law. These punishments are cumulative. The results show that: First, the *doro* tradition is an expression of realization of values in the philosophy of “*adat basandi syarak, syarak basandi kitabullah, syarak mangato adat mamakai*”. Second, the coexistence of customary law and Islamic law in the *doro* tradition takes place as the result of accommodation of two different legal systems, i.e. customary law and Islamic law. Third, the coexistence of customary law and Islamic law as reflected in the *doro* tradition functions as a social control institution that prevents adultery amid the rather ineffective effect of the Indonesian Criminal Code as the positive law in regulating prohibition and punishment of adultery cases.

This study serves as a reference to the limited research available regarding the coexistence of customary law and Islamic law. The existing literature emphasizes more on the study of conflicts and tensions between both legal systems. This study has its limitations regarding the informants and the available literature. The informants do not involve the people or the couples that served the punishments in the tradition. In addition, research on coexistence of a social value of norms within a community to which the present study can refer to are relatively lacking.

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**Interviews:**

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