

## Reconstructing Women's Status in Mowea Sarapu: Customary Divorce, Maqasid al-Shari'ah, and Gender Justice in Tolaki Muslim Legal Pluralism, Indonesia

**Muh. Akbar Fhad Syahril<sup>1\*</sup>, Zainuddin Zainuddin<sup>2</sup>, Anatolijs Krivins<sup>3</sup>, Wiwin Wiwin<sup>4</sup>, Nurhaedah Hasan<sup>5</sup>, Hardi Lestari Adi Hafid<sup>6</sup>**

1. Institut Ilmu Soial dan Bisnis Andi Sapada, Parepare, Indonesia
2. Universitas Muslim Indonesia, Makassar, Indonesia
3. Daugavpils University, Daugavpils, Latvia
4. Institut Ilmu Soial dan Bisnis Andi Sapada, Parepare, Indonesia
5. Universitas Muhammadiyah Parepare, Indonesia
6. Universitas Muhammadiyah Kolaka Utara, Indonesia

\* Corresponding author: [akbar9.a9@gmail.com](mailto:akbar9.a9@gmail.com)

**Article History:**

Received: December 5, 2025

Revised: January 3, 2026

Accepted: January 10, 2026

Published: January 15, 2025

**Citation:**

Syahril, M. A. F., Zainuddin, Z., Krivins, A., Wiwin, W., Hasan, N., & Hafid, H. L. A. (2026). Reconstructing Women's Status in Mowea Sarapu: Customary Divorce, Maqasid al-Shari'ah, and Gender Justice in Tolaki Muslim Legal Pluralism, Indonesia. *Jurnal Theologia*, 36(2), 311–326.  
<https://doi.org/10.21580/teo.2025.36.2.29864>

**Copyright:** © 2025 by the author/s. This open-access article is distributed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License. (CC BY-NC-SA 4.0).  
<https://creativecommons.org/licenses/by-nc-sa/4.0/>

**Abstract:** This study examines the practice of Mowea Sarapu within the Tolaki Muslim community in Indonesia, focusing on the husband as the primary unit of analysis. In this context, the husband symbolically "hands over" the cheating wife to his lover through the ritual of splitting the sarong and the payment of customary fines, often without formal divorce. The purpose of this study is to examine the conformity of these practices with Islamic norms (marriage, talaq, ishlah, and maqasid al-shari'ah) and to evaluate the normative position of women at the intersection of customs, religion, and state law. Utilizing normative legal research methods with conceptual and comparative approaches, this study draws on a literature review that focuses on the Tolaki/Kalosara tradition, Islamic family law, gender discourse, and Indonesian positive law. The findings suggest that Mowea Sarapu is able to mitigate communal conflict and restore dignity, but it creates a liminal zone for women's legal status, which is vulnerable to livelihood insecurity, hereditary issues, and stigma. The novelty lies in its framing as a reconstructable "ishlah adat." The contribution of research, in the form of socio-theological frameworks (maqasid, legal pluralism, and gender justice), aims to transform it into a model that is women-centered, more equitable, and in line with substantive justice and the rule of law.

**Keywords:** Mowea Sarapu; Customary Divorce; Gender Justice; Legal Pluralism; Maqasid al-Shari'ah

### 1. Introduction

The phenomenon of Mowea Sarapu in the Tolaki Muslim community in Konawe Regency, Southeast Sulawesi, illustrates the negotiation of conflicts related to infidelity, family honor, and marital relationships through a customary mechanism that remains strong. Husbands can "hand over" the wife who has an affair with her lover via the ritual of splitting the sarong and customary fines as redemption and restoration of family dignity. Socially, it is seen as a peaceful solution that



prevents violence or prolonged conflict. A similar pattern is observed in Muslim communities in Lampung, Minahasa, Java, and other regions, characterized by deliberation, customary fines, and ritual reconciliation (Indra & Mu'in, 2025; Rajafi, 2020). The 2025 viral case in Konawe, involving farm animals, ritual objects, and cash compensation (Karouw, 2025), illustrates the continuity of this practice. However, behind the apparent harmony, Mowea Sarapu hides serious problems for women's legal status and substantive justice, especially without formal divorce in religious courts. This practice reflects the tension between communal values and individual rights, where women are often victims of status uncertainty, social stigma, and limited access to legal protection (Koodoh et al., 2024). This pattern is also seen in other regions such as Maluku, where women's rights in customary practices are often ignored, reinforcing patriarchal dynamics.

Several studies have discussed the relationship between Islam, customs, and family dispute resolution in Indonesia. Islamul Haq (2024) illustrates the practice of Kalosara in the case of Umoapi Tolaki, based on the logic of ishlah, which involves repentance, confession of guilt, fines, and purification rituals aimed at restoring social balance (Haq et al., 2024). Similar research in Minahasa (Rajafi, 2020) and Javanese Muslim communities (Huda et al., 2024) reveals customary-religious negotiations aimed at promoting social harmony and upholding Islamic norms (Huda et al., 2024; Indra & Mu'in, 2025). However, theological-gender studies affirm that not all local wisdom is in harmony with Islamic justice, particularly in the context of women's positions and detrimental textual interpretations (Tasbih et al., 2024; Sugianto et al., 2025). The explicit discussion of Mowea Sarapu as a customary divorce and its implications for Islamic norms, gender justice, and family law remains very limited. Kamaruddin's (2023) study on the rights of Tolaki widows highlights the neglect of women's rights, but it has not integrated maqasid al-shari'ah in depth (Kamaruddin, 2023). Similarly, research on polygamy and legal pluralism (Wirastri & van Huis) and heritage in South Aceh (Harnides et al., 2024) has not specifically addressed rituals such as Mowea Sarapu. The literature tends to be descriptive rather than reconstructive, based on gender justice and legal pluralism.

Building on this context, this research aims to address the research gap with three main objectives. First, describe and critically analyze Mowea Sarapu as the resolution of infidelity conflicts that function as customary divorce and the restoration of family honor. Second, to examine its conformity with Islamic norms on marriage, talaq, ishlah, honor ('ird), and maqasid al-shari'ah, especially hifz al-nasl and hifz al-'ird. Third, evaluate women's positions and experiences from the aspects of agency, security, and civil-spiritual rights, by connecting them to contemporary Islamic theological discourse, gender, and local wisdom (Haq et al., 2024; Tasbih et al., 2024). A socio-theological approach is employed to interpret local traditions through community experiences, while considering a reflective Islamic ethical and legal framework. The gaps filled include an in-depth gender analysis of Mowea Sarapu-specific rituals that are often overlooked in studies of legal pluralism, such as those related to polygamy (Wirastri & van Huis) and Tolaki conflict resolution (Koodoh et al., 2024). With the integration of maqasid al-shari'ah, this research transcends previous descriptive approaches and offers a transformational perspective on substantive justice, which is particularly relevant amid growing academic interest in Islam and local wisdom, as well as in the intersection of Islam and Gender.

This research is grounded in theoretical assumptions that are tested through an argumentative analysis. First, Mowea Sarapu is not only a remnant of pre-Islamic tradition, but has undergone an Islamization of meaning so that it is understood as ishlah that is not completely contrary to the

teachings of Islam, even without official talaq procedures. Second, there is a latent tension between communal justice (restoration of men's honor) and women's personal justice, which has the potential to weaken women's legal and moral position without an administrative end to marriage. Third, a critical dialogue of Islamic theology, gender ethics, and local wisdom opens up space for Mowea Sarapu to reinterpret Mowea Sarapu from the mechanism of "wife surrender" to a model of conflict resolution that is in harmony with justice, consent, and protection of women's rights (Sugianto et al., 2025; Nuraida Fitri Habi et al., 2024). The main hypothesis: this reconstruction can bridge the practice of vibrant customs, Islamic theological norms, and national family law. Without gender-sensitive theological-critical studies and legal pluralism, these practices risk reproduction without ethical correction, while women bear the uncertainty of status as well as social vulnerability (Huda et al., 2024; Haq et al., 2024; Rajafi, 2020). This argument is reinforced by studies of legal pluralism, such as the Tayade system in Gorontalo, which demonstrates the potential for reconciling customary and state law (Lahaling et al.).

## 2. Literature Review

In this context, women's bodies and lives often become a "bargaining space" between family honour, social stability, and claims to normative justice, thus giving rise to tension between communal justice and personal justice (Afriko et al., 2025). Contemporary socio-theological and gender studies approaches offer analytical tools for considering practices such as Mowea Sarapu, particularly through *maqasid al-shari'ah*, *mustadh'afin* discourse, and Muslim feminist critiques of patriarchal culture operating in the name of religion and custom (Bawono et al., 2025; Kamaruddin, 2022).

### 2.1. Tolaki, Kalosara, and Family Conflict Resolution

In the Tolaki community, the customary law system, often referred to as Sara Tolaki, holds a strong position as the primary reference for resolving social disputes, including domestic conflicts. Customary symbols, such as Kalosara, serve not only as markers of cultural identity but also as normative mechanisms that govern the mediation, sanctions, and restoration of community honor (Jumasran et al., 2025). In concrete ritual practice, Kalosara is usually embodied in a circular rattan arrangement placed in the center of deliberation, symbolizing the unity, peace, and binding nature of the agreement, so that the settlement reached is framed as a return to communal balance and reconciliation. Within this framework, the resolution of family disputes is generally understood as an effort to restore social harmony through rituals, collective deliberation, and customary fines, which are often considered more effective and "peaceful" than formal litigation in state courts (Koodoh et al., 2024). Ethnographic studies indicate that Kalosara serves as a tool of peace in various conflicts, including inter-ethnic and domestic, by emphasizing solidarity and social control (La Banara et al., 2022). This approach reflects the living local wisdom, where Kalosara serves as the primary instrument to prevent the escalation of conflict and maintain the cohesion of the Tolaki community in Southeast Sulawesi.

However, some studies highlight that women's positions in Tolaki customary law practice are often subordinate, especially when customary decisions are more oriented towards restoring the collective honor of men and their extended families than towards fulfilling women's civil rights. For example, in the case of customary marriage and divorce, women's rights to alimony, joint property,

and child security are not always explicitly formulated in customary decisions (Kamaruddin, 2023). Empirical research has found that around 70-80% of customary decisions in family disputes tend to prioritize male honor, leaving women vulnerable to post-divorce legal uncertainties, such as widows' rights that are often ignored despite the existence of a responsive law framework (Kamaruddin, 2023). This tendency reveals the tension between customary claims, often referred to as "local wisdom," and the demands for substantive justice and gender equality that are emerging in the discourse of Islamic law and human rights. The literature on the dynamics of customary law in Southeast Sulawesi emphasizes the need to reconstruct the Tolaki legal culture to be more responsive to women's rights and freedoms, without ignoring the role of customary law as a source of social legitimacy (Kamaruddin, 2023).

## **2.2. Islam, Maqasid, and Gender Justice**

The study of contemporary Islamic theology and law reveals significant developments in the application of the maqasid al-shari'ah framework to evaluate gender relations, family rights, and the protection of vulnerable groups. The maqasid approach not only emphasizes five main goals (protection of religion, soul, intellect, descent, and property) but also begins to articulate explicitly the importance of maintaining human honor and dignity (*hifz al-'ird*) as well as protecting vulnerable groups, including women victims of violence and exploitation (Diana et al., 2025). Within this framework, social practices claimed by traditional scholars or indigenous peoples as part of tradition or "religiously justified" can be criticized if they are not in harmony with the principles of protecting the soul, dignity, and the well-being of future generations. For example, the reinterpretation of talaq in the modern context uses maqasid to ensure women's consent and the prevention of domestic violence, thus avoiding harmful patriarchal interpretations (Affandi et al., 2025). This approach provides a theoretical basis for assessing practices such as Mowea Sarapu, where claims of symbolic harmony with the customs and narratives of ishlah need to be tested against the extent to which they support or undermine the maqasid in protecting women's lives, posterity, and honor as full legal subjects (Rismilda, 2023).

Gender justice in Islam emphasizes that family norms, such as marriage, divorce, and ishlah, must be read contextually, so that women are not simply objects of reconciliation who are "moved" to maintain male honor and societal stability (Affandi et al., 2025). Several studies emphasize the importance of reinterpreting religious texts using maqasidi approaches and gender hermeneutics, so that marital relations, domestic conflict resolution, and religiously legitimized customary practices do not perpetuate structural violence or ignore women's consent and agency. In this context, the concept of ishlah is ideally understood as a process of restoring relationships that guarantees a sense of security, civil rights, and dignity of all parties, not just the cessation of open conflicts that appear "peaceful" but leave behind hidden injustices (Lestiwati et al., 2024). Studies on *hifz al-nasl* and *hifz al-'ird* in Islamic family law also expand the discussion to include child protection, prevention of domestic violence, and rejection of social practices that commodify women's bodies as a tool for conflict resolution. Contemporary fiqh articles indicate that maintaining honor entails protection from coercion, stigmatization, and customary settlement schemes that infringe upon women's rights to legal divorce, maintenance, and a clear legal identity for their children (Nasruddin Yusuf et al., 2025).

### 2.3. Islam, Gender, and Local Wisdom

Studies of Islam, gender, and local traditions reveal complex dialectical patterns: on the one hand, customs can serve as contextual spaces for the articulation of Islamic values of justice; On the other hand, customary practices can also be a medium for perpetuating patriarchal structures that are detrimental to women. A number of literary and ethnographic studies note that in various regions such as Minangkabau, Lombok, and other Muslim communities, there are creative efforts to synergize local wisdom with the principles of equality and dignity of women, including through the reinterpretation of religious figures and the social role of women in customary structures (Tijani et al., 2018; Afriko et al., 2025). On a broader theoretical level, anthropological and feminist engagement with Islamic family law further illuminates how local practices, such as Mowea Sarapu, operate within a regime of legal pluralism and gender-based authority. Bowen's work on Islamic courts and village forums in Indonesia demonstrates how customs, state law, and fiqh intersect in marriage and divorce disputes, often resulting in a negotiated rather than hierarchical legal order (Bowen, 2023). An-Na'im's theory of Islamic law as a historically constructed and reformable system supports the normative claim that family law practice should be re-evaluated in light of contemporary standards of human rights and gender justice (An-Na'im, 1996). Mir-Hosseini's analysis of Muslim family law and gender equality highlights how patriarchal readings of sharia can be challenged through maqasid and feminist-oriented hermeneutics, offering a critical framework for reassessing women's position in customary divorce mechanisms, such as Mowea Sarapu (Mir-Hosseini, 2009).

The discourse of Islamic feminism and the study of mustadh'afin in the Indonesian context emphasize the importance of positioning women not as objects of mercy but as actors who have the moral, spiritual, and political capacity to be involved in the interpretation of texts and the formulation of social norms (Afriko et al., 2025). The article on mustadh'afin, for example, advocates an empowerment strategy that combines gender literacy, critical reading of sacred text interpretation, and structural advocacy to transform social practices that result in women's vulnerability. Within this framework, local wisdom is considered authentic and worthy of preservation as long as it does not conflict with the principles of justice and the protection of the rights of vulnerable groups, as emphasized in the Qur'an and Islamic ethics. Therefore, the practice of Mowea Sarapu in the Tolaki Muslim community needs to be placed in a critical dialogue between customs, Islamic theology, and gender perspectives: does it simply perpetuate the logic of patriarchal honor, or can it be reconstructed as a conflict resolution mechanism that prioritizes consent, justice, and protection of women's rights? The literature on Tolaki customary law, maqasid al-shari'ah, and Islamic feminism opens up the possibility of a "rereading" of this practice as part of the transformation of local wisdom, from the mechanism of wife-surrender to an ishlah model that emphasizes clarity of legal status, women's access to formal institutions, and spiritual and social protection for all parties involved (Syahril, 2024). Mernissi's approach to Islamic feminism, which challenges patriarchal norms through the reinterpretation of Muslim history, enriches this global perspective by emphasizing women's emancipation in traditional Muslim societies (Mernissi, 1991). With this orientation, Mowea Sarapi's study not only contributes to the enrichment of Islamic and customary studies but also to the broader agenda of developing a humanistic, fair, and sensitive family law practice that is responsive to women's experiences in Indonesia.

### 3. Methods

#### 3.1 Material Object

The material object or unit of analysis in this study is the normative and discursive construction of Mowea Sarapu practice as a form of conflict resolution of infidelity and "customary divorce" in the Tolaki Muslim community, along with its relationship with Islamic fiqh norms on marriage and divorce, as well as Indonesia's positive legal provisions on family law and infidelity. This unit was chosen purposively because Mowea Sarapu is at the intersection of three normative regimes: customary law, Islam, and state law, making it a rich case for normative-theological studies of legal pluralism and gender justice (Haq et al., 2024; Nuraida Fitri Habi et al., 2024). The selection criteria include basic documentation of Mowea/Kalosara practices, the context of a strong Muslim community, as well as relevance to Islamic themes and local wisdom, as well as Islam and gender.

#### 3.2 Research Design

The design of this study employs a normative legal approach, utilizing conceptual and comparative methods (Juliardi et al., 2023). This design was chosen because the main purpose is not to photograph the empirical behavior of Mowea Sarapu perpetrators, but to test the coherence and tension between the concepts of justice, divorce, honor (*ird*), and women's protection in three normative frameworks: Tolaki customs, marriage and divorce fiqh, and Indonesian family law(Haq et al., 2024; Huda et al., 2024). The process involves the identification and reconstruction of Mowea Sarapu customary norms from secondary texts, an exploration of Islamic norms (nas, fiqh principles, *maqasid al-shari'ah*) in Islamic theological literature and family law, as well as a critical reading of positive legal provisions (e.g., the Marriage Law, religious court regulations, and infidelity articles in the Criminal Code) based on the findings of previous studies (Nuraida Fitri Habi et al., 2024; Tasbih et al., 2024). Arguments rely on textual and conceptual dialogue, not surveys or field observations.

#### 3.3 Data Sources

The primary data source in this study is text, not human participants, so the main source is in the form of scientific articles on Mowea/Kalosara and the resolution of infidelity conflicts in Tolaki communities and other Muslim communities (Haq et al., 2024; Rajafi, 2020). In addition, journals of articles on theology, Islamic law, and gender that discuss the integration of Islamic customs, restorative justice, and women's rights in local contexts(Huda et al., 2024; Sugianto et al., 2025; Tasbih et al., 2024), as well as a scientific analysis of family law and infidelity in Indonesia(Nuraida Fitri Habi et al., 2024). The selection of sources is carried out purposively, with the following criteria: published in reputable journals related to the themes of Islam, customs, family, and gender; fully open access; and a time span of 2010-2025 to ensure contemporary relevance. This research is completely text-based, so that the discussion of women's positions and experiences is the result of a critical reading of literature and the construction of customary norms, Islam, and positive law, rather than a direct representation of women's experiences in the practice of Mowea Sarapu.

#### 3.4 Data Collection Technique

The data collection technique employed a guided literature review, aligning with the normative research objectives to collect and analyze primary texts that contain normative constructions,

theological arguments, and legal analyses of Mowea/Kalosara, marriage customs, and gender in Islam(Haq et al., 2024). The process involves searching databases such as Scopus, JSTOR, and Google Scholar using keywords such as "Kalosara," "Mowea," "local wisdom marriage conflict," and "Islamic law gender Indonesia." Then, articles were selected based on their abstracts and the availability of full text, with the following inclusion criteria: relevance to the theme, published between 2010 and 2025, and totaling approximately 50 articles. Systematically, relevant content is recorded through manual coding techniques, particularly in sections that explain customary norms, Islamic frameworks, and their implications for women. The collection of positive legal data encompasses official regulatory texts and the latest academic analyses(Huda et al., 2024; Nuraida Fitri Habi et al., 2024). For research ethics, although text-based, research ensures accurate attribution of sources and avoids plagiarism.

### *3.5 Data Analysis Technique*

The data were analyzed using normative content analysis techniques combined with critical theological and gender readings, which allowed researchers to examine the structure of arguments, values, and norms in customary, religious, and legal texts, and then compare them within the framework of legal pluralism and gender justice(Sugianto et al., 2025). The analysis stage includes the categorization of key themes such as honor, divorce, reparations, women's position, consent, and protection of rights; identification of points of intersection and conflict between Mowea Sarapu customary norms and Islamic norms and positive law; as well as the construction of theological-normative arguments on how Mowea Sarapu can be criticized, corrected, or reinterpreted to be more in line with the principles of Islamic justice and women's protection. To ensure reliability, an inter-coder agreement is implemented by involving two independent researchers to verify the coding of the theme, with a minimum agreement rate of 85%. Thus, the normative method not only explains "what the norm says," but also proposes ethical and theological arguments for renewed understanding and practice.

## **4. Result**

### **4.1. Mowea Sarapu in the Framework of Legal Pluralism and Family Honor**

The phenomenon of Mowea Sarapu in the Tolaki Muslim community shows intense negotiations between infidelity conflicts, family honor, and the continuity of marital relationships through authoritative customary mechanisms at the community level. The ceremonial division of the sarong and the payment of customary fines are presented as a form of redemption and restoration of family dignity, allowing men who feel their honor is tainted to obtain symbolic reparations without resorting to violence or open revenge(La Banara et al., 2022). This scheme is in line with the pattern of conflict resolution based on local wisdom in various regions of Indonesia, where non-litigation resolution through customary deliberation and communal rituals is considered more "peaceful" and effective in maintaining social harmony than formal processes in state institutions(Haq et al., 2024). Ethnographic studies confirm that this kind of ritual not only mitigates domestic conflicts but also strengthens solidarity between kinship groups, as seen in the case of inter-ethnic resolutions in Kendari(La Banara et al., 2022). However, behind these claims of harmony, Mowea Sarapu often overlooks the long-term implications for women, where symbolic rituals are not always followed by

clarification of formal legal status, resulting in prolonged uncertainty (von Benda-Beckmann, 2002). This approach reflects the dynamics of legal pluralism in Indonesia's indigenous peoples, where customary law remains dominant despite the existence of a state framework.

Behind this harmonious construction, the structure of Mowea Sarapu positions women's bodies and lives as the main medium of negotiation between family honor, social stability, and claims of normative justice. A wife who is "handed over" to a lover is symbolically positioned as an object of relationship transfer and the burden of shame, while her legal status as a wife, from a fiqh and positive law perspective, does not automatically end (Lestiwati et al., 2024). This creates a gray area that has the potential to cause overlapping status (still legally valid but considered "moving" according to custom), while opening up new vulnerabilities related to livelihood rights, housing, and protection from long-term social stigma. A clear example can be seen in the case of Tolaki customary divorce, where women often lose inheritance and common property rights because customary decisions prioritize the restoration of men's honor, as reported in a study on widows' rights in the Tolaki community (Kamaruddin, 2023). Comparative research in other regions, such as Aceh, reveals a similar pattern in which women face economic losses after customary settlement without state legal support (Butt, 2017). This uncertainty not only affects individuals but also weakens women's access to formal justice, reinforcing the cycle of patriarchal dependency in indigenous Muslim societies.

Within the framework of legal pluralism, Mowea Sarapu illustrates how customary law persists as a robust normative regime in Muslim communities, coexisting with and sometimes conflicting with Islamic legal norms, as well as the state. The structure of the Sara Tolaki gives significant authority to customary institutions to adjudicate moral issues, while formal divorce proceedings in religious courts are often stopped after customary proceedings are deemed to have "resolved" the issue. This highlights the latent tension between communal justice, which prioritizes the restoration of collective honor, and personal justice, which requires certainty of legal status and the protection of women's civil rights within the national legal framework (Lestiwati et al., 2024). Studies on legal pluralism in Indonesia confirm that the interaction between customs, sharia, and state law often results in a hybrid order that benefits the dominant group, while women are the main victims of inconsistency (Bowen, 2003). In the context of Tolaki, reconstruction is necessary to integrate customs with the principle of substantive justice, ensuring that rituals such as Mowea Sarapu are not only symbolic but also legally protect women's rights.

#### **4.2. Maqasid al-Syari'ah, Ishlah, and the Tension of Gender Justice**

From the perspective of maqasid al-shari'ah, the practice of Mowea Sarapu can be read as a societal effort to maintain social stability, avoid violence, and restore family honor, which, on the one hand, is related to the protection of the soul and honor (*'ird*) (Haq et al., 2024). Traditional rituals, family deliberations, and fines imposed on the perpetrators of infidelity are interpreted as a means of redeeming honor, preventing further conflicts, and restructuring relations between kinship groups, thereby stopping conflicts that have the potential to escalate in the customary realm. However, when viewed from the perspective of maqasid (the purpose of marriage), which emphasizes the protection of women's dignity and the certainty of their status as a subject of law, this practice is problematic if it is not followed by formal divorce and the determination of women's rights within the framework of Islamic and positive law. Empirical support from case studies in Indonesia shows that customary reconciliation often fails to fulfill maqasid if gender justice is ignored, such as

in child custody disputes where women are harmed without consideration of hifz al-nasl (QS. An-Nisa/4: 35, which emphasizes the right of spouses to live in harmony. This approach aligns with the reinterpretation of maqasid to promote gender equality in Islamic family law(Affandi et al., 2025).

Contemporary Islamic fiqh studies and Islamic gender studies emphasize that ishlah is not just the cessation of open conflicts, but the process of restoring relationships that ensure a sense of security, agreement, and protection of the rights of vulnerable parties, especially women(Lestiwati et al., 2024). In Mowea Sarapu, the ishlah logic tends to focus on restoring the honor of men and the extended family, while women's voices, wills, and agency are less seen as substantive elements in the customary decision-making process. This intersects with Muslim feminist critiques of the textual and biased use of religious evidence that legitimizes social practices that, in practice, maintain patriarchal structures, while ignoring the principle of substantive justice that is the spirit of maqasid al-shari'ah. Empirical support from the hadith of the Prophet Muhammad PBUH about justice ("*Indeed, Allah commands justice and goodness*" – (QS. An-Nahl: 90) emphasizes that ishlah should be inclusive, not gender-discriminatory. Comparative studies in the Egyptian and Indonesian contexts show that modern talaq reinterpretations use maqasid to ensure women's consent, preventing structural violence in family conflict resolution (Mir-Hosseini, 2006).

The discourse on hifz al-nasl and hifz al-ird in Islamic family law also emphasizes the importance of child protection, prevention of domestic violence, and rejection of social practices that commodify women's bodies as an instrument of conflict resolution. The customary practice of a wife surrendering without confirmation of a legal divorce in a religious court can have a significant impact on the determination of children's fate, inheritance rights, and women's access to alimony, as well as their legal protection in future disputes. Therefore, a normative-theological assessment of Mowea Sarapu requires testing not only the level of "symbolic harmony" with the customs and narratives of ishlah but also the extent to which the practice truly supports the preservation of women's lives, descent, and honor as full legal subjects(Haq et al., 2024). Empirical support from the study of child custody in Indonesian religious courts shows that maqasid al-shari'ah is often used to ensure gender justice, where hifz al-nasl is a top priority (QS. Al-Baqarah/2: 233, on maintenance and protection of mothers and children). This approach is reinforced by the maqasid framework for gender equality in contemporary Islamic law (Sachedina, 2009).

### **4.3. Women's Position, Local Wisdom, and the Agenda for Indigenous Transformation**

The construction of Mowea Sarapu reveals that women are at the intersection of customs, religion, and state law, while simultaneously bearing the burden of the inconsistency among these three. In customary rulings, the focus on restoring the honor of men's families makes women figures who must be "removed" or "moved" from relationships to relieve shame, while guarantees of maintenance rights, protection from stigma, and access to formal justice mechanisms are not explicitly formulated(Lestiwati et al., 2024). This pattern is in line with the findings of a study of legal pluralism in Indonesia, which shows that the glorification of local wisdom is not always accompanied by sensitivity to the dimension of gender justice, so women are often positioned as the most vulnerable parties when customary, Islamic, and state law norms overlap and conflict. Empirical data from surveys in indigenous communities in Southeast Sulawesi indicate that 65% of post-customary women experience uncertainty of legal status, including limited access to child support and custody, reinforcing the claim that women are at the center of this intersection(Kamaruddin, 2023). Global

studies on legal pluralism in Southeast Asian Muslim communities are also supportive, where women often experience structural marginalization in custom-based conflict resolution (Benda-Beckmann & Turner, 2018).

In the discourse of Islam and Local Wisdom as well as Islam and Gender, practices such as Mowea Sarapu are seen as a crucial path to re-articulate the relationship between Islamic customs and teachings, by placing women's experiences as a starting point. Several studies advocate for a restorative justice paradigm that not only recognizes the role of customary practices as a mechanism for social recovery but also demands the restructuring of customary procedures to align with the principles of equality, protection of rights, and legal certainty for women and children (Widodo et al., 2025). Within this framework, Mowea Sarapu can be reconstructed as a custom-based ishlah model that requires women's conscious participation and explicit consent, as well as a clear relationship with the divorce process in the religious court, along with clear regulations on alimony, child custody, and protection from social stigma for vulnerable parties. Findings from ethnography in the Javanese Muslim community show that this kind of integration has succeeded in reducing women's vulnerability to family disputes by up to 50% (Huda et al., 2024). The global Islamic feminist approach reinforces this by emphasizing the reinterpretation of sharia for women's emancipation in a customary context (Mir-Hosseini, 2011).

The dialectic between customs, Islamic theology, and gender perspectives opens up space to shift the meaning of Mowea Sarapu from a mere mechanism of "wife surrender" to a conflict resolution practice that positions women as autonomous moral and legal subjects. The literature on Tolaki customary law, legal pluralism, and gender fiqh suggests that this transformation requires a shift in the perspective on honor: from the honor primarily attached to men and the extended family to a concept of honor rooted in human dignity, bodily integrity, and women's basic rights. With this orientation, local wisdom is no longer understood solely as a tradition that must be preserved as it is, but as a social practice that can continue to be critiqued, updated, and aligned with the ideals of Islamic and constitutional justice in Indonesia (Widodo et al., 2025). To summarize, here is a comparison table of customary norms vs. Islam in Mowea Sarapu:

Aspects	Adat Norms (Mowea Sarapu)	Islamic Norms ( <i>Maqasid al-Shari'ah</i> )
Kehormatan	Focus on restoring male honor	Hifz al-'ird: the dignity of all parties
Participation	Dominance of men and indigenous leaders	Ishlah: inclusive consent
Women's Rights	Not explicit, prone to uncertainty	Hifz al-nasl: alimony, nasab, protection

This table highlights the tensions and potential for reconstruction, based on the work of Haq et al. (Haq et al., 2024) and Affandi (Affandi et al., 2025). Studies on indigenous transformation in South Africa provide evidence that integrating gender justice increases access to justice by up to 40% (Bennett, 2011).

## 5. Discussion

The summary of results shows that Mowea Sarapu functions as a mechanism of "customary divorce," emphasizing the restoration of family honor and social stability through the symbolism of sarong-splitting, customary fines, and communal rituals within the framework of Sara Tolaki. In legal pluralism, this practice reflects a layer of normative regimes in which customary authorities remain dominant in resolving moral disputes, even though the state formally monopolizes the authority to dissolve marriages through religious courts (Murden, 2016). The responsive legal approach highlights that while Mowea Sarapu is responsive to local needs for peaceful resolution and violence prevention, it has not been sufficiently responsive to the interests and protection of vulnerable groups, particularly women who bear the long-term consequences of precarious legal and social status. The findings also reveal gender tensions, where the practice creates a liminal zone for women, at risk of livelihood vulnerability, heredity, and stigma. Overall, the results provide a framework for Mowea Sarapu's reconstruction of the wife's surrender mechanism into a more equitable model of customary ishlah, aligning with maqasid al-shari'ah and the rule of law (Haq et al., 2024).

Reflection on the results reveals serious imbalances in the distribution of burdens and benefits of the Mowea Sarapu mechanism, as seen through the lens of distributive and corrective justice theory. Communal justice, as well as the restoration of honor for men and their extended families, is achieved through the symbolic transfer of wives. However, corrective justice for women—in the form of restoration of livelihood rights, security, and freedom from stigma—is not adequately guaranteed (Widodo et al., 2025). Feminist legal theory emphasizes that when women's bodies are used as a means of atonement for shame, both customs and the state risk functioning as instruments of reproducing structural inequality rather than as means of emancipation (Rakia & Hidaya, 2022). In this context, the claim of "local wisdom" must be critically examined by considering the discursive construction of women's experiences as the primary indicator of whether a practice is truly in harmony with the principles of substantive justice in Islam and the constitution. This reflection reinforces that Mowea Sarapu, while effective in mitigating short-term conflicts, often leaves behind hidden injustices that weaken women's position as full legal subjects (Tasbih et al., 2024; Sugianto et al., 2025).

The interpretation of results by combining maqasid al-shari'ah theory and procedural justice theory places the issue not only on the final outcome but also on how the decision is made. Maqasid demands the protection of life, posterity, and honor, while procedural justice theory emphasizes meaningful participation, openness of process, and equal opportunities for affected parties to voice their concerns. In the practice of Mowea Sarapu, decision-making dominated by men, traditional leaders, family heads, and religious leaders creates procedures that formally appear legitimate, but substantively reduce women's autonomy and limit their bargaining power. The legal framework of integrity adds an interpretive layer: customary practices that claim Islamic legitimacy and adherence to the values of justice must be read and reformed to be consistent with the moral commitment of the entire legal system, including the protection of women's dignity and rights as recognized by progressive Islamic law and national law (Affandi et al., 2025). This interpretation emphasizes that gender tensions are not just a local issue, but a reflection of broader patriarchal dynamics in Muslim society.

A comparison with Kalosara's practice in resolving umoapi in Tolaki, as well as customary-based family conflict resolution models in other regions, shows that integration between customary

law and state law is beginning to develop through more responsive schemes. Some studies provide examples of customary rituals linked to official records, the use of restorative justice approaches that involve placing victims, perpetrators, and communities in equal dialogue, and the explicit recognition of women's and children's rights as part of resolution goals (Haq et al., 2024; Rajafi, 2020). From the perspective of customary law integration theory, Mowea Sarapu is still at the stage of symbolic integration, having not yet achieved normative and institutional integration that combines customary values with procedural and substantive justice standards in Islamic and national law. This explains why the practice is relatively effective in reducing short-term conflicts but weak in ensuring long-term protection for women as legal subjects. Globally, comparisons with khul' in Egypt—where women initiate divorce with compensation—highlight the potential of Mowea Sarapu reconstruction to empower women, similar to maqasid-based family law reforms (Sonbol, 2001; Mir-Hosseini, 2011).

Follow-up from the perspective of legal theory points to the need for Mowea Sarapu reconstruction within the framework of fair and gender-responsive legal pluralism. Responsive legal theory and restorative justice can be used as a basis for formulating a new model that still recognizes the role of Kalosara and traditional rituals, but requires transparent procedures, full participation of women, a mandatory relationship with divorce proceedings in religious courts, as well as clauses on the protection of alimony, custody, and prevention of violence and stigma. Feminist legal theory encourages the involvement of Tolaki Muslim women as actors in reforming customary norms, rather than just as recipients of their impacts, through participatory dialogue among customary institutions, scholars, and religious court officials (Rakia & Hidaya, 2022; Widodo et al., 2025). In this way, local wisdom is not only in harmony with maqasid al-shari'ah but also with the principles of the rule of law and human rights, so that Mowea Sarapu can change from a mechanism of "wife surrender" to a model of traditional ishlah that truly guarantees justice and dignity for all parties involved. Further research can explore the implementation of this model through empirical studies in the field.

## 6. Conclusion

The study's key findings confirm that the practice of Mowea Sarapu serves as a mechanism of "customary divorce" that emphasizes the restoration of family honor and social stability, but fails to ensure the certainty of legal status, the protection of civil rights, and the dignity of women who are the main subjects of the practice's impact. The surrender of wives through customary rituals and fines effectively dampens conflicts and prevents open violence, but creates a liminal space when formal divorce proceedings are not followed in religious courts, resulting in an overlap between customary and legal status that applies in legal pluralism. Analysis through the framework of maqasid al-shari'ah, particularly hifz al-nasl and hifz al-'ird, reveals that these practices fulfill the symbolic aspects of communal harmony but overlook substantive justice for women, such as alimony, child custody, and protection from long-term social stigma. These findings reinforce that the tension between communal and personal justice puts women in vulnerable positions, despite the practice being claimed to be a peaceful local wisdom.

The primary scientific contribution of the research lies in the integration of socio-theological perspectives, legal theory, and gender studies to interpret Mowea Sarapu not only as a local tradition but also as an arena of norm contestation between customary law, Islam, and national law. Drawing

on the framework of maqasid al-shari'ah (especially hifz al-nasl and hifz al-'ird), the theory of legal pluralism, responsive law, and the theory of justice and feminist law, this study offers a framework for the reinterpretation of Mowea Sarapu as a practice that needs to be reconstructed: from a communal honor-oriented mechanism of wife surrender to a customary ishlah model that guarantees substantive justice, status certainty, and comprehensive protection for women and children. This contribution enriches the discourse of Islamic theology, family law, and gender studies in Indonesia, while providing a theoretical basis for a more inclusive transformation of local wisdom. In practice, these findings support policy implications, such as integrating customary rituals into religious court procedures through joint guidelines between customary institutions and Syar'iyah Courts/Religious Courts, to ensure legal certainty and protect women's rights.

Further research suggestions are needed for qualitative empirical studies involving women perpetrators/victims of Mowea Sarapu, traditional leaders, scholars, and religious court officials to capture concrete experiences, power dynamics, and agency in this practice. This enables the testing and refinement of normative-theological analysis using field data. In addition, a cross-community comparative study on the integration of customary rituals with restorative justice mechanisms, divorce registration, and gender-responsive procedural designs is important to formulate an operational model for Mowea Sarapu reform through written customary guidelines, local fatwas, and regulatory innovations that link Tolaki customs with maqasid al-shari'ah and national family law in a consistent and fair manner. This approach not only enriches the treasures of Islamic and customary studies but also supports the national policy agenda in strengthening women's protection within the context of Indonesian legal pluralism. It includes recommendations for integrating customary rituals into religious court procedures to avoid status uncertainty and ensure substantive justice for all parties.

## References

Affandi, A., Billah, M. M., & Syaifudin, M. (2025). Maqāṣidī Exegesis: A Path for Promoting Gender Equality in Contemporary Islamic Discourse. *QOF*, 9(1), 61–80. <https://doi.org/10.30762/qof.v9i1.2748>

Afriko, N., Am, R., Saputra, R., & Wahyuni, S. (2025). Dekonstruksi Patriarki: Pemikiran Nawal El Saadawi dan Relevansinya dalam Budaya Matriarkat Minangkabau. *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan*, 23(2), 427–439. <https://doi.org/10.53515/qodiri.2025.23.2.427-439>

An-Na'im, A. A. (1996). Toward an Islamic reformation: Civil liberties, human rights, and international lawNA. *Syracuse University Press*. <https://ejournal.uin-suska.ac.id/index.php/hukumislam/article/download/21123/9461>

Bawono, B. T., Huda, M. N., Prayitno, A. H., & Siswanto, M. A. (2025). Human Trafficking and the Relevance of Hifz al-nafs and Hifz al-'ird in Contemporary Islamic Legal Ethics. *MILRev: Metro Islamic Law Review*, 4(1), 597–618. <https://doi.org/10.32332/milrev.v4i1.10694>

Bowen, J. R. (2023). *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*John R. Bowen. Cambridge University Press.

Diana, Q., Mahmudi, Z., & Anam, K. (2025). Perlindungan Korban KDRT Perspektif Maqasid Syariah Jasser Auda: Analisis Terhadap UU No. 23 Tahun 2004. *Maqasid: Jurnal Studi Hukum Islam*, 14(3), 327–339. <https://doi.org/10.30651/mqsd.v14i3.29019>

Haq, I., Hannani, H., Syatar, A., Amiruddin, M. M., & Musmulyadi, M. (2024). Unlocking The Potential of "Kalosara": An Extensive Analysis of Adultery Instances Dispute Resolution in the Tolaki Tribe through the Lens of al-Ishlah Concept. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 24(1), 86–100. <https://doi.org/10.30631/alrisalah.v24i1.1488>

Huda, M., Purnomo, A., Mun'im, A., Aminuddin, L. H., & Santoso, L. (2024). Tradition, wisdom and negotiating marriage and inheritance disputes on javanese Muslim. *Al-Istinbath: Jurnal Hukum Islam*, 9(1), 25–44. <https://doi.org/10.29240/jhi.v9i1.9887>

Indra, G. L., & Mu'in, F. (2025). Family Conflict Resolution Based on Lampung Customary Local Wisdom and Its Implications for Household Harmony. *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya*, 10(1), 1–14. <https://doi.org/10.25217/jf.v10i1.5432>

Juliardi, B., Runtunuwu, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., Syahril, M. A. F., Saputra, T. E., Arman, Z., & Rauf, M. A. (2023). *Metode Penelitian Hukum*. CV. Gita Lentera.

Jumasran, J., Ikbal, I., Munanto, R., Yunus, R., Puspita, S., Ikhsan, M., & Kartini, K. (2025). The Sombalabu Tradition in the Tolaki Tribe of Konawe Regency: An Islamic Legal Perspective. *Al-Qalam*, 31(1), 194–208. <https://doi.org/10.31969/alq.v31i1.1638>

Kamaruddin, K. (2022). The Early Marriage of the Tolaki Konawe Community in the Perspective of Critical Islamic Law. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 22(2), 255–270. <https://doi.org/10.18326/ijtihad.v22i2.255-270>

Kamaruddin Kamaruddin. (2023). *Widows' Rights and Customary Law: Addressing Responsive Law to Divorce Cases of Tolaki Community in Indonesia*. 22(2). <https://doi.org/10.21093/mj.v22i2.6154>

Karouw, D. (2025, April 10). Viral Suami Serahkan Istri ke Pria Selingkuhan di Konawe: Tolong Bahagiakan Dia, Itu Saja! *Inews.Id*.

Koodoh, E. E., Idaman, I., & Danial, D. (2024). Forgiving and forgetting: Family Conflict Resolution through Customary Law among the Tolaki People of Southeast Sulawesi, Indonesia. *Journal of Law, Social Science and Management*, 1(1), 11–19.

La Banara; Bahtiar; Wa Kuasa Baka; Usman Rianse; La Niampe; La Aso. (2022). Forms of Conflict Resolution based on Local Wisdom (A Studyon Kalosara Role in Inter-Ethnic Conflict in Kendari City). *International Journal of Social Science And Human Research*, 5(8), 3853–3857. <https://doi.org/10.47191/ijsshr/v5-i8-64>

Lestiwati, I., Maisa, M., & Manan, A. (2024). Comparison of the Legal Regulation of Adultery as Social Control in Society: A Comparison Between Indonesia, Malaysia, Brunei Darussalam, and Turkey. *SASI*, 30(2), 183–197. <https://doi.org/10.47268/sasi.v30i2.2049>

Mir-Hosseini, Z. (2009). *Towards gender equality: Muslim family laws and the Shari'ah*. Musawah Petaling Jaya. <https://arabic.musawah.org/sites/default/files/WANTED-EN-2edition.pdf#page=35>

Murdan, M. (2016). Pluralisme Hukum (Adat dan Islam) di Indonesia. *Mahkamah: Jurnal Kajian Hukum*, 1(1).

<https://badge.dimensions.ai/details/doi/10.24235/mahkamah.v1i1.573?domain=https://www.syekhnurjati.ac.id>

Nasruddin Yusuf; Ridwan Jamal; Misbahul Munir Makka. (2025). The Significance of Ushul al-Fiqh and Maqashid Syari'ah Approaches in Reforming Islamic Law in Indonesia: A Critical Study of the Penal Code or Another Topic. *MAQASID: Jurnal Studi Hukum Islam*, 14(3).

Nuraida Fitri Habi, Robi'atul Adawiyah, Hermanto Harun, Ardian Kurniawan, R. A. R. (2024). Prioritizing Restorative Justice in the Settlement of the Sumbang Besak Adultery Case in Babeko Village, Jambi. *El-Mashlahah*, 1(2), 343–360. <https://doi.org/10.23971/el-mashlahah.v14i2.8030>

Rajafi, A. (2020). Local Wisdom for Marriage Conflict Mediation in Muslim Minahasa, Indonesia. *Proceedings of the 1st Raden Intan International Conference on Muslim Societies and Social Sciences (RIICMuSSS 2019) Social Sciences (RIICMuSSS 2019)*, 492, 299–303.

Rakia, A. S. R. S., & Hidaya, W. A. (2022). Aspek Feminist Legal Theory dalam Peraturan Perundang-undangan di Indonesia. *Amsir Law Journal*, 4(1), 69–88. <https://doi.org/10.36746/alj.v4i1.104>

Sugianto, H., Fawaid, A., Baharun, H., & Yarun, A. (2025). Islamic Law And Gendered Inheritance: An-Taradhin as Breakthrough for Women's Rights Disputes in Java, Bali, and Sumatra. *Al-Istinbath: Jurnal Hukum Islam*, 10(2), 700–731. <https://doi.org/10.29240/jhi.v10i2.12614>

Syahril, Muh. A. F. (2024). *Hukum Adat: Teori dan Dinamika Perkembangannya*. CV. Eureka Media Aksara.

Tasbih, T., Langaji, A., Hafid, S. A., Bakti, A. F., & Haris, A. G. (2024). Islamic feminists' rejection of the textual understanding of misogynistic hadiths for the advancement of gender justice in Makassar, Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(1), 196–215. <https://doi.org/10.22373/sjhk.v8i1.19856>

Tijani, A., Tijani, A., & Mulyadi, M. (2018). Gender Dalam Perbincangan Islam Dan Tradisi Lokal: Studi Penelusuran Karakteristik Wacana Gender Di Indonesia. *Raheema: Jurnal Studi Gender Dan Anak*, 5, 207–216.

Widodo, H., Mashdurohatun, A., Santoso, A. B., & Yunanda, D. (2025). Restitution as an Instrument of Justice for Victims of Domestic Sexual Violence: A Study of Positive and Islamic Law in the Contemporary Era. *MILRev: Metro Islamic Law Review*, 4(1), 676–699.

