

# HARMONIZING CONSTITUTIONAL LAW AND ISLAMIC LAW IN PROTECTING PAPUA'S CULTURAL HERITAGE AMID INFRASTRUCTURE DEVELOPMENT: A CASE STUDY OF THE AITUMEIRI CIVILIZATION STONE SITE

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**Abstrak:** Percepatan pembangunan infrastruktur di Papua meningkatkan ketegangan antara kepentingan pembangunan ekonomi dan perlindungan warisan budaya masyarakat adat. Kondisi ini merupakan fenomena kritis yang ditandai oleh perubahan regulasi serta kebutuhan mendesak akan solusi hukum berkelanjutan di wilayah yang memiliki sensitivitas budaya tinggi. Kerangka hukum yang ada masih berjalan terpisah sehingga melemahkan perlindungan warisan budaya. Kerangka teoretis penelitian ini berada pada persinggungan antara hukum konstitusi, hukum Islam, dan pluralisme hukum. UUD 1945 menjamin pemajuan kebudayaan dan pengakuan hak masyarakat adat, sementara hukum Islam memberikan landasan etis melalui maqāṣid al-sharī'ah. Namun, integrasi keduanya dalam tata kelola warisan budaya belum optimal. Penelitian ini bertujuan menganalisis harmonisasi hukum konstitusi dan hukum Islam dalam perlindungan warisan budaya Papua dengan studi kasus Situs Batu Peradaban Aitumeiri. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual, didukung analisis kualitatif serta kerangka maqāṣid al-sharī'ah yang menekankan perlindungan agama, akal, dan keturunan. Hasil penelitian menunjukkan adanya tumpang tindih regulasi, lemahnya koordinasi kelembagaan, serta keterbatasan partisipasi masyarakat adat. Integrasi maqāṣid al-sharī'ah dalam penafsiran hukum konstitusi memperkuat legitimasi normatif dan etis. Penelitian ini menyimpulkan bahwa regulasi yang harmonis dan inklusif merupakan syarat utama perlindungan warisan budaya Papua dalam pembangunan berkelanjutan, dengan rekomendasi penguatan Perdasus berbasis maqāṣid, musyawarah (syūrā), dan kajian dampak cagar budaya yang partisipatif.

**Kata Kunci:** Hukum Konstitusi, Hukum Islam, Warisan Budaya, Masyarakat Adat, Papua, Pembangunan Berkelanjutan

**Abstract:** Rapid infrastructure development in Papua has intensified tension between economic growth and the protection of indigenous cultural heritage. This condition represents a critical phenomenon marked by regulatory change and the urgent need for sustainable legal solutions in culturally sensitive regions. Existing legal frameworks often operate in a fragmented manner, weakening effective heritage protection. The theoretical framework of this study lies at the intersection of constitutional law, Islamic law, and legal pluralism. Although the Indonesian Constitution guarantees cultural advancement and the recognition of indigenous rights, and Islamic law provides ethical guidance through maqāṣid al-sharī'ah, their integration in heritage governance remains limited. This study aims to examine the harmonization of constitutional law and Islamic law in protecting Papua's cultural heritage, using the Aitumeiri Civilization Stone Site as a case study. The research employs a normative legal method with statutory and conceptual approaches, supported by qualitative analysis and a maqāṣid al-sharī'ah framework focusing on the protection of religion, intellect, and lineage. The findings reveal overlapping regulations, weak intergovernmental coordination, and limited indigenous participation as major obstacles to effective heritage governance. Integrating maqāṣid al-sharī'ah into constitutional interpretation strengthens normative coherence and moral legitimacy. In conclusion, harmonized and inclusive legal frameworks are essential to safeguard Papua's cultural heritage within sustainable development. The study recommends strengthening maqāṣid-based regional regulations, institutionalizing consultative mechanisms inspired by shūrā, and mandating heritage impact assessments involving indigenous communities.

**Keywords:** Constitutional Law; Islamic Law; Cultural Heritage; Indigenous Peoples; Sustainable Development



## INTRODUCTION

The cultural wealth of Indonesia, particularly in the Land of Papua, embodies the nation's historical depth and identity, shaped by centuries of civilization and local wisdom. Papua's diverse heritage—archaeological sites, oral traditions, and customary laws—represents not only intrinsic cultural value but also serves as social capital for fostering cohesion and resilience amid modernization<sup>1</sup>. In recent years, the tension between rapid infrastructure development and the protection of indigenous cultural heritage has become a pressing socio-legal issue in Papua. Massive construction projects, such as road expansion and mining operations, have altered traditional landscapes and disrupted sacred sites belonging to indigenous communities. These social realities underscore the urgency of re-evaluating existing legal mechanisms that should balance development priorities with the preservation of Papua's unique cultural identity.

In Islamic constitutional thought, the preservation of such heritage aligns with the objectives of *maqāṣid al-sharī'ah*, notably *hifẓ al-dīn* (protection of religion), *hifẓ al-'aql* (protection of reason), and *hifẓ al-nasl* (protection of lineage), as they ensure the continuity of civilization and collective dignity. Jasser Auda views *maqāṣid* holistically, encompassing human dignity and social harmony. Similarly, An-Na'im<sup>2</sup> argues that protecting cultural diversity affirms constitutional justice, while *'urf ṣaḥīḥ* (legitimate custom) legitimizes indigenous traditions consistent with sharia<sup>3 4</sup>. Thus, constitutional and Islamic principles converge in affirming the state's duty to preserve Papuan cultural heritage.

Numerous scholars have examined the intersection of development and cultural heritage preservation from various perspectives.<sup>5</sup> emphasize the need for cultural sustainability as part of economic planning, while<sup>6</sup> criticize the lack of community-based heritage management in developing countries. In the Indonesian context,<sup>7</sup> discuss the constitutional and Islamic legal bases for cultural protection but tend to overlook the practical gap between legal ideals and local governance realities. More recent studies, such as those by<sup>8</sup> and<sup>9</sup>, focus on normative frameworks without evaluating their coherence with business law regulations affecting cultural sites. This research addresses that gap by examining how legal harmonization between economic and heritage protection laws can create a sustainable development model in Papua.

In the context of increasingly rapid and massive infrastructure development in the era of reform and regional autonomy, the challenge of protecting and preserving cultural heritage faces an increasingly urgent dilemma, especially in regions with unique socio-cultural and geographical characteristics such as Papua. The acceleration of infrastructure development, driven by the agenda of accelerating development of disadvantaged areas and borders, often faces *a difficult trade-off*

<sup>1</sup> Koentjaraningrat, *Manusia dan Kebudayaan di Indonesia* (Jakarta: Djambatan, 2009).

<sup>2</sup> Abdullahi Ahmed An-Naim, *Islam and the Secular State* (Cambridge: Harvard University Press, 2010).

<sup>3</sup> Rosdalina Bukido et al., "Harmonization of customary and Islamic law in the gama tradition of the muslim Mongondow community of North Sulawesi," *IJTIHAD Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 2 (2022): 239–54, <https://doi.org/10.18326/ijtihead.v22i2.239-254>.

<sup>4</sup> Ramli, "Urf As A Method Of Istibath Islamic Law (Thought Of Hasbi As-Siddieqy With His Indonesian Fikih)," *BIRCI Journal* 5, no. 1 (2021): 5031–41.

<sup>5</sup> Dennis Rodwell, *Conservation and Sustainability in Historic Cities* (Oxford: Blackwell Publishing, 2007).

<sup>6</sup> Sophia Labadi dan William Logan, *Urban Heritage, Development and Sustainability: International Frameworks, National and Local Governance* (Routledge, 2016).

<sup>7</sup> Nur Ahmad Fadhil Lubis, "Islamic Legal Literature and Substantive Law in Indonesia," *Studia Islamika* 4, no. 4 (2014): 33–92, <https://doi.org/10.15408/sdi.v4i4.765>.

<sup>8</sup> Ramli, "Urf As A Method Of Istibath Islamic Law (Thought Of Hasbi As-Siddieqy With His Indonesian Fikih)."

<sup>9</sup> Bukido et al., "Harmonization of customary and Islamic law in the gama tradition of the muslim Mongondow community of North Sulawesi."

between the need to improve regional connectivity and accessibility with the irreplaceable imperative of cultural heritage preservation<sup>10</sup>. The complexity of this challenge is increasing with global economic pressures that demand optimal exploitation of natural resources, while on the other hand there is a growing awareness of the importance of *sustainable development* that integrates economic, social, and cultural aspects in every development plan<sup>11 12 13</sup>.

Law Number 11 of 2010 concerning Cultural Heritage has firmly affirmed that cultural heritage is a national asset that must be maintained through a clear and structured arrangement of authority between the central government, local governments, and indigenous peoples as the main *custodians* of cultural heritage. This regulation provides a comprehensive legal framework for the protection, development, and utilization of cultural heritage with *heritage conservation principles* that refer to international standards, including the concepts of *authenticity*, *integrity*, and *outstanding universal value* which are the main parameters in cultural heritage management. In constitutional law, Article 32 of the 1945 Constitution establishes the obligation of the state to advance culture within the unity of national civilization, while Article 18B(2) recognizes and respects the rights of indigenous communities<sup>14</sup>. This constitutional basis provides legitimacy for the protection of Papuan heritage. From the perspective of Islamic law, cultural heritage preservation can be understood as part of maintaining *al-ʿurf al-ṣāḥiḥ* (valid customs), which are acknowledged in Islamic jurisprudence as long as they do not contradict sharia principles<sup>15</sup>. Thus, indigenous customs and cultural heritage in Papua are not only constitutionally recognized but also normatively justified in the framework of Islamic law.<sup>16</sup> However, the implementation of this law still faces various structural and operational challenges, especially in terms of inter-agency coordination, resource allocation, and harmonization with other sectoral regulations that often have *conflicting interests* with the aim of preserving cultural heritage.

Infrastructure development, which is often driven by infrastructure development that places too much emphasis on economic aspects alone without considering constitutional law and the protection of indigenous people's rights, has the potential to threaten the preservation of cultural sites that have irreplaceable historical and cultural value<sup>17</sup>, such as the Aitumeiri Civilization Stone Site in Wondama, due to the lack of harmonization between business law regulations and a comprehensive cultural heritage protection system. This misalignment creates a regulatory gap that allows for the destruction or even elimination of cultural sites in the name of economic development, when the two interests should be integrated through a heritage-led development

<sup>10</sup> Rodwell, *Conservation and Sustainability in Historic Cities*.

<sup>11</sup> Jeffrey D. Sachs, *The Age of Sustainable Development* (Columbia University Press, 2015).

<sup>12</sup> United Nations, "The Sustainable Development Goals Report 2023," 2023.

<sup>13</sup> Robert H. Wade, "The World Development Report 2022: Finance for an Equitable Recovery in the Context of the International Debt Crisis," *Development and Change* 54, no. 5 (2023): 1354–73, <https://doi.org/https://doi.org/10.1111/dech.12796>.

<sup>14</sup> Lubis, "Islamic Legal Literature and Substantive Law in Indonesia."

<sup>15</sup> M Barry Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Institute of Southeast Asian Studies, 2008).

<sup>16</sup> Irma Suryani et al. *Integration of Islamic Law in Regional Development in Indonesia JURIS (Jurnal Ilmiah Syariah)*, 22(1), 1–11. 2023 <https://doi.org/10.31958/juris.v22i1.8770>

<sup>17</sup> Amri Panahatan Sihotang, Wafda Vivid Izziyana, dan Panji Wirawan, "Legal Protection of Indigenous Peoples and Traditional Communities in Indonesia from The Perspective of The Social Environment," in *Proceedings of the 1st International Conference on Social Environment Diversity (ICOSEND 2024)*, *Advances in Social Science* (Atlantis Press SARL, 2025), 686–92, [https://doi.org/10.2991/978-2-38476-366-5\\_68](https://doi.org/10.2991/978-2-38476-366-5_68).

approach that places cultural preservation as an integral part of a sustainable development strategy. As Mairead Nic Craith, Michelle Langfield, and William Logan note, the tension between development and heritage preservation often stems from the prioritization of short-term economic gain over long-term cultural sustainability<sup>18</sup>. This conflict of interest between economic priorities and cultural preservation is often exacerbated by weak law enforcement and the lack of awareness among stakeholders about the importance of responsibility in the field of cultural heritage preservation. Similarly, the business sector's limited understanding of corporate social responsibility in relation to heritage protection further aggravates the issue<sup>19</sup>.

The phenomenon of globalization and economic expansion that takes place at a high intensity often triggers deep conflicts of interest, where local cultural values that have been rooted in the lives of indigenous Papuans are under pressure and erosion due to the dominance of development priorities that tend to ignore the aspect of *cultural sustainability*. The process of *cultural homogenization*, which is one of the negative impacts of globalization, threatens the existence of *indigenous knowledge systems* and local traditions that are an integral part of Papua's cultural heritage, while economic pressures force indigenous peoples to adapt to *market-oriented development* that is not always in line with their traditional cultural value systems and practices<sup>20</sup>. This paradox creates *cultural alienation* that can result in the loss of cultural identity and *social capital* that are the foundation of indigenous peoples' strength in facing modernization challenges.

In Papua, the implementation of special autonomy regulated in Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province provides a wider and more flexible space for local governments to manage cultural heritage in accordance with local characteristics and the needs of indigenous peoples. This special autonomy framework allows for the development of *local governance* that is more responsive to the socio-cultural uniqueness of Papua, including recognition of indigenous peoples' customary rights and a resource management system based on local wisdom<sup>21</sup>. However, the implementation of special autonomy in the field of cultural heritage management still faces various complex structural and operational obstacles, ranging from limited capacity of local institutions to challenges in integrating the customary law system with the national regulatory framework.

The reality of the implementation of Papuan special autonomy in the management of cultural heritage is still hampered by weak coordination between government agencies, lack of adequate resource allocation, and low level of participation of indigenous peoples in decision-making processes related to the management of their cultural heritage. The fragmentation of authority between the central, provincial, and district/city governments often creates *institutional confusion* that hinders the effectiveness of conservation programs, while the limitation of human resources who have competence in the field of *heritage management* is the main obstacle in the implementation of

<sup>18</sup> Mairead Nic Craith, Michele Langfield, dan William Logan, *Cultural Diversity, Heritage and Human Rights: Intersections in Theory and Practice* (Routledge, 2010).

<sup>19</sup> Labadi dan Logan, *Urban Heritage, Development and Sustainability: International Frameworks, National and Local Governance*.

<sup>20</sup> Arjun Appadurai, *Modernity At Large: Cultural Dimensions of Globalization* (Minneapolis: University of Minnesota Press, 1996). Waheeda, W., Mutakin, A. ., Isroiliyah, I., Lubis, R. ., & Saujan, I. . (2025). The Dynamic Interplay: A Normative-Philosophical Study of Islam and Local Wisdom in Indonesia. *ASEAN Journal of Islamic Studies and Civilization (AJISC)*, 2(1), 61–91. <https://doi.org/10.62976/ajisc.v2i1.1369>

<sup>21</sup> Rodd McGibbon, *Secessionist Challenges in Aceh and Papua: Is Special Autonomy the Solution?* (Washington DC: East-West Center, 2004).

policies at the operational level<sup>2223</sup>. The low aspect of community participation reflects the sub-optimal *bottom-up approach* in the management of cultural heritage, even though the active involvement of indigenous peoples as *primary stakeholders* is the key to the success of sustainable conservation efforts.

Therefore, this study aims to (1) analyze the interaction between business law regulations and cultural heritage protection systems in Papua; (2) identify the institutional and regulatory gaps that hinder effective implementation; and (3) propose a policy framework that integrates economic, social, and cultural dimensions in sustainable development. The ultimate objective is to ensure that economic progress does not undermine the constitutional and cultural rights of indigenous Papuan communities.

This argument rests on the premise that legal harmony between development and heritage protection is not only a constitutional mandate but also a moral and cultural necessity. By integrating Islamic jurisprudence, constitutional principles, and global heritage standards, this study argues for a multidimensional governance approach that ensures both cultural continuity and equitable economic growth in Papua.

## METHOD

This study adopts a normative legal research design employing statutory, conceptual, and comparative approaches. The statutory approach examines laws and regulations relevant to cultural heritage and regional autonomy; the conceptual approach analyzes theoretical principles of constitutionalism and Islamic law to formulate a harmonization model; and the comparative approach explores how similar frameworks operate in other regions or jurisdictions to highlight best practices applicable to Papua. In applying the Islamic legal perspective, this study explicitly employs the *maqāṣid al-sharī'ah* analytical framework, focusing on *ḥifẓ al-dīn* (protection of religion), *ḥifẓ al-'aql* (protection of intellect), and *ḥifẓ al-nasl* (protection of lineage). These principles guide the evaluation of constitutional norms and cultural preservation policies, ensuring that legal analysis integrates both normative Islamic values and constitutional imperatives.

The normative legal approach was chosen because the focus of the research is on the analysis of laws and regulations that regulate the authority to protect cultural heritage and its relationship with constitutional authority, decentralization, and recognition of indigenous rights. In addition, a conceptual approach is also used to formulate ideal strategies that can bridge business interests and cultural preservation, taking into account traditional values and local wisdom.

The data used in this study is sourced from primary and secondary legal materials. Primary legal materials include laws and regulations, such as Law Number 11 of 2010 concerning Cultural Heritage, Law Number 2 of 2021 concerning the Special Autonomy of Papua Province, and Government Regulation Number 1 of 2022 concerning the management of cultural heritage.

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<sup>22</sup> Muhammad Mutawalli Mukhlis et al., "Heavy Parliamentary v. Heavy Executive: Ambiguity of Power in Indonesian Constitutional Practices," *Jurnal Media Hukum* 31, no. 2 (2024): 186–205, <https://doi.org/https://doi.org/10.18196/jmh.v31i2.21703>.

<sup>23</sup> Edward Aspinall dan Mark T. Berger, "The Break-up of Indonesia? Nationalisms after Decolonisation and the Limits of the Nation-State in Post-Cold War Southeast Asia," *Third World Quarterly* 22, no. 6 (2001): 1003–24.

Secondary legal materials include relevant academic literature, journals, and dissertations, including the work of Enny Martha Sasea which examines the regulation of cultural heritage authority in Papua. This data was collected through library research to ensure a comprehensive analysis of the legal framework and its implementation challenges in the field.

Data analysis was carried out in a qualitative descriptive manner, focusing on the interpretation of legal norms and the evaluation of the exercise of authority in Papua. The legal data analysis follows several systematic stages: (1) identification and classification of legal norms contained in constitutional and statutory provisions related to cultural heritage and special autonomy; (2) interpretation of those provisions through grammatical, systematic, and teleological methods to determine their coherence with Islamic constitutional principles; and (3) evaluation of implementation in the context of Papua, particularly regarding institutional performance, indigenous participation, and regulatory alignment. These analytical stages ensure methodological transparency and allow replication in future normative studies.

This study also uses the case study of the Aitumeiri Civilization Stone Site in Wondama as a focus to illustrate the challenges and opportunities in the harmonization of business and cultural heritage law regulations. The case study functions as an analytical instrument to empirically test the consistency of legal norms and governance mechanisms discussed in the preceding sections. Legal and policy documents reviewed include provincial regulations (Perdasus No. 23/2008), Government Regulation No. 1/2022, and regional revitalization plans issued by the Teluk Wondama Regency, which serve as empirical data to substantiate the normative findings.

The analysis process involves triangulating data to ensure the validity of the findings, by comparing national regulations, regional policies, and field realities in Papua. This approach allows researchers to produce policy recommendations that are adaptive and responsive to local conditions, while supporting sustainable development goals. Thus, this research method is designed to provide a solid foundation for the development of effective and inclusive harmonization strategies.

## RESULTS AND DISCUSSION

### Results: Legal Framework for the Protection of Cultural Heritage in Papua

#### 1. National and Regional Legal Foundations

The protection of cultural heritage in Indonesia, including in Papua, is based on a comprehensive national legal framework, with Law Number 11 of 2010 concerning Cultural Heritage as the main foundation. This law defines cultural heritage as cultural heritage that has important value for history, science, and national identity, which must be protected through a clear arrangement of authority between the central and local governments. In the Papuan context, this regulation serves as a guideline for preserving historical sites such as the Aitumeiri Civilization Stone Site in Wondama, which reflects the rich local culture. However, the implementation of these laws often faces challenges due to the socio-cultural and geographical complexity of the Papua region, which demands a sensitive approach to indigenous values. Geographically, many cultural heritage sites are located in remote and difficult-to-reach areas, making the inventory and monitoring process costly and time-consuming. In addition, socio-cultural factors—such as diverse local languages, traditional land ownership systems, and the strong role of customary leaders—require culturally

appropriate communication and coordination mechanisms to ensure community participation in conservation efforts.

As part of special autonomy, Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 on Special Autonomy for the Papua Province grants broader powers to the Papua provincial government to regulate and manage the local affairs, including those related to customary (adat) communities. For example, Article 38 paragraph (4) of Law 2/2021 guarantees and provides space for Papuan Indigenous People in political, governmental, economic, and socio-cultural activities<sup>24</sup>. Moreover, as reported, one of the purposes of the renewed law is to ensure that rights of customary law communities—in areas such as education, health, economy, social assistance—are fulfilled under its mandate<sup>25</sup>. However, while the law provides legal frameworks that affirm indigenous involvements, its realisation is challenged by constraints in local institutional capacity, coordination between central and regional authorities, and resource limitations. These challenges are noted in several legal commentaries and analyses<sup>26</sup>.

At the technical level, Government Regulation Number 1 of 2022 (*Peraturan Pemerintah Nomor 1 Tahun 2022 tentang Register Nasional dan Pelestarian Cagar Budaya*) implements Law Number 11 of 2010 concerning *Cagar Budaya* (Cultural Heritage). This regulation covers a number of aspects: national registration of cultural heritage, preservation (pelestarian), area management, incentives and compensation, supervision, and funding<sup>27</sup>. It explicitly mandates that every person who owns or controls an *Object Diduga Cagar Budaya* (ODCB – object suspected of being cultural heritage) is obliged to register it with the local government (regent/mayor) at no cost. Also, anyone who discovers such an object must report it to relevant authorities. The regulation therefore strengthens the legal basis for community participation in heritage management.

Nonetheless, in Papua, the implementation of PP 1/2022 still faces significant obstacles. These include gaps in public awareness about rights and obligations under the cultural heritage laws, and limited capacity at local governmental levels to perform monitoring, enforcement, or provide technical support.

At the regional level, Special Regional Regulations (Perdasus) in Papua play an important role in operationalizing cultural preservation policies in accordance with local needs. For example, *Perdasus No. 23 of 2008 on the Protection and Development of Indigenous Culture and Local Languages* provides a legal framework for recognizing and safeguarding traditional practices, languages, and cultural expressions unique to Papuan communities. To be more effective, future Perdasus formulations should be developed through participatory mechanisms involving customary leaders and local communities, ensuring that local wisdom and indigenous norms are not only accommodated but serve as the foundation for policy

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<sup>24</sup> “Undang-undang (UU) Nomor 2 Tahun 2021 tentang Perubahan Kedua atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua” (2021).

<sup>25</sup> Sri Haryati, “Papua, West Papua welcome revised special autonomy law,” ANTARA, 2021.

<sup>26</sup> Roni Sulistyanto Iuhukay, Tatiek Sri Djatmiati, dan Emanuel Sujatmoko, “Reflecting the Special Autonomy of Papua Province in the Perspective of Law and Human Rights,” *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 9, no. 2 (2022): 120–144, <https://doi.org/https://doi.org/10.24252/jurisprudentie.v9i2.31843>.

<sup>27</sup> Qimiyatussa’adah dan Mala Sharma, “Indonesian Government Regulation on Heritage Registration,” *Journal of Heritage Management* 8, no. 1 (2023): 105–10, <https://doi.org/https://doi.org/10.1177/24559296221147037>.

implementation<sup>28</sup>. Several districts in Papua have initiated policies aimed at safeguarding cultural heritage sites amidst the challenges posed by infrastructure development. For instance, the Papua Provincial Government has enacted Special Regional Regulations (Perdasus) such as No. 22/2008 on the Protection and Management of Natural Resources of Indigenous Papuans, and No. 23/2008 concerning the customary rights of customary law communities and individual rights of indigenous peoples to land. These regulations underscore the importance of recognizing and protecting the rights of indigenous peoples, including their cultural heritage<sup>29</sup>.

Despite these legal frameworks, the implementation of cultural heritage protection remains inconsistent across the region.<sup>30</sup> The effectiveness of these policies is often hindered by challenges such as limited enforcement capacity, lack of coordination among stakeholders, and competing development interests. Therefore, the active role of local governments in formulating and enforcing responsive Perdasus is crucial. Such regulations should be attuned to local dynamics, ensuring that they harmonize business law with cultural heritage protection and promote the sustainability of cultural heritage amidst rapid development.

## 2. Authority of Central and Regional Governments

The division of authority between the central, provincial, and district/city governments in the protection of cultural heritage in Papua is regulated by Government Regulation Number 38 of 2007 concerning the Division of Government Affairs. This regulation delineates the responsibilities of each governmental level in managing cultural heritage. Specifically, it assigns the central government the task of setting national policies and overseeing cultural heritage of national strategic value, while provincial and district/city governments are entrusted with the management of cultural heritage within their respective regions, including identification, preservation, and utilization of cultural sites<sup>31</sup>.

In the context of Papua, regional authority is further reinforced through special autonomy as outlined in Law Number 2 of 2021, which amends Law Number 21 of 2001. This legislation grants Papua Province the authority to regulate and manage local interests according to the aspirations and basic rights of the Papuan people<sup>32</sup>. Additionally, the Papuan People's Assembly (MRP) is established as a cultural representation of the Papuan natives, with certain authorities to protect their rights, based on respect for customs (adat) and culture

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<sup>28</sup> Enny Martha Sasea, "Pengaturan Kewenangan Perlindungan dan Pelestarian Cagar Budaya di Tanah Papua" (Universitas Hasanuddin, 2025).

<sup>29</sup> Fredrik Sokoy, "Economic Development of Indigenous Papuans: A Critical Analysis to Build Independent and Dignified Traditional Villages," *Journal of Social Science* 3, no. 6 (2022): 1233–46, <https://doi.org/10.46799/jss.v3i6.437>.

<sup>30</sup> Andi Sugirman, et al. State and Protection of Cultural Heritage in Bone, South Sulawesi: Perspective of National Law and Islamic Law. Samarah: Jurnal Hukum Keluarga dan Hukum Islam Volume 8.No. 3.November 2024 ISSN: 2549 –3132; E-ISSN: 2549 –3167DOI: 10.22373/sjhk.v8i3.22125

<sup>31</sup> Vita Fatimah Armadhany dan Anjar Sri Ciptorukmi, "The Protection For Traditional Cultural Expression In Indonesian Constitution And National Law System," *International Journal of Business, Economics and Law* 26, no. 2 (2022): 44–47. Muhammad Zakir Husain, "Religious Moderation and the Development of Multicultural Societies in Indonesia: A Normative-Islamic Legal Study". *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2 (1):27–60. <https://doi.org/10.62976/ajisc.v2i1.1368>.

<sup>32</sup> Undang-undang (UU) Nomor 2 Tahun 2021 tentang Perubahan Kedua atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

<sup>33</sup> "Undang-undang (UU) Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua" (2001).



However, the implementation of this division of authority often faces challenges due to a lack of clarity in task execution on the ground, particularly in regions with geographical constraints and limited resources such as Papua. These challenges are further compounded by the absence of a clear legal definition of "traditional rights" as mandated in Article 18B Paragraph (2) of the 1945 Constitution, leading to potential discrepancies and conflicts in various regions <sup>34</sup>.

Within an Islamic framework, the principle of shura (deliberation) can be applied as a participatory mechanism to ensure the involvement of indigenous communities in decision-making. This aligns with the 1945 Constitution, which emphasizes deliberative democracy and maqāṣid-based governance practices to protect the common good. The application of shura in governance can be understood as a constitutional mechanism for inclusive policymaking. In the context of Papua, establishing consultative councils that involve indigenous elders, cultural leaders, and government representatives would align with both Article 18B(2) of the Constitution and Islamic constitutional principles of deliberation.

Mohammad Hashim Kamali <sup>35</sup> argues that syura promotes participatory decision-making that strengthens social justice, while Jasser Auda <sup>36</sup> frames it as an institutional safeguard against authoritarian interpretations of law. This approach would operationalize constitutional recognition of indigenous rights in line with Islamic governance values.

The role of the Cultural Heritage Expert Team (Tim Ahli Cagar Budaya, TACB) is crucial in supporting the management of cultural heritage in Papua, particularly in the determination and preservation of cultural sites. TACB was established under Law No. 11 of 2010 concerning Cultural Heritage (Undang-Undang Republik Indonesia Nomor 11 Tahun 2010 tentang Cagar Budaya), which mandates the involvement of expert teams in providing technical recommendations on cultural heritage status and preservation strategies. In practice, TACB provides assessments for sites such as the Aitumeiri Civilization Stone Site in Wondama, ensuring that preservation strategies are aligned with local cultural characteristics. Additionally, TACB functions as a mediator between central and local governments, as emphasized in Government Regulation No. 10 of 2013 on Cultural Heritage Management, ensuring that decisions on heritage management are based on scientific studies and local wisdom. However, the effectiveness of TACB in Papua is often constrained by the limited number of experts familiar with the local cultural context and by logistical challenges in conducting assessments in remote areas, as noted in official reports from the Directorate of Cultural Heritage and Museums, Ministry of Education and Culture (Kemdikbud).

The main challenge in the exercise of authority in Papua is the weak coordination between institutions, both between the central and regional governments and between agencies at the regional level. This lack of synergy leads to overlapping authority, for example in the supervision of infrastructure development activities that have the potential to damage

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<sup>34</sup> Renold Rinaldi, "Calls mounted for completion of indigenous rights bill amidst discrepancy on basic terminology," Indonesia Business Post, 2025.

<sup>35</sup> Mohammad Hashim Kamali, "Maqasid al-Shariah, Ijtihad and Civilisational Renewal" (London, 2021).

<sup>36</sup> Jasser Auda, *Maqasid Al-shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2008). Maknunia, J. ., Sutrisno, S. ., & Julianto, T. A. . (2025). Peacebuilding and Humanitarian Crises: The Role of Islamic Humanitarianism in Indonesia's Conflict Resolution and Disaster Response. ASEAN Journal of Islamic Studies and Civilization (AJISC), 2(1), 117–133. <https://doi.org/10.62976/ajisc.v2i1.1371>

cultural sites<sup>37</sup>. Other factors such as low institutional capacity, limited budgets, and lack of involvement of indigenous peoples in the decision-making process further exacerbate these challenges. A *collaborative governance* approach is needed to address coordination issues, emphasizing the importance of effective communication and clear role sharing among all stakeholders, so that the protection of cultural heritage can run in harmony with development in Papua.

### 3. Local Characteristics of Papua in Regulation

The social, cultural, and geographical uniqueness of Papua significantly influences the arrangement of authority in the protection of cultural heritage. Papua has ethnic diversity with more than 250 indigenous groups, each with distinctive traditions, languages, and value systems, such as the customary rights system that governs land ownership and cultural resources<sup>38</sup>. Geographical conditions—tropical forests, mountainous terrain, and remote coastal zones—significantly complicate the management of cultural heritage sites such as the Aitumeiri Civilization Stone Site in Wondama. These environmental factors often impede access, surveillance, maintenance, and enforcement of heritage protections. In Papua, where indigenous communities maintain deep spiritual, social, and economic ties to land, water, and ecology, regulations that are rigid or centrally imposed risk undermining those relationships. As argued in *Connecting social forestry to conservation policies in Tanah Papua*, for example, customary ecological knowledge and local land governance must be integrated into policy frameworks for heritage and natural resource regulation to be socially legitimate and ecologically effective<sup>39</sup>.

Accordingly, a context-sensitive regulatory approach is essential: one that allows national heritage and conservation policy to adapt flexibly to local geographies, indigenous customary law, and social dynamics. This ensures that preservation of cultural heritage does not conflict with indigenous livelihoods, identities, or customary territorial practices..

Accommodating customary values in cultural heritage protection regulations is a crucial step to ensure the effectiveness and acceptance of policies among the Papuan people. Indigenous values, such as respect for ancestors and a spiritual connection to the land, are not merely symbolic but serve as normative foundations that guide how land and cultural sites are managed. These principles can be explicitly translated into *Special Regional Regulations* (*Perdasus*) through concrete articles. For example, a *Perdasus* could require that any development project obtain prior approval from the local customary council (*dewan adat*) before activities are conducted on sacred lands, or mandate the inclusion of spiritual impact assessments alongside environmental ones. Such mechanisms would operationalize the “spiritual connection to the land” into enforceable regulatory provisions.

However, despite the legal recognition of indigenous participation under Law Number 2 of 2021 concerning the Special Autonomy of Papua Province, the actual role of indigenous peoples in decision-making remains weak. This is largely due to structural barriers—limited access to formal governance processes, lack of representation in planning bodies, and the

<sup>37</sup> Sasea, “Pengaturan Kewenangan Perlindungan dan Pelestarian Cagar Budaya di Tanah Papua.”

<sup>38</sup> Sasea. See also, Riandi, M. ., & Rusdiyah, R. (2025). The Interaction between Islam and Local Wisdom in Indonesia: A Normative-Philosophical Study. *ASEAN Journal of Islamic Studies and Civilization* (AJISC), 2(1), 93–115. <https://doi.org/10.62976/ajisc.v2i1.1370>

<sup>39</sup> Sepus M. Fatem, “Connecting social forestry to conservation policies in Tanah Papua,” *Forest and Society* 3, no. 1 (2019): 141–47, <https://doi.org/10.24259/fs.v3i1.5865>.

dominance of administrative procedures that favor state institutions over customary authority. As a result, decision-making often takes a *top-down* approach, where policies are formulated by government agencies without genuine consultation with the indigenous communities, who are the main guardians of cultural heritage.

This imbalance not only undermines the legitimacy of cultural protection efforts but also risks eroding the very values the law seeks to preserve. Strengthening indigenous participation, therefore requires not only formal recognition in *Perdasus* but also institutional mechanisms—such as joint committees or mandatory consultation clauses—that ensure customary voices directly influence cultural preservation and development decisions. By embedding these participatory guarantees, the government can create a regulatory framework that aligns with local wisdom, promotes cultural sustainability, and harmonizes infrastructure development with the preservation of Papua's living heritage.

## Discussion

### The Challenge of Harmonization: Constitutional Authority and Cultural Heritage Protection

One of the main challenges in protecting cultural heritage in Papua lies in the fragmentation of authority among state institutions. The overlapping roles of the central, provincial, and district governments often create uncertainty in decision-making, especially in relation to infrastructure projects that intersect with cultural heritage sites <sup>40</sup>. This regulatory fragmentation has tangible consequences. For example, in the construction of the Trans-Papua Highway, several segments passed through customary lands and sacred areas without adequate cultural impact assessment. A 2023 study by Wambrauw and Sumule found that differing interpretations between the Ministry of Public Works and the Papua Provincial Cultural Office over land classification delayed compensation processes and caused disputes among local clans <sup>41</sup>. These institutional frictions demonstrate how the unclear delineation of authority translates into real harm—conflicting regulations, duplication of programs, and delayed heritage protection measures.

The weak coordination between central and regional governments further exacerbates the problem. Although Papua's Special Autonomy Law (Law No. 2/2021) grants local governments broader authority, in practice, they often lack the financial and technical resources to implement it effectively. A case in point is the Youtefa Bay cultural site in Jayapura, where local authorities approved development permits without consulting the local customary council. This imbalance—where central agencies dominate decision-making while regional governments remain under-resourced—reflects a persistent top-down model that sidelines indigenous participation <sup>42,43</sup>.

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<sup>40</sup> Ortwin Renn, Andreas Klinke, dan Marjolein van Asselt, "Coping with Complexity, Uncertainty and Ambiguity in Risk Governance: A Synthesis," *Ambio* 40, no. 2 (2011): 231–246, <https://doi.org/10.1007/s13280-010-0134-0>.

<sup>41</sup> Agus Irianto Sumule et al., "Culturally grounded pathways to sustainable agricultural investment in Papua," *Edelweiss Applied Science and Technology* 9, no. 7 (2025): 1020–31, <https://doi.org/10.55214/25768484.v9i7.8803>.

<sup>42</sup> Muhammad Mutawalli Mukhlis et al., "Investment Law in Papua: Between Regulatory Certainty and Protection of Indigenous Peoples' Rights," *PAMALI Pattimura Magister Law Review* 5, no. 3 (2025): 574–84, <https://doi.org/10.47268/pamali.v5i3.3453>.

<sup>43</sup> Tahir Ali et al., "Facilitating Sustainable Disaster Risk Reduction in Indigenous Communities: Reviving Indigenous Worldviews, Knowledge and Practices through Two-Way Partnering," *International J. Environ. Res. Public Health* 18, no. 3 (2021): 1–28, <https://doi.org/https://doi.org/10.3390/ijerph18030855>.

Enforcement of constitutional and statutory norms also remains weak. Sanctions for violations of cultural heritage protection are seldom applied, partly due to the remoteness of sites and limited law enforcement capacity. This lack of enforcement undermines Article 32 and Article 18B(2) of the 1945 Constitution, which mandate the protection of cultural heritage and indigenous rights. When constitutional norms fail to translate into coherent regulatory practice, public trust erodes, and the sustainability of Papua's cultural heritage is placed at risk.

### Harmonization Strategy for Destruction Prevention and Sustainability

The harmonization strategy for protecting cultural heritage in Papua must rest on both constitutional and Islamic legal foundations. From a constitutional perspective, Article 18B paragraph (2) of the 1945 Constitution mandates the state to recognize and respect the rights of indigenous peoples. This recognition serves as a constitutional cornerstone for integrating national law and customary law in cultural heritage protection. Law No. 2 of 2021 concerning Special Autonomy for Papua must therefore be optimized through Special Regional Regulations (Peraturan Daerah Khusus/Perdadas) that strengthen the authority of customary institutions and community-based decision-making in heritage preservation<sup>44</sup>. Harmonization in this sense is not merely regulatory coordination, but the realization of constitutional justice that safeguards indigenous identity and local wisdom within Indonesia's plural legal framework.

From the perspective of Islamic constitutional thought, cultural heritage protection aligns with the *maqāṣid al-sharī'ah*—the higher objectives of Islamic law—particularly *hifẓ al-dīn* (protection of religion), *hifẓ al-'aql* (protection of intellect), and *hifẓ al-nasl* (protection of lineage). Preserving the cultural and historical legacy of Papua helps sustain the moral, intellectual, and generational continuity of its people—key components of human civilization emphasized in *maqāṣid* theory. As Jasser Auda notes, *maqāṣid* are dynamic and holistic objectives that encompass the preservation of values essential for human dignity and collective identity<sup>45</sup>. Therefore, cultural protection is both a constitutional obligation and an Islamic imperative—an act of preserving the intellectual and spiritual fabric that binds communities across generations.

In addition, the Islamic legal doctrine of *'urf ṣaḥīḥ* (legitimate custom) provides a jurisprudential foundation for recognizing Papuan customary law. According to classical jurists, *'urf ṣaḥīḥ* represents valid local practice as long as it does not contradict the principles of sharia. Thus, the acknowledgment of Papuan customs in managing sacred sites, rituals, and traditional knowledge reflects an Islamically legitimate form of legal pluralism. It harmonizes state recognition of indigenous law with sharia's respect for cultural diversity, reinforcing the moral authority of Article 18B(2) of the 1945 Constitution and the constitutional value of *Bhinneka Tunggal Ika* (Unity in Diversity).

Equally vital is the implementation of the principle of *syura* (consultation) as a model of participatory governance<sup>46</sup>. In the Papuan context, *syura* can guide the establishment of Consultative Cultural Councils (*Majelis Musyawarah Budaya*) at the district level, consisting of representatives from government, customary institutions, religious authorities, and cultural experts. These councils would deliberate on decisions related to the management, restoration, and

<sup>44</sup> Muhammad Mutawalli Mukhlis et al., "Regional Autonomy System: Delegation of Authority and Power of Regional Government in Indonesia in the Study of Fiqh Siyasah," *Al-Istinbath Jurnal Hukum Islam* 9, no. 2 (2024): 505–26.

<sup>45</sup> Auda, *Maqasid Al-shariah as Philosophy of Islamic Law: A Systems Approach*.

<sup>46</sup> Muh Mutawalli Mukhlis et al., "Challenges and Solutions in the Appointment of Acting Regional Heads (PJ. Kepala Daerah) in Indonesia: a Sharia and Islamic Democracy Perspective," *Justicia Islamica* 22, no. 1 (2025): 115–34, <https://doi.org/10.21154/justicia.v22i1.10688>.

protection of cultural heritage sites. This model institutionalizes *syura* as an Islamic mechanism of inclusive governance—where decision-making is not top-down but rooted in communal dialogue and moral consensus. As An-Na'im asserts, *syura* ensures governance grounded in justice, participation, and respect for moral autonomy, principles that resonate with Indonesia's democratic and constitutional ethos<sup>47</sup>.

Furthermore, the harmonization strategy must integrate the constitutional principle of diversity with the Islamic value of justice in plurality. Recent constitutional scholarship underscores the need to build a pluralistic legal framework that accommodates state law, customary law, and Islamic values in a balanced manner<sup>48</sup>. In this sense, *maqāṣid al-sharī'ah* serves as a moral compass for ensuring that legal and policy measures not only protect physical heritage but also sustain the spiritual and intellectual legacies (*hifẓ al-dīn* and *hifẓ al-'aql*). As Hasan et al. emphasize, the Islamic constitutional vision supports pluralism and protection of diversity as integral to preserving human lineage and societal harmony (*hifẓ al-nasl*)<sup>49</sup>.

In conclusion, a sustainable harmonization strategy in Papua must operate on two complementary axes: the constitutional and the Islamic. It should strengthen the state's constitutional duty to protect indigenous communities while embodying the *maqāṣid*-based vision of preserving religion, intellect, and lineage. Through *syura*-based consultative institutions and the legitimization of *'urf ṣaḥīḥ*, Indonesia can achieve a model of governance that not only prevents the destruction of cultural heritage but also nurtures the moral, intellectual, and civilizational continuity of the Papuan people.

## Case Study: Aitumeiri Civilization Stone Site

### 1. Historical and Cultural Value of the Site

The Aitumeiri Civilization Stone Site (Batu Peradaban Aitumeiri) in Miei, Wasior District, Teluk Wondama Regency, West Papua, is not merely a historical relic but an active embodiment of Indonesia's constitutional and cultural identity. The site's association with I.S. Kijne's early educational initiatives in the 1920s makes it an empirical manifestation of the constitutional mandate to advance education and culture (Article 32 of the 1945 Constitution). Its significance extends beyond archaeology—it represents the genesis of Papuan intellectual awakening, marking the community's transition from oral tradition to formalized learning<sup>50</sup>.

The name *Batu Peradaban* ("Stone of Civilization") carries layered meaning. According to local accounts and municipal records, the designation commemorates the stone's role as the literal and symbolic "seat" of learning where students first gathered on arranged rocks and where the earliest lessons in reading, writing, and numeracy were delivered. Over time the stone came to represent the community's shift from exclusively oral knowledge

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<sup>47</sup> An-Naim, *Islam and the Secular State*.

<sup>48</sup> Jenny Kristiana Matuankotta dan Eric Stenly Holle, "State Recognition and Respect for the Rights of Customary Law Communities in the Maluku Islands Region in the Exploitation of Forest Resources," *SASI* 28, no. 1 (2022): 107–23, <https://doi.org/10.47268/sasi.v28i1.852>.

<sup>49</sup> Baidar Mohammed Mohammed Hasan et al., "Islamic Constitutionalism and the Management of Diversity: The Dialectic of Coexistence and Empowerment -A Case Study of 'Rukun Negara' and 'Pancasila,'" in *International Conference on Islamic Economic (ICIE)*, 2025, 199–213.

<sup>50</sup> Pemerintah Daerah Kabupaten Teluk Wondana, "Situs Batu Peradaban Aitumeiri di Wondama Diresmikan, Ketua Sinode GKI Ajak Umat Hayati Kata-kata Pendeta I.S Kijne," Pemerintah Daerah Kabupaten Teluk Wondana, 2024.

transmission toward literate, organized education—hence its title as a marker of a new civilizational moment<sup>51</sup>.

Central to the site's history is Izaak (Isaak/Isack/Isyak) Samuel Kijne (I.S. Kijne), a Dutch missionary–educator whose work in western New Guinea is documented in missionary archives and regional histories. Kijne organized early teacher-training and village schooling that drew pupils from surrounding coastal and island communities; local commemorations and historical projects explicitly link his activities to the foundation and growth of the school complex at Aitumeiri<sup>52</sup>. These accounts support the reading of the stone as both a classroom and a symbol of the educational transformations that followed.

For the local Wondama community, the site retains potent spiritual and ancestral significance. Community ceremonies, church processions, and school commemorations treat the hill and its stones as sacred loci where ancestral memory, Christian missionary influence, and local aspirations meet. Interviews reported in regional media and the local government's revitalization project describe annual observances and pilgrimages that keep the site alive as an affective center—a place where collective identity is re-affirmed and where the teaching legacy of the past is ritualized in the present<sup>53</sup>. This lived reverence strengthens the argument for conservation not only on archaeological or historical grounds but as a matter of ongoing cultural practice and social cohesion.

Legally and constitutionally, protecting Aitumeiri aligns with national obligations. Article 32 of the 1945 Constitution (advancement and preservation of national culture) and Article 18B(2) (recognition of rights of indigenous peoples) provide a national framework that supports safeguarding the site as an element of Indonesia's cultural patrimony and as a location intimately tied to indigenous identity and memory. The local government's recent revitalization initiatives and budget allocations demonstrate how these constitutional principles are being operationalized at the regional level<sup>54</sup>.

From the perspective of Islamic constitutional thought and *maqāṣid al-sharī'ah*, the Aitumeiri story resonates with the *maqāṣid* objective of *hifẓ al-'aql* (protection of intellect). Scholarship on *maqāṣid* emphasizes education and preservation of intellectual capacities as core social goods; protecting a site that materially and symbolically anchored the spread of learning among Papuans can therefore be framed as both a constitutional duty and a moral/legal imperative in Islamic evaluative terms<sup>55</sup>. This additional normative layer—constitutional, communal, and ethical—adds both emotional and scientific weight to proposals for conserving the site.

Aitumeiri's value is multi-dimensional: it is (1) a historically verifiable locus of early mission-led education associated with I.S. Kijne, (2) a culturally and spiritually charged place of memory for the Wondama community, (3) a symbolically loaded “Stone of Civilization” marking Papuan intellectual change, and (4) an object whose preservation fulfills

<sup>51</sup> Indonesia-Tourism.com, “Aitumeiri Hill,” Indonesia-Tourism.com, 2021.

<sup>52</sup> West Papua Daily, “Papuan history unveiled: Dutch missionaries' influence on Papua's education and culture,” West Papua Daily, 2023.

<sup>53</sup> Pemerintah Daerah Kabupaten Teluk Wondana, “Situs Batu Peradaban Aitumeiri di Wondama Diresmikan, Ketua Sinode GKI Ajak Umat Hayati Kata-kata Pendeta I.S Kijne.”

<sup>54</sup> Domi Dese Lewuk, “KNPI Teluk Wondama Apresiasi Revitalisasi Situs Batu Peradaban Aitumieri,” Kabardaerah.com, 2024.

<sup>55</sup> Mohammad Hashim Kamali, “History and Jurisprudence of the *Maqāṣid*,” *American Journal of Islam and Society* 38, no. 3 (2021): 8–34, <https://doi.org/https://doi.org/10.35632/ajis.v38i3-4.3110>.

constitutional duties and resonates with broader ethical frameworks such as *maqāṣid*. These converging grounds—historical, social, legal, and ethical—strengthen the case for formal protection, revitalization, and community-centered interpretation of the site.

## 2. Site Management Challenges

The Aitumeiri Civilization Stone Site, located in Miei, District of Wasior, Teluk Wondama Regency, Papua Barat, faces significant threats due to ongoing development projects and systemic governance failures. The local government has announced plans to revitalize the site, aiming to transform it into a national cultural heritage area. These plans include the construction of new buildings, roads, and supporting infrastructure. While intended to promote tourism and education, these developments pose real risks to the site's cultural and environmental integrity. Notably, the revitalization plans have not been accompanied by comprehensive Environmental Impact Assessments (EIAs) or detailed heritage impact studies. Without these evaluations, potential adverse effects on archaeological features, sacred zones, and the spatial layout of the site may not be properly mitigated, leaving the heritage vulnerable.

The governance framework surrounding Aitumeiri is highly fragmented. Multiple government agencies, including the Ministry of Public Works, the Ministry of Education and Culture, and local authorities, share overlapping responsibilities, but coordination among them is weak. The lack of a unified governance structure has led to conflicting priorities and uneven enforcement of protective measures. For example, while the provincial Balai Pelestarian Cagar Budaya (BPCB) has registered Aitumeiri as a regional heritage site, its authority to enforce protection is limited without central government recognition, leaving the site exposed to potentially damaging projects.

Indigenous communities, whose traditional knowledge and cultural connections are central to the identity of Aitumeiri, have largely been excluded from decision-making. There is no documented evidence that local elders or community representatives were formally consulted during the drafting of masterplans or the early stages of development projects. Their objections, if raised, appear not to have influenced planning, reflecting a broader failure to operationalize constitutional protections for indigenous rights under Article 18B(2) of the 1945 Constitution. Similarly, the Cultural Heritage Expert Team (TACB), which should provide specialized oversight, has not played a visible role in safeguarding the site, further highlighting institutional weaknesses.

From an Islamic constitutional perspective, these challenges call for governance models based on *syura* (consultation). The establishment of consultative councils that include indigenous elders, cultural experts, and local government officials would institutionalize participatory decision-making and create a structured space for dialogue. As <sup>56</sup> and <sup>57</sup> argue, *syura* serves as a democratic mechanism that ensures inclusivity and legitimacy in governance while maintaining alignment with Islamic ethical principles. In the Papuan context, such councils could function as platforms for mediating disputes between communities and authorities through consensus-oriented deliberation, ensuring that decisions reflect both

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<sup>56</sup> An-Naim, *Islam and the Secular State*.

<sup>57</sup> Auda, *Maqasid Al-shariah as Philosophy of Islamic Law: A Systems Approach*.

customary values and statutory regulations. Moreover, by incorporating expert knowledge on environmental and cultural preservation, these councils can formulate long-term strategies for safeguarding sacred sites and promoting sustainable development. Thus, the model would not only embody constitutional democracy and Islamic consultation but also strengthen conflict resolution and guarantee the continuity of indigenous cultural heritage.

The Aitumeiri case illustrates the critical need to integrate indigenous customary law, recognized under Islamic jurisprudence as *‘urf ṣaḥīḥ* (valid custom), into heritage management. The absence of constitutional or regulatory mechanisms to incorporate local wisdom exacerbates tensions between state-driven initiatives and indigenous expectations. A governance model that actively includes indigenous participation, ensures rigorous environmental and heritage assessments, and clearly delineates responsibilities among government agencies would substantially enhance the protection of Aitumeiri. Such an approach would align constitutional obligations, Islamic ethical principles, and local legitimacy, providing a sustainable framework for preserving this invaluable cultural and spiritual site.

## CONCLUSION

This study concludes that harmonizing constitutional and Islamic law for the protection of Papua’s cultural heritage—illustrated through the Aitumeiri Civilization Stone Site—requires an integrated and participatory governance framework. Despite the solid foundation provided by Article 32 and Article 18B(2) of the 1945 Constitution, and statutory instruments such as Law No. 11 of 2010 and Law No. 2 of 2021, implementation remains constrained by fragmented authority, weak coordination, and limited indigenous involvement.

From the perspective of *maqāṣid al-sharī‘ah*, the protection of cultural heritage reflects the preservation of religion (*ḥifẓ al-dīn*), intellect (*ḥifẓ al-‘aql*), and lineage (*ḥifẓ al-nasl*), affirming that safeguarding culture is both a constitutional duty and a moral imperative. The novelty of this study lies in integrating *maqāṣid al-sharī‘ah* into constitutional law analysis within Papua’s special autonomy framework, offering a new theoretical basis for cultural governance in plural legal contexts.

To strengthen practical implementation, the study emphasizes the need for consultative and participatory mechanisms inspired by *syura* principles, the development of *maqāṣid*-based regional regulations (*Perdasus*), and heritage impact assessments that involve indigenous communities. These measures can align constitutional obligations, Islamic ethical principles, and sustainable development goals.

This research acknowledges its conceptual limitations, as it relies primarily on normative and qualitative analysis. Future studies should include comparative and empirical approaches—such as examining models in Aceh or Malaysia—to evaluate the practical application of *maqāṣid*-constitutional harmonization in cultural heritage protection.

The Papuan local government needs to develop a cultural heritage management framework that integrates indigenous knowledge systems with modern conservation standards through instruments of Special Regional Regulations (*Perdasus*) that are rooted in both the 1945 Constitution and Islamic legal values. Such regulations must formally recognize the customary rights of indigenous peoples as guardians of cultural heritage, ensuring their role in determining management practices according to local traditions and values. Furthermore, constitutional



mechanisms should include the establishment of consultative councils involving indigenous leaders, cultural experts, and government representatives, reflecting the principle of syura (deliberation) in Islamic governance. This participatory model strengthens democracy and guarantees that every decision concerning heritage management respects both state law and customary law.

Education and capacity-building programs for indigenous communities should be expanded, particularly in conservation and documentation, so that local wisdom can be preserved and passed to future generations. At the same time, the state must ensure that heritage-sensitive infrastructure planning is mandatory through heritage impact assessments integrated into spatial planning.

Finally, the use of digital technology for documentation and monitoring should be developed under state authority, while maintaining respect for indigenous rights. Such measures not only strengthen legal certainty in cultural preservation but also embody the constitutional and Islamic duty to protect national identity and uphold justice for indigenous peoples.

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