

KERAPATAN QADI: A HISTORICAL EXPLORATION OF ISLAMIC LEGAL PRACTICE IN KALIMANTAN

Sabarudin Ahmad¹, Lisnawati², Muhammad Riyas Rasyid³, Muhammad Gesit Widayatno⁴

^{1,2,3,4}Universitas Islam Negeri Palangka Raya

E-mail: sabarudin.ahmad@iain-palangkaraya.ac.id¹, lisnawati@iain-palangkaraya.ac.id²,

mriyasrasyid@gmail.com³, mgesitw@gmail.com⁴

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Abstract: The *Kerapatan Qadi* as a judicial institution during the Banjar Kingdom era, was not only served as a place for those seeking justice but also symbolized the implementation of Islamic law in Kalimantan. The purpose of this study is to analyze and explore the *Kerapatan Qadi* as a manifestation of the enforcement of Islamic law in Kalimantan. This research falls under the category of empirical legal research using a historical approach. The data sources for this research can be classified into three categories: primary, secondary, and tertiary data, which are then analyzed using the theories of living law and the applicability of law. The results of this study indicate that, first, the *Kerapatan Qadi* during the Banjar Sultanate functioned not only as an Islamic judicial institution with adjudicative authority, but also as a site of legal construction through contextual *rechtwinding*. Its practices demonstrate that Islamic law operated as a living law, adapting to the social dynamics of the community while fulfilling the juridical, sociological, and philosophical dimensions of legal validity. Accordingly, the *Kerapatan Qadi* represents an integrative and dynamic model of Islamic law implementation oriented toward public welfare (*maslahah*).

Keywords: *Kerapatan Qadi*, Islamic Law, Religious Courts.

Abstrak: Kerapatan Qadi sebagai lembaga peradilan pada era kerajaan Banjar, tidak hanya menjadi tempat bagi para pencari keadilan, tetapi juga sebagai simbol keberlakuan hukum Islam di Kalimantan. Tujuan penelitian ini untuk menganalisis dan mengeksplorasi Kerapatan Qadi sebagai wujud keberlakuan hukum Islam di Kalimantan. Penelitian ini masuk dalam kategori penelitian hukum empiris dengan menggunakan pendekatan sejarah (*historical approach*). Sumber data penelitian ini dapat dikelompokkan menjadi tiga kategori, yaitu data primer, sekunder, dan tersier, yang kemudian dianalisis menggunakan teori *living law* dan teori keberlakuan hukum. Hasil penelitian ini menunjukkan bahwa Kerapatan Qadi pada masa Kesultanan Banjar merupakan lembaga peradilan Islam yang tidak hanya menjalankan fungsi adjudikatif, tetapi juga berperan dalam konstruksi hukum melalui proses *rechtwinding* yang kontekstual. Praktik hukumnya menunjukkan bahwa hukum Islam hidup (*living law*) dan adaptif terhadap dinamika sosial masyarakat, serta memenuhi dimensi keberlakuan yuridis, sosiologis, dan filosofis. Dengan demikian, Kerapatan Qadi mencerminkan model penerapan hukum Islam yang integratif, dinamis, dan berorientasi pada kemaslahatan.

Kata Kunci: *Kerapatan Qadi*, Hukum Islam, Peradilan Agama.



INTRODUCTION

Islam in Kalimantan cannot be separated from the history of its arrival on the island. Prior to the rapid development of Islam, which coincided with the transformation of the Banjar Kingdom into an Islamic sultanate,¹ the ports of South Kalimantan became busy destinations frequented by traders from Java, Sumatra, the Malay Peninsula, Sulawesi, and even from the Arab world.² It is estimated that most of these traders were Muslims, and in the course of their trade, they also spread Islamic teachings in the places they visited.³ When the Banjar Kingdom, led by Raden Samudera, embraced Islam, he changed his name to Sultan Suriansyah.⁴ From that point onward, the development of Islam in Kalimantan, particularly in what is now South Kalimantan, grew rapidly, eventually becoming a major center of Islamic life in the region.⁵ The people of the Banjarmasin Sultanate, including those living in inland areas, were reached by traders who also served as religious teachers. This made it possible for farmers, livestock breeders, and fishermen to embrace Islam.⁶

One noteworthy aspect of the development of Islam in the Banjar Kingdom is the existence of a judicial institution known as the *Kerapatan Qadi*. Similar institutions were also found in other Islamic kingdoms, such as the Samudera Pasai Sultanate in Aceh, the Mataram Sultanate in Central Java, where it was known as the *Surambi Court*,⁷ the *Nagari* system in West Sumatra (Minangkabau), where it was referred to as the *Kerapatan Adat Nagari*,⁸ as well as in

¹ Ahmad Habibi et al., “Sejarah Pola Politik Islam Di Kalimantan Selatan,” *Scientific Journal Islamic Education* 1, no. 3 (2023): 221–28; Muhammad Azmi, “Islam Di Kalimantan Selatan Pada Abad Ke-15 Sampai Abad Ke -17,” *Yupa: Historical Studies Journal* 1, no. 1 (2017): 38–47, <https://doi.org/10.30872/yupa.v1i1.89>.

² Endang Susilowati, “Peranan Jaringan Sungai Sebagai Jalur Perdagangan Di Kalimantan Selatan Pada Paroh Kedua Abad XIX,” *Jurnal Sejarah Citra Lekha* 15, no. 1 (2011): 1–8; Yusliani Noor and Rabini Sayyidati, “Tionghoa Muslim Dan Dunia Perdagangan Di Banjarmasin Abad Ke-13 Hingga Ke-19,” *Juspi: Jurnal Sejarah Peradaban Islam* 3, no. 2 (2020): 182–94, <https://doi.org/10.30829/juspi.v3i2.5901>.

³ Hasan, “Islam Dan Budaya Banjar Di Kalimantan Selatan,” *Ittihad* 14, no. 25 (2016): 78–90, <https://doi.org/10.18592/ittihad.v14i25.865>.

⁴ Abdul Wahab Syakhrani and Ahmad Rangga Islami, “Islam Di Tanah Banjar,” *Cross-Border* 5, no. 1 (2022): 792–802; Abdul Wahab Syakhrani and Muhammad Nafis, “Islam Sebagai Agama Dan Islam Sebagai Budaya Dalam Masyarakat Banjar,” *Mushaf Journal: Jurnal Ilmu Al-Qur’an Dan Hadis* 2, no. 3 (2022): 270–74.

⁵ Yusliani Noor, “Sejarah Perkembangan Islam Di Banjarmasin Dan Peran Kesultanan Banjar (Abad XV-XIX),” *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 11, no. 2 (2012): 239–63, <https://doi.org/10.18592/al-banjari.v11i2.458>.

⁶ Ita Syamtasyiah Ahyat, “Perkembangan Islam Di Kesultanan Banjarmasin,” *Sosio Humanika: Jurnal Pendidikan Sains Sosial Dan Kemanusiaan* 8, no. 1 (2015): 11–20.

⁷ Ahmad R, “Peradilan Agama Di Indonesia,” *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 6, no. 2 (2016): 311–39.

⁸ Harisnawati et al., “Eksistensi Pemerintahan Nagari Di Sumatera Barat Dalam Kajian Sejarah,” *Bakaba: Jurnal Sejarah Kebudayaan Dan Kependidikan* 7, no. 2 (2018): 21–30; Aulia Ulvi, “Peranan Kerapatan Adat Nagari Dalam

Makassar and other regions. At that time, the jurisdiction of religious courts covered various civil matters and even criminal cases.⁹ The *Kerapatan Qadi* later evolved into what is now recognized as the Religious Court institution, particularly in the South Kalimantan region. Its legal basis can be traced to *Staatsblad* 1937 Nos. 116 and 610 concerning Religious Courts in Java and Madura, which confirmed *Staatsblad* 1882 No. 152, as well as *Staatsblad* 1937 Nos. 638 and 639 regarding the establishment of judicial institutions in South and East Kalimantan. These regulations introduced the *Kerapatan Qadi (Kadigerecht)* as the first-instance court and the *Kerapatan Qadi Besar (Opper Kadigerecht)* as the appellate court.¹⁰

The *Kerapatan Qadi* functioned not only as a forum for seekers of justice but also as a symbol of the implementation of Islamic law in Kalimantan, particularly in South Kalimantan. Scholarly research that specifically examines the *Kerapatan Qadi* remains very limited; most studies have instead focused on contemporary religious courts. For instance, works by Ahmad R.,¹¹ Muhammad Sukri,¹² Nofliadi,¹³ Andi Akram,¹⁴ Miftakhur Ridlo,¹⁵ and Muhyidin¹⁶ primarily explore religious courts within the broader historical development of Islamic judicial institutions. This study, therefore, aims to analyze and explore the *Kerapatan Qadi* as a manifestation of the application of Islamic law in Kalimantan.

METHOD

This study employs an empirical legal research design with a historical approach, as its primary focus is the *Kerapatan Qadi* as a judicial institution that functioned during the Banjar Sultanate and continued into the Dutch colonial period. The historical approach is chosen to trace the institutional development and the normative authority of Islamic law in Kalimantan.

Memperjuangkan Hak-Hak Masyarakat Adat Nagari Guguak Malalo Kabupaten Tanah Datar (1992-2016)” (Universitas Andalas, 2019).

⁹ Muhammad Sukri, “Sejarah Peradilan Agama Di Indonesia (Pendekatan Yuridis),” *Jurnal Ilmiah Al-Syir’ab* 10, no. 2 (2012): 1–8, <https://doi.org/10.30984/as.v10i2.252>.

¹⁰ Nofliadi, “Politik Hukum Undang-Undang Peradilan Agama,” *Alqisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 8 (2012): 91–107.

¹¹ R, “Peradilan Agama Di Indonesia.”

¹² Sukri, “Sejarah Peradilan Agama Di Indonesia (Pendekatan Yuridis).”

¹³ Nofliadi, “Politik Hukum Undang-Undang Peradilan Agama.”

¹⁴ Andi Akram, “Sejarah Peradilan Agama Di Indonesia,” *Al-Manabij: Jurnal Kajian Hukum Islam* 2, no. 1 (2008): 103–14, <https://doi.org/10.24090/mnh.v2i1.3699>.

¹⁵ Miftakhur Ridlo, “Sejarah Perkembangan Peradilan Agama Pada Masa Kesultanan Dan Penjajahan Sampai Kemerdekaan,” *Asy-Syari’ah: Jurnal Hukum Islam* 7, no. 1 (2021): 152–67, <https://doi.org/10.55210/assyariah.v7i2.612>.

¹⁶ Muhyidin, “Perkembangan Peradilan Agama Di Indonesia,” *Gema Keadilan* 7, no. 1 (2020): 1–19, <https://doi.org/10.14710/gk.2020.7233>.

The data for this research are derived from primary sources obtained through documentation, observation, and interviews. Documentation involves collecting and examining archives, manuscripts, and historical legal documents related to the *Kerapatan Qadi*. Observation is conducted at historical sites and cultural institutions relevant to contextualizing the existence and continuity of the institution. Interviews are carried out with judges of religious courts and community leaders who possess knowledge of past Islamic legal practices and their continuity within local traditions. Informants are selected based on their expertise, experience, and involvement in preserving or transmitting the institutional history of Islamic law in Kalimantan.

The data are then analyzed using the theories of *living law* and legal validity. The *living law* theory is employed to examine how Islamic legal norms institutionalized through the *Kerapatan Qadi* are embedded in and continue to influence social life. Meanwhile, the theory of legal validity is used to assess the extent to which the decisions of the *Kerapatan Qadi* were formally recognized by the Sultanate, the Dutch colonial administration, and Muslim communities in Kalimantan. By integrating these two analytical frameworks, this study seeks to bridge historical narratives with theoretical perspectives, thereby producing a comprehensive understanding of the implementation of Islamic law in the region.

RESULT AND DISCUSSION

The Banjar Sultanate and Syaikh Arsyad Al-Banjari

The existence of the *Kerapatan Qadi* in Kalimantan cannot be separated from the long history of the Banjar Sultanate. This discussion begins by outlining a brief history of the Banjar Sultanate as an Islamic polity in Kalimantan that laid the institutional foundation for the emergence of the *Kerapatan Qadi*. Banjarmasin is a region located in what is now South Kalimantan. The name “Banjarmasin” is derived from *Bandar Masih*, which was the name of the first capital of the Banjarmasin Kingdom under the leadership of Sultan Suriansyah, who ruled from 1526 to 1550. The Banjar Sultanate was situated along the Kuin (Cerucuk) River, which flows into major rivers, namely the Barito River and the Martapura River. Geographically, the Banjarmasin region is bordered by seas to the south and mountainous areas

to the east; to the north lie the areas around the Negara River, while to the west it extends along the Barito River basin.¹⁷

The Banjar people, or as they refer to themselves, Urang Banjar, are an indigenous ethnic group in South Kalimantan,¹⁸ Indonesia, and constitute one of the largest ethnic groups in the country. According to statistical data from 2010, the Banjar population in Indonesia reached 4,127,124 people. The majority reside in South Kalimantan with a population of 2,686,627, followed by 464,260 in Central Kalimantan and 440,453 in East Kalimantan. However, the term “Banjar” was not originally used to denote an ethnic group. Mary Hawkins argues that the term Urang Banjar (Banjar people) emerged as an ethnic identity designation in the 1930s. Previously, “Banjar” was associated solely with the Banjar Sultanate, which historically continued from earlier Hindu kingdoms, namely Negara Daha and Negara Dipa, established by migrants from Java around the thirteenth century. Prior to that, the Buddhist Kingdom of Tanjung Pura had been founded by Malay migrants from Sumatra around the fifth to sixth centuries in South Kalimantan.¹⁹

Before the emergence of Islamization in South Kalimantan, the Banjar Kingdom—which was a continuation of the Daha Kingdom—was characterized by Hindu religious traditions. The Banjar Sultanate later became the successor to this Hindu polity, with its core territory comprising five major districts in South Kalimantan: Kuripan (Amuntai), Gagelang (Alabio), Daha (Nagara–Margasari), Pandan Arum (Tanjung), and Pudak Sategal (Kalua). During the period of the Nagara Dipa Kingdom under the rule of Princess Jungjung Buih and her chief minister Lembu Amangkurat, diplomatic relations were established with the Majapahit Kingdom. The influence of Majapahit had extended to the Nagara River region, as recorded in the Nagarakertagama. By the end of the fifteenth century, South Kalimantan was under the authority of the Daha Kingdom, led by Prince Sukarama. He had four sons from different

¹⁷ Alfrida Dyah Miranti and Lutfiah Ayundasari, “Kesultanan Banjar: Peranan Dalam Persebaran Islam Di Kalimantan (Abad XVI M - XIX M),” *Jurnal Integrasi Dan Harmoni Inovatif Ilmu-Ilmu Sosial* 1, no. 2 (2021): 227–37, <https://doi.org/10.17977/um063v1i2p227-237>.

¹⁸ Khairil Anwar et al., “Tracing Religious Transformations in Urban Society During the Kutaringin Kingdom Era,” *Akademika : Jurnal Pemikiran Islam* 29, no. 1 (2024): 39–48, <https://doi.org/10.32332/akademika.v29i1.8618>.

¹⁹ Muhammad Iqbal, *Arsyad Al-Banjari: A Banjarese Shafi'i Scholar BT - Arsyad al-Banjari's Insights on Parallel Reasoning and Dialectic in Law: The Development of Islamic Argumentation Theory in the 18th Century in Southeast Asia*, ed. Muhammad Iqbal (Springer International Publishing, 2022), 111–20, https://doi.org/10.1007/978-3-030-91676-3_4.

consorts—Prince Mangkubumi, Prince Tumanggung, Prince Bagalung, and Prince Jayadewa—as well as a youngest daughter named Princess Galuh.²⁰

The arrival of Islam in the Banjar Sultanate began amid a leadership crisis toward the end of the Daha Kingdom, whose official religion was Hinduism.²¹ The emergence of the Banjar Sultanate was rooted in internal conflict within the royal family. This conflict occurred between Prince Samudera and his uncle, Prince Tumanggung, even though Prince Samudera was the legitimate heir to the Daha Kingdom. The *Hikayat Banjar* recounts that during the reign of King Sukarama, he declared on his deathbed that his successor should be his grandson, Raden Samudera. Upon hearing this, his sons opposed the decision. Among them, Prince Tumanggung was particularly unwilling to accept the will, as he harbored strong ambitions to take control of the Daha Kingdom.²²

After King Sukarama passed away, the throne was assumed by his eldest son, Prince Mangkubumi. This decision was made because Raden Samudera, the rightful heir according to the king's will, was still too young—only seven years old at the time. For this reason, the succession did not follow the testament of King Sukarama, and instead, his eldest son was appointed as king. However, Prince Mangkubumi's reign was short-lived, as he was assassinated by a palace official who had been influenced by Prince Tumanggung due to his political ambitions. Following Mangkubumi's death, Prince Tumanggung ultimately took over the throne of the Daha Kingdom.²³

During the reign of Prince Tumanggung, his primary rival was Prince Samudera. To avoid conflict, Prince Samudera left the royal court, disguised himself, and lived as a fisherman at the Banjar harbor. However, his presence was eventually discovered by Patih Masih, a capable minister in the kingdom's administration. Patih Masih had extensive interactions with Muslim scholars from Tuban and Gresik and was familiar with stories about the *Wali Songo*, who played a significant role in the rise of the Demak Sultanate. Influenced by these interactions, Patih

²⁰ Miranti and Ayundasari, “Kesultanan Banjar: Peranan Dalam Persebaran Islam Di Kalimantan (Abad XVI M - XIX M).”

²¹ Abd. Gofur, “Islam Di Kesultanan Banjar Pada Abad Ke 19 M Dan Peran Muhammad Arsyad Al-Banjari,” *Toleransi: Media Ilmiah Komunikasi Umat Beragama* 1, no. 1 (2009): 17–28, <https://doi.org/10.24014/trs.v1i1.439>.

²² Miranti and Ayundasari, “Kesultanan Banjar: Peranan Dalam Persebaran Islam Di Kalimantan (Abad XVI M - XIX M).”

²³ Miranti and Ayundasari, “Kesultanan Banjar: Peranan Dalam Persebaran Islam Di Kalimantan (Abad XVI M - XIX M).”

Masih embraced Islam. With his support, Prince Samudera was able to gather substantial forces to oppose Prince Tumenggung. The conflict between the two continued until Prince Samudera sought assistance from the Demak Sultanate. His request was granted by the Sultan of Demak on the condition that he convert to Islam. The Sultan then dispatched one thousand soldier along with a religious leader, Khatib Dayan, to facilitate the Islamization of Prince Samudera and the Banjar people.²⁴ With the support of Demak, Prince Samudera ultimately emerged victorious in the dynastic conflict. In accordance with his promise, he, along with the royal family and the people of Banjar, embraced Islam. Following his conversion in 1526 CE, the Daha Kingdom was transformed into the Islamic Banjar Sultanate.²⁵ Prince Samudera was then given the title Sultan Suryanullah, also known as Sultan Suriansyah, and was inaugurated as the first ruler of the Islamic Banjar Sultanate.²⁶

The development of Islam during the era of the Banjar Sultanate is closely associated with a prominent scholar widely known throughout the Indonesian archipelago, Syaikh Arsyad Al-Banjari.²⁷ He became a central figure in the advancement of Islam, particularly during the period of the Banjar Sultanate. Islamic law gained stronger recognition within both the royal court and society during the reign of Sultan Adam al-Wasik Billah, who ruled from 1825 to 1857 CE. During this period, specifically in 1835, the *Undang-Undang Sultan Adam* (UUSA) was promulgated, explicitly grounded in Islamic law. The enactment of this legislation reflects the ruler's strong commitment to institutionalizing Islamic law as positive law within the Banjar Sultanate, while also affirming Islam's role as a guiding principle in regulating social life.²⁸

Shaykh Muhammad Arsyad was born on 15 Şafar 1122 AH (9 March 1710 CE) in Lok Gabang Village, which is now part of Astambul District, Banjar Regency. After completing his

²⁴ Yusna Zaidah et al., "Unveiling the Role of Local Cultural Considerations in Judicial Discretion: An Analysis of Inheritance Decisions in the Religious Courts of South Kalimantan," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023): 47–58, <https://doi.org/10.30631/alrisalah.v23i1.1351>; Edlin Yanuar Nugraheni et al., "The Social Construction of the Banjar Ethnic Society Toward the Radap Rahayu Dance," *Jurnal Ilmiah Peuradeun* 12, no. 1 (2024): 51–70, <https://doi.org/10.26811/peuradeun.v12i1.1029>.

²⁵ Muslimah et al., "How Does the Kingdom of Kutaringin Develop Educational Activities," *Ta'dib* 26, no. 2 (2023): 245–56, <https://doi.org/10.31958/jt.v26i2.9711>.

²⁶ Miranti and Ayundasari, "Kesultanan Banjar: Peranan Dalam Persebaran Islam Di Kalimantan (Abad XVI M - XIX M)."

²⁷ Zein Firdaus et al., "Banjar Cultural Marriage Taboos and Analysis of the Prohibition of Marriage in Kitabun Nikah by Sheikh Muhammad Arsyad Al-Banjari," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (2023): 183–92, <https://doi.org/10.22373/ujhk.v6i1.18961>; Gusti Muzainah et al., "Integrating Religious and Customary Financial Obligations in Banjarese Marriages : Muhammad Arsyad al-Banjari ' s Islamic Legal Thought on Balanja al-Nik Āh," *Journal of Islamic Law* 6, no. 2 (2025): 358–76.

²⁸ Zainal Muttaqin, "Historisitas, Setting Sosial, Politik, Dan Kakakter Hukum Islam Di Kalimantan Selatan," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 19, no. 2 (2020): 287–303, <https://doi.org/10.18592/al-banjari.v19i2.3824>.

early education within the Banjar Sultanate in Martapura, he departed at the age of 30 for Mecca and Medina to pursue advanced studies. For 35 years, he devoted himself to acquiring knowledge with a strong determination to dedicate his learning to society, particularly in Kalimantan. Shaykh Arsyad returned to his homeland and arrived in Martapura in the month of Ramadan 1186 AH (1772 CE). There, he actively engaged in da'wah, encouraging the community to practice Islamic teachings in their daily lives. Throughout his life, he was associated with two significant places that shaped his intellectual development: Martapura, his birthplace and the center of his preaching activities until his death, and the holy cities of Mecca and Medina, where he pursued his studies and eventually became a distinguished scholar at the Masjid al-Haram in Mecca. The social and cultural conditions of the Banjar community in the late seventeenth and early eighteenth centuries also influenced his religious thought across various fields, including fiqh, aqidah, tasawuf, and politics.²⁹

The governance of the Banjar Sultanate under Sultan Mustain Billah was notably strict, particularly in the implementation of Islamic law. He refined the governmental structure established by Sultan Suriansyah by incorporating religious elites into formal positions within the royal administration. This institutional refinement included the addition of roles responsible for religious and social affairs, such as the *Tuan Penghulu*, *Tuan Khalifah*, *Khatib*, *Dipati*, and members of the *priyayi* class (*bubuhan Pagustian*). The Banjar Sultanate also extended strong support to ulama who promoted the application of Islamic law within the Sunni (*Ahl al-Sunnah wa al-Jama'ah*) tradition. This support is reflected in the widespread dissemination of Islamic teachings, as evidenced by the central role of mosques, which were actively frequented as hubs of worship and religious life.³⁰

The *Hikayat Banjar* records that Sultan Mustain Billah established a mosque in Martapura, particularly in the areas of Tambangan and Kampung Melayu. He also personally attended Friday prayers at the mosque together with his ministers. Meanwhile, in Banjarmasin, the early efforts of Sultan Suriansyah in spreading and developing Islam among the population began with the construction of a mosque. This mosque, known as the Sultan Suriansyah Mosque, was

²⁹ Erwin Rezki Fathur et al., "Pola Penyebaran Dakwah Syekh Muhammad Arsyad Al-Banjari Di Bumi Banjar," *Islamologi: Jurnal Ilmiah Keagamaan* 1, no. 1 (2024): 8–14.

³⁰ Dessi Mulia Sari and Muhammad Iqbal, "Tuan Guru Dalam Sejarah Kesultanan Banjar," *Tashwir* 12, no. 1 (2024): 51–60, <https://doi.org/10.18592/jt.v12i01.13880>.

the first mosque of the Banjarmasin Sultanate in the sixteenth century CE. Its construction was the result of deliberation between the Sultan and the royal elites.³¹

During the lifetime of Shaykh Muhammad Arsyad, four sultans ruled the Banjar Kingdom in Martapura: Sultan Khamidullah (also known as Sultan Kuning, 1700–1734 CE), Sultan Tanjidullah (1734–1759 CE), Sultan Muhammad Aliuddin Aminullah or Tamjidillah (1759–1761 CE), and Sultan Tahmidullah (Susuhunan Nata Alam, 1761–1801 CE). During this period, the political situation of the Banjar Kingdom was frequently unstable. Each succession of sultans was often marked by conflicts and struggles for power among royal princes, which in many cases escalated into civil wars. This instability occasionally led the rulers to seek assistance from the Dutch to maintain their power, often at the cost of ceding parts of their territory or authority to the colonial power.³²

Although Islam had long been present in the Banjar Kingdom, Islamic law had not yet become a priority, largely due to the absence of qualified scholars capable of implementing it. Sultan Tahmidullah was fortunate to receive the support of Shaykh Arsyad, a prominent scholar who successfully guided the Banjar community in practicing Islamic teachings. Based on Shaykh Arsyad's advice, the positions of *Mufti* and *Qadhi* were established within the kingdom. The *Mufti* was responsible for issuing fatwas concerning state actions related to religious matters, as well as addressing religious issues within society, ensuring that they remained in accordance with Islamic law. Meanwhile, the *Qadhi* was tasked with overseeing matters of inheritance, distribution of property, and *muamalat* (commercial transactions).³³

Shaykh Arsyad was appointed as the first Mufti of the Banjar Kingdom, and this role was later continued by Muhammad As'ad Syarifah binti al-Banjari. The first Qadhi was Abu Su'ud, the son of Shaykh Arsyad from his second wife, whom he married after returning from Mecca. Both of these officials were directly educated by Shaykh Arsyad, and the positions of Mufti and Qadhi within the kingdom, as well as religious representatives in various regions, were largely passed down to the descendants of Shaykh Arsyad.³⁴

Shaykh Arsyad played a significant role in the establishment of the *Mahkamah Syar'iyah* within the Banjar Kingdom. From this, one can observe the pattern of his *da'wah* dissemination. This study seeks to examine the relationship between Shaykh Arsyad's *da'wah* and the policies

³¹ Sari and Iqbal, "Tuan Guru Dalam Sejarah Kesultanan Banjar."

³² Fathur et al., "Pola Penyebaran Dakwah Syekh Muhammad Arsyad Al-Banjari Di Bumi Banjar."

³³ Fathur et al., "Pola Penyebaran Dakwah Syekh Muhammad Arsyad Al-Banjari Di Bumi Banjar."

³⁴ Fathur et al., "Pola Penyebaran Dakwah Syekh Muhammad Arsyad Al-Banjari Di Bumi Banjar."

of the Banjar Kingdom by analyzing various factors that supported his missionary activities, particularly through political channels and his involvement in the formation of the *Mabkamah Syar'iyah*. As a charismatic scholar with substantial influence over the Banjar community at the time,³⁵ Shaykh Arsyad was highly respected and regarded as a Waliyullah (a saintly figure). Consequently, his behavior and actions were consistently upheld as a model and source of guidance by the society.³⁶

This development was later continued by the descendants of Shaykh Arsyad, who established a judicial institution known as the *Kerapatan Qadi* through the policies of Sultan Adam. This policy can be understood as an effort to maintain the continuity of his political authority. First, there was a shift in the role of the *qadhi* into that of a judge. Prior to Sultan Adam's reign, the *qadhi* held the highest authority in handling religious matters. However, during his rule, the Sultan assumed the functions previously held by the *qadhi*, while general religious affairs were subsequently delegated to judges. This shift indicates that when political power begins to weaken, rulers may utilize religious authority as a source of legitimacy to sustain their rule.³⁷

This policy may have been implemented because Sultan Adam was known as an educated and intelligent ruler, with a relatively clean political record and close relations with the *ulama*. In addition to the shift in roles, Sultan Adam also strengthened the judicial structure by adding ten articles to the *Undang-Undang Sultan Adam* (UUSA) that specifically regulated judicial institutions and procedural law, making this the most substantial section within the code. This move further underscores his efforts to preserve the authority of the Banjar Sultanate through the legal domain. In other words, the structuring of law also functioned as a structuring of power.

Second, the UUSA contains six articles regulating land matters. Normatively, these provisions do not contradict the principles of *fiqh*. In a traditional political system such as the Banjar Kingdom,³⁸ all land within the territory of the kingdom was considered to belong to the

³⁵ Ahmad Sukris et al., "Restorative Justice Principles in Banjar Customary Inheritance Disputes: A Normative Analysis of Out-of-Court Settlement Institutions through Adat Badamai," *El-Mashlahah* 15, no. 2 (2025): 415–36, <https://doi.org/10.23971/el-mashlahah.v15i2.10047>.

³⁶ Fathur et al., "Pola Penyebaran Dakwah Syekh Muhammad Arsyad Al-Banjari Di Bumi Banjar."

³⁷ Muttaqin, "Historisitas, Setting Sosial, Politik, Dan Karakter Hukum Islam Di Kalimantan Selatan."

³⁸ Lisnawati and Sabarudin Ahmad, "Kada Balampu, Menyisir Sisi Tapih: Eksplorasi Nilai Islami Dalam Kearifan Lokal Urang Banjar," *Jurnal El-Qanunij: Jurnal Ilmu-Ilmu Kesyarabatan Dan Pranata Sosial* 9, no. 2 (2023): 312–28.

state, unless permission for its use was granted by the ruler. The discussion on land begins with Article 17 of the UUSA, which stipulates that anyone acquiring land through *muamalat* (civil transactions) must register it in accordance with the kingdom's administrative procedures.³⁹

On the other hand, it should be noted that landownership at that time was generally concentrated among the royal elite, nobility, and prominent community figures. This regulation may have been related to the reduction of territorial control following the arrival of the Dutch. The concentration of land under the control of royal elites had created various issues, thereby necessitating formal regulation. Therefore, the remaining lands of the Banjar territory needed to be recorded and reassessed to ensure which areas were still under the authority of the kingdom.⁴⁰ From a *fiqh* perspective, particularly in relation to *maslahah* (public interest),⁴¹ this policy does not contradict Islamic legal principles. However, it is also reasonable to understand this policy within the broader socio-political context of the time.

The History of the *Kerapatan Qadi*

The *Kerapatan Qadi Besar*

The existence of the *qadhi* position in South Kalimantan is closely related to the development of Islam within the Banjar Sultanate. Although the exact arrival of Islam in Kalimantan cannot be definitively determined, by the fifteenth century the Banjar Kingdom had already been established and later transformed into the Banjar Sultanate following the victory of Prince Samudera (Sultan Suriansyah) with the support of the Islamic Demak Sultanate.⁴²

The Sultan's concern for the development of Islam is reflected in his decision to send Shaykh Muhammad Arsyad al-Banjari to Mecca to study Islamic sciences. Upon his return, he served as an advisor to the kingdom. Sultan Tahmidullah II later appointed the first Mufti, Muhammad As'ad, grandson of M. Arsyad al-Banjari, and the first Qadhi, H. Abu Su'ud bin M. Arsyad al-Banjari. The position of *qadhi* continued uninterrupted even after the fall of the Banjar Sultanate, with 28 qadhis recorded as descendants of M. Arsyad al-Banjari. For example,

³⁹ Muttaqin, "Historisitas, Setting Sosial, Politik, Dan Karakter Hukum Islam Di Kalimantan Selatan."

⁴⁰ Abdul Helim et al., "Babilangan in the Marriage Traditions of the Banjar Community in South Kalimantan: A Legal Pluralism Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 2 (2025): 915–36, <https://doi.org/10.22373/9tr8na63>.

⁴¹ Eti Yusnita et al., "Embracing E-Court Innovation: Advancing Maslahah Mursalah in Indonesia's Religious Courts," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 2 (2024): 506–23, <https://doi.org/10.19109/nurani.v24i2.24744>.

⁴² "Sejarah Pengadilan Tinggi Banjarmasin," PTA Banjarmasin, 2018.

Qadhi H. Abdus Samad bin Mufti H. Jamaluddin had two sons, Qadhi H. Abu Thalhah and Qadhi H. Muhammad Jafri, who also served as qadhis in the late nineteenth to early twentieth centuries. According to Zaini Ahmad Noeh, the institution of the *qadhi* originated from the *tauliyah* system during the Banjar Sultanate and continued until the issuance of *Staatsblad* 1937 Nos. 638 and 639.

The existence of the *qadhi* institution in South Kalimantan, like other Islamic religious institutions across the Indonesian archipelago, cannot be separated from the role of Islam in society, including within the Banjar Sultanate. As with the broader history of the arrival of Islam in Indonesia, which remains a subject of scholarly debate, the precise origins of Islam in Kalimantan are also uncertain. By the fifteenth century, the Banjar Kingdom had already been established and was ruled for approximately two centuries by Buddhist kings. The rulers who reigned between 1438 and 1595 are generally recognized as Buddhist monarchs, and this period is commonly referred to as the Buddhist era.

The subsequent period marked the emergence of the Banjar Sultanate, beginning with internal conflict within the kingdom that ultimately resulted in the victory of Prince Samudera with the support of the Islamic Demak Sultanate. Following his accession as Sultan Suriansyah, the Banjar Kingdom was transformed into an Islamic sultanate. Over time, the Banjar Sultanate experienced significant upheaval, particularly with the rise of nationalist resistance against Dutch colonialism. Historically, the Banjar War, which began in 1859 under the leadership of Prince Antasari, ended with the defeat of his forces.⁴³

The defeat in the Banjar War led to the strengthening of colonial control, ultimately resulting in the de facto dissolution of the Banjar Sultanate by 1905. Other sources indicate that the Governor-General of the Dutch East Indies, through a decree dated 17 December 1859, declared the Banjar Kingdom to be under Dutch governance, with its official proclamation issued on 11 June 1860. Although the Dutch colonial government had taken control of the former Banjar territories since that date, no formal regulations concerning the office of *qadhi* were established at that time. It was only with *Staatsblad* 1937 Nos. 638 and 639 that the colonial administration formally regulated the position of *qadhi*, which became effective on 1 January

⁴³ Djafar Abdu Muchith, *Kerapatan Qadhi: Dari Kampung Qadhi Menuju Peradilan Modern: Refleksi 77 Tahun Kerapatan Qadhi Dan 10 Tahun Peradilan Satu Atap* (PTA Banjarmasin, 2014).

1938. Thus, there was a regulatory and administrative gap regarding the *qadhi* institution for approximately 32 years, from 1860 to 1937.⁴⁴

The Sultan's attention to the development of Islam was significant. Shaykh Muhammad Arsyad al-Banjari was sent by the Sultan to Mecca to study Islamic teachings, and upon his return, he assumed the role of a royal advisor. Collaboration between the *ulama* and the ruling elite was also evident in marital alliances, as members of the royal family intermarried with families of religious scholars. The sultans themselves actively pursued religious knowledge under the guidance of Shaykh Muhammad Arsyad al-Banjari and his descendants. His ideas regarding Islamic institutional structures were further implemented by the Sultan through the establishment of religious institutions beyond the already well-developed educational system.

Initially, Sultan Tahmidullah II bin Sultan Tamjidillah appointed a Mufti, with Muhammad As'ad, grandson of Shaykh Arsyad through his daughter Fatimah, serving as the first Mufti of the Banjar Kingdom. The position of *qadhi* was also established during his reign, with H. Abu Su'ud bin M. Arsyad al-Banjari recorded as the first *qadhi*. The second *qadhi* was H. Abu Na'im bin M. Arsyad al-Banjari, and the sixth was H. M. Said Jazuli Namban. According to H. M. Irsyad Zein, the office of *qadhi* continued uninterrupted even after the fall of the Banjar Sultanate.⁴⁵

This continuity is evident from the record of 28 individuals who served as *qadhi*, most of whom were descendants of Shaykh Arsyad al-Banjari. For instance, Qadhi H. Abdus Samad bin Mufti H. Jamaluddin (born 12 August 1822, died 22 June 1899) had two sons who also became *qadhis*, namely H. Abu Thalhah and H. Muhammad Jafri. Both began their service in the late nineteenth century and continued into the early twentieth century. Furthermore, H. Abu Thalhah had a son, KH. Basuni, who later served as a *qadhi* in Marabahan from 1941 to 1950.⁴⁶

The Kerapatan Qadi Kandangan

The first *Kerapatan Qadi* was established in Nagara. Generally, religious courts (*Pengadilan Agama*) in Indonesia operate at the city or regency level.⁴⁷ However, in Kandangan, there are

⁴⁴ PTA Banjarmasin, "Sejarah Pengadilan Tinggi Banjarmasin."

⁴⁵ Muchith, *Kerapatan Qadhi: Dari Kampung Qadhi Menuju Peradilan Modern: Refleksi 77 Tahun Kerapatan Qadhi Dan 10 Tahun Peradilan Satu Atap*.

⁴⁶ PTA Banjarmasin, "Sejarah Pengadilan Tinggi Banjarmasin."

⁴⁷ Rahmatiah Rahmatiah and Sabarudin Ahmad, "Hukum Acara E-Litigasi Dan Penerapannya Di Pengadilan Agama Sampit," *Jurnal Ilmu Syariah Dan Hukum* 2, no. 2 (2023): 160–69,

two religious courts: the Kandangan Religious Court, which serves as the capital of South Hulu Sungai Regency, and the Nagara Religious Court. The existence of the Nagara Religious Court, despite its jurisdiction being at the sub-district level, is justified by historical reasons, namely, that the first *Kerapatan Qadi* was established there. The Religious Court of Banjarmasin has even compiled a book on the *Kerapatan Qadi* to commemorate the anniversary of the Directorate of Religious Courts.⁴⁸

Historically, *ulama* who came to the region of Bumi Antaludin (Kandangan) traveled through the Amandit River, which flows into the Negara River. While spreading Islamic teachings in Kandangan, the Muslim population in the area gradually increased. As a result, the community's demand for the application of Islamic law became increasingly significant. According to a former Chief Judge of the Kandangan Religious Court, Drs. H. Rusdi Saberi (the fourth Chief Judge), the *Kerapatan Qadi* of Kandangan was established in response to the demands of the Muslim community, based on *Staatsblad* Nos. 638/639 of 1937, in which the religious court was referred to as *Kerapatan Qadi*. With the approval of the *Kerapatan Qadi Besar* of Banjarmasin, the *Kerapatan Qadi* of Kandangan was established in 1935.⁴⁹

The *Kerapatan Qadi* Barabai

Similarly, in Barabai, before the establishment of the *Kerapatan Qadi* of Barabai, Muslim communities resolved their legal matters by submitting them to a Mufti (a religious authority issuing fatwas). Initially, this position in Barabai was held by an Islamic jurist, K.H. M. Mochtar bin H. M. Hasan, based on a decree issued by the Resident of South and East Borneo on 20 February 1932. Subsequently, due to increasing public demand, led by *ulama* and prominent Islamic figures, the Dutch East Indies government issued *Staatsblad* 1937 Nos. 638–639. Specifically for the Barabai region, Government Decree No. 58/B/1-3/38 dated 21 May 1938

<https://doi.org/10.23971/jisyaku.v2i2.7378>; Lisnawati Lisnawati et al., “Modernizing Divorce in Courts: How to Realize Justice in Diverse Geographical Conditions?” *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 367–81, <https://doi.org/10.31958/juris.v23i2.11836>.

⁴⁸Khairi Rosyadi, *Wawancara* (Kandangan, 2024).

⁴⁹Muchith, *Kerapatan Qadhi: Dari Kampung Qadhi Menuju Peradilan Modern: Refleksi 77 Tahun Kerapatan Qadhi Dan 10 Tahun Peradilan Satu Atap*.

appointed K.H. M. Mochtar bin H. M. Hasan as the first Qadhi of Barabai in Hulu Sungai Tengah Regency.⁵⁰

These *Staatsblad* provisions became the legal foundation for the establishment of the Religious Court (*Kerapatan Qadi*) of Barabai, with K.H. M. Mochtar bin H. M. Hasan serving as its head. Prior to this appointment, he had served as a Mufti, issuing various Islamic legal opinions, particularly on family law matters such as marriage, divorce, reconciliation (*rujuk*), and inheritance. At that time, the Qadhi was highly respected due to his profound religious knowledge. All Qadhis in Barabai had studied in Nagara, which is notable as it reflects a strong intellectual lineage between teacher and student, *kyai* and *santri*. Nagara functioned as a center of Islamic learning, from which scholars returned to Barabai to apply their knowledge for the benefit of the community. It was in Barabai that the position of Qadhi began to be formally institutionalized.

After some time, due to certain circumstances, particularly the passing of the Head of the *Kerapatan Qadi*, H. M. Mochtar, in 1960, the court office, which had been his personal property, was reclaimed by his heirs. As a result, based on a collective decision, the office was relocated to a rented house located in front of the Shulaha Mosque in Barabai Darat, on Jalan Perintis Kemerdekaan, where it operated from 1960 to 1980. The property was later transferred to the Musyawaratut Thalibin Foundation and is currently used by BKPRMI (the Indonesian Mosque Youth Communication Board).

The Application of Islamic Law through *Kerapatan Qadi* in Kalimantan

The *Kerapatan Qadi* in Kalimantan, particularly during the Banjar Sultanate period, possessed broad jurisdiction across various fields of law, including family law, criminal law, as well as other social and religious matters. In addition to functioning as a court, the *Kerapatan Qadi* also served as an institution that issued fatwas and provided legal advice. The following is a more detailed explanation of its competencies in various areas:

Jurisdiction in Family Law

The *Kerapatan Qadi* held extensive authority in resolving disputes and issues related to family matters. One of its primary competencies concerned marriage. The institution handled cases related to marriage, including marriage approval, disputes over *mahr* (dowry), the validity

⁵⁰ Muchith, *Kerapatan Qadhi: Dari Kampung Qadhi Menuju Peradilan Modern: Refleksi 77 Tahun Kerapatan Qadhi Dan 10 Tahun Peradilan Satu Atap*.

of marriage, and issues arising from inter-family marriages. Even the act of officiating marriages fell within its authority. Based on data obtained from a community member in Negara, it was explained that in the past, when he got married, the officiant was the Qadi.⁵¹ This indicates that while marriage administration is currently conducted by the Ministry of Religious Affairs, particularly through the Office of Religious Affairs (*Kantor Urusan Agama*), during the era of the *Kerapatan Qadi*, marriages were officiated by the Qadi in his capacity as a judicial authority.⁵² The second area of competence concerned divorce. As an institution governing family law, the *Kerapatan Qadi* played a significant role in processing divorce (*ṭalāq*) and reconciliation (*rujuʿ*) cases. It had the authority to determine whether a divorce could be granted and to provide fair resolutions based on the principles of Islamic law. The third area involved child custody and maintenance. Following divorce, the *Kerapatan Qadi* was responsible for deciding custody arrangements and ensuring that maintenance obligations toward children and former spouses were fulfilled in accordance with Islamic legal provisions. The fourth area concerned inheritance. The distribution of inheritance (*farāʾid*) was one of the main responsibilities of the *Kerapatan Qadi*. The institution ensured that inheritance was distributed in accordance with Islamic law, which prescribes a just allocation among heirs, including the rights of women and children.

The jurisdiction in family law can be observed, among others, in Decision Number 65/1929 concerning past maintenance (*nafkah madiyah*) issued by the *Kerapatan Qadi* of Kandangan. The case describes a wife who filed a lawsuit against her husband, Djampu bin Anang, aged 25, a farmer residing in Taal Batangkulur Kanan Village, Zuid Amandit District. After marriage, they lived together harmoniously for two years, working together by tapping rubber in the forest. However, the husband later left her for three months, during which time he did not provide any maintenance. Therefore, she filed a claim with the *Kerapatan Qadigeracht* requesting that her husband be ordered to pay maintenance for the past three months, provide future maintenance and clothing (*kiswah*), and provide a proper *sharʿi* house with sufficient

⁵¹ Fitriyadi, *Wawancara* (Negara, 2024)

⁵² Theresia Dyah Wirastri and Stijn Cornelis Van Huis, “The State of Indonesia’s Marriage Law: 50 Years of Statutory and Judicial Reforms,” *Abkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32, <https://doi.org/10.15408/ajis.v24i2.38424>.

furnishings. If the husband was unable to fulfill these demands, she requested that the marriage be dissolved (*fasakh*) by the *Kerapatan Qadi*.⁵³

After examining the testimonies of the witnesses, the judge considered that according to Islamic law, based on the witness statements and the defendant's admission, both husband and wife were acknowledged as validly married. Therefore, the defendant was obligated to pay past maintenance and *kiswah* for a period of two years, amounting to 72 ringgit and 12 ringgit respectively. Furthermore, he was required to provide daily maintenance starting from that day onward in the amount of 25 cents, provide appropriate *kiswah*, and establish a proper *shar'i* residence complete with its furnishings within three days.⁵⁴

The operative part of the judgment stated that, first, Djampu bin Anang was ordered to pay Siti Hamsah maintenance for the past two years amounting to 72 ringgit, *kiswah* amounting to 12 ringgit, and to provide daily maintenance starting from 19 August 1939 onward in the amount of Rp. 0.25 (twenty-five cents). Second, all goods within the *shar'i* house were declared to be the property of Siti Hamsah once she occupied it. Third, Siti Hamsah binti Unus was ordered to reside in the said *shar'i* house. Fourth, her request regarding a servant (*chadam*) was rejected. Finally, she was ordered to pay court costs amounting to Rp. 6. This decision was rendered on Saturday, 19 August 1939, by Judge H.M. Junan Qadi, in the presence of H. Basri, H.M. Chabri, and H. Abdussamad Qadi, and was pronounced on the same day in public before the parties involved in the case.⁵⁵

This case demonstrates that the *Kerapatan Qadi* possessed clear and substantive jurisdiction in the field of family law, particularly in matters of marital rights and obligations such as maintenance (*nafkah*), clothing (*kiswah*), and housing. Through its decision, the court not only examined the validity of the marriage and the claims presented,⁵⁶ but also actively enforced the husband's responsibilities by ordering payment of past and ongoing maintenance, as well as the provision of a proper residence. This indicates that the *Kerapatan Qadi* functioned

⁵³ PTA Banjarmasin, *Kerapatan Qadhi: Dari Kampung Qadhi Menuju Peradilan Modern (Refleksi 77 Tahun Kerapatan Qadhi Dan 10 Tahun Peradilan Satu Atap)* (PTA Banjarmasin, 2014).

⁵⁴ Banjarmasin, *Kerapatan Qadhi: Dari Kampung Qadhi Menuju Peradilan Modern (Refleksi 77 Tahun Kerapatan Qadhi Dan 10 Tahun Peradilan Satu Atap)*.

⁵⁵ Banjarmasin, *Kerapatan Qadhi: Dari Kampung Qadhi Menuju Peradilan Modern (Refleksi 77 Tahun Kerapatan Qadhi Dan 10 Tahun Peradilan Satu Atap)*.

⁵⁶ Nunuk Hidayati et al., "Beyond Religious Bureaucracy: Sapta Darma's Marriage Registration Struggle in Post-Constitutional Reform Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 2 (2025): 305–34, <https://doi.org/10.18326/ijtihad.v25i2.305-334>.

as an authoritative judicial body in resolving family disputes and ensuring the protection of spouses' rights in accordance with Islamic law.

Jurisdiction in Criminal Law

Although the *Kerapatan Qadi* is primarily known as an institution dealing with family and religious law, it also had jurisdiction in the field of criminal law (*jinayah*).⁵⁷ However, this data is not sufficiently strong, as it is derived only from oral historical accounts. According to one research informant, since the judicial system during the Banjar Sultanate consisted of a single institution, the *Kerapatan Qadi*, it is assumed that all disputes were resolved through this body, including criminal cases.⁵⁸ Nevertheless, this remains an assumption, as throughout this research no supporting evidence has been found, such as documented decisions indicating that the *Kerapatan Qadi* adjudicated criminal matters.

Although direct documentary evidence of criminal judgments has not been found, there are strong structural indications that the *Kerapatan Qadi* possessed jurisdiction in the field of criminal law (*jinayah*). This can be inferred from the institutional configuration of the Banjar Sultanate,⁵⁹ in which the *Kerapatan Qadi* functioned as the central judicial authority with broad and integrated competence. Given the absence of evidence indicating the existence of a separate criminal court,⁶⁰ it is reasonable to argue that the adjudication of criminal matters would have fallen within its domain. Moreover, the position of the Qadi as both a legal and religious authority suggests that the application of Islamic law, including its criminal aspects, was not fragmented but administered within a unified judicial framework. Therefore, even without explicit documentary proof, the institutional structure provides a strong analytical basis to affirm that the *Kerapatan Qadi* had competence in criminal law.

⁵⁷ Syahrul Anwar et al., "Autonomy and Islamic Criminal Law Enforcement in Creating Social Order in Aceh Region," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 2 (2025): 438–57, <https://doi.org/10.18860/j-fsh.v17i2.32771>.

⁵⁸ Hikmah, *Wawancara* (Martapura, 2024)

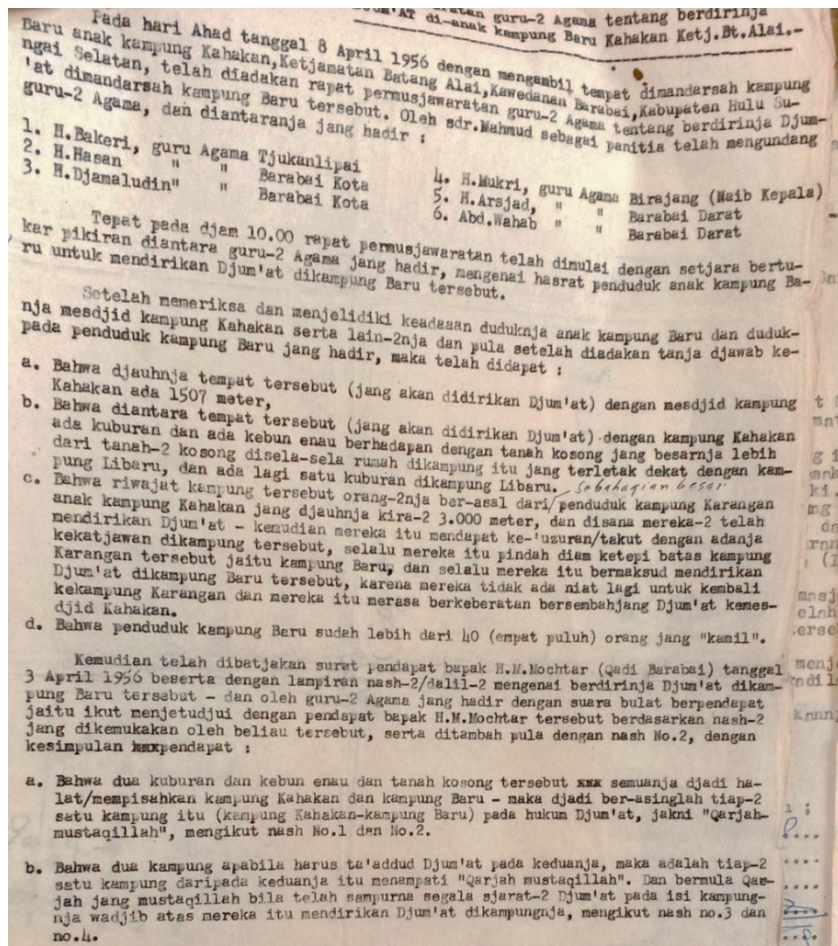
⁵⁹ Imam Mustofa et al., "Living Islamic Law in Indigenous Communities in Indonesia: Integration of Fiqh in the Tradition of Mu'amalah of the Muslim Community of Banjar," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 2 (2025): 289–312, <https://doi.org/10.24090/mnh.v19i2.14792>; Gusti Muzainah et al., "Female Circumcision in Banjar Culture: Navigating Customary Law, Islamic Law, and Human Rights," *Al-Abkam* 35, no. 2 (2025): 371–400, <https://doi.org/10.21580/ahkam.2025.35.2.27814>.

⁶⁰ Mia Amiati et al., "Urgency of Falsum in Indonesian Criminal Justice System as Basis for Revision; An Islamic Perspective," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 19, no. 2 (2024): 303–28, <https://doi.org/10.19105/al-ihkam.v19i2.13141>.

Jurisdiction in Fatwa

Beyond family and criminal law, the *Kerapatan Qadi* also had competence in resolving various social issues related to religion. This is evidenced by the discovery of a decision document from the *Kerapatan Qadi* of Barabai concerning a request for a fatwa on the establishment of Friday prayer at a location far from the central mosque (*masjid jami'*).⁶¹ The decision clearly indicates that the *Kerapatan Qadi* addressed religious issues within society, functioning as an institution for issuing fatwas. This finding is further supported by the fact that the position of Qadi was held by *Tuan Guru*, who were recognized as religious scholars and served as authoritative figures in resolving various religious and social matters.

This competence in the field of fatwa is identified through a decision of the *Kerapatan Qadi* of Barabai. Based on the examination of the decision document, it can be seen as follows:



⁶¹ Documentation, (Barabai, 2024)

The document represents the minutes of a deliberation among religious scholars in Kahakan Village, Barabai, dated 8 April 1956, which discussed the establishment of Friday prayer in Kampung Baru. The main issue examined was whether the village had met the requirements to independently conduct Friday prayer or whether it still needed to be affiliated with the parent village. In the process, the participants conducted a direct fact-finding inquiry, including the geographical distance between the two villages, territorial boundaries such as plantations and cemeteries, the origin and social condition of the society, as well as the number of congregants meeting the minimum requirement.

Based on the findings, it was determined that Kampung Baru possessed characteristics indicating social and territorial independence, although geographically it remained relatively close to the original village. In addition, the deliberation referred to the written opinion of the Qadi of Barabai and to fiqh-based arguments concerning the concept of *qaryah mustaqillah* as the normative basis for determining the validity of holding Friday prayer. This demonstrates that legal determination was not solely grounded in religious texts but also took into account the evolving social realities within the community.

From the perspective of *living law*, this decision reflects that Islamic law exists and develops within the social practices of society, rather than merely as a textual norm.⁶² The decision to recognize Kampung Baru as a *qaryah mustaqillah* emerged from the community's real needs, as it had already formed its own social identity, allowing the law to follow the dynamics of social life. Meanwhile, within the framework of the theory of legal validity,⁶³ this decision demonstrates the fulfillment of three dimensions of validity: first, juridical validity, as it is based on the authority of the Qadi and fiqh arguments.⁶⁴ Second, sociological validity, as it is accepted and aligned with the conditions of the local community.⁶⁵ third, philosophical validity, as it aims

⁶² Rahmah et al., "Living Law Dalam Hukum Keluarga Di Indonesia," *Jurnal Riset Multidisiplin Edukasi* 2, no. 5 (2025): 195–207, <https://doi.org/10.71282/jurmie.v2i5.289>; Muh Zaitun Ardi and Nadyatul Hikmah Shuhufi, "Islamic Law and Local Tradition: Living Appasili Marriage in Takalar Regency Indonesia," *Indonesian Journal of Islamic Law* 7, no. 1 (2024): 40–62, <https://doi.org/10.35719/ijil.v7i1.2114>.

⁶³ Muhammad Nasrulloh et al., "Between Theoretical Sharia and Practical Realities: A Critical Analysis of Interfaith Marriage in Classical Texts and Contemporary Legal Contexts," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 15, no. 1 (2025): 1–35, <https://doi.org/10.15642/alhukama.2025.15.1.1-35>; Khairil Anwar et al., *Persinggungan Agama Dan Kerajaan Kutaringin* (K-Media, 2022).

⁶⁴ Sukri, "Sejarah Peradilan Agama Di Indonesia (Pendekatan Yuridis)"; Abdul Syatar et al., "Formalisasi Hukum Islam Dalam Bentuk Peraturan Daerah : Analisis Yuridis Petaturan," *Bilancia* 15, no. 1 (2021): 65–84.

⁶⁵ Yuliyanto Yuliyanto, "Peranan Hukum Adat Masyarakat Dayak Dalam Menyelesaikan Konflik Untuk Mewujudkan Keadilan Dan Kedamaian," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017):

to realize public benefit (*maṣlahah*) and facilitate the performance of religious obligations.⁶⁶ Thus, this decision represents a concrete form of *rechtsvinding*, integrating norms, authority, and social reality into a unified practice of Islamic law.

Overall, the existence of the *Kerapatan Qadi* in Kalimantan,⁶⁷ particularly within the historical context of the Banjar Sultanate, did not merely function as a judicial institution in the narrow sense, but rather as a legal institution with broad and integrative competencies. Its authority in the field of family law, indications of involvement in criminal law, and its role in issuing fatwas affirm that the *Kerapatan Qadi* served as a central authority of Islamic law, combining adjudicative, consultative, and normative functions simultaneously.⁶⁸ Consequently, the boundary between court decisions and fatwas became relatively fluid, as both functioned as instruments for resolving legal issues within society.

Furthermore, the practices reflected in the decisions of the *Kerapatan Qadi* demonstrate that Islamic law was not applied rigidly, but rather through a process of *rechtsvinding* that simultaneously considered textual sources, authority, and social context.⁶⁹ This reinforces the thesis that the law in operation at that time constituted *living law*, namely law that was genuinely lived, practiced, and accepted by society.⁷⁰ Within the framework of the theory of legal validity, the existence of the *Kerapatan Qadi* also illustrates the simultaneous fulfillment of juridical, sociological, and philosophical dimensions, such that its legal products were not only normatively valid but also effective and oriented toward public benefit (*maṣlahah*). Thus, the *Kerapatan Qadi* can be understood as a model of Islamic legal institution that is contextual and

37, <https://doi.org/10.33331/rechtsvinding.v6i1.134>; Moh Mufid, “Aspek Sosiologis Fikih Imam Al-Syafi’i,” *Syariah: Jurnal Hukum Dan Pemikiran* 16, No.1 (2016); Cik Hasan Bisri, *Aspek-Aspek Sosiologis Hukum Islam Di Indonesia* (Logos, 1988).

⁶⁶ Ahmad Ali, *Menguak Tabir Hukum (Suatu Kajian Sosiologis Dan Filosofis)* (Toko Gunung Agung, 2002); M. Sholihin, “Maqasid As-Shariah Dan Pendekatan Filosofis Hukum as-Shariah as Philosophy of Islamic Law,” *Turast: Jurnal Penelitian & Pengabdian* 1, no. 1 (2013): 95–101; Theo Hujbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Kanisius, 1982); Safi’ et al., *Filsafat Hukum; Mengurai Esensi Hukum Berbasis Multi-Prespektif* (Prenada Media, 2023).

⁶⁷ Muhammad Hasan et al., “Inheritance Property Distribution Models Among the Muslim Community of Borneo-Nusantara,” *Al-Adalah* 21, no. 1 (2024): 175–98, <https://doi.org/10.15408/sdi.v24i3.4324.1>.

⁶⁸ Bagir Manan, *Sistem Peradilan Bervibawa; Suatu Pencarian* (Fakultas Hukum, Universitas Islam Indonesia (UII) Press, 2005); Muhyidin, “Perkembangan Peradilan Agama Di Indonesia”; R, “Peradilan Agama Di Indonesia.”

⁶⁹ Muhammad Taufiki et al., “The Use of Maxims (al-Qawā’id al-Uṣūliyyah Wa al-Fiqhiyyah) in Legal Argumentation of Sharia Economic Court Decisions in Indonesia,” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 1 (2022): 165–88, <https://doi.org/10.19105/al-ihkam.v17i1.6070>; Siti Malikhatun Badriyah, “Penemuan Hukum (Rechtsvinding) Dan Penciptaan Hukum (Rechtsschepping) Oleh Hakim Untuk Mewujudkan Keadilan,” *Universitas Diponegoro* 1, no. 1 (2017): 389.

⁷⁰ Sudirman Tebba, *Sosiologi Hukum Islam* (UII Press, 2003); Sabian Utsman, *Dasar-Dasar Sosiologi Hukum: Makna Dialog Hukum & Masyarakat* (Pustaka Pelajar, 2016); Samsir Salam, “Hukum Dan Perubahan Sosial (Kajian Sosiologi Hukum),” *Tabkum: Jurnal Hukum Dan Syariah* 11, no. 1 (2015): 107–15.

adaptive, capable of bridging classical fiqh norms with local social realities. This finding further affirms that the historical practice of Islamic law in Indonesia, particularly in Kalimantan, exhibits a dynamic, plural, and society-oriented character, making it relevant as a reference for the development of contemporary Islamic law.

CONCLUSION

Islamic law during the Banjar Sultanate in Kalimantan was not only formally implemented but also operationalized contextually through the *Kerapatan Qadi* as an institution with broad authority in family, religious, and even indicative criminal matters. Its hierarchical institutional structure reflects the existence of a well-established Islamic judicial system, while at the same time demonstrating the effective application of Islamic law in societal life. Moreover, the practices reflected in the decisions of the *Kerapatan Qadi* reveal a process of *rechtvindning*, in which law was constructed through the interaction between fiqh norms, the authority of the Qadi, and social realities. From the perspective of *living law*, Islamic law is shown to be dynamic and adaptive to the needs of society. Meanwhile, within the framework of the theory of legal validity, its legal products fulfill the juridical, sociological, and philosophical dimensions simultaneously. Thus, the *Kerapatan Qadi* represents a model of Islamic legal institution that is dynamic, contextual, and oriented toward the public good (*maṣlaḥah*).

CREDIT AUTHOR STATEMENT

Sabarudin Ahmad: conceptualization, methodology, formal analysis, writing-original draft, writing-review & editing, critical revision of the manuscript. **Lisnawati:** investigation, validation, resources, field coordination, writing-review & editing. **Muhammad Riyas Rasyid:** supervision, data curation, data verification. **Muhammad Gesit Widayatno:** visualization, manuscript refinement, quality control.

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