# The Influence of Religion in the Process of Developing Customary Law Towards Prosperity in Modern Society

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### **Abstract**

In the context of Indonesia, which is diverse in terms of culture, religion, ethnicity, customs, geography, economy and so on, has its own attraction to learn especially when social problems occur. The existence of such conflicts is often triggered by differences in SARA issues, so there must be alternatives to overcome this. In writing this journal, there is one solution offered in resolving the SARA conflict, namely by making customary law a sub-system of law that is not written in the life of the nation and state. Customary law, the authors consider as an effort of the government in providing tolerance to overcome conflicts that exist in society. When viewed from the aspect of religion, especially in fiqh, customary law gets legitimacy through the provisions stating that customary law can be used as law, provided that it must contain the values of benefit, especially in safeguarding five aspects of life, namely: Religion, property, ancestry, mind and soul.

Keywords: Customary Law, Religion, Benefit.

## I. INTRODUCTION

## A. The Urgency of Tolerance in Diversity in Indonesia

The diversity of Indonesia's ethnicity, religion, race and culture with a population of more than 2591 million is an indisputable sociological fact. Heterogeneous Indonesian people still partially recognize the existence of traditions or customs that originate from their cultural values. Direct or indirect social heterogeneity can contribute positively to efforts to improve people's welfare. But on the other hand, social heteregonity also has a negative impact on

national life if there are development imbalances, social and economic inequalities, as well as uncontrolled dynamics of political life. This requires the government (especially) to respond wisely and wisely.

Democracy that provides openness to public space becomes an important variable in dynamizing Indonesia's heterogeneous society. Because openness encourages each interest group including adat groups to express and fight for interests. The struggle for interests can clash with other interests (as in conflict theory). This dynamic condition places Indonesia as a country with a high level of vulnerability to social conflict. The conflict resulted in the loss of security, the emergence of community fear, environmental damage, loss of property, loss of life and psychological trauma such as revenge, hatred, and antipasti among social groups. The consequence of all of this is that public welfare is not realized.

Philosophically the formation of the Unitary State of the Republic of Indonesia (NKRI) is to realize the unity and integrity of the nation that overcomes all differences of opinion or conflicts that occur between community groups. As mandated in the 1945 Constitution of the Republic of Indonesia that the objective of the Unitary State of the Republic of Indonesia is to protect all Indonesians consisting of diverse ethnic, religious and cultural groups and to protect all of Indonesia's blood spills, including providing a guarantee of security and freedom from fear in order to realize public welfare.

Conflicts and / or clashes between community groups have the potential to create violent conflicts that result in disruption of national stability and impeded national development. The potential for conflict to become a form of violence among various social groups is influenced by the absence or low quality of the institutional conflict management available. Based on data from the Ministry of Home Affairs, the phenomenon of social conflict that occurs in Indonesia is

increasing every year. during 2012 the number of social conflicts reached 89 cases. Even though in the previous year there were only 77 cases.

The case of social conflict is like an iceberg phenomenon, which only looks at the surface level. Though it is certain the number of actual cases must be far higher than that. The predicate of the Indonesian people as a nation that has the image of hospitality and manners seems to have been eroded. Clashes between citizens, clashes between students, student clashes with officials often surface national public space. Social conflicts that have reached a form of violence have claimed 28 lives and 200 seriously injured as well as material and non-material losses.<sup>2</sup>

Indonesia is a plural country with ethnic, religious and racial groups living side by side. In such conditions it is not uncommon that a small problem can ignite the anger of one of the groups so that it triggers tension. Tensions between groups or groups are also a cause of violence. Several cases of conflict with the SARA issue have broken out in Sampit, Ambon, Poso and tribal wars in Papua. Various horizontal conflicts actually have been managed by the mechanism of local wisdom (local wisdom).

Local wisdom manifests itself in the rules of customs that have lived for generations. Heterogeneous Indonesian people still practice adat originating from local cultural values as a conflict management mechanism. UU no. 7 of 2012 concerning Handling of Social Conflicts, has guaranteed and encouraged the function of customary institutions and / or social institutions in the management and resolution of social conflicts. Activating the function of customary institutions in conflict management, so that conflicts find resolution and do not appear in the form of violence, is an effort to avoid overlapping conflict resolution mechanisms

<sup>&</sup>lt;sup>1</sup> Novri Susan, dkk "laporan pengkajian hukum tentang peran pranata adat dalam pencegahan atau penghentian konflik antara kelompok masyarakat" (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, 2014).
<sup>2</sup> Ibid.

between adat mechanisms classified as ADR (alternative dispute resolution) with formal mechanisms such as the courts.

#### II. DISCUSSION

## A. Urgency of Tolerance in Diversity in Indonesia

In this reform era, the plurality of people tends to be a burden rather than the capital of the nation and state of Indonesia. This can be seen from the emergence of various problems whose sources smell of pluralism, especially in the religious field. Religion should not be isolated from public matters. Now there are more and more poor people, but there are also many pilgrims. This is because religion is less contextualized and used as a solution to various social problems, so there is a lack of discussion about the social responsibilities of religious communities. Now there is a setback for the sense and spirit of togetherness that has been built so far.

Intolerance is increasingly marked by increasing hatred and mutual suspicion among fellow children of the nation. The majority's hegemony over the minority is getting thicker, replacing love, tolerance, and the spirit of sharing. Intolerance arises due to the loss of commitment to make tolerance a way out to overcome various problems that make the nation worse. In a religious perspective, all religious groups are not yet convinced that the basic value of every religion is tolerance. As a result, what emerged was intolerance and conflict. Though religion can be a positive energy to build tolerance values in order to create a state that is just and prosperous

Tolerance is a form of accommodation without formal approval. Sometimes tolerance arises unconsciously and unplanned, which is caused by the character of individuals or groups of people, to avoid disputes as much as possible. From history it is known that the Indonesian nation is a tolerant nation that as far as possible avoiding disputes. Halim (2008) in an article entitled

"Exploring Oase of Tolerance", states "Tolerance comes from the Latin language, that is" tolerantia "means leniency, gentleness, relief and patience".<sup>3</sup>

In general this term refers to openness, grace, willingness, and tenderness. The United Nations Educational, Scientific and Cultural Organization (UNESCO) defines tolerance as an attitude of "mutual respect, mutual acceptance and mutual respect amid cultural diversity, freedom of expression, and human character". For this reason tolerance must be supported by broad horizons of knowledge, openness, dialogue, freedom of thought and religion. In short tolerance is equivalent to a positive attitude and respect for others in order to use basic human freedoms.

There are two models of tolerance, namely<sup>4</sup>: First, passive tolerance, namely the attitude of accepting differences as something that is factual. Second, active tolerance, involving oneself with others amid differences and diversity. Active tolerance is the teaching of all religions. The essence of tolerance is peaceful coexistence and mutual respect between diversity. In Indonesia, the practice of tolerance experiences ups and downs. These ups and downs are triggered by a distinctive understanding that relies on "their" and "our" relations. Inevitably, in a variety of contemporary, often stated that, radicalism, extremism, and fundamentalism are clothes of violence caused by patterns of exclusive and antidialogical understanding of religious texts.

All religions must be responsible for bringing about justice and peace. This will not be achieved only by relying on exclusive theology which only stops at truth claims, but requires a theology of pluralism which is oriented towards liberation. Tolerance intended in this paper is: mutual respect, mutual respect, and mutual acceptance amid cultural diversity, ethnicity, religion and freedom of expression. With tolerance, citizens of a community can coexist peacefully, in harmony, and work together in overcoming various problems that occur in their

4 Ibid.

<sup>&</sup>lt;sup>3</sup> Kiki Aryaningrum, "Toleransi dalam Masyarakat Plural" (jurnal kebangsaan).

environment. In addition, it must also be moderate (wasathiyyah) in dealing with various problems.

Zuhairi (2008)<sup>5</sup> said that the problem of anti-tolerance and anti-pluralism which was getting stronger was not only influenced by faith and the scriptures, but many were influenced by real factors, such as politics, economy, social and culture. Pluralism does not mean the statement that all religions are the same, nor does it stick with the question which is right and good. However, pluralism is a willingness to accept the fact that in society there are different ways of life, culture, and religious beliefs. In that reception, people are willing to live, mingle, and work together to build the country.

Frans Magnis Suseno (2008) said pluralism is an absolute requirement so that a nation that is so plural can be united and a nation that does not respect pluralism is a nation that kills itself. Sujatmiko (2008) cites the results of a survey conducted by Roy Morgan in 2006 of 25,000 respondents published in The Jakarta Post on November 14, 2006 showing that 89 percent of Indonesians consider themselves to be more of an Indonesian nation than their ethnicity.<sup>6</sup>

In facing global challenges, there needs to be competencies, networking and hardworking which can be supported by religious values. This is expected to foster enthusiasm and optimism that can improve the overall quality of life of the nation. Some excerpts that have been stated above, show that the sense of nationality (ashabiyyah, nationalism and patriotism) has developed, on the contrary the sense of togetherness is fading, the strengthening of primordial ties and anti-tolerance. So tolerance needs to be fostered and developed in the life of a plural / plural society.

We need to save the nation and the state by returning to the noble values that are surely inherent in most people, groups and communities in this country. The problem is not every person or group who wants to recognize pluralism and

<sup>6</sup> Ibid

<sup>&</sup>lt;sup>5</sup> Ibid

multiculturalism. In fact, by getting to know each other, plural society groups can develop appreciation, respect, and even cooperation between one another. Subkhan (2007: 29) states pluralism does not merely refer to the reality of pluralism. However, what is meant is an active involvement in the reality of the plurality. Religious and cultural pluralism can be found everywhere.

In certain communities, in the office where we work, in the school where we study, even in the market where we shop. But someone can only be said to carry these traits if he can interact positively in the pluralistic environment. In other words, religious pluralism is that each adherent of religion is required not only to recognize the existence and equality in order to achieve harmony in diversity.

Intan (2007 states that religious pluralism based on individual solidarity undoubtedly has several positive implications<sup>7</sup>: First, the understanding of religious pluralism is no longer merely a "reality", but rather a "must" that cannot be eliminated. In this reality, an effort to pay attention to one another is born from interdependent awareness. In this condition, religion is encouraged to contribute because religious interdependence requires that the inactivity of one religion will affect the results to be achieved.

If the awareness of religious interdependence continues to grow, the participation of religions can be maximized. Second, religious pluralism based on intellectual solidarity upholds the principle of take and give. A good dialogue will result in changes for both parties. Third, based on intellectual solidarity, religious pluralism requires that religious freedom is not limited to negative immunity, that religion must be free from socio-political stranglehold including the state. Fourth, religious pluralism with intellectual solidarity has the potential to produce values that contain commond good.

What is meant by plural society in this paper, is a plural society marked by the diversity of ethnic groups, religions, cultures or customs. Such community

<sup>&</sup>lt;sup>7</sup> Ibid

conditions require cooperation with tolerance (tasamuh) in facing various challenges to strengthen the social resilience of a community. In a plural or plural society, horizontally it is marked by the existence of social units based on ethnic differences, religious differences, customs, and regional differences, and so on. While being looked at vertically it turns out that there is a striking difference between the upper layer and the lower layer. This condition of the community will easily lead to riots in the form of inter-ethnic conflicts, conflicts in the name of religion, and social jealousy caused by a sharp gap between the rich and poor.

If a community or community is unable to prevent or manage conflict and violence and is unable to protect its vulnerable citizens, this reflects the community's weak social security. The solution offered is a tolerance approach. As the value of policy in shared life, quoting Rainer Forst's opinion in Tolerantion and Democracys (2007)<sup>8</sup> states, there are two perspectives on tolerance, namely the concept based on state authority (permission conception) and the conception based on culture and the desire to build understanding and respect for others (respect conception).

In this case, Forst prefers the second concept, namely tolerance in the context of democracy must be able to build mutual understanding and mutual respect amid diversity of ethnicity, religion, race, and language. To build tolerance as a policy value there are at least two capital requirements, namely: First, tolerance requires social interaction through intensive conversation and association. Second, build trust between various groups and sects. The basic principle of all religions is tolerance, because all religions basically love peace and are non-violent.

# B. Customary Law as an Alternative Solution Towards the Benefit of Modern Society

<sup>&</sup>lt;sup>8</sup> Ibid

Social conflict, with violence, has an intractable conflict caused by several factors, including<sup>9</sup>:

- 1. Every social conflict has a long history, not appearing suddenly.
- 2. The issue is interconnected, complex, not single.
- 3. The totality of the involvement of all parties.

Therefore the handling of social conflicts requires a long process involving modern state institutions and also adat which existed long before the state itself was established. Handling social conflict is a process towards preventing and / or stopping violence and finding solutions to problems that are acceptable to the conflicting actors. Handling can be directly carried out by the conflicting parties or the involvement of third parties (conflict mediators).

The process of preventing and stopping violence, and finding solutions to problems is a complex process involving dimensions of conflict management including cultural systems, social values, customs, interests of actors, sociopolitical institutional design and legal systems. In cases of certain social conflicts that are not too complex and without large dimensions of importance the process of handling can be easier. Cases of social conflict that are more complex by the involvement of large interests, including the interests of fighting over natural resources, agrarian, identity, politics, and community collective safety tend to be more difficult to handle. Indonesia is a country with a very heterogeneous society which empirically often experiences social conflicts laden with conflicts of big interests.

Indonesian people still keep a historical record of violent conflicts between actors of interests both organizations and communities. The Ambon-Maluku people in 1999-2003, the beginning of post-New Order democratization, were involved in violent conflicts that involved economic, identity, ethnicity and religious interests together. The mobilization of different ethnic and religious groups trapped in a circle of vengeance has devastated Ambon. Hundreds of

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<sup>9</sup> Ibid

thousands have to flee, especially parents, mothers and children. In the same year, Poso in North Sulawesi also experienced social conflict and violence which until now created a severe effect of social segregation. The City of Sampit in West Kalimantan suffered a breakdown in its community system, damage to infrastructure and collective trauma among ethnic Madurese and Dayaks after the wave of violence in 2002.<sup>10</sup>

Efforts to handle conflicts involving the state structure and legal system, as in the cases above, are not enough. The legal system is unable to handle conflicts in which murder, destruction and intimidation are criminal offenses. Violent conflict situations in some cases have even dragged the security apparatus to the circle of conflict. They take positions as primary conflict actors and jointly mobilize violence. Learning from cases of social conflict with violence in Ambon, Poso and Sampit conflict handling works optimally when adat institutions are functioned by civil society and political leaders.

Based on their relevance and significance, the state has in fact given adat institutions (institutions) a legal arrangement in a positive legal system. Despite this arrangement, until now, still not strong enough as a foundation for the implementation of customary institutions in handling social conflicts. Therefore in this section, it is important to critically examine the customary arrangements for handling social conflicts. Customary institutions, in the tradition of sociology, are arrangements of knowledge related to good and bad, right and wrong, and truths about life (social values) that are codified as rules for the behavior of its members, and are guarded by the role of leadership (social position) in its implementation.

This understanding divides traditional institutions into three social dimensions, namely social values that have been built for a long time, the role of leadership in maintaining a set of rules and practices of social values that have become the daily habits of members. The three social dimensions of customary institutions then relate the areas of life including the management of community

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<sup>10</sup> Ibid

<sup>11</sup> Ibid

collective land, marital procedures, and mechanisms for handling disputes or conflicts among its members. Community unity that has three social dimensions is referred to as indigenous people. In this paper the definition of indigenous peoples can refer to the First Archipelago Indigenous Congress (KMAN I) in March 1999. KMAN I states that indigenous peoples are groups of people who have ancestral origins (hereditary) in certain geographical areas, and have a value system, ideology, economics, politics, culture and territory itself.<sup>12</sup>

In much of the literature on handling conflict, both prevention and stopping violence, as well as problem solving mechanisms, customary institutions have different principles. The principle must be in accordance with the three dimensions of custom institutions that can differ between indigenous peoples. Illustration of customary institutions in Papuan society that every conflict that has caused injury or death to one of the parties must be punished accordingly. Such punishment can be in the form of retaliation until the perpetrators are killed or compensation in the amount of material through certain ceremonies. The first principle of custom institutions in handling conflict, in turn, is conformity with the social dimensions of custom institutions.

However, the context of indigenous peoples in the Indonesian state of law causes these principles to be in harmony with the prevailing legal system. The principle of harmony between customary institutions and positive law on several dimensions of its implementation found no obstacles. However, many of the implementations also find out which harmony between customary institutions and positive law has conflicting concepts or views of certain practices in conflict. For example, killings in cases of conflict between members of indigenous peoples, positive law will include it as a criminal offense even though the customary institution has resolved it through its mechanism independently.

The idea of optimizing the function of customary institutions in handling social conflicts is dealing with the principle of harmony with a positive legal

<sup>12</sup> Ibid

system. This fact requires the determination of the portion of the extent to which adat institutions have authority in handling cases of social conflict among their members. Therefore, the regulation of the functions of customary institutions must be regulated in more detail and certainty through the Indonesian legal system so that institutions for dealing with social conflicts in customary institutions are more clearly established.

# C. Jurisprudence, Customs and Benefit

Lately, it has often been raised about issues of conflict between sharia and adat, especially for those who have a textual understanding of sharia texts. The existence of this group strongly condemns religious practices originating from customs, while on the other hand, especially those who have contextual tendencies in understanding sharia texts choose to understand the existence of religious practices that are loaded with these cultural values.

It still hasn't lost our memory of the Talibanism that destroyed the Buddha statue in Bamiyan, Afghanistan. Now we are confronted with the symptoms of ISIS and NI (the Islamic state in Iraq and Sham) which are far more radical, puritanical, and brutal even compared to Al-Qaeda, which was its initial roots. Not only is it hostile to and slaughtering all groups that are different from it, whether Muslim or not, this group of ISIS displays extraordinary hostility towards manifestations of local culture. Not only in relation to the empowerment of cultural artifacts, but directly striking all manifestations of local culture, including thoughts and traditions born of it. This occurs because of the strengthening of legal-textual exclusivism along with the inclusion of transnational Islamic understanding which unfortunately tends to be hostile to culture and its products.<sup>13</sup>

In the science of ushul figh there is the rule of al-adah muhakkamah (customs can become law). This basic principle becomes the legitimacy of the existence of customary law in the context of religious life. Because when talking about religion, then it is not free from revelation. However, revelations also need

 $<sup>^{13}</sup>$  Dr. Abdul Moqsith Ghazali, " $metodologi\ Islam\ Nusantara$ " antologi artikel dalam buku "Islam Nusantara", (Bandung: PT Mizan Pustaka, 2015), 175.

the creation of reason to ground these celestial teachings. Conceptually, culture and / or culture have differences with Islamic revelation or teachings. If revelation is from God, while customs / culture comes from human creations. But sometimes, because the revelation also has dimensions of action teachings, then these teachings then crystallize into custom / culture in society. We know that prayer is a religious teaching that we must do five times a day and a night, so that prayer becomes a habit of Muslims throughout the world.

If we look fundamentally the concept of Islamic teachings, actually only consists of three main teachings (law). First, ahkam i'tiqadiyyat, which contains teachings relating to what must be believed by the mukallaf regarding the existence of God, angels, messengers and God's books. Second, ahkam khuluqiyyah, which is the teaching of how a person behaves towards each other and to cleanse the soul and heart of despicable qualities and decorate them with commendable qualities. Third, ahkam 'amaliyyah or practical law, which is guidance and demands relating to the act of believers, ranging from worship, marriage, transactions, and so on.<sup>14</sup>

The first and second nature are universal and static, do not change anywhere and anytime. About faith in God and the hereafter is no different between past and present, between Americans and Asians. Likewise, that honesty is a principle that must be maintained, does not differ between Nigerians and Indonesians. Deception is always bad, wherever and whenever. In this segment of moral beliefs and guidance Islam cannot be emblazoned with the name of the place, the name of the time or the name of a character.

While the third, namely ahkam 'amaliyyah, still needs to be sorted between tsawabit / qath'iyyat and ijtihadiyyat. Qath'iyyat laws such as the obligation to pray five times a day overnight, the obligation to fast, adultery, Hajj ritual procedures, do not change (static) even though the time and place change. <sup>15</sup> European prayer is no different from African prayer. Fasting, from the first to the

Afifuddin Muhajir "Meneguhkan Islam Nusantara untuk Peradaban Indonesia dan Dunia" antologi artikel dalam buku "Islam Nusantara", (Bandung: PT Mizan Pustaka, 2015), 61.

end of the world and in any country begins from the Fajr and ends when I pray the call to prayer Maghrib.

Explanation of the Qur'an and Sunnah in the law of this qath'iyyat is detailed, detailed and perfect in order to close the creation of reason. Reason generally does not reach the reasons why, for example, running back and forth seven times between Safa and Marwa during Hajj. Therefore, reason is demanded to submit and surrender in the laws of the qath'iyyat. Meanwhile, the ijtihadiyyat laws are dynamic, changing with benefits that provide certain space, time and conditions. Certain case laws may have been haram before, but now or later may. Al-Qur'an and Al-Sunnah explain these laws in general, part of the principles although occasionally detailed. This law requires the creation of reason to be in line with the wishes of the social environment.

Then from the division of the three main teachings of religion raises one question, how is the relationship between religion and customs / culture in life? To answer that question, we can see Dr. Haidar Bagir in his article entitled "Islam and Local Culture", he views the relationship between religion and culture / tradition divided into two ways: first, seeing religion as respecting culture as a source of wisdom. In relation to the benefit, Ibn al-qayyim al-jauziyah, an Islamic leader in the Muslim sect, concluded that the Islamic Shari'a was built for the benefit of humans and other universal humanitarian goals, that is the benefit. Justice, dignity and wisdom. The scholars' agreed on maslahah as a source of Islamic law saying, where there is a benefit there is a Shari'a, and where there is a Shari'a there is a benefit. This means that there is no contradiction between the Shari'a texts and the benefits.

Basically, benefit is divided into three forms, namely: first, it is dharuriyyat, namely the benefit or the interests of human beings which become a necessity in their lives. Once the importance of this, so that if this is not fulfilled

<sup>16</sup> Ibid

<sup>&</sup>lt;sup>17</sup> Haidar Bagir, "*Islam dan Budaya Lokal, Perspektif 'Irfan*" antologi artikel dalam buku "Islam Nusantara" (Bandung: PT Mizan Pustaka, 2015),175.

<sup>&</sup>lt;sup>18</sup> Prof. Dr. Masykuri Abdillah, "*Islam dan Dinamika Sosial Politik di Indonesia*" (Jakarta: PT Gramedia Pustaka Utama, 2011), xix.

human existence and life systems will be flawed. Second, is hajiyyat, namely human needs to facilitate daily affairs in order to avoid difficulties that lead to danger or damage, for example economic activities intended to support the realization of human existence above. Third, is tahsiniyyat, namely human interests which are complementary needs to support the upholding of ethics and morals as the embodiment of a good life, orderly, comfortable, and happy born and inner.<sup>19</sup>

Besides the principle of benefit in determining a law, there are also other principles that are no less urgent, namely 'urf or tradition. A rule says "something that is determined based on tradition, is just as much his position as something that is determined based on the Koran and Hadith" as earlier also stated that adat can be used as a source of law. Such is the position of 'urf in Islam that is important, then usul fiqh gives a mandate to 'urf-traditions to takhshish common recitation without technical instructions for its implementation in the Koran and Hadith. That is what is called takhshish bi al-'urf.<sup>20</sup>

In this connection, jalaluddin al-suyuthi in ashbah wa al-nazhair said<sup>21</sup>: "Something that comes from Allah and His Messenger is absolutely unlimited in terms of criteria, both in terms of Shari'a and in aspects of language, then something must be returned to the 'urf-tradition or custom ". This shows how much Islam values cultural creations or customs. As long as the tradition does not tarnish the principles of humanity, it can be maintained.

In Islam, nationality and ethnicity (which are the locus of culture) are seen positively as a source of wisdom. Second, see culture as a legacy of divine wisdom which was passed down through prophets who were sent by God throughout human history. From this, some experts claim that the actual cultural heritage as long as it can be proven does not contradict religious rules, whose existence and understanding are more or less inherited from the prophet. Thus, not only is it permissible, culture / custom has a legitimate place and even has certain sacredness.

<sup>20</sup> Ibid

<sup>19</sup> Ibid

<sup>&</sup>lt;sup>21</sup> Ibid

#### III. CONCLUSION

From the description above, we can conclude that Indonesia as a country that has a large area with many islands spread from Sabang to Merauke has logical consequences for various social compositions. Starting from the diversity of culture, ethnicity, religion, economic and political conditions so that not infrequently lead to conflict, both vertically and horizontally. The existence of these conflicts (especially those that are horizontal) is often triggered by the absence of tolerance in differences, especially those concerning SARA issues.

In this context the need for an attitude of tolerance as a tactical solution is solutive. Because conflicts in differences are inevitable, they can happen at any time. This tolerance also needs to be affirmed in a written text whether in the form of law or constitution. In addition, the expression of tolerance in responding to conflicts that occur in the community can also be realized with the existence of customary law.

One of the legitimacy of the existence of customary law is the existence of religious provisions that position customs or culture in line with sharia texts namely Al-quran and Hadith with provisions must stand on the principle of life namely benefit in order to safeguard five aspects of life, namely: protecting reason, soul, religion, offspring and possessions.

## REFERENCE

Abdul Moqsith Ghazali. *metodologi Islam Nusantara*, *antologi artikel dalam buku Islam Nusantara*. Bandung: PT Mizan Pustaka, 2015.

Afifuddin Muhajir. *Meneguhkan Islam Nusantara untuk Peradaban Indonesia* dan Dunia, antologi artikel dalam buku Islam Nusantara. Bandung: PT Mizan Pustaka, 2015.

Haidar Bagir. *Islam dan Budaya Lokal, Perspektif 'Irfan, antologi artikel dalam buku Islam Nusantara*. Bandung: PT Mizan Pustaka, 2015.

Kiki Aryaningrum. Toleransi dalam Masyarakat Plural. Jurnal Kebangsaan.

Masykuri Abdillah. Islam dan Dinamika Sosial Politik di Indonesia. Jakarta: PT

Gramedia Pustaka Utama, 2011.

Novri Susan, dk. *Laporan Pengkajian Hukum tentang Peran Pranata Adat dalam Pencegahan atau Penghentian Konflik antara Kelompok Masyarakat.*Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, 2014.

