



***Tulou* As A Customary Criminal Sanction In Mentawai: Convergensi Of Customary And Islamic Law For Social Reconciliation**

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Abstract: This study examined the application of *Tulou* as a customary criminal sanction in the Mentawai Islands, particularly in cases of sexual harassment, and clarified its relevance to Islamic criminal law. Hence, the researcher followed a qualitative socio-legal approach, combining document analysis, participant observation, and in-depth interviews to describe the operation of *Tulou* within the community and analyze its correspondence with the principles of *fiqh jināyah*. The study revealed a set of findings, which consisted of recognizing *Tulou* as a restorative mechanism that emphasizes reconciliation, apology, and compensation rather than punitive retribution, thereby restoring social balance and protecting communal dignity. Within the framework of Islamic law, *Tulou* falls under the category of *ta'zīr*, a form of discretionary sanction for acts not explicitly regulated by *hudūd* or *qisās*, yet harmful to public order and morality. The practice aligns with the objectives of *maqāṣid al-sharī'ah*, particularly the protection of dignity (*'ird*), justice (*'adl*), and public welfare (*maṣlahah*), demonstrating that indigenous sanctions can be harmonized with Islamic legal principles. The findings suggest that *Tulou* may serve as a culturally embedded model of restorative justice compatible with Islamic jurisprudence, provided that it upholds fairness, safeguards victims' rights, and prevents recurrence of offenses. Accordingly, this study recommends further exploration of how customary sanctions like *Tulou* can be integrated within plural legal systems as complementary mechanisms to state law, particularly in contexts where indigenous practices remain socially legitimate and effective in resolving moral offenses.

Keywords: Customary law, Islamic criminal law, Mentawai, social reconciliation, tulou

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Abstrak: *Tulou, sebagai sanksi adat Mentawai, tidak hanya berfungsi sebagai hukuman, tetapi juga sebagai mekanisme keadilan restoratif yang menekankan pemulihan keseimbangan sosial. Penelitian ini berangkat dari isu pelecehan seksual yang menyoroti keterbatasan hukum positif dalam memberikan pemulihan yang memadai bagi korban. Pertanyaan penelitian difokuskan pada bagaimana konsep tulou dapat diintegrasikan ke dalam kerangka hukum pidana Islam dan hukum positif Indonesia untuk merumuskan model pemidanaan yang lebih berkeadilan. Dengan menggunakan pendekatan yuridis normatif dan studi kasus di Desa Pasakiat Taileleou, data diperoleh melalui wawancara mendalam dengan tokoh adat, ulama, dan perangkat desa, serta ditopang oleh analisis literatur hukum pidana adat, fiqh jinayah, dan kebijakan penal kontemporer. Temuan menunjukkan bahwa tulou membedakan antara pelanggaran ringan dan berat melalui kategori uruat dan tulou, yang berfungsi tidak hanya sebagai bentuk kompensasi material, tetapi juga sebagai sarana rekonsiliasi sosial. Lebih lanjut, penelitian ini mengungkap bahwa dalam kasus pelecehan seksual, mekanisme adat ini dapat melengkapi hukum positif melalui pemberian restitusi kepada korban, penyelesaian berbasis komunitas, serta pencegahan konflik yang lebih luas. Kebaruan studi ini terletak pada upaya mereformulasi kebijakan pemidanaan dengan mengintegrasikan prinsip maqāṣid al-sharī'ah dengan keadilan restoratif adat. Hasilnya menawarkan model hibrida yang tidak hanya menekankan efek jera bagi pelaku, tetapi juga menempatkan pemulihan korban dan ketahanan sosial komunitas sebagai pusat keadilan.*

Kata Kunci: *Hukum adat, hukum pidana Islam, Mentawai, rekonsiliasi sosial, tulou*

Introduction

The issue under investigation in this study is the tension between the restorative orientation of *Tulou* as a customary sanction and the need for deterrence in cases of sexual harassment. This issue is important because, while *Tulou* reflects the living cultural values of the Mentawai community and resonates with Islamic criminal law principles of reconciliation and social harmony, it raises concerns about its adequacy in addressing the seriousness of sexual violence. Previous research has shown that customary sanctions in Indonesia often prioritize communal reconciliation over individual victim protection, thereby creating a legal gap when compared to national criminal law standards and international human rights norms.¹ Similar debates are found in Islamic criminal law scholarship, which stresses the dual objectives of justice: *jalb al-maslahah* (promoting welfare) and *dar' al-mafsadah* (preventing harm), where restorative

¹ John Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003), p. 112.

practices are valued but must not undermine deterrence and victim protection.² From the perspective of legal anthropology, customary sanctions such as *Tulou* function as mechanisms to sustain social order, yet they may be insufficient in addressing crimes with severe personal and psychological impact, particularly sexual violence.³ At the same time,⁴ restorative justice theorists argue that the legitimacy of such mechanisms depends on balancing community harmony with accountability for the offender.⁵ Consequently, the study of *Tulou* is significant not only for understanding legal pluralism in Indonesia but also for contributing to broader debates on how local customary law can coexist with Islamic and national legal frameworks in protecting victims and promoting social justice.

Another critical issue is the limited scholarly attention given to the intersection of customary law and Islamic criminal law in regions where Muslims are not the majority, such as Mentawai. This is important because most studies on legal pluralism in Indonesia focus on regions with predominantly Muslim populations, overlooking how Islamic law may still provide a relevant analytical framework in non-Muslim contexts. For instance, Hooker's seminal work emphasizes the coexistence of multiple legal systems in Southeast Asia but primarily analyzes contexts where Islamic law is formally recognized and practiced.⁶ Similarly, studies on adat law often remain descriptive, highlighting rituals and sanctions without situating them in broader Islamic jurisprudential debates.⁷ Therefore, examining *Tulou* in relation to Islamic criminal law not only fills a geographical and thematic gap but also advances comparative legal scholarship by demonstrating how Islamic law can serve as an interpretive lens for non-Muslim customary practices.

A further issue concerns the lack of comparative analysis between indigenous mechanisms of restorative justice and contemporary global discourses on victim protection. This issue is crucial because, while restorative justice has gained recognition in international criminal law and transitional justice frameworks, there remains a tendency to idealize local customary sanctions

² Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed. (Cambridge: Islamic Texts Society, 2003), p. 365-368.

³ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation* (Cambridge: Cambridge University Press, 2013), p. 178-180.

⁴ Heléne Zetterström Dahlqvist et al., "Dimensions of Peer Sexual Harassment Victimization and Depressive Symptoms in Adolescence: A Longitudinal Cross-Lagged Study in a Swedish Sample," *Journal of Youth and Adolescence* 45, no. 5 (May 24, 2016), p. 858-73.

⁵ Howard Zehr, *The Little Book of Restorative Justice*, rev. ed. (New York: Good Books, 2015), p. 23-25.

⁶ M. B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: ISEAS, 2008), p. 45-47.

⁷ Daniel S Lev, *Legal Evolution and Political Authority in Indonesia: Selected Essays* (The Hague: Kluwer Law International, 2000), p. 214.

without adequately scrutinizing their impact on victims of gender-based violence. Scholars such as Braithwaite argue that restorative justice fosters accountability and community cohesion, yet critics warn that in cases of sexual violence,⁸ restorative mechanisms may perpetuate power imbalances and silence victims.⁹ In Indonesia, legal studies rarely juxtapose indigenous sanctions like *Tulou* with restorative justice theory, leaving a research gap in understanding their strengths and limitations in addressing serious crimes.¹⁰ By situating *Tulou* within both Islamic jurisprudence and restorative justice discourse, this study highlights its potential as a culturally embedded yet critically assessable model, thereby contributing to ongoing debates on justice for victims of sexual harassment in plural legal systems.¹¹

As public awareness especially among victims of their legal rights increases,¹² particularly in the context of protection against sexual crimes,¹³ there is a growing demand for resolving harassment cases not only with a focus on social restoration but also on fulfilling the aspects of substantive justice and safeguarding the individual rights of victims. In this regard, both modern criminal law and Islamic criminal law emphasize the necessity of holding perpetrators accountable and ensuring that sanctions are clearly defined and proportional to the severity of the offense.¹⁴ From the perspective of Islamic criminal law, sexual crimes are not only considered violations of individual rights but also breaches of divine norms,¹⁵ which require specific forms of punishment whether *hudud*, *ta'zir*, or *jinayat* depending on the nature and gravity of the offense. Therefore, when customary sanctions such as *Tulou* are examined through the paradigm of

⁸ Valerie A. Stander and Cynthia J. Thomsen, "Sexual Harassment and Assault in the U.S. Military: A Review of Policy and Research Trends," *Military Medicine* 181, no. 1S (January 2016), p. 20–27.

⁹ John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002), p. 86–88.

¹⁰ Arskal Salim and Adriaan Bedner, *Law and Legal Institutions of Indonesia: Comparative Studies* (London: Routledge, 2014), p. 133–135.

¹¹ Caroline Mellgren, Mika Andersson, and Anna-Karin Ivert, "'It Happens All the Time': Women's Experiences and Normalization of Sexual Harassment in Public Space," *Women & Criminal Justice* 28, no. 4 (August 8, 2018), p. 262–281.

¹² M Doni and Silfia Hanani, "The Compilation of Islamic Law as a Socio-Digital Product in the Reform of Islamic Law in Indonesia," *Hakamain: Journal of Sharia and Law Studies* 4, no. 1 (2025), p. 14–25.

¹³ Jennifer L. Doty et al., "Patterns of Bullying and Sexual Harassment: Connections with Parents and Teachers as Direct Protective Factors," *Journal of Youth and Adolescence* 46, no. 11 (2017), p. 2289–2304.

¹⁴ Rahmawati Rahmawati et al., "Criminal Law Disparities against Perpetrators of Sexual Violence against Children Based on Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (2023), p. 667–696

¹⁵ Vangie A. Foshee et al., "Shared Risk Factors for the Perpetration of Physical Dating Violence, Bullying, and Sexual Harassment Among Adolescents Exposed to Domestic Violence," *Journal of Youth and Adolescence* 45, no. 4 (2016), p. 672–86.

Islamic criminal law which emphasizes legal certainty, justice for victims, and crime prevention a challenge arises in assessing to what extent such customary practices fulfill these fundamental principles, particularly within non-Muslim communities that do not formally adopt Islamic law.¹⁶ Consequently, cross-perspective research and dialogue become crucial in seeking common ground that allows for the integration of customary legal systems rooted in local values with the universal normative approach of Islamic law,¹⁷ in order to develop a resolution model that is not only culturally just but also ensures the protection of human rights, particularly for victims of sexual violence.¹⁸

The *Tulou* customary sanction is a traditional method of conflict resolution applied to social violations, including cases of sexual harassment. It generally involves mechanisms such as an apology, compensation or restitution to the victim and their family,¹⁹ and social exclusion of the perpetrator as a form of acknowledgment of wrongdoing and an effort to restore community harmony. The implementation of *Tulou* reflects a restorative justice system deeply rooted in the local norms and collective values of the Mentawai indigenous community,²⁰ which highly values social harmony and the maintenance of intergroup relationships in a communal living setting.²¹ However, when analyzed through the perspective of Islamic criminal law, an intriguing dynamic arises.²² Islamic criminal law employs a normative-religious approach that asserts a firm stance on sexual crimes,²³ emphasizing not only the protection of victims' rights and dignity but also stipulating certain definitive (*qath'i*) punishments under the *hudud* category if syar'i evidentiary standards are met. Within the Islamic criminal law framework, sexual harassment may fall under *ta'zir* or *hudud* offenses depending on its form and severity, and perpetrators may be subjected to physical,²⁴ moral,²⁵ or financial sanctions in accordance with the degree of violation and its impact on

¹⁶ Azhari Akmal Tarigan, "Ta'zir dan Kewenangan Pemerintah dalam Penerapannya," *AHKAM : Jurnal Ilmu Syariah* 17, no. 1 (2017), p. 153-170.

¹⁷ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), p. 44-47.

¹⁸ Linda L Magnusson Hanson et al., "Work-Related Sexual Harassment and Risk of Suicide and Suicide Attempts: Prospective Cohort Study," *BMJ*, September 2, 2020.

¹⁹ Lina Marcela Quinones, "Sexual Harassment in Public Transport in Bogotá," *Transportation Research Part A: Policy and Practice* 139 (September 2020), p. 54-69.

²⁰ Taufik Abdullah, *Sejarah Dan Masyarakat: Lintasan Historis Indonesia* (Jakarta: LP3ES, 1987), p. 214.

²¹ Lawrence M Friedman, *Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), p. 15-17.

²² Putusan Pengadilan Negeri Bukittinggi Nomor 130/Pid.Sus/2024/PN Bkt. (2024).

²³ Putusan Pengadilan Negeri Bandung Nomor 989/Pid.Sus/2021/PN Bdg. (2021).

²⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2019), p. 35-37.

²⁵ Soerjono Soekanto, *Sosiologi Hukum Dalam Masyarakat* (Jakarta: Rajawali Press, 2009), p. 80-90.

the victim.²⁶ Therefore, it is crucial to analyze to what extent *Tulou*, as a restorative customary sanction mechanism practiced in a non-Muslim society, aligns with the principles of substantive justice in Islamic criminal law—particularly in terms of deterrence, delivering justice to the victim, and ensuring that violations of bodily integrity and personal dignity are not reduced to merely matters of social reconciliation, but are instead upheld as moral and legal violations within the framework of Sharia.

The purpose of this study is to explore in depth the mechanism of implementing *Tulou* customary sanctions in addressing sexual harassment cases in the Mentawai community, which essentially prioritizes local values in conflict resolution and the preservation of social harmony. The research also aims to assess the extent to which the principles of *Tulou* can be harmonized with the Islamic criminal law approach, which normatively maintains a strict stance against sexual crimes while emphasizing the importance of justice for victims.²⁷ By adopting an interdisciplinary approach, this study seeks to connect and compare the two legal systems the customary law system that has evolved in Mentawai and the principles of Islamic criminal law—to evaluate their compatibility in dealing with sexual crimes, which are known to be highly sensitive and complex issues. One of the novelties offered by this research is its comparative analysis focusing on how local values, as embedded in *Tulou* sanctions, can be examined, critiqued, and potentially integrated with the substantive justice principles of Islam. This may open the door for the development of a hybrid dispute resolution model that not only accommodates local norms but also aligns with the universal values found in Islamic criminal law, in an effort to create a more holistic, contextual, and just resolution system for both victims and the wider community.

This study employed a qualitative research design with a socio-legal orientation to explore the implementation of *tulou* as a customary criminal sanction in the Mentawai community. The fieldwork was conducted in South Siberut District, West Sumatra, between February 2024, enabling in-depth engagement with the local context. Data collection relied on three primary techniques: document analysis, participant observation, and semi-structured interviews. Document analysis involved the review of customary records, local regulations, and case files relating to sexual harassment cases,²⁸ while participant observation was conducted during customary deliberations and dispute resolution

²⁶ Mohammed Emier Azka et al., “The Protection of Human Rights for Children and Women from the Houthi Insurgency,” *USRATY: Journal of Islamic Family Law* 3, no. 1 (May 21, 2025), p. 1–13.

²⁷ Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973), p. 5.

²⁸ Jennifer A. Scarduzio, Sarah E. Sheff, and Mathew Smith, “Coping and Sexual Harassment: How Victims Cope across Multiple Settings,” *Archives of Sexual Behavior* 47, no. 2 (February 21, 2018), p. 327–340.

sessions, following Spradley's ethnographic framework to capture symbolic meanings and cultural logic. Semi-structured interviews were held with 25 participants, including traditional leaders (*sikerei*), victims and their families, religious figures (*ustadz*), and village officials, ensuring diverse perspectives on justice, reconciliation, and alignment with *maqāsid al-sharī'ah*. All interviews were conducted in Mentawai and Indonesian languages, recorded with prior informed consent, and transcribed with the assistance of local research facilitators to ensure accuracy. Data analysis was carried out through thematic coding and comparative content analysis, allowing patterns to emerge across documents, observations, and interview transcripts.²⁹ Validity was ensured through triangulation of sources and participant validation, while reflexivity was maintained to minimize researcher bias. By providing detailed descriptions of the location, participants, instruments, and analytical procedures, this qualitative methodology ensures both rigor and replicability, while offering a rich understanding of *tulou* within its cultural and legal context.

Customary Sanction of Tulou as a Restorative Justice Mechanism in the Mentawai Indigenous Legal System

In the Mentawai customary community, *Tulou* is not merely a form of punishment, but a conflict resolution mechanism that serves to restore social balance following a violation of customary norms.³⁰ This concept is rooted in the philosophy of social harmony, which is highly upheld by the Mentawai people, where each individual plays a role in maintaining the equilibrium of the community. When someone violates customary norms—such as by stealing, trespassing boundaries, or committing actions that harm others—the *Tulou* system is implemented to repair the disrupted social relations. The process begins with mediation involving tribal chiefs, customary elders, and representatives from the families involved. The primary goal of *Tulou* is not only to impose sanctions on the offender but also to ensure that the harmed party receives fair restitution, both materially and symbolically. This is intended to prevent prolonged conflicts that could lead to acts of revenge. In some cases, *Tulou* also includes traditional rituals aimed at appeasing ancestral spirits and maintaining spiritual balance within the community.³¹ This process reflects the concept of restorative justice, where the focus is on healing social relationships rather than delivering retributive punishment.

The *Tulou* system in Mentawai customary law recognizes differentiated fines based on the severity of the violation committed. The main distinction lies

²⁹ James P Spradley, *Participant Observation* (New York: Holt, Rinehart and Winston, 1980), p. 117-124.

³⁰ Interview with Aman Godai, Religious Leader, Mentawai, February 15, 2024.

³¹ Interview with Mas'oeed Abidin, Director of the Center for Islamic and Minangkabau Studies (PPIM) (2001–2007), Padang, February 17, 2024.

in *Uruat*, which refers to fines for serious offenses, and *Tulou*, which applies to minor infractions.³² *Uruat* is generally imposed in cases considered to cause significant disruption to social balance, such as adultery, murder, or severe insults against cultural symbols. Fines in this category are typically larger and more complex, involving compensation in the form of livestock, agricultural produce, or other valuable items that reflect the gravity of the offense. In contrast, *Tulou* applies to minor or unintentional wrongdoings, such as interpersonal disputes, defamation, or small breaches of social etiquette. Fines under *Tulou* are more flexible and may consist of everyday items such as harvest yields, traditional cloth, or even community service. This differentiation reflects the principle of proportionality, where punishments are adjusted according to the degree of wrongdoing, allowing justice to be achieved without placing an undue burden on the offender. Moreover, the distinction between *Uruat* and *Tulou* demonstrates that the Mentawai society possesses a mature legal system oriented toward the preservation of long-term social relationships. This system not only governs interpersonal interactions but also ensures that each form of violation is handled in a balanced and just manner, without disregarding the human element in the process.³³

The implementation of *Tulou* is carried out through a deliberative mechanism led by customary mediators, typically consisting of tribal chiefs, traditional elders, and community leaders who possess deep knowledge of customary law. This process begins with a report submitted by the aggrieved party to the customary leader, who then invites both parties to participate in the deliberation. The purpose of the deliberation is not only to determine the amount of the fine but also to seek a mutually acceptable resolution to prevent the escalation of conflict. Customary mediators consider various factors in determining the *Tulou*, such as the perpetrator's intent, the social impact of the offense, and the extent of harm experienced by the victim. The decision is made collectively and based on consensus, ensuring that all parties feel involved in the resolution process. Additionally, the resulting decision is often reinforced with a customary oath or specific ritual, which serves to affirm the offender's commitment to carrying out the agreed-upon sanction.³⁴ In some cases, customary mediators may also offer alternative resolutions such as community service or other forms of compensation if the material fine is deemed too burdensome for the offender. This mechanism demonstrates that the *Tulou* system is not merely about imposing fines, but is also part of a customary strategy to foster collective awareness about the importance of maintaining harmony within the community.

³² Interview with Jauhari, Village Head, Mentawai, February 15, 2024.

³³ Interview with Aman Deun, Religious Leader, Mentawai, February 15, 2024.

³⁴ Interview with Palo Julianto, Village Head, Mentawai, February 15, 2024.

The *Tulou* system in the Mentawai customary society plays a crucial role in preventing conflict and acts of revenge that could trigger further violence. As a dispute resolution mechanism, *Tulou* functions to calm the emotions of the involved parties and steer them away from violent actions that could damage relationships between individuals or groups within the community. In practice, *Tulou* is not solely aimed at punishing the wrongdoer, but also at ensuring that the problem-solving process is carried out in a fair manner that prioritizes peace. This process usually involves deliberation between the concerned parties, attended by customary elders, providing both sides the opportunity to express their views and feel heard. In this way, *Tulou* acts as a barrier against revenge that could lead to a cycle of violence, as each party tends to feel that they have received proportional justice.

Tulou in Mentawai indigenous society is not merely a form of fine or punishment for individuals who violate social or customary norms, but also a means of teaching and instilling local wisdom values that form the foundation of communal life. These values include respect, responsibility, and mutual appreciation among community members. The *Tulou* process often involves customary ceremonies led by traditional elders, where the parties involved in the dispute are given the opportunity to acknowledge their mistakes and promise not to repeat them. In this context, *Tulou* serves as a tool of social education, reminding the community of the importance of maintaining harmony and justice in social life. Moreover, the system encourages awareness of the need to balance individual rights with social responsibilities and reinforces the bonds of solidarity within the community. As part of a broader social mechanism, *Tulou* is not only concerned with restoring the losses caused by violations but also with strengthening customary values that sustain social equilibrium and reduce the potential for conflict that could disrupt communal life.

Tulou can be viewed as a form of restorative justice within the indigenous community, where the approach focuses more on restoring social relationships and communal well-being rather than on retributive punishment aimed solely at penalizing the wrongdoer. In the restorative justice concept, the emphasis lies on repairing the harm experienced by the victim and mending the relationships between the individuals involved in the conflict. In this regard, *Tulou* functions as a medium for bringing together the disputing parties—not merely to identify who is at fault or deserves punishment, but to foster mutual understanding, correct wrongs, and restore peace within the community. The *Tulou* process does not end with the imposition of sanctions or fines; it often involves a deeper reconciliation, allowing the offender and the victim to engage in dialogue, forgive one another, and rebuild damaged relationships. This aligns with the core principles of restorative justice, which prioritize healing over punishment and provide communities with the opportunity to learn from conflict while reinforcing social solidarity.

In the context of this research, the primary emphasis is placed on the application of *Tulou* in cases of sexual harassment, which has increasingly become a matter of concern within the Mentawai community. Unlike other customary cases such as theft or minor violations of social norms, sexual harassment produces profound psychological impacts on victims and their families. The choice of *Tulou* as a mechanism of resolution is not only perceived as a means to restore social balance but also as an effort to protect victims from the social stigma that often accompanies formal legal proceedings. Therefore, the analysis of *Tulou* practices in sexual harassment cases is particularly significant for examining the extent to which customary sanctions can deliver restorative justice without neglecting the protection of victims' dignity.

The Transformation of *Tulou* Customary Sanctions in the Modern Legal System

Since ancient times, customary rules in society have been unwritten and passed down orally from generation to generation through the roles of *sikerei* (traditional leaders), customary figures, and village elders.³⁵ These rules govern social life and regulate various aspects such as dispute resolution, sanctions for violations, and social conduct based on values inherited from ancestors. However, with the passage of time and social change, customary law faces various challenges, particularly in its application and adaptation to the more formal national legal system. Indigenous communities are caught in a dilemma between preserving the flexibility of unwritten rules—which are more adaptive to cultural contexts—and the pressure to adopt a written legal system that is more systematic and officially recognized by the state.³⁶ As a result, many customary communities have begun codifying their traditional laws into village regulations, which not only provide legal certainty for the local population but also reinforce the presence of customary practices amidst the tide of modernization and globalization.³⁷ This codification aims to bridge the gap between customary legal practices and state law, allowing traditional rules to remain legally valid without losing the essence and values of local wisdom that have long served as a guide for community life.

As part of the effort to adapt customary law into the formal legal system, communities in various villages have started formulating written regulations governing the implementation of customary law, including the *Tulou* mechanism. One such example is Village Regulation No. 9 of 2019, which outlines in detail the types of violations subject to *Tulou* sanctions. This regulation identifies 56

³⁵ M Gullit Agung W et al., *Turuk Sikerei: Etnik Mentawai* (Jakarta: Lembaga Penerbitan Balitbangkes, 2014), p. 2.

³⁶ Glenn Reeves, "History and 'Mentawai': Colonialism, Scholarship and Identity in the Rereiket, West Indonesia," *The Australian Journal of Anthropology* 10, no. 1 (April 8, 1999), p. 34–55.

³⁷ Interview with Aman Godai, Religious Leader, Mentawai, February 15, 2024.

types of violations encompassing various aspects of social life, including breaches of decorum, insults to tradition, environmental damage, and social interactions that disrupt communal harmony. With this regulation in place, the implementation of *Tulou* becomes more clearly defined, providing clarity on the types of violations that warrant customary fines, the amount of fines to be paid, and the procedures that must be followed. The existence of written rules also ensures legal certainty for the community, thereby eliminating misunderstandings or differing interpretations regarding how cases should be resolved. Moreover, the regulation helps ensure that *Tulou* remains relevant in the modern era, where communities increasingly require written legal references to address social issues in a fair and proportional manner.

As customary law becomes codified in village regulations, the management mechanism of *Tulou* has also undergone significant changes, especially in its implementation, which now involves village government authorities. In the past, the resolution of customary violations was handled solely by *sikerei* and traditional elders. Today, village officials also participate in enforcing and managing *Tulou*.³⁸ The village government plays a role in documenting each case, ensuring that procedures comply with written regulations, and overseeing the proper use of collected fines—for example, in public infrastructure development or social activities. With the involvement of village authorities, the *Tulou* system has become more transparent and features stronger oversight mechanisms, thereby reducing the potential for misuse or injustice. However, despite the increasingly dominant role of the village government, customary leaders still hold an essential position in the decision-making process, particularly in providing moral and social considerations based on long-standing traditional values.

The increasing development of legal modernization presents a significant challenge for indigenous communities in preserving traditional values that have been passed down through generations.³⁹ On one hand, modernization brings clarity to the legal system, making rules more written and uniform, while providing certainty for all parties. On the other hand, the codification process of customary law often overlooks the flexibility that is a hallmark of the customary system itself. In customary law, conflict resolution frequently prioritizes deliberation, mutual agreement, and justice based on moral and social values—elements that do not always align with the more procedural and rigid formal legal system. Furthermore, the incorporation of the national legal system, which is

³⁸ Sonya Hellen Sinombor, “Kekerasan Seksual Mengintai Anak-Anak Perempuan Di Mentawai” (PT Kompas Media Nusantara, n.d.), <https://www.kompas.id/baca/humaniora/2024/03/24/kekerasan-seksual-mengintai-anak-anak-perempuan-di-mentawai>.

³⁹ Maskota Delfi, “Islam and Arat Sabulungan in Mentawai,” *Al-Jami’ah: Journal of Islamic Studies* 51, no. 2 (2013), p. 475-499.

based on state regulations, can marginalize the role of traditional leaders who previously served as key figures in conflict resolution and maintaining social harmony.⁴⁰ As customary law begins to conform to state legal standards, concerns arise that local wisdom values such as mutual cooperation, consensus-based deliberation, and harmony-based resolution will gradually erode. Indigenous communities are thus caught in a dilemma between preserving their traditions, with all their unique characteristics and local wisdom, or adapting to the tide of modernization that demands conformity in order for customary law to be formally recognized and applied more broadly.

The role of village government is becoming increasingly crucial in ensuring that the system operates in accordance with the codified rules. Village governments now not only serve as facilitators in resolving customary disputes but also bear the responsibility of documenting, supervising, and enforcing rules agreed upon by the community. One of the main roles of the village government is to ensure that every case of customary violation sanctioned by *Tulou* is processed transparently and fairly. This includes recording each violation, verifying evidence, and ensuring that the imposed fines comply with applicable rules and are not arbitrary. Additionally, the village government has the obligation to channel the *Tulou* funds for community benefit, such as village infrastructure development, social activities, or financial aid for underprivileged residents. Nevertheless, in the implementation of *Tulou* regulations, the village government must continue to collaborate with traditional leaders to ensure that the cultural values underlying this system remain intact. The involvement of village authorities in customary law also presents its own challenges, particularly in ensuring that their intervention does not diminish the authority of traditional institutions or create friction between formal regulations and long-standing customary mechanisms.

Once the *Tulou* system has been codified into village regulations, the legal implications for perpetrators of customary violations become clearer and rest on a stronger legal foundation. Previously, the enforcement of *Tulou* was flexible and dependent on the decisions of traditional leaders. Now, each violation listed in the regulation has firmer and unavoidable consequences. This has a positive impact on maintaining social order, as the community becomes more aware that customary violations carry definite legal consequences and are not merely subject to deliberation or the subjective judgment of traditional elders.⁴¹ However, this formality also brings new challenges, especially for communities accustomed to the more flexible, consensus-based mechanisms of customary law. In some cases, the more formal application of *Tulou* may be perceived as too rigid and may not adequately consider the social context or motives behind a violation.

⁴⁰ Interview with Martius Ligup, Siberut Community, Mentawai, February 15, 2024.

⁴¹ Interview with Palo Julianto, Village Head, Mentawai, February 15, 2024.

Moreover, the existence of written rules also opens the door for violators to exploit legal loopholes or appeal to the national legal system, potentially weakening the effectiveness of *Tulou* in resolving conflicts directly. Therefore, formal regulations should be designed with an approach that still accommodates the flexibility of customary law so that the values of justice, deliberation, and social harmony remain core principles in resolving customary violations.

The Reformulation of Sentencing Policy for Sexual Offenders in Islamic Criminal Law

Although Indonesia has regulations in place to address cases of sexual crimes,⁴² the effectiveness of their implementation remains a complex issue. One of the main problems is the weak enforcement of sanctions against perpetrators, resulting in a lack of deterrent effect and minimal justice for victims.⁴³ Many cases of sexual crimes are not followed up decisively due to various obstacles,⁴⁴ such as poor coordination among law enforcement agencies, disparities in case investigations, and interference from certain parties that can hinder the judicial process. Additionally, weaknesses in the legislative process exacerbate this situation, as the laws drafted are often not based on comprehensive research into patterns of sexual crimes and their impact on victims.⁴⁵ As a result, there are many legal loopholes that allow perpetrators to avoid the punishment they deserve.⁴⁶ The inconsistent application of criminal penalties and the lack of supervision over the enforcement of punishments further complicate the issue. Some perpetrators of sexual crimes even receive reduced sentences or escape legal consequences through appeals or sentence remissions,⁴⁷ which in some cases are viewed as being unsympathetic to the victims' interests.⁴⁸

⁴² Abdul Syatar et al., "The Consideration of Maslahat in the Imposition of the Death Penalty for Serious Sexual Crimes in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024), p. 137-154.

⁴³ M Noor Harisudin, "Formulasi Baru Epistemologi Fiqh Perempuan," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 10, no. 2 (2016), p. 393-408.

⁴⁴ Solène Neyret et al., "An Embodied Perspective as a Victim of Sexual Harassment in Virtual Reality Reduces Action Conformity in a Later Milgram Obedience Scenario," *Scientific Reports* 10, no. 1 (2020), p. 6207.

⁴⁵ JM. Muslimin et al., "Sextortion, Gender, and Digital Crime: A Socio-Legal Comparison between Positive and Islamic Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (2024), p. 53-77.

⁴⁶ Dalia Kadry Abdelaziz, "Criminal Legislation and Women in Sexual Assault Cases: Justice or Victim Blaming?," *Journal of Posthumanism* 5, no. 2 (2025).

⁴⁷ Ruth W. Leemis et al., "Traditional and Cyber Bullying and Sexual Harassment: A Longitudinal Assessment of Risk and Protective Factors," *Aggressive Behavior* 45, no. 2 (2019), p. 181-92.

⁴⁸ Fredrik Bondestam and Maja Lundqvist, "Sexual Harassment in Higher Education – A Systematic Review," *European Journal of Higher Education* 10, no. 4 (2020), p. 397-419.

In Islamic criminal law, sexual crimes are categorized as *jarimah* that may be subject to *hudud* or *ta'zir* punishments,⁴⁹ depending on the severity of the offense. If the crime meets the criteria for a *hudud* punishment—such as adultery committed by a married individual with the presence of qualified witnesses—then the penalty may include stoning.⁵⁰ However, if specific conditions are not met,⁵¹ *ta'zir* punishment is applied, which allows for more flexible sentencing at the discretion of the judge.⁵² In contrast to Islamic criminal law, Indonesia's positive law regulates sexual crimes through Law No. 1 of 2023,⁵³ which encompasses a range of penalties, from primary punishments like imprisonment and fines to additional and special punishments that can be tailored to the circumstances of the perpetrator and the victim. The main principles of both legal systems remain the same: to deter offenders, restore victims' rights, and protect society from future crimes. However, in practice, the effectiveness of positive law is often questioned due to weak enforcement and inconsistencies in sentencing. On the other hand, although Islamic criminal law is strict in principle, its application in modern legal systems often clashes with human rights principles and differences in interpretation regarding the appropriate types of punishment.

Besides primary penalties such as imprisonment and fines under positive law, there is also a mechanism for additional punishment that allows for the application of customary obligations in resolving sexual crime cases. This is stated in Articles 96 and 97 of Law No. 1 of 2023, which provide space for local wisdom in the penal process.⁵⁴ One example of a punishment based on local wisdom is the *Tulou* concept applied in Pasakiat Taileleou village, which functions as a resolution mechanism through customary fines. This system aims not only to impose sanctions on the perpetrator but also to ensure victim recovery

⁴⁹ Arfiansyah and Adriaan Bedner, "Forum-Shopping in Criminal Law: Power and Pragmatism in Gayo, Aceh, Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024), p. 479–496.

⁵⁰ Weini Wahyuni, "Jarimah Pemerkosaan Dalam Qanun Jinayat Aceh Perspektif Feminist Legal Theory," *Jurnal Hukum* 38, no. 1 (2022), p. 43–60.

⁵¹ "Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, Diubah Dengan Undang-Undang Nomor 35 Tahun 2014" (Indonesia, 2002).

⁵² Danial Danial, "Criminalization in Islamic Penal Code: A Study of Principles, Criminalization Methods, and Declining Variations," *Jurnal Ilmiah Peuradeun* 11, no. 3 (2023), p. 1005–1026.

⁵³ "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana" (Indonesia, 2023).

⁵⁴ Muhammad Rahmandio Novan Pratama, "Reformation of Indonesian Criminal Law: A Comparison of the Current Criminal Code (KUHP) and the New National Criminal Code (KUHP Nasional)," n.d., <https://aco-law.com/articles/reformation-of-indonesian-criminal-law-a-comparison-of-the-current-criminal-code-kuhp-and-the-new-national-criminal-code-kuhp-nasional/>.

and social reconciliation within the community.⁵⁵ By adopting the concept of restorative justice, customary punishments can serve as a complement to the formal penal system, especially in cases that require not only physical punishment but also social and psychological rehabilitation. In practice, the application of customary punishments can be harmonized with positive law to avoid conflict with national legal principles.⁵⁶ For example, in some cases, in addition to serving a prison sentence, the perpetrator may also be required to fulfill certain customary obligations as part of the social rehabilitation process. The Qur'an and Hadith provide general guidance on actions considered moral and social violations, including sexual crimes. However, the absence of explicit provisions specifically regulating sexual harassment has led to differences of opinion among scholars in interpreting and categorizing forms of sexual crime not directly mentioned in Islamic criminal law sources.⁵⁷ Some scholars argue that sexual crimes not classified as *zina* should be categorized as *jarimah ta'zir*, which refers to offenses without fixed punishments in the Qur'an or Hadith,⁵⁸ thus allowing for flexible sentencing based on the discretion of judges or authorities. This flexibility underscores the importance of *ijtihadiah* approaches in formulating legal policies that are more relevant to evolving social conditions. Islamic jurists and scholars can employ methods such as *qiyas* (analogical reasoning), *istihsan* (juridical preference), and *maslahah mursalah* (public interest) to determine punishments that are balanced and consistent with Islamic principles of justice. This shows that even though Islamic criminal law does not explicitly regulate sexual harassment,⁵⁹ sharia principles still provide room for legal authorities to impose fair and contextually appropriate sanctions.⁶⁰

The Qur'an and Hadith provide general guidance on actions considered moral and social violations, including sexual crimes. However, the absence of explicit provisions specifically regulating sexual harassment has led to differing

⁵⁵ Arsenius Sirirui, "Perempuan Dan Anak: Adaptasi Hukum Adat vs Hukum Formal" (Mentawai Kita, n.d.), <https://mentawaikita.com/index.php/baca/4513/perempuan-dan-anak-adaptasi-hukum-adat-vs-hukum-formal>.

⁵⁶ Irma Suryani et al., "Reformulation of Bundo Kandung's Role in Solving Domestic Violence Cases," *Jambura Law Review* 5, no. 2 (2023), p. 199–219.

⁵⁷ La Gursi et al., "Islamic Legal Perspective on Data of Child Victims of Sexual Violence: A Case Study of the Indonesia's Court," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024), p. 456–479.

⁵⁸ Ita Musarrofa, Husnul Muttaqin, and Ridha Amaliyah, "The Problems of Islamic Family Law in the Digital Era and Its Relevance to Renewal of the Compilation of Islamic Law," *Jurnal Hukum Islam* 22, no. 1 (2024), p. 89–124.

⁵⁹ Maj Britt D. Nielsen et al., "Sexual Harassment in Care Work – Dilemmas and Consequences: A Qualitative Investigation," *International Journal of Nursing Studies* 70 (2017), p. 122–130.

⁶⁰ Bojan Gavrilovic and Stephanie Schweininger, "A Criminal Tribunal and a Wide-Ranging Reparation Programme Is Necessary for the Victims of Sexual Violence and Torture in Iraq," *Torture Journal* 29, no. 1 (2019), p. 110–124.

views among scholars in interpreting and categorizing forms of sexual crimes that are not directly mentioned in Islamic criminal law sources.⁶¹ Some scholars argue that sexual crimes not classified as *zina* (adultery or fornication) should be classified as *jarimah ta'zir*, which refers to offenses without fixed punishments in the Qur'an or Hadith. Thus, the punishment is flexible and depends on the discretion of the judge or government. This flexibility makes the *ijtihadiah* approach very important in formulating legal policies that are more relevant to the continuously evolving social conditions.⁶² Scholars and experts in Islamic criminal law can use methods such as *qiyas* (analogical reasoning), *istihsan* (juridical preference), and *maslahah mursalah* (public interest) to establish punishments that are balanced and in line with the principles of Islamic justice.⁶³ This shows that, although Islamic criminal law does not provide explicit rules regarding sexual harassment,⁶⁴ the principles of sharia still offer space for legal authorities to impose fair and context-appropriate sanctions.

Reformulating legal policies is necessary to improve the effectiveness of law enforcement and provide maximum protection for victims.⁶⁵ Evaluation of penal policies should be carried out periodically to align regulations with social dynamics, crime patterns, and the changing needs of society. One step that can be taken is to increase the severity of punishments for sexual offenders,⁶⁶ especially for those who commit acts of violence or target vulnerable groups such as children and women.⁶⁷ This increased punishment aims not only to enhance the deterrent effect for perpetrators but also to reassure society that sexual crimes will be dealt with firmly.⁶⁸ Furthermore, local governments can play a more active role in

⁶¹ Muhammad Arifin, "The Efforts of Islamic Criminal Law Integration into Indonesian Law Procedures," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 3, no. 2 (2020), p. 975–984.

⁶² Stephanie Barbour, "Supporting Accountability for Sexual Violence in the Syria and Iraq Conflicts," *Journal of International Criminal Justice* 18, no. 2 (May 1, 2020), p. 397–423.

⁶³ Dian Andi Nur Aziz et al., "Examining Qanun in Aceh from a Human Rights Perspective: Status, Substance and Impact on Vulnerable Groups and Minorities," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023), p. 37–56.

⁶⁴ Wissam H. Halawi, "Zinā and Gender (In)Equality in Ismā'īlī Druze Law," *Der Islam* 99, no. 2 (2022), p. 514–551.

⁶⁵ Ingrid Elliott, Coleen Kivlahan, and Yahya Rahhal, "Bridging the Gap Between the Reality of Male Sexual Violence and Access to Justice and Accountability," *Journal of International Criminal Justice* 18, no. 2 (2020), p. 469–498.

⁶⁶ Alexa Martin-Storey and Elana G. August, "Harassment Due to Gender Nonconformity Mediates the Association Between Sexual Minority Identity and Depressive Symptoms," *The Journal of Sex Research* 53, no. 1 (2016), p. 85–97.

⁶⁷ Sarah J. Rinehart and Dorothy L. Espelage, "A Multilevel Analysis of School Climate, Homophobic Name-Calling, and Sexual Harassment Victimization/Perpetration Among Middle School Youth," *Psychology of Violence* 6, no. 2 (2016), p. 213–222.

⁶⁸ Ida Wahyumah and Trias Saputra, "Comparative Analysis of the Crime of Overspel (Adultery) in the Articles of the New Criminal Code and the Old Criminal Code Related to Adultery," *Journal of Social Science* 5, no. 4 (2024), p. 1034–1048.

addressing sexual crimes by adopting customary law-based approaches that align with local values,⁶⁹ while still adhering to human rights principles. For instance, some regions can integrate local wisdom-based resolution systems, such as customary fines or social rehabilitation for perpetrators, aimed at restoring victims and mitigating the social impact of such crimes.

Protection of life and lineage must be prioritized in the penal system, considering the profound psychological and social impact of sexual crimes.⁷⁰ The principle of *maqashid sharia* (objectives of Islamic law) aligns with the goals of punishment in positive law, emphasizing prevention, rehabilitation, and social balance in the application of sanctions.⁷¹ Therefore, the integration of Islamic criminal law and positive law can be a solution in building a more comprehensive and effective penal system for handling sexual crimes. One form of this integration can be implemented through a restorative justice approach, which not only emphasizes punishment for the perpetrator but also seeks to restore the condition of the victim and the affected community. In some cases, the application of punishment combining conventional criminal elements with customary obligations or rehabilitation programs can be a more humane alternative while providing a stronger deterrent effect. Thus, the principle of *maqashid sharia* can serve as the foundation for developing legal policies that are fairer, more effective, and oriented towards the overall well-being of society.

this study lies in its attempt to examine *Tulou* as a customary sanction within a non-Muslim society, while analyzing it through the lens of Islamic criminal law (*fiqh jināyah*). Most previous studies have tended to position customary law and Islamic law as separate entities, or merely highlight their differences. This research, however, emphasizes their points of convergence, particularly in relation to the objectives of *maqāsid al-sharī'ah*, such as the protection of dignity (*'ird*), justice (*'adl*), and public welfare (*maṣlahah*). Accordingly, this study offers a new contribution to the literature on both Islamic criminal law and customary law by demonstrating the potential convergence between Mentawai's *Tulou* mechanism and Islamic legal principles in addressing sensitive cases like sexual harassment, even within a predominantly non-Muslim society.

The recommendations from this study highlight the need for further exploration of the convergence between customary sanctions and Islamic criminal law, particularly within plural legal settings. Conceptually, future research should

⁶⁹ Manish Madan and Mahesh K. Nalla, "Sexual Harassment in Public Spaces," *International Criminal Justice Review* 26, no. 2 (June 28, 2016), p. 80–97.

⁷⁰ Olle Folke and Johanna Rickne, "Sexual Harassment and Gender Inequality in the Labor Market," *The Quarterly Journal of Economics* 137, no. 4 (September 20, 2022), p. 2163–2212.

⁷¹ Samar El-Masri, "Prosecuting ISIS for the Sexual Slavery of the Yazidi Women and Girls," *The International Journal of Human Rights* 22, no. 8 (September 14, 2018), p. 1047–1066.

elaborate how the objectives of *maqāṣid al-sharī'ah*—including justice, dignity, and public welfare—can provide a unifying framework that bridges Tulou practices with broader legal and ethical principles. Such an approach may demonstrate that Islamic law has dialogical potential with non-Muslim traditions, rather than being confined to a parallel system. In addition, more focused analysis is needed to examine the conditions under which customary sanctions retain their legitimacy in contemporary societies and how they can complement state law in addressing sensitive cases like sexual harassment. Methodologically, combining ethnographic fieldwork with comparative legal analysis would enrich understanding of Tulou's operation in practice, while integrating surveys or interviews could offer insight into community perceptions of justice and legitimacy. Policy-wise, it is crucial to establish collaborative forums between customary leaders, Islamic jurists, and state institutions to design hybrid models of dispute resolution that respect cultural traditions yet remain consistent with human rights and universal principles of justice. Such engagement could also enhance social trust and mitigate tensions that often arise in legally plural societies.

Conclusion

Based on the analysis conducted, this study concludes that the application of tulou as a customary criminal sanction in cases of sexual harassment within the Mentawai community represents a living legal system that remains functional and socially effective. Tulou does not merely serve as an instrument of punishment but operates as a mechanism for restoring harmony, repairing damaged social relationships, and reaffirming the dignity of both victims and communities. Its collective and participatory orientation demonstrates that justice is understood not only as an individual entitlement but also as a communal responsibility. When viewed through the lens of Islamic criminal law, tulou can be situated under the category of *ta'zīr*, a discretionary punishment designed to protect public order where no fixed penalties are prescribed. This convergence illustrates that despite being rooted in indigenous traditions, tulou aligns with the higher objectives of *maqāṣid al-sharī'ah*, such as protecting honor, ensuring justice, and safeguarding public welfare. Therefore, tulou provides evidence that customary mechanisms can be recognized as legitimate legal instruments when evaluated through the spirit of adaptability and social responsiveness within Islamic law. The significance of this study lies in its ability to demonstrate the conceptual and methodological relevance of integrating customary practices with Islamic criminal law in a plural legal environment. Conceptually, this research highlights the potential of *maqāṣid al-sharī'ah* as a bridging framework for reconciling indigenous traditions with universal principles of justice, dignity, and human welfare. Methodologically, it illustrates the value of interdisciplinary approaches that combine normative analysis of

Islamic law with socio-legal perspectives on living traditions. This synthesis not only enriches scholarly discourse but also provides practical insights for policymakers, religious authorities, and community leaders in addressing sensitive moral offenses. Furthermore, the findings contribute to the global conversation on restorative justice by showing that local mechanisms like tulou can function as context-specific models compatible with broader ethical and legal norms. In this way, the study underscores that customary law should not be dismissed as archaic but instead recognized as a valuable component of inclusive and adaptive legal systems.

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Interviews

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Interview with Jauhari, Village Head, Mentawai, February 15, 2024.

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