

# Living Islamic Law in Indigenous Communities in Indonesia:

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## Living Islamic Law in Indigenous Communities in Indonesia: Integration of Fiqh in the Tradition of Mu'amalah of the Muslim Community of Banjar

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Submitted : 10-07-2025  
Revision : 15-08-2025

Accepted : 27-08-2025  
Published : 26-11-2025

**Abstract:** The interaction between Islamic law and local wisdom among the Muslim community of Banjar in South Kalimantan reflects the significant dynamics of living Islamic law within the framework of legal pluralism in Indonesia. The *mu'amalah* practices developed in this community are not limited to the application of normative fiqh alone, but are brought to life through cultural expressions and oral traditions, such as *barelaan*, *tukar jual*, *jual lah seadanya*, and *bawa ja dulu*, which serve a dual role as *ṣiḡhat al-'aqd* and as social devices for upholding the principles of voluntariness, openness, honesty, and justice. This study aims to trace the forms, meanings, and mechanisms of integrating the principles of *fiqh mu'amalah* into the customary order, as well as to assess its contribution to the discourse on living law and *maqāṣid al-sharī'ah*. A qualitative approach within a phenomenological framework is used. Research data were collected through participatory observation in traditional markets, interviews with local scholars, customary leaders, and traders. The results reveal that local scholars play a strategic role as mediators who interpret and adapt customary practices to align with the principles of Sharia. This process gives rise to a living legal system that is deeply rooted in social legitimacy and endowed with moral authority recognized by the community. From a theoretical perspective, this study broadens the understanding of legal pluralism through a model of reciprocal interaction between Islamic customary law, *fiqh mu'amalah*, and positive law, while enriching the discourse on *maqāṣid al-sharī'ah*, particularly in the dimension of *ḥifẓ al-māl*, which is preventing loss and fostering blessings through social practices based on community trust and ethics.

**Keywords:** Islamic living law, Fiqh Mu'amalah, Tradition, Legal pluralism, Maqāṣid al-Sharī'ah.

**Abstrak:** Interaksi antara hukum Islam dan kearifan lokal di kalangan komunitas Muslim Banjar di Kalimantan Selatan mencerminkan dinamika signifikan hukum Islam yang hidup dalam kerangka pluralisme hukum di Indonesia. Praktik *mu'amalah* yang berkembang di komunitas ini tidak terbatas pada penerapan fiqh normatif saja, tetapi dihidupkan melalui ekspresi budaya dan tradisi lisan, seperti *barelaan*, *tukar jual*, *jual lah seadanya*, dan *bawa ja dulu*, yang memainkan peran ganda sebagai *ṣiḡhat al-'aqd* dan sebagai perangkat sosial untuk menegaskan prinsip-prinsip kesukarelaan, keterbukaan,

kejujuran, dan keadilan. Penelitian ini bertujuan untuk melacak bentuk, makna, dan mekanisme integrasi prinsip-prinsip fiqh mu'āmalah ke dalam tatanan adat, serta untuk menilai kontribusinya terhadap wacana tentang hukum yang hidup dan *maqāṣid al-sharī'ah*. Pendekatan kualitatif dalam kerangka fenomenologi digunakan. Data penelitian dikumpulkan melalui observasi partisipatif di pasar tradisional, wawancara dengan ulama setempat, tokoh adat, dan pedagang. Hasil penelitian menunjukkan bahwa ulama setempat berperan strategis sebagai mediator yang menafsirkan dan mengadaptasi praktik adat agar selaras dengan prinsip-prinsip Syariah. Proses ini melahirkan sistem hukum yang hidup, berakar kuat pada legitimasi sosial, dan memiliki otoritas moral yang diakui masyarakat. Dari perspektif teoretis, penelitian ini memperluas pemahaman pluralisme hukum melalui model interaksi resiprokal antara hukum adat Islam, fiqh mu'āmalah, dan hukum positif, sekaligus memperkaya wacana *maqāṣid al-sharī'ah*, khususnya dalam dimensi *ḥifẓ al-māl*, yaitu mencegah kerugian dan menumbuhkan keberkahan melalui praktik sosial yang berlandaskan kepercayaan dan etika masyarakat.

**Kata Kunci:** Hukum Islam yang hidup, Fiqh Mu'āmalah, Tradisi, Pluralisme hukum, *Maqāṣid al-Sharī'ah*.

## Introduction

The interaction between Islamic law and culture in the social practices of Muslim communities is inevitable, producing a set of complementary and adaptive legal norms. Both of them have a diverse dialectic.<sup>1</sup> In this context, Islamic law is implemented in society as a living rule, a concept that can also be referred to as living Islamic law.<sup>2</sup> This terminology refers specifically to (Islamic) legal practices that have developed and are applied in everyday lives by Muslim communities. Living Islamic law has characteristics in the form of rules that have been agreed upon by the community, both written and unwritten, and contain moral, spiritual, and social values based on Islamic teachings. These conditions enable religious norms to live in society.<sup>3</sup>

While the term living Islamic law has not been previously articulated in scholarly discourse, it represents an extension of the term living law introduced by Eugen Ehrlich. The concept of living law refers to norms and practices that emerge from social interactions and customs, which are not necessarily codified in formal legal texts.<sup>4</sup> According to him, Living Law is a concept that emphasizes the importance of living law in Eugen Ehrlich's society.<sup>5</sup> Law does not only originate from legislation, but also from social practices and norms that develop within society.<sup>6</sup> This concept emphasizes

<sup>1</sup> Raha Bahari and Ezmi Sivana, "The Meaning of Socio-Cultural Values from the Islamic Law Perspective," *MilRev: Metro Islamic Law Review* 1, no. 1 (2022): 90–103.

<sup>2</sup> Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge, UK ; New York: Cambridge University Press, 2009) Read also ; M. Noor Harisudin, "Diskursus Fikih Indonesia: Dari Living Laws Menjadi Positive Laws," *Al-Manahij: Jurnal Kajian Hukum Islam* 10, no. 2 (February 2017): 169–84, <https://doi.org/10.24090/mnh.v10i2.932>; Also see ; Eza Aulia, "Kodifikasi Hukum Islam Sebagai Ius Constituendum Terhadap Living Law Yang Hidup Di Dalam Masyarakat," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 3, no. 2 (December 2019), <https://doi.org/10.35308/jic.v3i2.1439>.

<sup>3</sup> Muhammad Zaki et al., "Living Hadith and Legal Traditions in Preserving Ancestry: A Case Study of the Contemporary Arab Sayyid Community in Lampung," *MilRev: Metro Islamic Law Review* 4, no. 2 (2025): 1297–327.

<sup>4</sup> Erawadi Erawadi and Fadlan Masykura Setiadi, "Exploring Religious Harmony Through Dalihan Na Tolu: Local Wisdom in Peacebuilding in Indonesia," *Jurnal Ilmiah Peuradeun* 12, no. 3 (September 30, 2024): 1379, <https://doi.org/10.26811/peuradeun.v12i3.1398>.

<sup>5</sup> Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Cambridge: Harvard University Press, 1913), 37.

<sup>6</sup> Roger Cotterrell, *Living Law: Studies in Legal and Social Theory*, 1st ed. (Routledge, 2017), 15.

that formal and informal law interact and influence each other.<sup>7</sup> Unlike the term living law, which emphasizes the definition of law that develops in general, living Islamic law specifically describes Islamic law that grows and develops in Muslim societies.

As a country with the largest Muslim population, Islamic law is part of state law and customary law within the framework of legal pluralism.<sup>8</sup> Islamic law is not only present in the form of positive law accommodated by the state, but also grows culturally and normatively through the practices of indigenous communities that make Islamic values the basis of ethics and living law.<sup>9</sup> Living Islamic law can be an important source of law in Muslim societies,<sup>10</sup> including in the context of family law and economic law.

The concept of living Islamic law emphasizes the importance of understanding Islamic law as a dynamic and adaptive system,<sup>11</sup> which can interact with the social and cultural context of society.<sup>12</sup> The traditions of indigenous communities such as Banjar, Aceh, and Sasak are rich in Islamic values<sup>13</sup> that are not present in normative texts, but rather through symbols, language, and practices of marriage, muamalah, or other practices that intersect between tradition and Islamic law, transmitted intergenerationally.<sup>14</sup> They emphasize living Islamic law as not merely a codified fiqh, but more about the values of *maqāṣid al-sharī'ah* manifested through local traditions,<sup>15</sup> such as shigat akad in buying and selling, requests for “*halal*” after transactions, and dispute resolution based on deliberation guided by local religious leaders.<sup>16</sup>

This study captures Living Islamic law in the context of the Banjar community in South Kalimantan, Indonesia, in which a variety of traditional practices rich in religious and cultural

<sup>7</sup> Read more, David Nelken and Johannes Feest, eds., *Adapting Legal Cultures*, Oñati International Series in Law and Society (Oxford ; Portland, Or: Hart Pub, 2001).

<sup>8</sup> Sally Engle Merry, “Legal Pluralism,” *Law & Society Review* 22, no. 5 (July 1988): 869–96, <https://doi.org/10.2307/3053638>; Bagio Kadaryanto, Ardian Kurniawan, and Burhanuddin Burhanuddin, “Reconstruction of Indigenous Community Inclusion in Village Autonomy Policy: Towards a Substantive Autonomy Model in Indonesia,” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (June 2025): 1–19, <https://doi.org/10.30631/alrisalah.v25i1.1845>.

<sup>9</sup> Jenny. K. Matuankotta et al., “The Impact of the Hamlet Land Pawn Agreement on the Economic Level of Indigenous Peoples in Negeri Piliana, Maluku Tengah Regency,” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (June 2023): 21–32, <https://doi.org/10.30631/alrisalah.v23i1.1262>.

<sup>10</sup> Jan Michiel Otto, “Judicial Lawmaking in Indonesia: Between Civil Law and Islamic Law,” in *Epistemology and Methodology of Comparative Law* (Oxford ; Portland, Or: Hart Publishing, 2004), 20–12; also see Abdul Ghofur Anshori and Yulkarnain Harahab, *Hukum Islam: Dinamika Dan Perkembangannya Di Indonesia* ([Yogyakarta] : [Ciganjur, Jagakarsa, Jakarta: Total Media ; Distributor tunggal, Buku Kita, 2008), 63; also see Ahmad Qodri A. Azizy and Ahmad Qodri A. Azizy, *Hukum Nasional: Eklektisisme Hukum Islam Dan Hukum Umum*, Ed. rev., cet. 1 (Jakarta : Mizan Media Utama, 2004), 102.

<sup>11</sup> Ziba Mir-Hosseini, “The Construction of Gender in Islamic Legal Thought and Strategies for Reform,” *Hawwa: Journal of Women of the Middle East and the Islamic World* 1, no. 1 (2003): 16–19, <https://doi.org/10.1163/15692078-00101002>.

<sup>12</sup> Read, Muhammad Khalid Masud, *Muslim Jurists' Quest for the Normative Basis of Shari'a; Inaugural Lecture*, Occasional ISIM Paper (Leiden: ISIM, 2001); Also read Warkum Sumitro, *Hukum Islam Di Tengah Dinamika Sosial Politik Di Indonesia* (Malang: Setara Press, 2016), 220.

<sup>13</sup> Read also Sri Asuti A. Samad Munawwarah, “Adat Pernikahan Dan Nilai-Nilai Islami Dalam Masyarakat Aceh Menurut Hukum Islam,” *El-Usrah: Jurnal Hukum Keluarga* 3, no. 2 (2020): 289–302, <https://jurnal.ar-raniry.ac.id/index.php/usrah/index>; Daeng Sani Ferdiansyah, “Akulturasi Budaya Islam Dalam Tradisi Merariq Masyarakat Suku Sasak, Lombok Timur, NTB,” *Kuriositas: Media Komunikasi Sosial Dan Keagamaan* 12, no. 1 (2019): 17–46.

<sup>14</sup> Read, Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, ICAS Publications Series (Amsterdam: Amsterdam University Press, 2010), 97–102; Lebba Kadorre Pongsibanne, *Islam dan Budaya Lokal: Kajian Antropologi Agama*, Edisi revisi (Yogyakarta: Kaukaba, 2017).

<sup>15</sup> Syamsarina Syamsarina et al., “Dynamics of Different Religious Inheritance Decisions: The Case Study of the Religious Court Judges Ijtihad,” *Syariah: Jurnal Hukum Dan Pemikiran* 25, no. 1 (2025): 1–21, <https://doi.org/https://doi.org/10.18592/sjhp.v25i1.15717>.

<sup>16</sup> Opik Rozikin et al., “Contextualizing Maqāṣid Al-Shari'ah in Indigenous Legal Practices: A Comparative Study of Family Resilience in Kasepuhan Ciptagelar and Kampung Naga,” *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 2 (2025): 344–62, <https://doi.org/https://doi.org/10.19109/nurani.v25i2.27760>.



meaning mark daily life.<sup>17</sup> Traditions such as *baayun maulid*<sup>18</sup> and *batampung tawar*<sup>19</sup> are clear examples of the intertwining of Islamic rituals and local expressions. All of this shows that Islam in Banjar is an Islam that adapts, not one that rejects tradition.<sup>20</sup> Furthermore, the discussion of Living Islamic law in the context of Banjar society in this study focuses on the aspect of *mu'amalah* or activities related to the economy.

The Banjar Muslim community has transformed Islamic law from merely a set of fiqh dogmas into a framework of ethical values that guide daily trade practices.<sup>21</sup> The Banjar Muslim community practices many traditions in their daily *mu'amalah* practices.<sup>22</sup> For example, in buying and selling among the Banjar community, there is a custom of using local terms (*tukarlah, jual lah, barelaan, jual seadanya, bakalahi badahulu, bawa ja dulu*) that have been passed down from generation to generation. These customs have been practiced for more than 200 years, since Syekh Muhammad Arsyad Al-Banjari returned to Banjar and spread Islam. This custom persists not only because of its social value but also due to the support and reinforcement provided by religious scholars and community leaders, making it an integral part of Living Islamic Law.

There have been previous studies examining the *mu'amalah* practices of the Banjar community, but their exploration remains limited to the domain of *mu'amalah*. Studies by Fadillah and Hidayatullah indicate that local expressions such as "*tukarjual*", "*jual seadanya*" (sell as is), and "*barelaan/minta rela*" (ask for what is reasonable) are not merely post-codification idioms, but function as *shighat al-'aqd bi al-lisan* (verbal contract terms) that directly articulate Sharia principles such as consent, honesty, and efforts to prevent *ghisy* (fraud) in the economic interactions of the Banjar community.<sup>23</sup> Syaifullah's research shows that local wisdom reflected in the practice of "*minta halal*" or "*berelaan lah*" in the economic interactions of the Banjar community is not merely a linguistic symbol, but reflects an appreciation of the values of honesty, moral responsibility, and consent in *muamalah*.<sup>24</sup>

Furthermore, within the framework of Living Islamic Law, which examines the integration of Islamic law into indigenous community contexts, Hasbi has explored the case of the Acehese

<sup>17</sup> Kadaryanto, Kurniawan, and Burhanuddin, "Reconstruction of Indigenous Community Inclusion in Village Autonomy Policy: Towards a Substantive Autonomy Model in Indonesia."

<sup>18</sup> Arif Sugian and Ady Muh Zainul Mustofa, "Symbolic Interaction Analysis of The Baayun Maulid Tradition of The Banjar Community," *Indonesian Journal of Islamic Education and Local Culture* 1, no. 2 (October 2023): 2, <https://doi.org/10.22437/ijielc.v1i2.30778>.

<sup>19</sup> Muhammad Rezky Noor Handy et al., "The Religious Values in Tradition of Batahlil in Banjar Pahuluan Community," *The Kalimantan Social Studies Journal* 2, no. 1 (October 2020): 39, <https://doi.org/10.20527/kss.v2i1.2462>.

<sup>20</sup> Ahda Fithriani and Niska Kamalia Rahim, "Exploring the Tradition of 'Pamantang': Prohibitions and Beliefs Surrounding Pre-Marriage Practices in the Banjar Society," *Interdisciplinary Explorations in Research Journal* 2, no. 1 (March 2024): 1, <https://doi.org/10.62976/ierj.v2i1.451>.

<sup>21</sup> Nur Quma Laila and Irwan Abdullah, "Questioning Fiqh Muamalah of Toleration: Religious Spatial Segregation in the Urban Area of Yogyakarta," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (2022): 28–59.

<sup>22</sup> Chuzaimah Batubara et al., "Realizing Justice and Maṣlaḥah in E-Commerce: Fiqh Muamalah Insights and Challenges in Malaysia and Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (September 10, 2024): 253, <https://doi.org/10.31958/juris.v23i2.12356>.

<sup>23</sup> Rahmat Fadillah and Muhammad Syarif Hidayatullah, "Dialog Masyarakat Banjar Dalam Interaksi Ekonomi (Telaah Kearifan Lokal Dalam Lensa Hukum Ekonomi Syariah)," paper presented at The 4th Annual Postgraduate Conference on Muslim Society, Banjarmasin, *Local and Global Aspects in The Malay World*, July 20, 2022.

<sup>24</sup> A. Syaifullah, "Moderasi Islam Dalam Kitab Sabilah Muhtadin: Kearifan Lokal Tanah Banjar," *Mudṣarah: Jurnal Kajian Islam Kontemporer* 2, no. 1 (July 2020): 31, <https://doi.org/10.18592/msr.v2i1.3676>.

community,<sup>25</sup> Sadiani has investigated the Dayak Ngaju community,<sup>26</sup> and Nordin has focused on the Malay Bunyan community.<sup>27</sup> Nevertheless, these studies have not yet addressed the integration of Islamic law within the domain of muamalah practices in the Banjar indigenous community.

Therefore, this study focuses on the integration of traditional values of the Banjar community in the context of muamalah practices with fiqh. This study captures the muamalah traditions of the Banjar indigenous community as a dimension of social legitimacy and moral authority. This research reveals the forms of verbal (oral) practices in contracts using the Banjar traditional language as an instrument of customary and Sharia legitimacy, while bridging the gap between formal law and social-religious values.

Through a phenomenological approach, <sup>7</sup> this study aims to gain a deeper understanding of the meaning, norms, and practices of *mu'amalah* traditions in the context of the Banjar indigenous community, which are integrated with Islamic and indigenous values. This allows researchers to explore the subjective experiences, interpretations, and social meanings of participants directly, thereby clarifying how Islamic law is internalized and practiced in the daily lives of the community.<sup>28</sup> The phenomenological approach enables researchers to understand experiences and social meanings shaped by the social and cultural context of the community.<sup>29</sup> This study focuses on a specific community with distinctive characteristics, so that it can obtain a comprehensive and contextual picture of *mu'amalah* practices within the framework of local and adaptive Islamic law.<sup>30</sup>

Data collection was carried out using participatory observation and in-depth interviews. Participatory observation was conducted to directly observe *mu'amalah* practices, including economic transactions, customs, and ceremonies related to Islamic norms and Banjar customs. Additionally, interviews were conducted with traditional leaders, local religious scholars, and community members with backgrounds as traders and consumers to uncover their meanings and interpretations of existing *mu'amalah* practices, as well as how they integrate Islamic teachings with customs.

To ensure the validity and reliability of the findings, data triangulation was employed through observation, interviews, and documentation. The data were analyzed using thematic analysis, whereby the information collected was systematically coded to identify key themes related to the concepts of Islamic law, customary norms, and *mu'amalah* practices within Banjar society. This methodological approach enabled the study to uncover the dynamics and substantive meanings of *mu'amalah* traditions as an integral component of living Islamic law characterized by its fluidity and contextual adaptation within the everyday life of the indigenous Banjar community in Indonesia.

<sup>25</sup> Yusrizal Hasbi et al., "Criminalising Women, Silencing Victims: Human Rights and Sharia Enforcement in Aceh," *De Jure: Jurnal Hukum Dan Syaria'iah* 17, no. 1 (June 2025): 175–203, <https://doi.org/10.18860/j-fsh.v17i1.29635>.

<sup>26</sup> Sadiani Sadiani et al., "Progressive Islamic Law and Misk Tradition of Dayak Ngaju in Central Kalimantan," *El-Mashlahah* 13, no. 2 (December 2023): 225–44, <https://doi.org/10.23971/el-mashlahah.v13i2.7624>.

<sup>27</sup> Zaimuariffudin Shukri Nordin et al., "Integrating Islamic Law and Customary Law: Codification and Religious Identity in the Malay Buyan Community of Kapuas Hulu," *Journal of Islamic Law* 6, no. 1 (February 2025): 89–111, <https://doi.org/10.24260/jil.v6i1.3410>.

<sup>28</sup> Norman K. Denzin and Yvonna S. Lincoln, *Hand Book of Qualitative Research* (Yogyakarta: Pustaka Pelajar, 2009), 272.

<sup>29</sup> Clark E. Moustakas, *Phenomenological Research Methods*, Nachdr. (Thousand Oaks: Sage, 2009), 21–25; John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Ppproaches*, 4th ed (Thousand Oaks: SAGE Publications, 2014), 76–79.

<sup>30</sup> Robert E. Stake, *The Art of Case Study Research* (Thousand Oaks: Sage Publications, 1995), 78.

### Living Islamic Law in the Economic Activities of the Banjar Muslim Indigenous Community: Between Tradition and Contemporary Fiqh Mu'amalah

Living Islamic law refers specifically to the practice of (Islamic) law that has developed and is applied in everyday life by Muslim communities. Living is a precedent that indicates an activity that is alive and developing within a community.<sup>31</sup> Living Islamic law is characterized by rules that have been agreed upon by the community, whether written or unwritten, and contain moral, spiritual, and social values based on Islamic teachings. Although the term Living Islamic law did not exist previously, it is a development of the term Living Law introduced by Eugen Ehrlich. According to him, living Law is a concept that emphasizes the importance of living law in society.<sup>32</sup> Law does not only originate from legislation, but also from practices and social norms that develop within society.<sup>33</sup>

Living law originates from customs or traditions, religion, and other sources.<sup>34</sup> The concept of living law has become an important concern in social law studies, especially in the context of legal pluralism in developing countries such as Indonesia.<sup>35</sup> Living law can be an important source of law in society, especially in the context of customary law or religious law.<sup>36</sup>

Based on the same concept of law that grows in society, Islamic law is applied in society and interacts with state and customary laws. This condition is reflected in the daily practices of the indigenous Muslim community of Banjar, who in their economic activities, apply a framework that is the result of the interaction between Islamic law and customary law.

The Banjar Muslim community views Islamic law not merely as a legal doctrine but as ethical values guiding daily commercial practices. The Banjar Muslim community practices many traditions in their daily mu'amalah (transactions). For example, in buying and selling among the Banjar community, there is a custom of using local terms such as: *tukarlah, jual lah, barelaan, jual seadanya, bakalahi badahulu, bawa ja dulu*. These expressions are part of the tradition of the Banjar Muslim community in conducting muamalah transactions.<sup>37</sup>

Expressively, in carrying out transactions, the Banjar Muslim community uses oral traditions that are part of the customary legal system that is obeyed.<sup>38</sup> Expressions such as "tukarlah-jual lah" are verbal agreements that not only have the meaning of an agreement but also have the meaning

<sup>31</sup> Muhammad Fauzinudin Faiz et al., "Living Ihyā and Harmonizing the Spiritual Essence: Sheikh Washil's Fiqh-Sufistic as the Bedrock of Spiritual-Based Islamic Law in Nusantara," *El-Mashlahah* 14, no. 2 (December 2024): 431–50, <https://doi.org/10.23971/el-mashlahah.v14i2.8551>.

<sup>32</sup> Ehrlich, *Fundamental Principles of the Sociology of Law*, 37.

<sup>33</sup> Cotterrell, *Living Law*, 15.

<sup>34</sup> Sofyan Hadi, "Living Law Dalam Perspektif Hukum Sosial," *DiH Jurnal Hukum* 13, no. 26 (2017): 159–60, <https://doi.org/10.30996/dih.v0i0.1588>.

<sup>35</sup> Brian Z Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sidney Law Review* 30, no. 3 (2008): 378.

<sup>36</sup> Gordon R Woodman, "Local Land Law in Globalizing World," *Journal of Legal Pluralism* 47, no. 1 (2015): 234. Read also ; John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (January 1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.

<sup>37</sup> Jamaluddin Jamaluddin et al., "Examining the Synthesis of Islamic Commercial Principles and Local Customary Practices: A Case Study of Nyambut Sawah Traditions in Tejamari, Banten," *Journal of Islamic Law* 5, no. 1 (February 29, 2024): 86–104, <https://doi.org/10.24260/jil.v5i1.2091>.

<sup>38</sup> Sukarni Sukarni and H bin Mahmud, "Development and Concept of Environmental Fiqh in the Works of Banjar Scholars: Historical and Thought Analysis," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 172–88, <https://doi.org/https://doi.org/10.18592/sjhp.v24i1.12906>.



of “shighat” in a sale and purchase agreement that has the legitimacy of the principles of consent and understanding. Thus, in this context, it shows that the expressive dimension is part of the living Islamic law emerging in the Banjar community. Furthermore, the performative dimension is also present in transactional expressions and is carried out repeatedly, for example, in the practice of returning or exchanging goods (*mun kada sedang hurupakan ja / bulikakan ja*), which means applying the principle of *khiyār* in *fiqh muamalah*. The buyer and seller agree (socially) that if the goods are not suitable, the buyer can exchange the goods.<sup>39</sup>

In addition, the expression “*bawaja dulu*”, reflects an agreement to deliver the goods first and make payment at a later date. This agreement is made on the basis of social trust.<sup>40</sup> Trust-based social contracts are sometimes more effective in regulating economic relations than formal mechanisms, especially in strong indigenous communities.<sup>41</sup>

Furthermore, there is an important finding that there is the expression “*bariakan*”, meaning a bonus given to regular customers.<sup>42</sup> In *fiqh* studies, this practice is categorized as a form of *hibah* (gift) in transactions, but in Banjar culture, it is not only a gift but also a strategy to maintain customer loyalty. This condition reflects cultural practices carried out as a means of cultural preservation as well as the implementation of Islamic values. Although not written, this system lives on in social actions that are carried out repeatedly.<sup>43</sup> Thus, this tradition demonstrates Islamic principles such as justice, openness, and transparency, which are part of *maqāṣid al-sharī'ah* in *fiqh mu'āmalah* and are manifested in social agreements without formal regulations.

These dimensions indicate the integration of *fiqh mu'āmalah* in local communities transmitted by the ulama. As is well known, the Banjar community in their daily *mu'amalah* practices generally tend to follow local religious scholars or figures whom they respect and look up to. This preference is greatly influenced by emotional closeness, pesantren culture, and a strong religious tradition that has been passed down from generation to generation in the Banjar community.<sup>44</sup>

Local scholars are considered the main religious authority due to their comprehensive understanding of *fiqh* law and the social context of the Banjar community.<sup>45</sup> In many cases, fatwas or advice from these figures are followed more than the official decisions of the Indonesian Ulema Council (MUI), state regulations, or the contents of classical *fiqh* books, especially if they are not conveyed directly by local religious figures whom they know.<sup>46</sup> Most *muamalah* traditions developed

<sup>39</sup> Mujiburrahman, “Interview with a Muslim Religious Leader from the Banjar Community, ‘Traditions of Mu'Āmalah in the Banjar Muslim Community,’” May 20, 2025.

<sup>40</sup> Ahmad Rosyadi, “Interview with Buyers at Batuah Martapura Market, ‘Traditions of Mu'Āmalah in the Banjar Muslim Community,’” May 21, 2025.

<sup>41</sup> Wim Van Binsbergen and Rijk Van Dijk, eds., *Situating Globality: African Agency in the Appropriation of Global Culture* (BRILL, 2004), <https://doi.org/10.1163/9789047412557>.

<sup>42</sup> Harisah, “Interview with a Cracker Seller at Martapura Market, ‘Traditions of Mu'Āmalah in the Banjar Muslim Community,’” May 21, 2025.

<sup>43</sup> Javaid Rehman, “Towards a New Common Sense. Law, Science and Politics in Paradigmatic Transition: Boaventura de Sousa Santos, Routledge, 1995, 614 Pages (Hardback £45.00; Paperback £17.99),” *The Liverpool Law Review* 18, no. 1 (March 1996): 109–10, <https://doi.org/10.1007/BF02440175>.

<sup>44</sup> Siti Mi'rojiah, “Interview with Buyers at Batuah Martapura Market, ‘Traditions of Mu'Āmalah in the Banjar Muslim Community,’” May 20, 2025.

<sup>45</sup> Yusuf Asyabri et al., “Multiplier Effect of Religious Tourism for Income of the Surrounding Community in Banjar Regency,” *International Journal of Tourism and Hospitality in Asia Pasific* 6, no. 2 (July 2023): 2, <https://doi.org/10.32535/ijthap.v6i2.2456>.

<sup>46</sup> Ahmad Tarmizi, “Interview with Buyers at Batuah Martapura Market, ‘Traditions of Mu'Āmalah in the Banjar Muslim Community,’” May 20, 2025.



through adat, but the ulama also guided to ensure that they remained in accordance with Islamic law.<sup>47</sup>

The history of Islamic law in Banjar is a long process. Since its early spread through the royal courts, Islam underwent a complex process of acculturation with local wisdom.<sup>48</sup> The kings of Banjar, especially Sultan Adam Al-Watsiq Billah in the 19th century, played an important role in integrating Islamic values into the legal and social systems of society through the Sultan Adam Law.<sup>49</sup> The people of Banjar accepted Islam not in a puritanical and textualistic form, but as a value system capable of harmonizing with their long-standing traditions and cultural symbols that had been preserved for centuries.<sup>50</sup> In addition, the development of Islam in Banjar cannot be separated from the influence of scholars such as Syekh Muhammad Arsyad al-Banjari, known for his intellectual brilliance and ability to transform fiqh teachings into a local context.<sup>51</sup> His monumental work, *Sabilal Muhtadin*, was written to address the Banjar community's need for an understanding of Islamic law that did not conflict with local culture.<sup>52</sup>

In addition, the existence of Sheikh Muhammad Arsyad al-Banjari's influence was mentioned by informants who said that the traditions of "barelaan" and "jual seadanya" (selling at whatever price) in sales transactions had been practiced since Sheikh Muhammad Arsyad al-Banjari returned from Mecca and spread Islam in Banjar.<sup>53</sup> This confirms that living Islamic law in the Banjar communities comes through a long process of vernacularization of fiqh by scholars. In addition, the contextualization of Islamic law in the cultural sphere occurred through a process of adaptation and negotiation between religious and local doctrines.<sup>54</sup> In this case, the ulama played a central role as mediators of Islamic law in society, transferers of religious knowledge as well as interpreters of Islamic and social law, thereby realizing a living and developing Islamic law in society.

The interaction between religious norms (fiqh) and the culture of the Banjar Muslim community resulted in customary practices that are both relevant and consistent with *fiqh mu'amalah* or Islamic economic law. The following is a table of traditions and expressions of the Banjar community as mentioned above in economic activities and their relevance to *fiqh mu'amalah*:

<sup>47</sup> Masruddin, "Interview with a Muslim Religious Leader from the Banjar Community, "Traditions of Mu'Amalah in the Banjar Muslim Community", June 27, 2025.

<sup>48</sup> Siti Maimunah et al., "Local Cultural Values in the Banjar Community," *The Kalimantan Social Studies Journal* 4 (March 2023): 178, <https://doi.org/10.20527/kss.v4i2.6649>.

<sup>49</sup> Tyas Alvionita Zahara, *Penerapan Syariat Islam di Kerajaan Banjar*, 7, no. 2 (2023).

<sup>50</sup> ahdi Makmur, "Peranan Ulama dalam Membina Masyarakat Banjar di Kalimantan Selatan," *MIQOT: Jurnal Ilmu-ilmu Keislaman* 36, no. 1 (June 2012), <https://doi.org/10.30821/miqot.v36i1.114>.

<sup>51</sup> M Noor Harisudin, "The Formulation of Fiqh Nusantara in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021): 39–57.

<sup>52</sup> Wardatun Nadhiroh, "Religious and Gender Issues In the Tradition of Basurung and the Polygamy of Banjar Tuan Guru in South Kalimantan," *Al-Albab* 6, no. 2 (December 2017): 2, <https://doi.org/10.24260/alalbab.v6i2.674>.

<sup>53</sup> Faidoh Rahmaniah, "Interview with Buyers at Batuah Martapura Market, "Traditions of Mu'Amalah in the Banjar Muslim Community," May 20, 2025.

<sup>54</sup> Shehnaz Haqqani, "Men in Charge? Rethinking Authority in Muslim Legal Tradition: By Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger, Eds. (London: Oneworld Publications, 2014. 286 Pages.)," *American Journal of Islam and Society* 33, no. 1 (January 2016): 137–41, <https://doi.org/10.35632/ajis.v33i1.893>.

Table 1. Table of Traditions and Expressions of the Banjar Muslim Community

No	Expressions/Traditions of the Banjar Muslim Community in Mu'amalah	Meaning	Relevance to Contemporary Fiqh Mu'amalah in Indonesia
1	<i>Barelaan</i>	<i>Barelaan</i> is an expression used by the Muslim community of Banjar when buying and selling. This expression is a part of price negotiation that is a key aspect of social and economic interactions in traditional markets. <i>Barelaan</i> is not just a process of bargaining; it also reflects local cultural values such as politeness, deliberation, and harmonious interpersonal relationships between sellers and buyers. <sup>55</sup>	The practice of <i>barelaan</i> in the context of Islamic economics reflects the principle of <i>'an-tarādī</i> (mutual consent) as explained in Surah An-Nisa verse 29 and the hadith narrated by Ibn Majah, which means: "Indeed, buying and selling must be done based on mutual consent." <sup>56</sup> One of the requirements for a valid sale is the consent of both parties. If a sale occurs under coercion or involves pressure from one party, then the contract is considered invalid. <sup>57</sup>
2	<i>Tukar jual</i>	The term " <i>Tukar jual</i> " in Banjarese tradition refers to a form of traditional economic transaction that reflects a system of direct exchange (barter) between two parties without using money as a medium of exchange. <sup>58</sup>	The practice of " <i>tukar jual</i> " reflects the practice of <i>ijabqabul</i> ( <i>shighat al'aqd bi allisān</i> ) and contract through action ( <i>almu'āthah</i> ). Contracts for the sale and purchase or exchange of goods (barter) can occur through verbal <i>ijab qabul</i> or through actions, if local customs consider such transactions to be valid. <sup>59</sup>
3	<i>Jual seadanya</i>	The expression " <i>Jual seadanya</i> " in Banjarese tradition refers to the practice of buying and selling goods in their current condition, without prior repair, improvement, or quality enhancement before being transferred to the buyer. This practice embodies the principles of transparency and honesty in transactions, as the seller discloses the goods' actual quality, quantity, and physical state without concealment or alteration. <sup>60</sup>	<i>Jual seadanya</i> is a commercial practice that signifies the presence of <i>Shighat al-'aqd</i> , which in mu'amalah jurisprudence functions not only as a statement of <i>ijab qabul</i> , but also as an instrument to ensure clarity of contract and narrow the possibility of fraud ( <i>ghish</i> ) in transactions. The clarity of the contractual terms and the mutual consent of the parties are essential conditions for the validity of a sale, as they prevent disputes and fraudulent practices that may harm one of the parties. <sup>61</sup>

<sup>55</sup> Lutfi Sahal, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'Amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>56</sup> Eka Nuraini Rachmawati and Ab. Mumin bin Ab. 2. ani, "Akad Jual Beli Dalam Perspektif Fikih Dan Praktikanya Di Pasar Modal Indonesia," *Al-Adalah* 12, no. 2 (2017): 785-806, <https://doi.org/10.24042/adalah.v12i2.214>.

<sup>57</sup> Abu al-Walid Muhammad ibn Ahmad Ibn Rusyd, *Bidayat Al-Mujtahid Wa Nihayat al-Muqtashid* (Dar al-Kutub al-Ilmiyyah: Beirut, tt), II/158-159.

<sup>58</sup> Ahmad, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'Amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>59</sup> Ibn Rusyd, *Bidayat Al-Mujtahid Wa Nihayat al-Muqtashid*, II/154-155.

<sup>60</sup> Ahmad, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'Amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>61</sup> Ibn Rusyd, *Bidayat Al-Mujtahid Wa Nihayat al-Muqtashid*, II/153-154.

No	Expressions/Traditions of the Banjar Muslim Community in <i>Mu'amalah</i>	Meaning	Relevance to Contemporary Fiqh <i>Mu'amalah</i> in Indonesia
4	<i>Mun kada sadang hurupakan ja</i>	The expression <i>Mun kada sadang hurupakan ja</i> is commonly used in traditional buying and selling, especially when there is a shortage in the weight or measure of an item, but accompanied by the belief that the shortage will be made up later. This practice reflects local values such as mutual trust, cooperation, and tolerance in economic interactions. In Banjar society, the relationship between sellers and buyers is not purely transactional but is also built on social closeness and moral integrity. <sup>62</sup>	The practice of <i>Mun kada sadang hurupakan ja</i> in <i>mu'amalah</i> jurisprudence is permissible as long as it is based on mutual consent ( <i>an-tarāḍī</i> ) and clarity in the agreement, and does not contain elements of fraud ( <i>gharar</i> ) or harmful ambiguity, prohibited in Islamic law. <sup>63</sup> Valid conditions for a sale include mutual consent and honesty between the parties. Furthermore, if the item delivered contains defects, Islamic law grants the buyer the right of <i>khiyār</i> the option to either cancel the contract or demand its fulfillment. <sup>64</sup>
5	<i>Bakalahi badahulu</i>	<i>Bakalahi badahulu</i> means that the buyer and seller must communicate and negotiate in advance about the price and terms of the transaction. <sup>65</sup> This tradition emphasizes the importance of transparency and honesty in sales transactions. By communicating and negotiating in advance, buyers and sellers can understand each other's needs and desires and reach a mutually beneficial agreement. <sup>66</sup>	The customary practice of " <i>Bakalahi badahulu</i> " in economic interactions within the community is an implementation of the principles of <i>ash-shidq</i> (honesty) and <i>al-amānah</i> (trustworthiness) as emphasized in <i>mu'amalah</i> jurisprudence. Honesty and trustworthiness are the main principles in sales contracts to avoid <i>gharar</i> and <i>ghisy</i> , while ensuring fairness for all parties. <sup>67</sup> Compilation of Sharia Economic Law Article 21, which mandates that every party to a contract must be honest, open, and have good intentions ( <i>al-ikhtiyārī</i> ) for the sake of justice, benefit, and blessings in <i>mu'amalah</i> .

<sup>62</sup> Ahmad, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'Amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>63</sup> Efa Rodiah Nur, "Riba Dan Gharar: Suatu Tinjauan Hukum Dan Etika Dalam Transaksi Bisnis Modern," *Al-'Adalah* 12, no. 1 (2017): 647–62, <https://doi.org/10.24042/adalah.v12i1.247>.

<sup>64</sup> Ibn Rusyd, *Bidayat Al-Mujtahid Wa Nihayat al-Muqtashid*, II/158-160.

<sup>65</sup> Lutfi Sahal, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'Amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>66</sup> Ahmad, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'Amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>67</sup> Ibn Rusyd, *Bidayat Al-Mujtahid Wa Nihayat al-Muqtashid*, II/153-156.



No	Expressions/Traditions of the Banjar Muslim Community in Mu'amalah	Meaning	Relevance to Contemporary Fiqh Mu'amalah in Indonesia
6	<i>Bawa ja dulu</i>	<i>Bawaja dulu</i> in Banjar tradition is the practice of small traders borrowing goods from large traders or suppliers, with the agreement that payment will be made after the goods are sold. <sup>68</sup> The term literally means "take it first," which reflects the high level of trust and social solidarity in the trading relations of the Banjar community. <sup>69</sup>	Local cultural practices such as the expression "Bawa ja dulu" in economic transactions among the community actually reflect the form of <i>istijār</i> contract in mu'amalah jurisprudence. Clarity in contracts is important, but customs can serve as a legal basis for mu'amalah as long as they do not cause <i>gharar</i> or harm to certain parties. <sup>70</sup> Community customs based on good intentions ( <i>al-ikhtiyārī</i> ) and transparency among economic actors are recognized as part of Islamic mu'amalah law. <sup>71</sup>
7	<i>Mun kada cucuk, bulikakan</i>	<i>Mun kada cucuk, bulikakan</i> is a local expression that reflects the principles of fairness, honesty, and responsibility in sales transactions. Literally, this expression means "if it doesn't fit, just return it," which reflects the openness between the seller and the buyer in addressing discrepancies in goods after a transaction has been made. <sup>72</sup>	Local cultural practices such as the expression " <i>Mun kada cucuk, bulikakan</i> ", which means "if it doesn't fit, just return it", is an implementation of the principle of <i>ḥaq al-khiyār</i> in mu'amalah fiqh. Sharia gives the contracting parties the right to cancel or exchange goods under certain conditions, such as defects or special conditions agreed upon in advance. <sup>73</sup>

Source: Data compiled by the author based on data interpretation.

The expression *Barelaan* is an integral part of local wisdom in the socio-economic interactions of the Banjar community. Rissari Yayuk explains that after a transaction or joint activity ends, the parties involved will say "barelaan" as an expression of asking for the other party's goodwill so that there are no objections or losses.<sup>74</sup> In a similar vein, the expression "*TukarJual*" serves as a symbol of voluntary agreement (*'antarāḍī*) and honesty in transactions, while also strengthening social trust.<sup>75</sup> This tradition is in line with the legacy of Sheikh Muhammad Arsyad al-Banjari as articulated in

<sup>68</sup> Lutfi Sahal, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>69</sup> Ahmad, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>70</sup> Ibn Rusyd, *Bidayat Al-Mujtahid Wa Nihayat al-Muqtashid*, II/154-155.

<sup>71</sup> Abdur Rahman al-Jaziri, *Al-Fiqh 'alā al-Madhāhib al-Arba'ah* (Beirut: Dar al-Kutub al-Ilmiyah, tt), II/10-11.

<sup>72</sup> Ahmad, "Interview with Muslim Community Leaders in Banjar, 'Traditions of Mu'amalah in the Banjar Muslim Community,'" June 28, 2025.

<sup>73</sup> Ibn Rusyd, *Bidayat Al-Mujtahid Wa Nihayat al-Muqtashid*, II/172-176.

<sup>74</sup> Rissari Yayuk, *Kesantunan Berbahasa pada Masyarakat Banjar* (Banjarmasin: Balai Bahasa, Kementerian Pendidikan dan Kebudayaan, 2012);80 Rahmat Fadillah dan Muhammad Syarif Hidayatullah, "Dialog Masyarakat Banjar Dalam Interaksi Ekonomi (Telaah Kearifan Lokal Dalam Lensa Hukum Ekonomi Syariah)" (The 4th Annual Postgraduate Conference on Muslim Society, Banjarmasin, 2022).56

<sup>75</sup> Rahmat Fadillah and Hidayatullah, "Dialog Masyarakat Banjar Dalam Interaksi Ekonomi (Telaah Kearifan Lokal Dalam Lensa Hukum Ekonomi Syariah)" (July 20, 2022).55

*Sabilal Muhtadin*, which requires verbal or gestural clarity in contracts to uphold social blessings and economic stability in the Banjar community.<sup>76</sup>

The expression *Jual seadanya* is a verbal agreement or contract made with full moral awareness by the seller and buyer.<sup>77</sup> It functions not merely as a ritualized component of trade but as a practical mechanism for fostering trust, sincerity, and blessings in economic exchange. Similarly, *bakalahi badahulu* emerges as a form of verbal assurance regarding the conformity of goods to the agreed terms. This expression shows the importance of verbal clarity in contracts so that transactions are considered valid and ethical.<sup>78</sup>

The expression *Bakalahi badahulu* denotes an important position in maintaining social cohesion, emphasizing polite dialogue and respect for the other party, minimizing the possibility of hidden conflicts (the meaning of “fighting” is to speak bluntly and honestly).<sup>79</sup> Meanwhile, the term *Bawaja dulu* means that the seller must hand over the goods to the buyer first before the buyer makes payment. This tradition emphasizes the importance of trust and honesty in sales transactions.<sup>80</sup> Meanwhile, “*Mun kada cucuk, bulikakan*” functions as a concrete manifestation of local norms, operating as a social mechanism to preserve mutual trust and enforce responsibility in sales transactions.

The above traditions represent Islamic laws that remain deeply embedded in the daily lives of the community. This concept is in line with Bedner’s finding that *legal pluralism* in Indonesia opens space for customary law and social values to coexist with state law,<sup>81</sup> especially in matters of *muamalah* or economic transactions among the people. The principles of openness and return of goods based on unsuitability show that the community has developed fair and humanistic transactional ethical standards based on social experience, not merely contractual law.<sup>82</sup>

This phenomenon delimits how Islam grew and took root in Banjar society and became part of the culture.<sup>83</sup> Open religious discourse, tolerant social dynamics, and adaptive local wisdom are strong foundations for maintaining harmony within the society. In this context, Islam does not come as a hegemonic force that oppresses culture, but rather as a spirit that animates tradition, refines morality, and strengthens social solidarity.<sup>84</sup>

### Integration of Fiqh Principles in the Economic Practices of the Banjar Community

*Mu’amalah* practices in the Banjar Muslim community are a manifestation of the implementation of living Islamic law, in which Islamic legal values are both normative and relevant with traditions

<sup>76</sup> I. Ertanti dan M. Fahrzi, “Praktik Ijab-Kabul (Akad) dalam Transaksi Jual Beli oleh Masyarakat Banjar Ditinjau dari Perspektif Hukum Ekonomi Islam,” *Diversi: Jurnal Hukum* 8, no. 2 (2022): 359–64.

<sup>77</sup> Hanafiah, Rahmadini, S., & Fatimah, S. N. (2024). “Aqad Selling and Buying in the Habits of the Banjar Tribes”, *Islamologi: Jurnal Ilmiah Keagamaan*, 1(2), 3–6. 1(3), 8–12.

<sup>78</sup> Rahmat Fadillah and Muhammad Syarif Hidayatullah, “Dialog Masyarakat Banjar Dalam Interaksi Ekonomi (Telaah Kearifan Lokal Dalam Lensa Hukum Ekonomi Syariah),” paper presented at The 4th Annual Postgraduate Conference on Muslim Society: Local and Global Aspects in The Malay World, Banjarmasin, 2022.63

<sup>79</sup> Departemen Pendidikan Nasional Pusat Bahasa, *Kamus Bahasa Banjar Dialek Hulu Indonesia* (Banjarmasin: Balai Bahasa, 2008).

<sup>80</sup> Lutfi Sahal, “Interview with Muslim Community Leaders in Banjar, ‘Traditions of Mu’Amalah in the Banjar Muslim Community,’” June 28, 2025.

<sup>81</sup> Adriaan Bedner, “Indonesian Legal Pluralism Revisited: Between State Law and Living Law,” *Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 174–93, <https://doi.org/10.1080/07329113.2021.1944302>.

<sup>82</sup> Irmayanti and Ita Rodiah, “Cultural Heritage and Islamic Values in the Sayyang Pattu’du Tradition by the Mandar Ethnic Group,” *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, May 3, 2024, 25–38, <https://doi.org/10.56593/khuluqiyya.v6i1.133>.

<sup>83</sup> Abdul Wahab Syakhrani and Muhammad Nafis, “Islam Sebagai Agama dan Islam Sebagai Budaya dalam Masyarakat Banjar,” *MUSHAF JOURNAL: Jurnal Ilmu Al Quran dan Hadis* 2, no. 3 (March 2022): 270–74, <https://doi.org/10.54443/mushaf.v2i3.44>.

<sup>84</sup> Wahyu, *Local Wisdom in Banjar Cultural Perspective* (2021), <https://doi.org/10.2991/assehr.k.210222.003>.

from generation to generation.<sup>85</sup> *Mu'amalah* practices in the economic transactions of the Banjar community, such as “barelaan,” “bawaja dulu,” and “tukar lah,” are not merely expressions but forms of internalization of Islamic values. These expressions are forms of social agreements that uphold the values of honesty, willingness, and transparency, which are fundamental principles in *fiqh mu'amalah* contracts.<sup>86</sup>

The tradition of *mu'amalah* in the Banjar Muslim community is not merely a cultural inheritance from previous scholars, but also the result of interaction and dialectic between Islamic *fiqh* and social reality. In this context, the practice of Islamic law extends beyond the mere application of normative provisions; it also functions as a living law embedded in social practice and mediated through a vernacularization process, the adaptation of *fiqh* principles to the cultural context of the local community. Islamic law in the Banjar context is not only studied but also practiced, with necessary adjustments, under the guidance of local authorities such as village scholars and traditional leaders. This integration of *fiqh mu'amalah* values with local traditions has given rise to economic practices that align with, rather than contradict, the principles of *sharia*.

The practice of Islamic law extends beyond the mere application of normative provisions; it also functions as a living law embedded in social practice and mediated through a vernacularization process, the adaptation of *fiqh* principles to the cultural context of the local community. Islamic law in the Banjar context is not only studied but also practiced, with necessary adjustments, under the guidance of local authorities such as village scholars and traditional leaders.

As stated by Al-Idrus in an interview, Banjarese tradition places strong emphasis on the principle of *pangaluaran* (willingness), alongside the values of trust and brotherhood.<sup>87</sup> Similarly, Mujiburrahman stated that one of the distinctive features of the Banjar community's *muamalah* practices is the use of local *shigat akad* (contract terms) such as the Banjar phrases “*tukar lah*” or “*jual lah*” which are uttered after an agreement is reached.<sup>88</sup> These expressions originated from the teachings of Banjar religious scholars and community leaders and have been transmitted across generations.

Meanwhile, Ali Husein al-Idrus states that these *muamalah* customs are not entirely derived from direct scholarly prescriptions, but rather from longstanding local customs (*urf*) of the Banjar community that have been practiced for a long time, which were later adjusted by scholars to remain in accordance with *sharia* principles.<sup>89</sup> The role of scholars in Banjar society, as reported by Nurhajini, is very important. The community tends to adhere more closely to the guidance of local ‘*ulamā*’ than to fatwas issued by central institutions, due to the strong emotional and social bonds between scholars and the people.<sup>90</sup>

<sup>85</sup> Musahadi Musahadi, “*Fiqh Mu'amalah* Content in Friday Sermon: Dialectics of the Mosque as a Ritual Space and the Market as Economic Space,” *Al-Ahkam* 31, no. 1 (April 29, 2021): 25–48, <https://doi.org/10.21580/ahkam.2021.31.1.7383>.

<sup>86</sup> Moh. Wahib, “Implementation of the Minority *Fiqh* Concept for the Papuan Muslim Community,” *De Jure: Jurnal Hukum Dan Syaria'h* 13, no. 1 (July 28, 2021), <https://doi.org/10.18860/j-fsh.v13i1.11930>.

<sup>87</sup> Ali Husein al-Idrus, “Interview with Members of the Fatwa Commission of the Indonesian Ulema Council of Banjar Regency, ‘Traditions of *Mu'amalah* in the Banjar Muslim Community,’” June 27, 2025.

<sup>88</sup> Mujiburrahman, “Interview with a Muslim Religious Leader from the Banjar Community, ‘Traditions of *Mu'amalah* in the Banjar Muslim Community,’” May 20, 2025.

<sup>89</sup> Ali Husein al-Idrus, “Interview with Members of the Fatwa Commission of the Indonesian Ulema Council of Banjar Regency, ‘Traditions of *Mu'amalah* in the Banjar Muslim Community,’” June 27, 2025.

<sup>90</sup> Interview with Nurhajini, Muslim figure in Banjar society, “Integrasi Prinsip *Fiqh* Dalam Tradisi *Muamalah* Masyarakat Muslim Banjar,” May 20, 2025.



The co-existence of *mu'āmalah* traditions within the Banjar Muslim community and the provisions of classical *fiqh* represent a clear manifestation of legal pluralism. The concept of *legal pluralism* is not entirely derived from direct scholarly prescriptions, but rather from longstanding local customs. In the context of Banjar society, informal legal systems based on local community norms are often more effective than formal law in the context of everyday social relations.<sup>91</sup> This is evident in the loyalty of the Banjar community to the fatwas and views of local scholars rather than to formal authorities such as the MUI or state regulations. Within the framework of *legal pluralism*, the existence of Islamic value-based customary law cannot be considered inferior, but rather as a *living law* that regulates economic practices in a contextual and participatory manner.<sup>92</sup>

The tradition of *mu'āmalah* using expressions in contracts in the Banjar language is a form of spiritualization of transactions. This tradition is not only in accordance with *fiqh mu'āmalah*, but also part of *maqāṣid al-sharī'ah*, particularly in upholding honor and honesty in transactions.<sup>93</sup> Taisirul Khairi believes that the existence of expressions in the *mu'āmalah* of the Banjar community proves that the Banjar community has long practiced Islamic economic principles, even though not all of them understand technical *fiqh* terms.<sup>94</sup> Muhammad Arifin also stated that customary laws that do not conflict with Sharia are a legacy of previous scholars that must be preserved.<sup>95</sup>

When examined using the theory of *maqāṣid al-sharī'ah*, the *muamalah* of the Banjar Muslim community, which integrates normative *fiqh* and social practices, points to *maṣlahah ḥifẓ al-māl* (protection of property), which is one of the main objectives of *maal-sharī'ah*.<sup>96</sup> Expressions such as “*minta halal*” and “*berelaan lah*” are verbal forms of agreements that emphasize willingness, clarity, and honesty, which substantively reflect the principles of valid contracts in *fiqh muamalah*.<sup>97</sup> In the context of property protection, clarity of the origin of goods, price transparency, and the honesty of Banjar traders in trading, as reflected in field narratives, are concrete applications of *maqāṣid al-sharī'ah* on the point of *ḥifẓ al-māl*, namely preventing loss and fostering blessings.<sup>98</sup> *Hifẓ al-māl* is an important aspect for maintaining transparency in contracts,<sup>99</sup> which is the ‘key’ of *ijab-kabul*.<sup>100</sup>

<sup>91</sup> Wahidah Wahidah and Alias Azhar, “Implementation of Faraidh’s Provisions in Hibah Wasiat (A Case in Banjar, South Kalimantan),” *Al-Adalah* 16, no. 2 (2019): 375–92, <https://doi.org/10.24042/adalah.v16i2.4578>.

<sup>92</sup> Ido Shahar, “Legal Pluralism and the Study of Shari’a Courts,” *Islamic Law and Society* 15, no. 1 (2008): 112–41, <https://doi.org/10.1163/156851908X287280>; M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975).

<sup>93</sup> Muhyiddin, “Interview with a Muslim Religious Leader from the Banjar Community, ‘Traditions of Mu’āmalah in the Banjar Muslim Community,’” May 20, 2025.

<sup>94</sup> Khairi, “Interview with a Muslim Religious Leader from the Banjar Community, ‘Traditions of Mu’āmalah in the Banjar Muslim Community,’” May 20, 2025.

<sup>95</sup> Muhammad Arifin, “Interview with a Muslim Religious Leader from the Banjar Community, ‘Traditions of Mu’āmalah in the Banjar Muslim Community,’” May 20, 2025.

<sup>96</sup> Abu Hamid Muhammad bin Muhammad al-Ghazali, *Al-Mustashfa Min ‘Ilmi al-Ushul* ((Digital Library, al-Maktabah al-Syamilah al-Ishdar al-Tsani, 2005), 286; Abu Ishaq Ibrahim bin Musa bin Muhammad al-Lakhmi al-Syathibi, *Al-Muwafaqat Fi Usul al-Shariah* (Beirut: Dar al-Kutub al-Ilmiyah, 2003).

<sup>97</sup> Wahba az-Zuhaili, *Financial Transactions in Islamic Jurisprudence. Volume 1*, Second edition (Damascus, Syria: Dar al-Fikr, 1428), 135.

<sup>98</sup> Mohammad Hashim Kamali, *Shari’ah Law: An Introduction*, Reprinted (Oxford: Oneworld Publ, 2010), 182; Ğāsir ‘Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, ed. Ğāsir ‘Auda (London: The International Inst. of Islamic Thought, 2008), 154.

<sup>99</sup> Jaenal Aripin, “Haji Fund Investment: A Comparative Contemporary Fiqh Study on Maslahah and Public Policy Perspectives in Indonesia,” *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 360–88, <https://doi.org/10.32332/milrev.v4i1.10424>.

<sup>100</sup> M. Harir Muzakki and Ahmad Sumanto, “Tinjauan Hukum Islam Terhadap Upah Pembajak Sawah Di Desa Klesem Pacitan,” *Al-Adalah* 14, no. 2 (2017): 483–502, <https://doi.org/10.24042/adalah.v14i2.1909>.

Meanwhile, the use of certain expressions and traditions in the context of ethics and morals in *mu'amalah*, the Banjar community highly respects traditional and religious values such as justice and honesty in *mu'amalah*, as an effort to maintain trust among members of the community, especially between sellers and buyers. Khairullah, a construction worker, stated that although he does not understand the structure of contracts, he knows that in Islam, transactions must be clear and not cause harm. Therefore, he always mentions the price and condition of the goods at the beginning to avoid anyone feeling deceived.<sup>101</sup> Some traders mention the original price of the goods before the trader takes a profit to prevent disappointment, deception, or other things that could harm and damage the buyer's trust.<sup>102</sup>

For the Banjar community, maintaining the trust of buyers is very important. Mardiana, a processed food trader at the Batuah market, emphasized that it is important to maintain relationships and mutual trust among community members.<sup>103</sup> They say that the Banjar community still upholds traditional *muamalah* ethics, but their religious values are very strong. Local wisdom and traditions in *mu'amalah* are practiced and preserved because of the high value of trust in the Banjar community, as well as to maintain harmony and smooth local economic activity.

Expressions in Banjarese business dealings aim to maintain ethics in interactions and business dealings, and an expression of a Muslim's belief and moral responsibility. Muhammad Bahrān, a merchant, said that after completing a transaction, he always says "*berelaan lah*" to his customers. According to him, this is not just a matter of politeness, but part of his moral responsibility as a Muslim to prevent problems in the future.<sup>104</sup> In addition, Harisah, a cracker seller, stated that in the past, village figures always taught that in buying and selling, one should not hide the flaws of goods and must be honest, even if there is no written receipt.<sup>105</sup>

Efforts to maintain trust between sellers and buyers are also made in an honest way, explaining the origin or ingredients of the goods being sold. A processed food seller at Batuah Martapura Market emphasized the importance of clarity regarding ingredients and honestly stating whether the ingredients used contain substances whose *halal* status is questionable. Syamsuddin, another seller, mentioned that honesty in trading is more important than making a large profit. He strongly believes that *halal* sustenance will bring blessings.<sup>106</sup> This is something that is not widely practiced by traders today, especially amid price competition and efforts to seek as much profit as possible. However, this practice is still present among some Banjar people to uphold ethics in *mu'amalah* and maintain buyer trust.

The integration of traditional and Islamic values in the Banjar community's *muamalah* demonstrates a practice of legal pluralism that is in line with the *maqāṣid al-sharī'ah*. Local scholars

<sup>101</sup> Khairullah, "Interview with Construction Workers in Martapura, 'Traditions of Mu'Āmalah in the Banjar Muslim Community,'" May 21, 2025.

<sup>102</sup> Mardiana, "Interview with Processed Food Vendors at Batuah Market in Martapura, 'Traditions of Mu'Āmalah in the Banjar Muslim Community,'" May 21, 2025.

<sup>103</sup> Mardiana.

<sup>104</sup> Muhammad Bahrān, "Interview with the Owner and Shopkeeper of a Mobile Phone Shop in Batuah Martapura Market, 'Traditions of Mu'Āmalah in the Banjar Muslim Community,'" May 21, 2025.

<sup>105</sup> Harisah, "Interview with a Cracker Seller at Martapura Market, 'Traditions of Mu'Āmalah in the Banjar Muslim Community,'" May 21, 2025.

<sup>106</sup> Syamsuddin, "Interview with Traders in the Banjar Muslim Community, 'Traditions of Mu'Āmalah in the Banjar Muslim Community,'" May 21, 2025.

act as fatwa issuers and social mediators who adapt normative law to the local context.<sup>107</sup> The community's trust in them is a key factor in the sustainability of this practice, demonstrating that law does not only apply because of formal authority.

Customs in community activities constitute living Islamic law. This concept is reinforced by Moore, who states that living law is dynamic and responsive to social change.<sup>108</sup> *Fiqh mu'āmalah* in the context of Banjar society is not only written in normative law, but also lives and is rooted in customary practices and social interactions in business activities. Islamic law in the form of *fiqh mu'āmalah* originates from *fiqh* books, fatwas from the Indonesian Ulema Council, and textual rules established by the state, such as the Compilation of Sharia Economic Law (KHES). Moreover, *fiqh muamalah* among the Banjar community is alive and integrated with the culture. Thus, *fiqh mu'āmalah* in Banjar society is not merely a text, but a living Islamic law that also runs parallel to the positive law established by the state, which operates socially and culturally.<sup>109</sup>

The integration of *fiqh* with Banjar customs is an example of the vernacularization of Islamic law that preserves *maqāṣid al-sharī'ah* without losing its cultural context.<sup>110</sup> The emphasis on honesty, transparency, and trust as basic values in transactions reflects the strength of living Islamic law, which does not conflict with state law but has not been fully accommodated in formal regulations, as emphasized by Benda-Beckman.<sup>111</sup> Legal pluralism in Indonesia is evident in the customary legal system that continues to be practiced by the community even though it does not always receive formal recognition by the state. Indeed, some customary laws that are unwritten and rooted in local community values have undergone a process of positivization through regional regulations, but they remain separate from the codified and written national legal framework.<sup>112</sup>

However, the process of integrating living Islamic law into the national legal system faces many challenges. Therefore, concrete strategies are required to accommodate and reconcile the two systems. First, formal recognition of the values of *fiqh* that are alive in society needs to be expanded in the form of regional or village regulations. Second, local scholars need to be involved in the legislative process so that positive law continues to accommodate traditional *muamalah* practices. These steps are important to prevent the subordination of local law to the dominance of state law or textual *fiqh* that is not contextual. As explained by Benda-Beckmann, non-formal laws that are not recognized in the formal system will remain in an unequal position and will be difficult to develop, despite their strongly social position.<sup>113</sup>

<sup>107</sup> John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge, UK ; New York, NY: Cambridge University Press, 2003), 213.

<sup>108</sup> Sally Falk Moore, *Law as Process: An Anthropological Approach*, 2. ed, Classics in African Anthropology (Hamburg: Lit [u.a.], 2000).

<sup>109</sup> Ihsan Yilmaz, "Secular Law and the Emergence of Unofficial Turkish Islamic Law," *Middle East Journal* 56, no. 1 (2002): 117.

<sup>110</sup> Engle Merry, "Legal Pluralism"; Hallaq, *Shari'a*.

<sup>111</sup> Franz von Benda-Beckmann, "Riding or Killing the Centaur? Reflections on the Identities of Legal Anthropology," *Law and Anthropology* 12 (2009): 14.

<sup>112</sup> Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society* 3, no. 1 (March 2022): 1, <https://doi.org/10.19184/ijls.v3i1.26752>.

<sup>113</sup> M. B. Hooker, "The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau. By Keebet Von Benda Beckmann. Dordrecht: Foris Publications, 1984. Pp. Xviii, 210. Map, Glossary, Bibliography, Index.," *Journal of Southeast Asian Studies* 16, no. 2 (September 1985): 324–25, <https://doi.org/10.1017/S0022463400008493>.



## Conclusion

The results of this study reveal that the *mu'amalah* practices of the Banjar community are a clear manifestation of living Islamic law organically integrated with local traditions through the process of vernacularization of fiqh. Terms such as *barelaan*, *tukar jual*, *jual seadanya*, and *bawa ja dulu* are not merely communication tools in transactions but also serve as social mechanisms that instil Sharia values, including honesty, willingness, justice, and openness. This pattern of integration shows that fiqh does not stop at the normative-textual realm but is present as law that operates in the midst of socio-cultural realities, thereby bridging the gap between formal law and the factual needs of society.

From a theoretical perspective, this finding enriches the discourse on legal pluralism by offering a model of reciprocal interaction between Islamic law, customary law, and state authority. Within this framework, Islamic customary law is not merely a remnant of cultural heritage but a normative order with strong social legitimacy and moral authority. Another contribution of this study is the enrichment of the theory of *maqāṣid al-sharī'ah*, particularly in the dimension of *ḥifẓ al-māl*, by emphasizing that the protection of property is not only achieved through formal legal instruments but also through social practices based on trust and moral agreements.

Academically, this study expands the scope of Eugen Ehrlich's analysis of Living Law by incorporating the elements of *maqāṣid* and *mu'amalah* jurisprudence as integral parts of the dynamics of living law in Muslim societies. It not only describes a phenomenon but also offers a conceptual framework for how Islamic law can transform into adaptive cultural jurisprudence without sacrificing its normative authority. This framework has the potential to serve as a reference for the development of theories and policies that can accommodate the diversity of legal practices in pluralistic contexts such as Indonesia.

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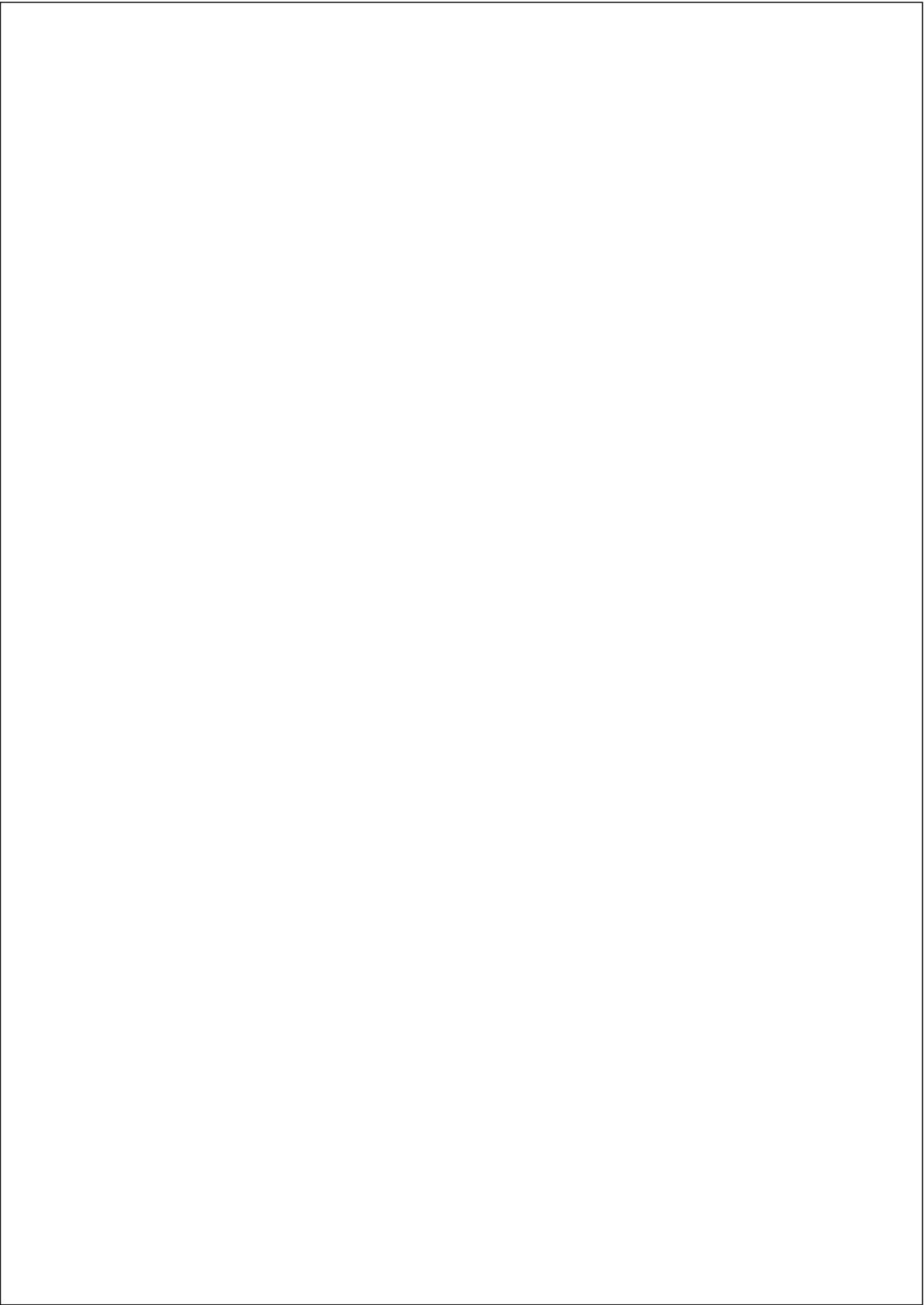


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