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The Legal Culture of Samin Community of Family Law in Central Java

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Abstract:

This article seeks to examine the legal culture of the Samin community in relation to their preferences in family law, the persistence of the customary law in the community, and the transformations that have taken place in Samin family law. The data of this article is derived from an ethnographic study conducted at various Samin villages in Central Java between 2022 and 2023. Information was gathered via in-depth

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interviews, observation, and document analysis. The study's findings suggest that the government does not officially recognize marriage within the Samin community. However, the Samin family law has undergone a significant transformation. It underwent a substantial change which involved the government officially acknowledging the Samin beliefs. The research findings reveal symptoms of the Samin family law which underwent a transformation from customary law to local fiqh characterized by a mystical style. Efforts are being made to establish formal legal frameworks that accept the belief in God Almighty and incorporate legal practices. The legal negotiations led to the emergence of natural law plurality which in practice, is influenced by politics, social, and culture.

Keywords:

Legal Culture; Samin Community; Family Law; Preferences

Introduction

The legal development in Indonesia is undergoing substantial advancements that directly impact the lives of indigenous peoples, cultural heritage,¹ and indigenous faith.² Those regulations govern some societal life such as marriage, civil governance, and officially recognized state faith on indigenous communities who have coexisted and abided by their traditional norms for centuries.³ For decades, indigenous peoples have served as custodians of customary law and culture.⁴ Now, it is being depicted as a hindrance to the progress of the law. Local faiths that have assimilated themselves from their

¹ Susandi Decapriu Putra Pamungkas et al., "Penerapan Sistem Civic Virtue Sebagai Langkah Optimalisasi Musyawarah Perencanaan Pembangunan (Musrenbang) dalam Pembentukan Produk Hukum di Desa Adat," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 4, no. 1 (2023): 1-20, <https://doi.org/10.19184/idj.v4i1.39091>.

² Mahkamah Konstitusi, "Putusan Nomor 97/PUU-XIV/2016" (2016).

³ John R. Davies, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, vol. 59 (New York: Cambridge, 2003), <https://doi.org/10.1017/CBO9780511615122>.

⁴ Solomon Gwerevende, "Chilonga Cultural Landscape in the Shadow of Eviction: Living Cultural Heritage, Livelihoods and Minority Indigenous People's Rights under Threat in Zimbabwe? Rights under Threat in Zimbabwe?," *International Journal of Heritage Studies* 29, no. 7 (2023): 627-42, <https://doi.org/10.1080/13527258.2023.2211976>.

ancestors and rely on spirituality and the preservation of cultural heritage are under challenge.

The imposition of state legislation can compel indigenous peoples to relinquish their ideas, values, customs, and behaviors associated with their cultural heritage such as what happened in the Samin community.⁵ This affects the way they conduct marriage, divorce, and the distribution of assets after death in order to comply with their religious convictions.⁶ The implementation of the Marriage Law, Population Administration Law, and Compilation of Islamic Law have a significant impact on the Samin community. Epistemologically, this kind of law shows that the Samin community realizes and believes that Islam regulates their life as part of the law. Moreover, ontologically, this belief builds a relationship between customary law and their legal culture.

Wong Samin, a Javanese term, designates a faction within Javanese society adhering to the Samin teachings.⁷ Samin community originated in approximately 1890, when Surosentiko Samin, a Javanese peasant farmer, started spreading his religious beliefs in Blora and Rembang regencies of north-central Java. The Dutch colonial authorities first took notice of the movement in 1905.⁸ According to Harry J. Benda and Lance Castles, another complexity arises from the fact that the Saminist ideology does not easily align with the general category of a small part of the whole tradition.⁹

Tjipto Mangoenkoesoemo further stated that Samin's separation from his first spouse had influenced his ideas toward scrutinizing the prevailing societal structure. Accusing Samin of not

⁵ Gwervevende.

⁶ Davies, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*.

⁷ Iman Fadhilah et al., "Exploring the Monogamy Principle in the Samin Community's Customary Marriages in Kudus: Harmonisation of Tradition and State Law," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 2 (2023): 281-304, <https://doi.org/10.18326/ijtihad.v23i2.281-304>.

⁸ Victor T. King, "Some Observations on the Samin Movement of North-Central Java," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 129, no. 4 (2013): 457-81, <https://doi.org/10.1163/22134379-90002714>.

⁹ Harry J. Benda and Lance Castles, "The Samin Movement," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 125, no. 2 (2013): 207-40, <https://doi.org/10.1163/22134379-90002844>.

being a Muslim, she attempted to nullify their marriage through the *naib* (a local religious official).¹⁰ Furthermore, the Samin community does not include the *modin* (a village religious official) in marriages and funerals. They decided to have a traditional marriage, informing only the village head.¹¹ This is in line with research conducted by Hartanto, meanwhile identifying variables that contribute to the Samin community in Kaliyoso, Kudus, not registering their marriage.¹²

In 2017, the Constitutional Court announced Decision Number 97/PUU-XIV/2016 which officially recognized adherents of the belief in God as the fundamental requirement for the execution of marriage.¹³ Widanarti and Njatrijani show that some members of the Samin community have implemented the decision. However, there are some individuals who do not want to comply with these provisions and refuse to officially register their marriages. In addition, certain individuals from the Samin community requested formal recognition of their faith, known as Adam, as a legitimate faith in Indonesia.¹⁴

Rosyid illustrates how the Samin community feels relieved and liberated from the state. The verdict granted the Samin community the freedom to get married in accordance with their religious beliefs. For example, the couple Ani Agustina and Kristiyanto married on April 25, 2019, following local religious customs as stated in the Constitutional Court's decision to believe in God Almighty.¹⁵

¹⁰ Tjipto Mangoenkoesoemo, *Het Saminisme: Rapport Uitgebracht Aan de Vereeniging "Insulinde"* (Semarang: Drukkerij en Boekhandel HA Benjamins, 1918).

¹¹ Benda and Castles, "The Samin Movement."

¹² Dwiwana Achmad Hartanto, "Local Wisdom of Sedulur Sikep (Samin) Society's Marriage In Kudus: Perspective of Law Number 1 Year 1974 on Marriage," *Jurnal Dinamika Hukum* 17, no. 2 (2017): 132, <https://doi.org/10.20884/1.jdh.2017.17.2.723>.

¹³ Mahkamah Konstitusi, Putusan Nomor 97/PUU-XIV/2016.

¹⁴ Herni Widanarti and Rinitami Njatrijani, "Implementasi Putusan MK No 97/PUU-XIV/2016 Terhadap Pelaksanaan Perkawinan Pada Masyarakat Adat Samin (Sedulur Sikep) Di Jawa Tengah," *Diponegoro Private Law Review* 4, no. 2 (2019), <https://ejournal2.undip.ac.id/index.php/dplr>.

¹⁵ Moh Rosyid, "Perempuan dalam Perkawinan Samin: Perlindungan Budaya Versus Hukum Positif," *Musāwa Jurnal Studi Gender dan Islam* 18, no. 2 (2019): 149, <https://doi.org/10.14421/musawa.2019.182.149-159>.

There are two distinct sides: first, the group that seeks to have their beliefs recognized as an officially recognized religion in Indonesia. The second is the group that chose to convert to Islam.¹⁶ Hidayat A.N. et al.'s study reveals the Samin community's increasing involvement in formal marriage registration through the Religious Affairs Office,¹⁷ which implies the second group's existence and choice. It is likely different from Horii who cites Platt's viewpoint that marriage registration according to state legislation holds little significance for numerous Sasak individuals as it undermines or diminishes customs that foster a more vibrant type of marriage.¹⁸

Some relevant research has been conducted by several researchers. Myrlinda's,¹⁹ Arif's et al.,²⁰ and A.N. Hidayat's et al²¹ have conducted research on the Samin community toward their culture. Their research, generally, shows that the Samin communities are still fighting with the existence of their local tradition toward the existence of state law. Furthermore, Arif and Hidayat argue that the Samin community tends to adapt the state and customary law for their daily life and both go in harmony. However, Myrlinda's research shows strong efforts of the Samin community to preserve their legal traditions. Another one is that of Anna Beckers et al²² which argues that law enforcement in modern societies is driven by two seemingly

¹⁶ Moh Rosyid, "Konversi Agama Masyarakat Samin: Studi Kasus di Kudus, Pati, dan Blora," *Sinopsis Disertasi* (IAIN Walisongo, 2013).

¹⁷ Hidayat AN, Saipiatudin, and Kurniawan N, "Transformation of the Legality of the Marriage Culture of the Samin Sambongrejo Community, Blora Regency," *Journal of Geography Science and Education* 22, no. 1 (2023): 2685-581, <https://doi.org/https://doi.org/10.32585/jgse.v5i1.3644>.

¹⁸ Hoko Horii, "Marriage, Gender, and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce, and Desire, by Maria Platt," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 174, no. 2-3 (2018): 345-47, <https://doi.org/10.1163/22134379-17402017>.

¹⁹ Fransiska Rahayu Myrlinda, "Samin's Arranged Marriage Rituals in Today Javanese's Society," *Journal of Language and Literature* 19, no. 2 (2019): 140-47, <https://doi.org/10.24071/joll.v19i2.2143>.

²⁰ Muhamad Arif, Abdul Ghofur, and Dhanang Respati Puguh, "The Pattern of Social Changes in the Samin Community and Its Influencing Factors," *Indonesian Historical Studies* 5, no. 2 (2022): 134-47, <https://doi.org/10.14710/ihis.v5i2.13389>.

²¹ Hidayat and Kurniawan, "Transformation of the Legality of the Marriage Culture of the Samin Sambongrejo Community, Blora Regency."

²² Anna Beckers, Klaas Hendrik Eller, and Poul F. Kjaer, "The Transformative Law of Political Economy in Europe," *European Law Open*, 2022, <https://doi.org/10.1017/elo.2023.13>.

contradictory missions: promoting growth and preserving tradition. To some extent, this portrays the same situation as that of Samin in dealing with the requirement to obey the state law and the willingness to pertain to the customary law.

Thus, compared to them, this study builds on previous research by thoroughly examining the legal preferences and legal culture of the Samin families which serve as a foundation for formulating legal policy. This research aims to strengthen the arguments of previous studies on legal culture development apart from its differences in terms of emphasis, methodology, and theories used, particularly regarding the construction of legal culture and its impact. The results of this study will enhance the discussion and process of agreement-making between customary law, Islamic law, and national law, not only in Indonesia but also among indigenous groups around the world.

There are three issues to examine in this article. First, how is the construction of a legal culture of the Samin community in the preference of family law in Central Java? Second, how is the persistence of the Samin community on their own family/customary law in Central Java? Third, how is the transformation of family law of the Samin community in Central Java?

Methods

This research is legal ethnography, a legal research method with direct interaction of social settings to understand the life experiences of members of the Samin community in Central Java. The primary data consisted of 15 key informants: 8 Samin leaders, 3 religious leaders, and 4 state officials. Interviews were conducted three to four times and lasted between 50 and 120 minutes. The interviews were recorded and transcribed. The observation, meanwhile, was conducted in six *dukuh* (hamlets) in Central Java, over a period of more than one year from 2022 to 2023. Fieldwork was done by going to them, visiting coffee shops, rice fields, halls, and *kamling* (*keamanan lingkungan*) posts. We used Thomas Aquinas' theory of natural law because initial observations showed that the legal norms of the Samin family are closely related to theology. In their recognition is the theology that comes from the religion of Adam.

Result and Discussion

The Construction of Legal Culture of Samin Community in Preference of Family Law

Samín community believes, based on their custom, that real marriage is *pengucape* (from his speech), *ilmu laku* (the science of behavior), *ilmu kasunyatan* (the science of reality), and *sepisan kanggo selawase* (once in people's life) without having to be registered.²³ However, some Samín people also still believe in state law. It shows that the Samín community itself has diverse family law preferences. We found that there are preferences among them about what kind of law they use in their life. For detailed information, the representative preferences of the family law system in the Samín community can be seen in Table 1.

Table 1. Samín community's family law system with specific preferences

Source	Statement	Family Law System Preference
Rebi (A Samín Elder)	Starting in 1955, the government arranged large-scale/mass weddings for the Samín community, and we willingly participated in them.	State law and customary law
Kemi (A Samín Elder)	I was not required to demonstrate my identity as a Samín. Consequently, I officially recorded my marriage in 1972.	State law and customary law
Budi Santoso (A Samín Elder)	I object to being compelled to get married under Islamic law, as my religious beliefs do not align with Islam. I adhere to the faith of Adam. Since 1990, I have encountered difficulties in gaining government recognition for my beliefs. Our religion was officially acknowledged as a belief by the State in 2017.	State law based on belief in God
Datar Village Apparatus)	(A Samín community adopted Buddhism as their preferred religion for marriage aspect.	Buddhist-based State Law

²³ Gun Retno, "Interview" (26 Maret, 2023).

Source	Statement	Family Law System Preference
Gun Retno (A Samin Elder)	We continue to uphold marital laws passed down by our forefathers. Our marriages are not officially recorded.	Customary law

Data compiled from research

Based on Table 1, it can be seen that the majority of informants have officially recorded their marriage at the Office of Religious Affairs.²⁴ Some get married according to their beliefs in God Almighty at the Civil Registry.²⁵ Others registered their marriages at the Civil Registry based on Buddhism, and there are still Samin communities who do not want to register their marriages.

Some of those informants stated that the marriage registration happened because the State wanted citizens to register their marriage officially. The state representatives, *pamong praja* (civil servants), come to every Samin people and ask them to register their marriage. Below is the story of Santoso's experience:²⁶

"In 1985, I was getting married to my wife. We experienced the ferocity of the local government. I was visited by *Pamong Praja* (Civil Servants). I was threatened that I could not marry a resident here. Then if I wanted to marry one of the villagers, I had to get married in an Islamic way at the Religious Affairs Office. Finally, there was a big argument. I was forced, but I did not want to. They didn't accept it and kicked the table. I was told, "You are breaking the law". The next day, the *kamituwo* (unofficial hamlet leader) and *modin* (a village religious official) came to me again, but I insisted that I did not want to get married in Islam".

²⁴ Hidayat and Kurniawan, "Transformation of the Legality of the Marriage Culture of the Samin Sambongrejo Community, Blora Regency."

²⁵ Rosyid, "Perempuan dalam Perkawinan Samin: Perlindungan Budaya Versus Hukum Positif."

²⁶ Budi Santoso, "Interview" (20 Juni, 2023).

From the interview with Santoso,²⁷ it can be seen that there is an interaction of the Samin family law with the state law. Santoso said that national law was formed after Indonesian independence, while Samin law had existed before Indonesian independence. However, politically, the state does not recognize the existence of the Samin law. He further argued that Adam's religion is an ancestral religion that existed long before the birth of the Republic of Indonesia.

Santoso's case above indicates a legal conflict between state and customary law. The village government uses coercion against Samin people who want to get married in accordance with official religion and beliefs. The narrative above is similar to Lukito's research which found conflicts between state law, Islamic law, and customary law.²⁸

Apart from this, the contentious tradition in the family law of the Samin community, which is subject to objectification, is *nyuwito* tradition. The *nyuwito* tradition, which is a stage of Samin marriage, is opposed by *ulema* and the people around them. Thohir, as a religious leader, expressed the opinion on *nyuwito* or *ngrukuni* tradition as follows:²⁹

“Before marriage, Samin communities have to do *nyuwito* ceremony or *ngrukuni*, sexual intercourse between man and woman. The next morning, they have to report that they did it and confess whether they have feelings for each other to the prospective in-laws. After all, the next day, they can hold a wedding party.

In this specific context, the marriage will be considered “lawful” if the bride's parents have given consent for the relationship. Sexual intercourse serves as evidence of genuine affection between individuals. Samin community believes that love, manifested through sexual intercourse during the *nyuwito* phase, should be the foundation

²⁷ Santoso.

²⁸ Ratno Lukito, “Hukum Sakral dan Hukum Sekuler: Studi tentang Konflik dan Resolusi dalam Sistem Hukum Indonesia” (Jakarta: Pustaka Alvabet, 2008).

²⁹Thohir, “Interview” (19 Februari, 2023).

of marriage.³⁰ Nevertheless, there are many bad rumors circulating among the wider society about the marriage practices of this community, especially regarding with *nyuwito* tradition.

Islam is a religion and a guideline that regulates the lifestyle of society in small and large scopes.³¹ Islam provides spaces for dialogue between ethnic and religious values, which link the Islamic teaching and the cultural and ethnic values.³² According to Islamic Jurisprudence, the attitude of *ulema* who reject the *nyuwito* tradition is relevant to the theory of *al-‘ādah muḥakkamah* that customary traditions can become law as long as they do not violate Islamic Shari‘a. Research by Zainuddin et al³³ and Assaad et al³⁴ shows the encounter and collaboration of local culture and Islamic law which vividly shows how those two can be either in harmony or in conflict. On the other hand, Beccmann's research found *ulema* fighting customary traditions that contradict Islamic law³⁵ which strengthens that this case repeatedly happens in diverse contexts. When Minangkabau *ulema* used the method of war to solve the contradictions, *ulema* around the Samin community provided continuous understanding in a peaceful manner.

The legal preferences of the Samin family therefore show a legal culture of carrying out community-made laws believed to be laws from God. Wacks with Tebbit mentioned that God's law can be

³⁰ Arif Rohman, "Rumours and Realities of Marriage Practices in Contemporary Samin Society," *Humaniora* 22, no. 2 (2015): 113–24, <https://doi.org/10.2139/ssrn.2256794>.

³¹ M Ichsan, "Poligami dalam Perspektif Hukum Islam (Kajian Tafsir Muqāranah)," *JURIS (Jurnal Ilmiah Syariah)* 17, no. 2 (2018): 151, <https://doi.org/10.31958/juris.v17i2.1196>.

³² Ridwan Nurdin, Muhammad Yusuf, and Syarifah Sarah Natasya, "The Gayonese Culture of Marriage System: The Islamic Law Perspective," *Samarah* 5, no. 1 (2021): 108–26, <https://doi.org/10.22373/sjhc.v5i1.9257>.

³³ Zainuddin, Jusalim Sammak, and Salle, "Patuntung: The Encounter of Local Culture and Islamic Sharia in the Ammatoa Kajang Community," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (2023): 177–99, <https://doi.org/10.19105/al-lhkam.v18i1.8207>.

³⁴ Zulkifli et al., "Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (2023): 125–51, <https://doi.org/10.19105/al-lhkam.v18i1.7162>.

³⁵ Fatahuddin Aziz Siregar et al., "Merantau in the Ethnic Tradition of Minangkabau: Local Custom without Sharia Basis?," *Samarah* 6, no. 1 (2022): 115–38, <https://doi.org/10.22373/sjhc.v6i1.9954>.

accessed by humans through the use of reason. The light of reason is the divine radiance in humans. Laws from God are taught by their ancestors orally and from generation to generation. Then, the knowledge of this law is lived by its adherents as the social construction theory proposed by Peter Berger and Thomas Luckmann. Social construction consists of the processes of externalization, objectification, subjectification, and internalization. In the externalization process, the data showed the existence of power relations between the state and the Samin community. The process of negotiation and reconciliation is a power relation from the state. The knowledge disseminated by the government on the importance of marriage registration is a discourse that is then normalized. The objectification among the Samin is clear from the way they can be accepted by the other communities. Meanwhile, the subjectification leads to the Samin people's argument that their custom is the best to maintain in their daily life. In the end, internalization required them to use and implement their custom and Islamic teaching together. This, then, leads them to be mindful about the law they used in their lives.

This study discovered the development of a legal culture that has a tendency towards pluralism. There are several legal cultures in the Samin community. First, the legal culture uses customary law. Second, the legal culture employs state law based on Islamic law. Third, the legal culture uses Buddhist-based state law. Fourth, the legal culture uses state law based on belief in God. Based on those points, it shows that the existing legal system, whether liked or disliked, must be combined with local culture, namely customary law. There is a strong relationship among them which cannot be separated from each other.

The interaction and relationship between the customary and legal systems in the Samin communities shows that the process of assimilation of law happened. Mohamed Berray argues that employing homogeneous common good as the fundamental analogy for assimilation and integration disregards the necessary individual adjustments that must be made to both majority and minority

societies.³⁶ Like what happened in the Samin community, Hung found that there are creative and flexible strategies employed by three Chinese groups to adopt Confucian values and the traditional Chinese legal system.³⁷ His research showed that Confucian and traditional law cannot be separated.

Within this framework, the act of objectifying Samin's legal culture through the reconstruction of a culture that contradicts Islam reinforces the findings of Surya Sukti et al.'s research. Their study revealed that the practice of opening *lawang sekepeng*, which involves consuming *tuak* (traditional alcoholic beverage), has been substituted with the consumption of *halal* milk or other permissible beverages.³⁸ Those customs are deemed to contradict Islamic teaching. Like what occurred among the Samin, customary law can be implemented as long as it does not contradict Islamic law as explained in *receptio a contrario* theory. Therefore, the role of *ulemas* is found to be important as they typically control and adapt to the situation.

In fact, the cultural values of the Samin Community have the potential to contribute to the formation of national law. This is in line with Hussin et al.'s research which found that by applying the concepts of *al-'ādah muḥakkamah* and the concept of *maqāsid ash-shari'ah*, Islamic Family Law could specifically incorporate the custom among the Malay community. This is due to the fact that local culture offers many advantages and positive aspects for the community as a whole.³⁹

The position of *adat* in the state law is actually regulated in Article 4 of Minister of Home Affairs Regulation No. 52 of 2014 concerning the recognition and protection of indigenous and tribal

³⁶ Mohamed Berray, "A Critical Literary Review of the Melting Pot and Salad Bowl Assimilation and Integration Theories," *Journal of Ethnic and Cultural Studies* 6, no. 1 (2019): 142-51, <https://doi.org/10.29333/ejecs/217>.

³⁷ Alvin Hoi-Chun Hung, "Filial Piety across Legal Systems: Analysing the Influence of Traditional Chinese Legal Culture of Property in Hong Kong, Taiwan, and China," *Asian Journal of Comparative Law* 18, no. 2 (2023): 137-57, <https://doi.org/10.1017/asjcl.2023.6>.

³⁸ Surya Sukti, Munib, and Imam S. Arifin, "Pernikahan Adat Dayak Ngaju Perspektif Hukum Islam Studi Di Kabupaten Gunung Mas Kalimantan Tengah," *El-Mashlahah* 10, no. 2 (2020): 65-75, <https://doi.org/10.23971/maslahah.v10i2.2284>.

³⁹ Moh Norhusairi Mat Hussin et al., "The Legal Recognition of a Wife's Rights of Harta Sepencarian in Malaysia," *Asian Women* 39, no. 1 (2023): 23-44, <https://doi.org/10.14431/aw.2023.12.39.1.23>.

peoples. In addition, customary law is recognized as a thing to consider in the legal discovery or legal formation by judges, namely living customary law within the customary law community.

In the end, the Samin community exhibits a multifaceted legal culture in their comprehension of laws pertaining to family law, namely marriage. Disparities manifest in numerous geographical regions. Certain individuals are inclined to adhere to state legislation, whereas others are not. Meanwhile, the Samin community holds the belief that marriage serves as a concrete manifestation of divine laws under certain precise conditions. Alternatively, some Samin people opt to adopt inclusivity and actively engage in negotiations and reconciliation with the government. The outcome of the power dynamics between the community and the government shapes the specific cultural formation of the Samin community.

Persistence among The Samin Community to their Customary Law

The persistence of customary law among the Samin community can be seen in unrecorded marriages as well as the divorce of those who live at Kaliyoso Hamlet, Karangwo Village, Undaan Sub-District, Kudus. The Samin community tends to get stuck and does not want to move from customary law to state law. Some sampling yet representative divorce cases showing this symptom can be seen in Table 2.

Table 2. Samin Community Divorce

Divorced Parties	Year	Problems	Solution taken
Sandi vs Warni	2005	Sandi is not native to Samin and they do not have children	Divorce without involving the state
Totok vs Mita	2015	Child marriage, disharmony	Divorce without involving the state
Ogi vs Mega	2016	Shifting values from traditional to modern	Divorce without involving the state
Aspi vs Anggi	2018	Child marriage, domestic violence, childlessness	Divorce without involving the state

Data compiled from research

What happened at the hamlet is quite different from Samin community in Blora Regency which conducts divorce through a Religious Court.⁴⁰ Table 2 implies that Samin communities in Kudus still maintain their own *kapitayan* (customary law order) for divorce.⁴¹ According to their perspective, the crucial aspect of divorce is the *pengucape* (as they refer to it) which signifies communicating to in-laws that the couple is no longer capable of fulfilling their responsibilities towards their spouse.⁴² As Retno said, the state does not have the authority to represent Samin marriages and divorces.⁴³ In addition, they still uphold their family law practices to this day.

As the government does not recognize this sort of legal norm of customary marriage those who do not register their marriage in the Religious Office, are considered unmarried. However, among 27 family cards, we found 20 of them mention women as the heads of the family, while the rest are headed by men. It is questionable considering that they did not register their marriage to the Religious Affairs Office. Therefore, this likely shows inconsistencies in the government impacting the status of some children who are only recognized by their mother's line.⁴⁴ In fact, as a part of Indonesian citizens, the Samin community is supposed to obey the state laws. This situation can be seen as legal pluralism considering that each sub-culture has its own law namely customary law.

Samin community is therefore at the crossroads of competing norms between state law and Samin family law. A part of the Samin community opposes the state marriage law because it threatens their cultural landscape which includes their traditions and values. Specifically, they believe that it can damage and jeopardize their cultural heritage, religious autonomy, and the continuity of their traditional practices. They believe that when they get far away from their own culture and do not preserve it anymore due to the shift to state marriage law, it could lead to the loss of religious and spiritual activities that define their identity as well as their living cultural heritage.

⁴⁰ Abdurrahman, "Interview" (17 Maret, 2023).

⁴¹ Gumani, "Interview" (19 Juni, 2023).

⁴² Ngasipan, "Interview" (19 Maret, 2023).

⁴³ Retno, "Interview."

⁴⁴ Karangrowo Village Government, "Dokumentation" (Kudus, 2023).

Transformation of the Samin Family Law

Due to increased government and citizen awareness about marriage, the majority of Samin natives in Blimbing Sambongrejo Village have legally registered their marriages. They have also modified the marriage procedure by following the state law and registering their marriages to the Religious Affairs Office.⁴⁵ Muyayin, the Head of the Religious Affairs Office (KUA) in Menden, provided an explanation of the Samin community's comprehension of Islamic law in Blora Regency as follows.⁴⁶

“The common marriage in this KUA is a marriage with *wali hakim*. This happened because, in the past, their parent was not legally married. Therefore, the next generation has to get married at the Religious Affairs Office.”

The excerpt implies a change in how the Samin community perceives contestation between state marriage law and their own marriage customary law. The previous generation tended to ignore the state law, while the current one has changed a lot as clear by their cooperation and obedience to both laws. It seems that government efforts work quite well. One member of the Samin community, named Gumani, interpreted family law from the perspective of the Samin law as follows:⁴⁷

“Samin law of marriage is actually the law of promise – marriage must be once in our life. But we live in a country where the law is supreme. Consequently, we abide by the laws of the land. As a result, we abide by the laws of the country, but we still follow our ancestral teachings. I tend to follow the rules, and now I have recorded my marriage”.

⁴⁵ Hidayat and Kurniawan, “Transformation of the Legality of the Marriage Culture of the Samin Sambongrejo Community, Blora Regency.”

⁴⁶ Muyayin, “Interview” (12 Maret, 2023).

⁴⁷ Gumani, “Interview.”

What Gumani said reflects how the current generation of Samin thinks about the customary law they inherited from their ancestor in relation to the state law as a rule in which they live their life. Instead of choosing one of both, they opt to adopt the new one without ignoring the older one. This is reinforced by Ngasipan⁴⁸ who clarified that the Samin tradition continues to persist, but the spouse also registers their marriage contract at the Religious Affairs Office. If the spouse chooses not to claim themselves Muslim, according to Datar,⁴⁹ a village official in Jepara Region, the marriage is typically carried out in the Civil Registry by claiming Buddhism.

Running both laws, among others, is experienced by Bakri⁵⁰ who testified as below:

“Since a long time, Samin marriage has to be organized in both customary and state law. It is like what I experienced; I already got married before the government and then Samin cultural marriage was also told to run. The point is on deliberation.”

This shifting change, however, does not happen in a night. Rebi,⁵¹ a Samin elder in Bapangan Hamlet, Blora, explained further about compromise from the state so that the Samin community to register their marriages. The state, according to him, provided an understanding of the importance of marriage registration for the Samin community in Bapangan Hamlet. Likely, beginning in 1955, the state started implementing the mass marriage program. In the following year, 1956, the mass marriage program continued until the following years.

Likewise, Thohir, the headman in Blora area, claimed to struggle to straighten out Samin teachings to be in accordance with Islamic law. He admitted that he always gave an understanding to the Samin community so that the Samin tradition, which was considered contrary to Islamic shari'a, would be abandoned.⁵² This ‘cooperation’

⁴⁸Ngasipan, “*Interview*.”

⁴⁹Datar, “*Interview*” (30 Juni, 2023).

⁵⁰Bakri, “*Interview*” (25 Maret, 2023).

⁵¹Rebi, “*Interview*” (19 Juni, 2023).

⁵²Thohir, “*Interview*.”

implies how the transformation owes not only to the state’s efforts but also to Samin key persons themselves.

Changes in the era and the impact of the current government efforts have forced the Samin community to adapt to the changing times.⁵³ It does not only happen in marriage only, but also in inheritance as told by Hadi⁵⁴ who explained an inheritance dispute case among the Samin community. It is even found other sams cases in Karangrowo Village as follows:

Table 3. Samin Community Inheritance Dispute Cases in Karangwono Village

Disputing Parties	Year	Case	Resolution
Jimin vs Untari (sibling)	1998	This was a disputed inheritance case. It occurred at RT. 04, RW. 06, Karangrowo Village. One of the heirs sold an undistributed inheritance asset instead of dividing it.	It was resolved at the village office after much deliberation took place.
Umbar vs Sanah	1999	Umbar (a mother) has seven children but is deemed to have distributed the inheritance asset unfairly. Finally, Sanah (daughter) sued this distribution to the village office.	The case was resolved at the village office and the settlement was amicable.
Gondo vs Sumino	2018	Gondo is supposed to receive an inheritance from his mother. However, Sumino, his father, only distributed inheritance to other children. Gondo sued his father at the Karangrowo Village Office.	The village apparatus resolved the inheritance dispute through deliberation. In the end, Gondo received the inheritance.

⁵³ Hidayat and Kurniawan, “Transformation of the Legality of the Marriage Culture of the Samin Sambongrejo Community, Blora Regency.”

⁵⁴Noor Hadi, “Interview” (19 Juni, 2023).

Bambang vs Endang (sibling)	2019	Bambang sued Endang in Kudus District Court because the inheritance was only given to Endang.	They were rejected by the Kudus District Court because they did not have identity cards or family cards. Finally, the case was settled at the village office
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Data compiled from research

Table 3 shows how there was compromise, reconciliation, and negotiation between the Samin community and the state through either the village apparatus or the District Court. The existence of this negotiation indicates a transformation of the Samin family law that begins to recognize the state law. In some of these cases, they involved the state when resolving inheritance problems. This is evidence of the Samin community's internalization of the state law. In addition, Gumani's marriage, which was registered in 2021, proved the negotiation between the state and the Samin community as well as recognition of the Samin community's beliefs as *penghayat kepercayaan* (believers).

Those phenomena furthermore show the creation of alternative norms by the Samin community apart of differences between one place to others like in Pati, Blora, and Kudus. The interview session with Muyayin showed us how the Samin community has accepted Islamic law. They get married through the Religious Affairs Office in accordance with Islamic law. Meanwhile, in Jepara, the legal negotiations took place by choosing Buddhism as the closest religion to be written on the national identity card (KTP) so that the Samin community could register their marriage. Collaboration between Samin family law and state law is therefore crystal clear. Figure 1 below shows the transformation process of the Samin family law.

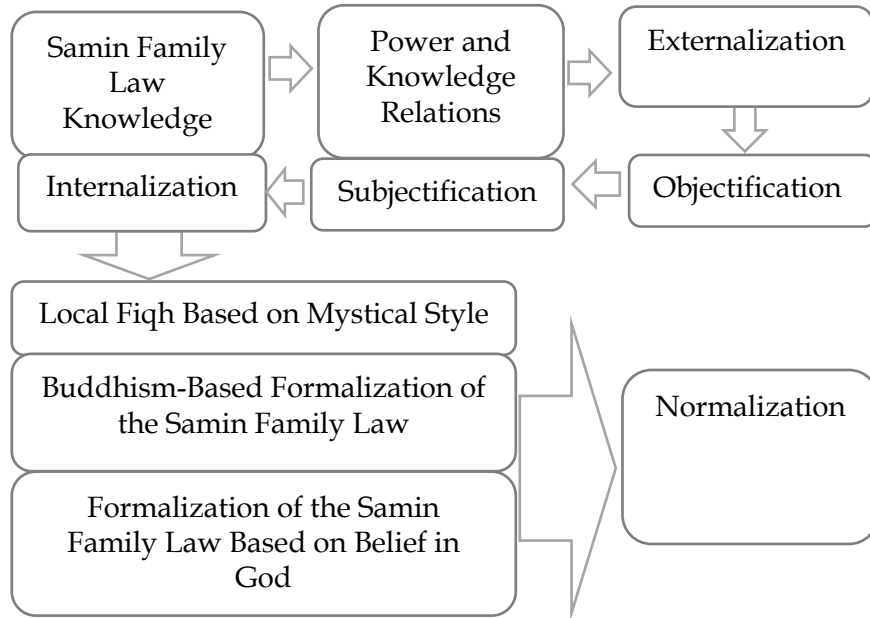


Figure 1. Transformation of the Samin Family Law

Figure 1 above displays how the Samin family law transformed into local fiqh based on mystical style, formal law based on Buddhism, or formal law based on belief in God. It is made possible by using Berger's theory of social construction consisting of externalization, objectification, subjectification, and internalization. Once externalized, the Samin family or customary law is observed by non-Samins so that they can know it quite well. They range from non-Samins people, government, and *ulema*. The next step, for instance, enables *ulema* to identify a part of Samin culture contradictory to Islamic law so that they can propose a good replacement for it at the phase of objectification. Meanwhile, the government forced them to register their marriage through mass marriage.

Along with it, Samin themselves also undergo a subjectification process, namely how they perceive their own customs which inevitably leads them to truth claims. To make the truth claim balanced with the surrounding laws living with them, there made the last phase called internalization in which the Samin community

reflects the law they have within existing laws in their surrounding so that it leads them to obtain legal consciousness. They make their own public conceptions and objectify themselves at the same time. Therefore, the community members engage in a dialectical process of externalization, objectification, and internalization periodically which finally leads them to the creation of a set of normative and cognitive concepts called legal consciousness. They manifest the consciousness by making necessary changes in both their ideas and actions which, in this context, relates to how they perform marriages, divorce, and inheritance share.

In light of *al-‘ādah muḥakkamah*, Samin customs potentially become the law. Customary habits that apply in an area can be used as a reference in Islam as long as they do not contradict Islamic shari’a. In Indonesia itself, this theory has been implemented in the Compilation of Islamic Law for determining joint property (*gono-gini* property). Moreover, living law in the Samin community shows their morality and legal culture. Samin community has accepted other rules for the sake of the sustainability of Samin itself. If they do not accept the rules of the state, they will likely encounter many obstacles in carrying out daily activities. Thus, at the same time, according to the theory of a semi-autonomous social field, they are simultaneously regulated in a large social field called the state which gives them no other choice than making alternative rules to maintain their existence.

Since the organization of mass marriage by the state, the Samin community has always been confronted with alternative systems of legal practice. In fact, not all local customs contravene Islamic law. However, the connection between Islam and *adat* in the Samin community has changed a lot over the course of history between supposedly adapting phase, open hostility, and skillful ideological synthesis. The fact that both systems have provided unique frames of reference for objectifying agents to relate to while attempting to develop new ideas of local law, however, should not be disregarded. The local law of the Samin community has undergone objectification and transformation caused by social and political interactions even though some Samin communities still try to preserve their customary law without considering other existing laws around them.

The intersection of the Samin community with the state and Islam put them as subjects to both state law and Islamic law at the same time. *Ulema* play a role in social control over Samin customs

considered contrary to Islamic Shari'ah. In the objectification phase, the *ulema* and the surrounding community found that the religion adopted by a part of the Samin community is Islam. They therefore feel responsible for straightening out customs contrary to Islamic law like the habit of *nyuwito* and borrowing wives.

From this point, it is clear that the state is engaging in three negotiations. *First*, the negotiation of marriages is to be conducted at the Religious Affairs Office. This negotiation is a transformation of the Samin family law that recognizes the state law as well as Islamic law. This transformation of the Samin family law into local *fiqh* is based on a mystical style. Based on the knowledge-power relations paradigm proposed by Michel Foucault, the power-owning state disseminates knowledge to the Samin community to register their marriages at the Religious Affairs Office. Through normalization, the Samin community in Blora performs marriages at the Religious Affairs Office. *Second*, marriage negotiations are based on Buddhism. *Third*, the negotiation of marriage as *penghayat kepercayaan* (a believer). The last two points are out of this current research focus that it lacks reliable data but provides chances for further relevant research instead.

Conclusion

Discrepancies between state law and the preferences of the Samin community with regard to family law were shown in marriage, divorce, and reconciliation of inheritance disputes without involving the state. This tendency leads to competing norms and conflicts with government officials and *ulema*. The transformation of the Samin family law is found in the social relations of the Samin community with village apparatus in the settlement of inheritance, mass marriage, *nikah wali hakim*, and *nikah* through civil registration with the recognition of their beliefs by the government. The research findings were that the Samin family law transformed into local *fiqh* based on mystical style, formal law based on Buddhism, and formal law based on belief in God. We contend that politics has a real impact on the tradition of natural law theory which holds that law comes from God. This research only focuses in the religious aspect of the Samin community in certain hamlets and cities. There is a chance that the Samin community culture in other cities is different. Therefore, we

suggest other researchers explore another city with a big population of Samin or a strong Samin culture such as Pati.

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Bibliography

- Arif, Muhamad, Abdul Ghofur, and Dhanang Respati Puguh. "The Pattern of Social Changes in the Samin Community and Its Influencing Factors." *Indonesian Historical Studies* 5, no. 2 (2022): 134-47. <https://doi.org/10.14710/ihis.v5i2.13389>.
- Beckers, Anna, Klaas Hendrik Eller, and Poul F. Kjaer. "The Transformative Law of Political Economy in Europe." *European Law Open*, 2022. <https://doi.org/10.1017/elo.2023.13>.
- Benda, Harry J., and Lance Castles. "The Samin Movement." *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 125, no. 2 (2013): 207-40. <https://doi.org/10.1163/22134379-90002844>.
- Berray, Mohamed. "A Critical Literary Review of the Melting Pot and Salad Bowl Assimilation and Integration Theories." *Journal of Ethnic and Cultural Studies* 6, no. 1 (2019): 142-51. <https://doi.org/10.29333/ejecs/217>.
- Davies, John R. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*. Vol. 59. New York: Cambridge, 2003. <https://doi.org/10.1017/CBO9780511615122>.
- Fadhilah, Iman, Tedi Kholiludin, Muhamamd Lutfi Hakim, and Ubbadul Adzkiya'. "Exploring the Monogamy Principle in the Samin Community's Customary Marriages in Kudus: Harmonisation of Tradition and State Law." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 2 (2023): 281-304. <https://doi.org/10.18326/ijtihad.v23i2.281-304>.
- Government, Karangrowo Village. "Dokumentation." Kudus, 2023.
- Gwervevende, Solomon. "Chilonga Cultural Landscape in the Shadow

- of Eviction: Living Cultural Heritage, Livelihoods and Minority Indigenous People's Rights under Threat in Zimbabwe?" *International Journal of Heritage Studies* 29, no. 7 (2023): 627-42. <https://doi.org/10.1080/13527258.2023.2211976>.
- Hartanto, Dwiwana Achmad. "Local Wisdom of Sedulur Sikep (Samin) Society's Marriage In Kudus: Perspective of Law Number 1 Year 1974 on Marriage." *Jurnal Dinamika Hukum* 17, no. 2 (2017): 132. <https://doi.org/10.20884/1.jdh.2017.17.2.723>.
- Hidayat AN, Saipiatudin, and Kurniawan N. "Transformation of the Legality of the Marriage Culture of the Samin Sambongrejo Community, Blora Regency." *Journal of Geography Science and Education* 22, no. 1 (2023): 2685-581. <https://doi.org/https://doi.org/10.32585/jgse.v5i1.3644>.
- Horii, Hoko. "Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce, and Desire, by Maria Platt." *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 174, no. 2-3 (2018): 345-47. <https://doi.org/10.1163/22134379-17402017>.
- Hung, Alvin Hoi-Chun. "Filial Piety across Legal Systems: Analysing the Influence of Traditional Chinese Legal Culture of Property in Hong Kong, Taiwan, and China." *Asian Journal of Comparative Law* 18, no. 2 (2023): 137-57. <https://doi.org/10.1017/asjcl.2023.6>.
- Hussin, Moh Norhusairi Mat, Raihanah Abdullah, Nahid Ferdousi, and Wirdati Mohd Radzi. "The Legal Recognition of a Wife's Rights of Harta Sepencarian in Malaysia." *ASian Women* 39, no. 1 (2023): 23-44.
- Ichsan, M. "Poligami dalam Perspektif Hukum Islam (Kajian Tafsir Muqāranah)." *JURIS (Jurnal Ilmiah Syariah)* 17, no. 2 (2018): 151. <https://doi.org/10.31958/juris.v17i2.1196>.
- King, Victor T. "Some Observations on the Samin Movement of North-Central Java." *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 129, no. 4 (2013): 457-81. <https://doi.org/10.1163/22134379-90002714>.
- Lukito, Ratno. "Hukum Sakral dan Hukum Sekuler: Studi tentang Konflik dan Resolusi dalam Sistem Hukum Indonesia." Jakarta: Pustaka Alvabet, 2008.
- Mahkamah Konstitusi. Putusan Nomor 97/PUU-XIV/2016 (2016).

- Mangoenkoesoemo, Tjipto. *Het Saminisme: Rapport Uitgebracht Aan de Vereeniging "Insulinde."* Semarang: Drukkerij en Boekhandel HA Benjamins, 1918.
- Myrlinda, Fransiska Rahayu. "Samin's Arranged Marriage Rituals in Today Javanese's Society." *Journal of Language and Literature* 19, no. 2 (2019): 140–47. <https://doi.org/10.24071/joll.v19i2.2143>.
- Nurdin, Ridwan, Muhammad Yusuf, and Syarifah Sarah Natasya. "The Gayonese Culture of Marriage System: The Islamic Law Perspective." *Samarah* 5, no. 1 (2021): 108–26. <https://doi.org/10.22373/sjhk.v5i1.9257>.
- Pamungkas, Susandi Decapriu Putra, Hanny Hilmia Fairuza, Risqiana Risqiana, Rena Rena, and Mia Rosmiawati. "Penerapan Sistem Civic Virtue Sebagai Langkah Optimalisasi Musyawarah Perencanaan Pembangunan (Musrenbang) dalam Pembentukan Produk Hukum Di Desa Adat." *Interdisciplinary Journal on Law, Social Sciences and Humanities* 4, no. 1 (2023): 1–20. <https://doi.org/10.19184/idj.v4i1.39091>.
- Rohman, Arif. "Rumours and Realities of Marriage Practices in Contemporary Samin Society." *Humaniora* 22, no. 2 (2015): 113–24. <https://doi.org/10.2139/ssrn.2256794>.
- Rosyid, Moh. "Konversi Agama Masyarakat Samin: Studi Kasus Di Kudus, Pati, dan Blora." *Sinopsis Disertasi*. IAIN Walisongo, 2013.
- — —. "Perempuan dalam Perkawinan Samin: Perlindungan Budaya Versus Hukum Positif." *Musāwa Jurnal Studi Gender dan Islam* 18, no. 2 (2019): 149. <https://doi.org/10.14421/musawa.2019.182.149-159>.
- Siregar, Fatahuddin Aziz, Febri Yulika, Nofialdi, Ikhwanuddin Harahap, Benny Ridwan, and Iswandi Syahputra. "Merantau in the Ethnic Tradition of Minangkabau: Local Custom without Sharia Basis?" *Samarah* 6, no. 1 (2022): 115–38. <https://doi.org/10.22373/sjhk.v6i1.9954>.
- Sukti, Surya, Munib, and Imam S. Arifin. "Pernikahan Adat Dayak Ngaju Perspektif Hukum Islam Studi Di Kabupaten Gunung Mas Kalimantan Tengah." *El-Mashlahah* 10, no. 2 (2020): 65–75. <https://doi.org/10.23971/maslahah.v10i2.2284>.
- Widanarti, Herni, and Rinitami Njatrijani. "Implementasi Putusan MK No 97/PUU-XIV/2016 Terhadap Pelaksanaan Perkawinan Pada Masyarakat Adat Samin (Sedulur Sikep) Di Jawa Tengah."

Nur Wakhidah, et al.

Diponegoro Private Law Review 4, no. 2 (2019).
<https://ejournal2.undip.ac.id/index.php/dplr>.

Zainuddin, Juselim Sammak, and Salle. "Patuntung: The Encounter of Local Culture and Islamic Sharia in the Ammatoa Kajang Community." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (2023): 177-99. <https://doi.org/10.19105/al-lhkam.v18i1.8207>.

Zulkifli, Syafiq Hasyim, M Zaki Mubarak, Husnul Khitam, Muhammad Ishar Helmi, Elfia, Sandria Milka Ratna Sari, et al. "Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (2023): 125-51. <https://doi.org/10.19105/al-lhkam.v18i1.7162>.