

# Rosdalina Bukido Ijtihad

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## **Harmonization of Customary and Islamic Law in the *Gama* Tradition of the Muslim Mongondow Community of North Sulawesi**

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*Gama* in the Mongondow Muslim community is considered mandatory to determine a marriage's validity. Therefore, this study aims to examine in depth the relevance of customary and Islamic law to the tradition of *gama* in the Muslim community of Mongondow, North Sulawesi. The study was conducted in the Bolaang Mongondow area of North Sulawesi using a juridical-sociological approach. Data were collected using observation, interviews with traditional and religious leaders, as well as document study. The steps in data processing include data collection, presentation, reduction, and verification. Furthermore, analysis was carried out using the concept of *urf* and *receptie a contrario*. The results showed that even though the *gama* tradition predates the arrival of Islam in Bolaang Mongondow area, its implementation has Islamic values, otherwise known as *urf shahih*. The community upholds the noble values of traditions passed down by their ancestors. Islam teaches that the *gama* tradition has a symbol of respect for women. This indicates that customary and Islamic law play a joint role in shaping the life of the Bolaang Mongondow people. Conclusively, respect for the existence of women is a noble value in the Customary law of the Mongondow people.

*Gama* pada masyarakat muslim Mongondow dipandang wajib dilakukan untuk menentukan sahnya perkawinan. Artikel ini mengkaji secara mendalam relevansi hukum adat dan hukum Islam terhadap tradisi *gama* pada masyarakat muslim Mongondow Sulawesi Utara. Artikel ini menggunakan pendekatan yuridis-sosiologis. Penelitian dilakukan di wilayah Bolaang Mongondow Sulawesi Utara. Teknik pengumpulan data dilakukan dengan observasi, wawancara kepada tokoh adat dan tokoh agama serta studi dokumen. Pengolahan data melalui empat tahapan yakni pengumpulan data, penyajian data, reduksi data dan verifikasi. Analisis dilakukan dengan mengambil konsep *urf* dan *receptio a contrario*. Pelaksanaan tradisi *gama* memiliki nilai Islam (*urf shahih*) meskipun tradisi ini sudah ada sebelum Islam masuk di wilayah Bolaang Mongondow. Masyarakat menjunjung tinggi nilai luhur tradisi yang diturunkan oleh nenek moyang mereka. Tradisi *gama* memiliki simbol penghargaan dan penghormatan kepada perempuan, dimana Islam juga mengajarkan hal tersebut. Artinya pada tradisi ini Hukum Adat dan Hukum Islam memiliki peran bersama dalam memberi makna kehidupan masyarakat Bolaang Mongondow. Penghormatan kepada eksistensi perempuan merupakan nilai luhur dalam Hukum Adat masyarakat Mongondow.

**Keywords:** *customary law, gama, Islamic law, North Sulawesi, tradition.*

### **Introduction**

Customary and Islam law are present in the social environment of society (Coulson, 2017), and they both influence people's lives. Customary law appears first in people's lives (Apter, 2015), while Islamic provides a clear path when community activities turn wrong (Feener, 2013; Peletz, 2020). The *gama* tradition of the Mongondow tribe in North Sulawesi is an example of Customary and Islamic law. They are considered to be related to one another in social life, thereby necessitating a study based on law and culture in Indonesia. The *mogama/gama* tradition is carried out to bring the bride to the groom's house. However, permission from both parents and the bride's family must be requested according to the rules and procedures for carrying out the *mogama* tradition (Bukido *et al.*, 2021).

Several traditions have similarities with *gama*, such as China's "Naodongfang" (Wang, 2021). However, the *manjapuik marapulai* contradicts this tradition, where the bridegroom is picked up by the bride (Ramanta and Samsuri, 2020). In Kyrgyzstan's *kuz ala kachui* tradition, the groom's parents ask for permission to pick up the bride (Kleinbach and Salimjanova, 2007). These traditions for each community are considered noble values of respecting the bride and groom. However, in contrast to the *gama* tradition, the Mongondow people, who are predominantly Muslim, are still close to the customary law. The close relationship between the *gama* custom and the Mongondow tribe is an inherited tradition passed down by their forefathers. In social life, they also implement religious values taught in Islam.

This study aims to explore the relationship between customary and Islam law by using the *mogama/gama* tradition of the Mongondow community as an example. The study identified *gama* tradition in terms of customary and Islamic law by taking the concepts of *wuf* and *receptive*. The Mongondow is a Muslim-dominated community in North Sulawesi, indicating that Islamic law is still practiced in their daily activities, albeit in a ritualistic manner.

## **Method**

This study was conducted in the Mongondow Muslim community in North Sulawesi, which is one of the largest tribes in the province. Among this populace, the Mongondow people hold traditional rituals, such as *gama tradition*, which have been practiced for generations. According to customary law, this tradition determines the validity of their marriage. Therefore, an in-depth study is required regarding the harmonization of customary and Islam law.

This study uses a juridical-sociological approach based on fieldwork as well as in the legal and cultural environment of society (Huda, 2022). Both primary and secondary data sources were used. The primary data sources involve informants, such as religious and traditional leaders, as well as stakeholders of the Mongondow Muslim community. Secondary data sources include law literature, namely custom, Islam, positive regulations, and related documents. This study emphasizes understanding the beliefs, actions, and role of each informant related to the *gama* traditions of the Mongondow Muslim community.

Data were collected in 3 ways, namely observation, interviews, and documentation. Observations were made at the time of the wedding ceremony (*walimatul' ursy*) of the Mongondow Muslim community. In-depth interviews were conducted with religious and traditional leaders, as well as stakeholders in the Mongondow Muslim community (Creswell, 2014). Furthermore, documentation was carried out using the *record* tool, aimed at recording data on the *gama* process of the Mongondow community for further scrutinization.

Sociological juridical studies examine the various realities of human action that are related to a social construction from the outermost to the deepest layers (worldview) (Huda, 2022). This is relevant to the theory of Fishbein and Ajzen, stating that attitudes and subjective understanding of social norms can predict interest and influence behavior (Wttenbraker, Gibbs, and Kahle, 1983). Furthermore, data processing undergoes 4 stages, namely data collection, presentation, reduction, and verification (Miles, Huberman, and Saldaña, 2018).

The data collected through 3 stages is discussed using 2 law theories. *First*, the theory of *urf* in Islamic law, which are of 2 types, namely, custom can be good

when it does not conflict with Islamic law and vice versa (Yamamah, 2016). *Second*, the theory of *receptie a contrario* demonstrates that customary law can apply as long as it does not conflict with Islamic law (Hazairin, 1981; Khan, 2015; Tellenbach, 2016). These theories aim to understand the meaning behind the behavior of the Mongondow Muslim community regarding *gama*. Furthermore, an analysis is carried out based on philosophical studies in an eclectic way from several law, namely scientific disciplines, Islam, and customary.

### ***Gama Tradition in the Mogondow Muslim Society of North Sulawesi***

The Bolaang Mongondow community interprets *gama* as a tradition of picking women up (Bukido *et al.*, 2021). This tradition is carried out after the marriage, where the groom is obliged to pick up the bride. The implementation of the *gama* tradition at every wedding held in Mongondow is divided into 2, namely, the *mogama* on the road and the *gama* on the spot. *Gama* is implemented immediately following the wedding, which is hosted at the bride's home and performed on a stage (*wedding puade*). The groom's family practices *gama* on the street on foot. The bride's steps are calculated based on the amount of money given by the groom's family. Both *gama* on the spot or the road involves the 13 stages stipulated in Mongondow customary law. The vast majority of Muslims in Bolaang Mongondow community practice *gama* tradition at every wedding. This indicates that *gama* tradition is now a prerequisite for wedding ceremonies in the community (Lantong, 2022; Manggo, 2022; Mokodompit, 2022).

The *gama* procession begins with *moguat/guat*, which is carried out by traditional stakeholders or customary leaders. It conveys the intention and purpose of the groom's arrival to pick up the bride. The groom then asks for blessings from both parents of the bride using the Mongondow traditional language:

*“Mama naa aku'oy ki uyo (nama) aku'oy momoripa mobahas koy mama ako mo taadoy ki anu mo nimun dia an kudon kon baloy kon baroy mama baroy papa yo akata koy bogumu mamayo ba buryng panag mo puring tata burawan popotuuntumu ki anu ini mu, cuam aku'oy dia mo bo onu takadon kan aku'oy kiin (seseraha) ini popaabatku ki mama sebagai sukurku ko ini mama bo naa mama aka mo taadoy mo doa kaminda barumah tangga umuran pamonony (Bukido et al., 2021).”*

“Mother, my name is Uyo. I already have a steady job, then even if the mountain is full of gold, I will give it. However, mom and dad today I don’t have more income, so please accept this gift as a form of offering and appreciation.”

The customary leaders then thank the bride’s mother for conceiving, giving birth, looking after, and caring for her child. Afterward, they seek permission to bring (*gama*) her daughter to the groom’s house. This process is executed with the hope that the bride in her household journey will get sustenance as well as shalih and sholihah offspring. At this point, the bride’s parents then allow the groom’s family to bring their children. This is followed by a procession of 13 stages of *gama*, namely *Tompangkoi in gama* (preparation), *Lolanan Kon Tubig* (crossing the water), *Lampangan kon Tutugan in Lanag* (crossing the eaves), *Poponikan kon Tukad* (climbing the stairs), *Lampangan kon Tonom* (stepping over the bend), *Pilat in Siripu* (taking off shoes), *Kungkum ing Paung* (closing the umbrella), *Litu’an bo Pogapangan* (sitting and being accompanied), *Pilat in Kolubung* (opening the veil), *Pinomama’an* (eating areca nut/whiting lime), *Pinogiobauan/Pongaanan* (eating), *Pinolimumugan* (gargling), and *Pobuian* (coming home) (Bukido *et al.*, 2021).

At each stage of this ritual, the Mongondow people offer prayers as a form of hope to Allah SWT. For example, in the gargling / *pinolimumugan* procession, the bride and groom rinse their mouths using betel. Then, they cleaned the mouth that was still red earlier, and this is believed to bring fortune and good things to both partners (Irfan, 2022). The procession of the bride and groom eating betel is a sign of the union between the families of the two partners in marriage (Lantong, 2022; Manggo, 2022). Furthermore, the procession of opening the veil / *pilat in kolubung* is believed to be a symbol of beauty and can also give the husband peace of mind (Gonibala, 2022).

The completeness of the *mogama* tradition is giving wealth/gifts to the bride, which is a token of gratitude to her parents. Starting from giving birth to their children to caring for and raising them to the aisle (Lantong, 2022). Moreover, the gift of wealth is carried out to convince them and provide evidence that the groom can look after the bride and support her (Manggo, 2022).

Punu Yayubangkai, who was the first to practice the *mogama* custom, has

passed it down from generation to generation. Based on interviews with Mongondow traditional leaders, Punu Yayubangkai has children who have been married. He gave all his wealth to his future son-in-law when proposing and gifts to the bride's family when the son-in-law was picked up at his residence. Punu handed over land, houses, gardens, harvests, gold, money, and livestock to the women as a sign of courtesy and due to his regard for women. Punu abandoned just his sword and scabbard (Ginoga, 2022).

This story is used as the basis for implementing *gama* in the Mongondow community. Over time, the traditional assembly changed the gift assets into gold (Mokodompit, 2022). Moreover, like *Pongiooan*, money is a token of gratitude because the proposal has been accepted. *Potarapan* is a beauty kit package given by the groom's family to be able to see the bride. *Wear tobaki* is a complete attire for the proposal, *Poleadan* is the property given to the bride, and *Guat* is the money given by the groom's family to the bride's parents. Furthermore, *Potulokan* is the money given to the parents for permission to live in one house with her husband, while *Tali* is dowry for the bride.

Assets/gifts can be given in the form of objects such as livestock, land, jewelry, or cash, depending on the previous agreement. They are received by the bride's parents as support for the wedding party (*walimatul' ursy*) or directly given to the bride, who becomes the man's wife. Meanwhile, *guat* is an absolute right that a woman's parents should own. The nominal assets issued are adjusted to the request of the woman's family. The difference in nominal assets in this tradition is influenced by social status, the bride's beauty, and class, such as the descent of the king/ordinary population. The family makes this a classification of valuation assets/gifts in the *gama* tradition (Ginoga, 2022).

Previous studies have shown that the Bolaang Mongondow tradition and culture are still attached to the beliefs of the Mongondow people. Moreover, the *gama* tradition at the wedding ceremony is a place to establish and strengthen friendship ties, as well as unite the families of both parties. The Mongondow people see *gama* as a symbol of women's majesty and honor, which is still maintained today.

### **Islamic Law Against the *Gama* Tradition**

As one of the concepts outlined in Islamic law, *urf* is defined as traditional community activity or interaction carried out repeatedly (Nasution, 2022). It is a wide and open withdrawal of legal sources assessed in terms of a custom benefit (Mansyur, 2021). Furthermore, the *gama* tradition can be classified into the concept of *urf shahih*, which translates to good custom. This tradition does not conflict with the *nash* when analyzed more deeply. The meaning is not to eliminate the benefits and not bring destruction. In the concept of *urf* and marriage ceremonies, it is explained that customs/traditions practiced in the household provide safety (*al-urfkhash*) (Yamamah, 2016). For the Mongondow Muslim community, *gama* has the essence of hoping for happiness in the household, which can arise by appreciating women (Irfan, 2022).

The concept of *urf* is the answer of contemporary Islamic thinkers in reforming the law. According to Shabana (2010), these changes were made through the mechanism of deconstructing Islamic law and adapting it to the principles of human rights (HAM). Murtadlo (2020) reported that modern-day Islamic law needs to involve ideas or thoughts from other disciplines, one of which is *urf*.

Even though marriage is considered valid in Islamic law when it fulfills the pillars and conditions (Yamamah, 2016), the *gama* tradition has become mandatory and is attached to the marriage process of the Mongondow Muslim community. The community does not combine the *gama* procession with the pillars of marriage, even though it is necessary. If this tradition is included in the pillars, it is contrary to Islamic law. The Bolaang Mongondow community continues to view *gama* as a requirement for marriage because it is not against Islamic beliefs and causes no harm to any party. Therefore, this tradition is *mubah* (permissible) in Islamic law.

The stages carried out in the *gama* tradition are consistent with the *urf* requirements. According to Andalib, Mohammadzadeh, and Mahdi (2021), the requirement for *urf* is whether or not the traditions practiced offer benefits that are acceptable to common sense. The *gama* tradition has various benefits from each procession, for example, eating betel together indicates a strong bond between



husband and wife. Furthermore, the procession of gargling is a prayer asking for abundant sustenance. Both of these rituals are carried out by the Mongondow people in the hope of having a harmonious family (Ginoga, 2022; Irfan, 2022).

Furthermore, based on the stages of this tradition, studies have seen some Islamic values contained in this procession. *First*, it glorifies women, especially wives (QS. An-Nisa: 19). Women may not be taken by force in the implementation of marriage, but should be glorified. Marriage is a special moment for women, in their position as wives to their husbands and mothers to their children, entering new families and being united with different backgrounds. These differences in life complement each other in the household. Furthermore, this respect for women is the essence of the *gama* tradition in honoring their position in the household. The process of inviting women to enter the New World was conducted in accordance with tradition, so the families they encountered eventually accepted them in a spirit of connection and kindred. In accordance with the *akkorongtigi* custom of the Makassar people, the marriage ritual is viewed as a means of elevating women (Salam and Lapele, 2020). Of course, the *gama* tradition teaches that from requesting a wedding to picking up the bride, it should be carried out in good faith.

*Second*, *gama* tradition is intended to further bind the brotherhood of 2 different families. Moreover, the brotherhood is meant for the close relatives and neighbors of the bride and groom (Ginoga, 2022). Islam upholds brotherhood (QS. An-Nisa: 36) and is practiced by the Muslim community to further strengthen the relationship between people with the basis of humanity (Eficandra, 2022). The relationship is maintained based on affection, attention, and good treatment. Relationships between people start from the closest to distant relatives, which has implications for overall relations with all community groups (Leirvik, 2010; Mondry, 2017).

These 2 values, namely glorifying women and kinship ties, are highly noble for the Mongondow Muslim community. By carrying out the *gama* tradition, the community believes that both partners and families will get a peaceful, happy, and eternal life based on the purpose of marriage. The implementation of this tradition is based on the agreement and deliberation results of the 2 families. Each stage in

this traditional procession has meaning for the Mongondow Muslim community.

### **Customary Law against the *Gama* Tradition**

The concept of customary law is related to religion and customs towards a rule (Article 131 paragraph 2 sub. b IS / *Indische Staats Regeling*) (Bukido, 2017). Due to its dynamic nature (Musawwamah, 2020), the law evolves in tandem with the development of social society since it reflects the needs of the community. This development is influenced by external factors, such as religious and general law, resulting in assimilation or acculturation (Rohe *et al.*, 2019; Nyambok and Zanello, 2022).

This statement is demonstrated by the tradition of presenting wealth in a procession of *gama* (treasures/gifts), starting from the gifts that should be given, which constitute the vast majority of assets owned. Furthermore, based on the community's needs, it is adjusted to become property in the form of land, houses, or other objects. However, over time, the form of the assets given is carried out by deliberation regarding the giving of this *gama* prize. The traditional assembly then agreed that the objects given as gifts were money and gold (Ginoga, 2022; Irfan, 2022; Lantong, 2022).

According to Bukido (2017), this is an honest marriage with a gift of money/goods. This pattern of marriage also occurs in Nigerian and African societies. Anyogu and Ibekwe (2020) stated that the indigenous peoples of Nigeria and Africa perform these forms of marriage. The goal is to release the woman (wife) into a new family with the man (husband). Furthermore, this marriage is carried out to transfer the responsibility and power over women to the man's family.

Fang (2020) explains that the woman's family should strengthen her child's partner to prevent the negative effects of this honest marriage, which could have an impact on intimidation and violence against women. The woman's family has to transfer responsibility to their children and live in their new family home.

The application of customary law and its enforcement in rural communities is important and central to restoring social image as a norm that controls and restrains all violations of rules (Anyogu and Ibekwe, 2020). One of the elements in

customary law applied by society for social violation is sanction. However, unlike other legal systems, most customary law sanctions are occult (Huda *et al.*, 2022).

The Mongondow Muslim community, especially the groom and his family who do not practice *mogama makai*, are considered *poton/taboo* (accursed) because *gama* is a form of completeness for all marriages (Lantong, 2022; Mokodompit, 2022). According to traditional leaders, social sanctions are felt by the bride. Moreover, society despises brides who do not carry out this tradition because the purpose of *gama* is to glorify women (Lantong, 2022).

The community views *mogama/gama* as a form of high appreciation for the bride and her family. This is because the groom needs permission from the bride before they can start a new life together. Permission is obtained before the bride is taken to her new home to serve as a form of sincerity to both partners. The *gama* tradition for the assembly and the Mongondow community aims to unite the bride and groom as well as both families as one in the Bolaang Mongondow custom. This implementation process is used to preserve the culture of the people (Manggo, 2022; Mokodompit, 2022).

Bukido (2017) reported that 2 obligations occur in customary law. *First*, it is always considered and implemented by the community. *Second*, the community believes customary law has legal force, such as social and occult sanctions contained in this *gama* tradition. Beyer (2016) found a pattern of customary law that is a reflection of the thinking and structure way of the community. The first partner passes down the tradition from generation to generation in every marriage ceremony. However, there are frequent adjustments to the conditions of society that have developed over time. *Second*, the community still holds faith in this supernatural sanction due to the *gama* tradition's magical-religious elements (religious beliefs), such as the incidence of taboos and curses. *Third*, it emphasizes togetherness, in which the legal relationship between members of the customary community occurs based on a sense of kinship, mutual assistance, and brotherly bonds, as shown in the *Pinomama'an* procession

Even though customary law is unwritten, the existence of *gama* traditions is adhered to in community groups. According to Komaruddin (2020), the community

still adheres to customary law as a guideline and a way of life. Obedience or adherence to these laws is based on a shared awareness of a power that regulates and binds the community because of its value, which benefits people's lives (Trinkner, Jackson, and Tyler, 2018). According to Nonet and Selznick (2017), tradition is formed and has a strong customary law position if the rule of law reflects the values in social society. The community always obeys these provisions or rules even though the practices of the *gama* tradition are not documented.

### **The Relationship between Customary and Islam Law in the *Gama* Tradition**

Referring to Ash-Shiddiqy in Siregar *et al.* (2022), all laws apply due to habit. Therefore, habits appear to become community agreements and comply with form the customary law (Howell, 2018). The concept of Islamic law also describes customary law as an agreed-upon provision or a guideline for social activity (Tellenbach, 2016). However, Islam explains that customary law can be of bad (*fashid*) and good value (*shahih*) as these customs are governed by Islamic teachings (Sudirman *et al.*, 2019). The practice and application of customary and Islamic law can affect societal changes in habits.

Customary and Islamic law are two different legal systems, written and unwritten. The written law guarantees legal certainty, but not all rules apply fairly in society (Hart, Raz, and Green, 2012). A group's attitudes toward written law are shaped by its societal customs. On the other hand, unwritten laws are formed from the habits of social groups by combining their cultural values (Hart, Raz, and Green, 2012; Fatmawati, 2021).

The *gama* tradition practiced in Bolaang Mongondow does not imply the imperfection of Islam but rather that there is a significant impact on customary law on society, which should be respected as a fundamental principle (Gonibala, 2022; Lantong, 2022). This implies that Islamic law remains relevant to customary law by aiming at realizing peace among the people even though the renewal of traditions will occur continuously in every social setting.

Long before the existence of Rasulullah SAW, customs were enforced by a group of people worldwide (Robinson, 1983). According to Parisi (2001), some

values are considered appropriate and positive for these community groups. This opinion is corroborated by the arguments of Kasim and Nurdin (2020) that customary in the form of habits will be carried out repeatedly, agreed upon, understood, and practiced by the community based on awareness. This argument is consistent with the report of Nasution (2022) regarding *urf*.

There are two relationships between customary and Islamic law in the *gama* tradition. *First*, Islamic law is accepted by society (Zeb *et al.*, 2019), and the *gama* tradition of the community includes good customary practices. In the implementation, the community does not become a requirement/pillar in marriage. Furthermore, in maintaining the noble values passed down from the ancestors, there are customary sanctions for those who do not practice this tradition.

*Second*, Islamic law recognizes customary law because of the benefits of this tradition (Mutawali, 2021). The community carried out the *gama* tradition as proof of the nobility of a woman, especially after becoming a wife, which is consistent with the teachings of Islam. This study can establish brotherly relations with this tradition, which is required in Islam. Therefore, Islamic law does not conflict with this tradition.

The previous statement and the results of this study can be linked to Hazairin's theory of "*receptie a contrario*", which states that both laws can coexist given that they do not conflict (Mutawali, 2021). Another link is the concept of customary, which is called *Urf* in Islamic law. Habits or customs are complex because they vary in each region. However, they contain various meanings and noble values inherent in the community (Adamec, 2016; Suriadi, 2017; Sudirman *et al.*, 2019; Zubir and Ahmad, 2022).

### **Conclusion**

Every wedding in the Mongondow Muslim community of North Sulawesi includes the *gama* procession, which has been practiced for generations. Even though the marriage is legal according to Islam, it is considered invalid when the bride fails to perform the *gama* ritual. This tradition that applies to the Mongondow Muslim community has a relationship between customary and Islamic law. Furthermore,

the purpose of *gama* for the bride is to place women in an honorable position, respect their families, and position them as housewives who certainly have an important role in realizing the goal of marriage, which is to be happy and eternal based on the belief in the one supreme God.

Both customary and law mutually recognize their existence in the *gama* tradition. First, the concept of *urf* explains that the *gama* tradition has the noble value of glorifying women and the high value of brotherhood (QS. An-Nisa: 36). This tradition is justified in Islamic law as long as it does not conflict and cause harm. Second, the concept of *receptive* considers *gama* to be practiced with a strong philosophical foundation by classifying this tradition as an honest marriage under customary law, with the noble value of glorifying women who are still held in high esteem by the community. In conclusion, these concepts do not conflict, hence, they can coexist in social activities.

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