

## The Legalization and Application of Osing Indigenous People's Customary Law Model in the Legal System

SRI WARJIYATI, SAFRIN SALAM, JAN ALIZEA SYBELLE,  
IMADUDDIN ABIL FIDA & RIDWAN

**Abstract** This research aims to analyze the application and normalization of the Osing indigenous people's customary law model in the Indonesian legal system. It discusses whether or not local wisdom as unwritten laws can be applied as guidelines in establishing the legal system in Indonesia. This research used the socio-legal method that views the law as how it is applied or how the law lives in society. Results show that people's plural socio-cultural values contained in well-preserved local wisdom, including those of Osing indigenous people in Banyuwangi, are often unwritten. Some view the importance of normalizing customary laws with local wisdom values in a positive law form with a location-limited enforceability. This can be applied through the procedures and mechanisms regulated in Indonesian Law No. 12 of 2011 on the Formation of Constitutional Regulations.

**Keywords:** • customary • law • osing • legal system • Indonesia

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CORRESPONDENCE ADDRESS: Sri Warjiyati, Ph.D., Associate Professor, Universitas Islam Negeri Sunan Ampel, Jalan Ahmad Yani No. 117, Jemur Wonosari, Wonocolo, Surabaya, East Java, 60237, Indonesia, e-mail: warjiyatisri@uinsby.ac.id. Safrin Salam, Ph.D., Senior Lecturer, Universitas Muhammadiyah Buton, Batupoar, Jalan Betoambri, No. 36, Lanto, Bau-Bau, Southeast Sulawesi, 93724, Indonesia, e-mail: safrinjuju@gmail.com. Jan Alizea Sybelle, Ph.D., Assistant Professor, Stellenbosch University, Victoria Street, Private Bag X1, Matie Land, Stellenbosch, 7602, South Africa, e-mail: janalsybelle@hotmail.com. Imaduddin Abil Fida, Ph.D., Assistant Professor, Sekolah Tinggi Agama Islam Muhammadiyah Probolinggo, Jalan Mahakam No. 1, Kedopok, Kec. Kedopok, Probolinggo City, 67231, Indonesia, e-mail: Imanuddin676@gmail.com. Ridwan, Ph.D., Associate Professor, Universitas Muhammadiyah Bima, Anggrek Street 16, Ranggo, Bima Regency, West Nusa Tenggara, Indonesia, e-mail: sahecapi13@gmail.com.

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## 1 Introduction

Various ethnic groups and sub-groups live in different areas in Indonesia. Each of them has its own characteristics, including unique customary laws. Most of these laws remain unwritten (Sulaiman, 2016, p. 16; Thontowi, 2015). Even so, many groups still use their customary laws to resolve occurring problems.

The existence of customary laws is acknowledged by the government as Indonesia applies three legal systems, namely the western, religious, and customary legal systems. The state and the customary laws have different binding power. They are constitutionally similar but they have different forms and aspects (Adji, 2019, p. 32).

Due to strong positive law, customary laws' existence has started to degrade, as people slowly refrained from using them to resolve legal disputes. People start to reject customary laws due to their lack of certainty. Even so, customary laws can become the main solution to achieve justice due to their win-win solution principle (Ratnawati & Triyanto, 2019). There need to be efforts to prevent the disappearance of customary laws. These laws need to be well-documented and applied in society. It is possible to turn customary laws into written laws. But there needs to be socialization to increase people's awareness for this cause (Senjaya, 2014, pp. 343–350).

It is crucial to normalize customary laws which have local wisdom values in a written form of law due to the strong pressure from positive law. Indonesian law apparatuses have had a very strong positivistic attitude from the colonial era up to now. In any issue where the Osing customary law and the positive legal regulations (the criminal code or other forms of Law, even the lowest level of laws, i.e., the regional regulations) conflict with each other, the law apparatuses will undoubtedly choose to use the positive law even though it contradicts the people's legal spirit (*volkgeist*) and local wisdom. The legalization of customary laws through its acceptance in the national positive law with special stipulations only applies at the provincial or city/district government levels where the customary laws (in this case the Osing customary laws) apply. This is in accordance with Kostrubiec's research, which found that generally, acts of local laws are sources of generally applicable laws, but they apply only in the area of responsibility of the bodies which adopted them (Kostrubiec, 2021, pp. 111–129; Senjaya, 2014, pp. 343–350).

Six years ago, Banyuwangi Regency was only a small regency in the eastern point of East Java province. It was known as a place to find shamans or to cross to Bali Island. But now, it is known as a tourist destination along with the popularity of the Ijen Crater and its blue fire as well as the Red Island Beach (Pantai Pulau Merah). The legalization of Osing customary laws in Banyuwangi as national laws with

limited regional applicability is not an impossible thing, as the Republic of Indonesia's Aceh Province has already applied the Aceh Qanun (regional regulations of the Aceh Province that is based on Islamic sharia). This legalization will lead to the preservation of customary laws and their local wisdoms that the national law does not have.

Banyuwangi also has cultural uniqueness, as it is home to the Osing ethnic group among other ethnic groups such as Javanese and Madurese. It is also home to the minority Balinese, Mandar, and Bugis ethnic groups. The Osing ethnic group is an ethnic sub-group of Javanese. They use the Osing language and they mostly live in Glagah, Licin, Songgon, Kabat, Rogojampi, Giri, Kalipuro, and Kota districts (Maylinda & Sudarmono, 2021). There are fourteen Osing customary communities, including Kemiren, Andong, and Olehsari, with the following characteristics: 1) they use the Osing language, 2) they have a village elderly (*danyang desa*), 3) they are homogenous as they tend to marry those from the same group, 4) they still undergo *bersih desa* (cleaning the village) ritual, 5) they embrace ancestral beliefs, and 6) most of its people work in the agricultural or carpentry sectors.

**Figure 1:** A barong in the middle of a Kemiren Village street with two bird figures



Source: Hasan, 2016.

The Kemiren customary community in Kemiren Village, Glagah District is deemed the most persistent village in applying Osing traditions. Thus, in 1995, the regional government deemed it a cultural heritage and an Osing Customary Tourism Village (Sufia et al., 2016, pp. 726–731). The Kemiren Village still applies the *barong ider bumi* (a ritual to repel bad luck by wearing traditional masked costumes) and *arak-arakan* (parade) customs. They also maintain the traditions of deliberation and

togetherness in their daily lives. In 2013, the Banyuwangi government organized annual events in this village, such as *Ngopi Sewu* (Coffee Festival), *Tumpeng Sewu* (a ritual to repel bad luck by eating rice piled up in the form of a cone on the street at night), and *Mepeh Kasur* (the tradition of drying beds together on the day of *Tumpeng Sewu*) (Suhaemo, personal communication, November 13<sup>th</sup>, 2022).

Kemiren village people still use the Osing language. Most of their houses also have the special characteristics of a traditional Osing house. To understand more about Osing traditional houses, art, and cultures, tourists can visit the Ganjah Arum Sanggar (a studio). This shows that the Osing culture is highly preserved in Kemiren village (Rofikoh, 2018, p. 25).

There need to be efforts to preserve Osing cultures. This is because the Osing customary community and village have a great role as part of the nation's plurality. Culture is part of an identity. Turning it into mere performances to attract tourists can strip away its spirit. It is counterproductive for the customary community (Hadzantonis, 2019, pp. 556–561). But the copious number of tourists that visit the Kemiren Village and its status as a customary tourism village do not decrease the Osing people's commitment and enthusiasm to strongly preserve their cultures and ancestral customs. Thus, the researcher is interested to study the application and normalization of the Osing indigenous people's customary law model in the legal system in Indonesia. This research offers originality as there have not been any other studies that analyze the legalization of Osing customary laws into the Indonesian legal system.

## 2 Research Methods

This research was conducted in Kemiren Osing Customary Village, Banyuwangi Regency, East Java, Indonesia in September 2021. This was because the Kemiren Village highly preserves the Osing culture. The researchers conducted observation and documentation, as well as interviewed Osing customary society and other related parties. This descriptive research used the qualitative method that produced descriptive data in the form of written or oral words from research subjects or observed behavior (Ali, 2021).

Because this research used the socio-legal research method, primary data became the main focus. Primary data were directly sourced from society. Meanwhile, secondary data were obtained from library research. Researchers studied documents, scientific articles, and books as secondary sources (Haq et al., 2021, pp. 485–501).

The socio-legal research method was a legal research method that refer to sources that sociologically exist in society. It concerns how the law lives in society or how

society sees and acts upon the law. Secondary sources are written sources such as legal regulations, courtly decisions, legal doctrines, and legal literature. In this method, the researchers conducted an analysis on these sources, especially primary sources, to answer the formulated research question (Zaini, 2011).

In this context, interviews and observations were some of the suitable methods of data collection used in socio-legal research. This was because the socio-legal research method aimed to analyze the law that lives in society. Therefore, it required data that were directly obtained from the field through interviews and observation. Even so, in this research, secondary data were also used as additional sources to support the analysis towards the data sources that existed in the field. For instance, if the research aimed to analyze local wisdom or how the law (in this case the Osing customary law) lives in society, therefore interviews with actors, Osing societal members, or other parties related to this law can provide data that are useful in answering the research question (Ali, 2021).

**In this case, it is crucial for the researchers to make sure that these interviews have validity and integrity. To make sure of the validity, the researchers conducted interviews to: (1) Suhaemo, an Osing customary leader, (2) Saleha, a representative Osing woman who is also the mother-in-law of Mr. Suhaemo, and (3) Suwito, a member of the Osing customary society.** As there is high consideration for the validity and integrity of the sources, the research must be carefully carried out. It must be suited to the aim and context of research (Laksana et al., 2016). The socio-legal research method is often used in legal research as it allows researchers to logically and systematically conduct data collection and analysis on social dynamics and other factors that influence the Osing customary law in the Osing society. Therefore, this method must be wisely used by combining primary data and other secondary data to obtain a more comprehensive understanding on the analyzed legal issue (Zaini, 2011).

### 3 Literature overview

Customary people is a orderly social unit whose members are not only bound to live in an exclusive area, both in worldly terms as a place of residence and also in spiritual terms as a place to worship ancestor spirits (territorial). But they are also bound to genealogic correlation due to blood or relational ties to one ancestor, either impersonally through marital ties or personally through genealogic customary ties. Each customary group has norms that regulate possibly occurring problems in their customary environment. Customary law is a coercive behavioral law that only applies to indigenous groups or original Indonesian societies that is yet to be codified into constitutional regulations (Nadlir, 2016, p. 23).

Then, the decision of the International Labour Convention (ILO) No. 169 of 1969 Article 1 (1b) states that a customary community is a community that has its own values as well as ideological, political, economic, cultural, social, and territorial systems. The Indonesian government constitutionally acknowledges the customary community's existence in the 1945 Constitution Article 18B clause (2). It states that the state acknowledges and respects units of customary societies as well as their traditional rights so long as they still apply according to the development and principles of the Republic of Indonesia Unified State as stipulated in the law. The existence of customary groups obtained *de jure* acknowledgement and ratification in Article 28I clause (3) of the 1945 Constitution which stipulates that the cultural identities and rights of traditional societies are respected in line with the development of the civilization and era (Sihabudin, 2013).

Local wisdom can be understood as wise local ideals with good values that are followed by community members (Kurnia et al., 2022). Local wisdom functions to: 1) conserve and preserve natural resources; 2) develop human resources; 3) develop cultures and knowledge; 4) produce advice, beliefs, literature, and prohibitions; 5) provide social meaning, for instance through integrative communal/kinship ceremonies; 6) produce morals and ethics; 7) provide political meaning, for instance through the *ngangluk merana* ceremony (a ceremony of Hindunese people in Bali to ask for protection and abundant crop) or patron-client power dynamics.

Local laws are based on both past and living values in society. Local laws need not be rational as modern laws, as the former originated from religious or traditional laws. Such systems are inseparable from the influence of morality and religion. This contradicts the legal modern system that according to Unger requires the fall of traditional systems (Thontowi, 2015).

The Indonesian nation is inseparable from social and cultural pluralism. This pluralism is visible in the values that exist, grow, and develop among Indonesian citizens and societies, such as deliberation, togetherness, communalism, magic-religious beliefs, and respect for pluralism (Atmaja et al., 2020, pp. 8–16). Because of that, legal pluralism cannot be avoided as part of socio-cultural pluralism. Even so, according to Rahardjo, legal pluralism cannot be found only by studying formal laws. To find the nuance of legal pluralism, one must seek it in society (Arizona & Cahyadi, 2013, p. 43). The Indonesian constitution acknowledges customary laws that exist and develop in society. Because in this country, legal pluralism cannot be ignored.

Various norms live in Indonesian communities, especially those concerning rights and responsibilities associated with natural resources that originated from their ancestors. They regard natural resources as more than mere means to obtain economic benefits. Instead, natural resources have cultural, spiritual, social,

political, and ecological values in many customary communities (Ziborov et al., 2021, pp. 232–245). This may be because indigenous groups perceive themselves as an integral part of the ecological community that is thick with ecological morality.

#### 4 Research

Most Osing people in Banyuwangi currently reside in nine districts of Banyuwangi's 24 districts. These districts are Banyuwangi (Kota/City), Giri, Kabat, Rogojampi, Songgon, Singojuruh, Cluring, and Genteng. These villages are Osing culture pockets that still maintain the Osing traditional cultures, customs, and arts. The currently surviving Osing customary communities are Mangir, Cungking, Grogol, Kemiren, Dukuh, Glagah, Andong, Olehsari, Mandaluka, Bakungan, Macan Putih, Tambong, Aliyan, and Alas Malang customary communities (Aripin, 2019, p. 17; Rofikoh, 2018).

The researchers believe that this paper may give positive contribution towards the government's efforts in maintaining the diversity of Indonesia's legal culture as well as maintaining the preservation of the customary law that exists in Osing society. It is hoped that the results of this research may give beneficial recommendation for the government and the society in the effort to adapt and normalize Osing people's customary law to the legal system that applies in Indonesia.

Apart from that, the researchers believe that this research can give valuable input to legal experts and academicians in developing knowledge on customary law and the legal system in Indonesia. This research may also contribute to the development of science and technology. It can also become a referential material for further research on the customary laws in Indonesia. Therefore, the research on the legalization and normalization of Osing society's customary law model in the legal system that apply in Indonesia is highly crucial and it is an interesting topic to be analyzed.

This paper aims to analyze the roles of customary villages as buffer zones of Osing traditions and local wisdom. Traditions are opinions, beliefs, customs, etc., that are passed on from generation to generation. Then, local wisdom/indigenous knowledge/local genius are wise local knowledge or ideas that are proven to provide resilience and growth power to resolve local issues (Öktem, 2014, pp. 750–774). There are variations between each Osing customary community. But this paper will describe traditions and local wisdom that represent the Osing culture in general (Öktem, 2014).

Customary laws are laws that which in a certain community or society. They were formed from values and norms that developed in that society for centuries. Customary laws are commonly delivered orally and are passed down from

generation to generation. In several cases, they are written in certain forms of documents.

According to Suwito in a personal interview, societies that embrace the Osing customary law accept that customary law and apply it comunally. It has become the society's customary law from generation to generation, becoming an inseparable part of their daily lives. But it must be remembered that customary laws are not always in line with national or international laws. Even, in some cases, they may violate the human rights (Suwito, personal communication, December 2<sup>nd</sup>, 2022).

As a legal system that grows and develops from society, customary laws have strengths and weaknesses. The strengths are that customary laws can help maintain the identity and culture of a society, while providing an alternative for societies that do not have access to or who do not believe in the national legal system. But the weakness is that customary laws may become a source of discrimination and violation of human rights, especially against groups that are deemed to be different or who are deemed to violate their traditional norms.

Another tradition that exist in Osing customary people of Banyuwangi, as delivered by Suhaemo is unique marriage traditions (Suhaemo, personal communication, November 13<sup>th</sup>, 2022). The Osing customary marriage in Banyuwangi have some differences when compared with other Javanese customs. These are some of the reasons behind this:

1. The Banyuwangi customary marriage is influenced by Balinese culture. Due to its location that is directly adjacent to Bali, it is no wonder that the Banyuwangi customary marriage is influenced by Balinese culture. For instance, in the customary marriage in Banyuwangi, there is the "*mappaci*" or "*mepepada*" ritual, i.e., the procession of decorating the bride's body with natural ingredients such as pandanus, tumeric, and flowers. This ritual is similar to the "*mepandes*" ritual in Balinese customary marriage.
2. The Banyuwangi customary wedding attire has its own characteristics. It is usually made of *songket* fabric (weaved fabric) with special traditional motifs. Meanwhile, the Javanese customary wedding attire is usually made of batik fabric. This shows the different textile culture between Banyuwangi and Javanese cultures.
3. The accompaniment music in Banyuwangi customary marriages are also different from that of other Javanese customary marriages. Banyuwangi customary marriages often use traditional musical instruments such as *gamelan* (traditional bronze percussion instruments), *rebab* (bowed instrument), and gongs. Meanwhile, Javanese customary marriages generally use *gamelan* and *gender* (a percussion instrument made of metal from Java and Bali).



4. Banyuwangi customary marriages have some special traditions. For instance, the "*ngejot*" tradition where the bride steps on eggs before entering the new home. This is carried out as a symbol of sacrifice and faithfulness in marriage. This tradition is not found in other Javanese customary marriages.
5. Banyuwangi customary marriages have various complicated ceremonies and processions. Apart from the wedding ceremony, there are also the *siraman* ceremony (bathing the bride and groom before they get married), the *sunatan* ceremony (circumcision of young boys), etc., that must carefully be carried out. This shows the complexity in Banyuwangi customary marriages' procedures and processions.

In general, Banyuwangi customary marriages have uniqueness and differences when compared to other Javanese customary marriages. This shows the rich and diverse cultures and customs in Indonesia that need to be preserved and appreciated (Sari & Megasari, 2020).

In the context of the writers' professional perspective, research on the Osing customs of Banyuwangi is crucial as it provides profound insight and understanding on the diverse cultures and customs in Indonesia. As professionals, it is crucial for us to understand and appreciate local cultures around us. This is because it can help us in better interacting with society more effectively. This research is also crucial as it discusses the application and normalization of the Osing customary people's laws in the Indonesian law. This has great implication towards the Indonesian government's efforts in maintaining the cultural diversity and preserving the customary law of the Osing people.

Apart from that, this research also provides valuable insight for law experts and academicians in developing knowledge on customary law and the legal system in Indonesia. With greater understanding on the Osing people's laws, it is hoped to help Osing people overcome legal issues they face and maintain their traditions and cultures. Because of that, this research can provide significant contribution in the effort to maintain the cultural diversity and preserve customary laws in Indonesia.

#### **4.1 Regional Regulation of Banyuwangi Regency No. 14 of 2017 on Preservation of Inherited Cultures and Customs in Banyuwangi**

The Regional Regulation of Banyuwangi Regency No. 14 of 2017 initiated the empowerment, preservation, and development of customs and customary institutions. This regional regulation aimed to develop human resources, preserve cultures, create regional cultures that support the national culture, as well as increase the role of customary institutions in the people's societal lives (Nursafitri et al., 2020, pp. 180–189).

The Osing people from Banyuwangi have their own language, namely the Osing language. This language was directly derived from the Ancient Javanese language. But this language is not Javanese as it has a different dialect.

Similar to the Tengger ethnic group of Bromo-Tengger-Semeru National Park, East Java, the Osing ethnic group lives among people of Javanese and Madurese ethnic groups. Thus, in certain areas of the Banyuwangi Regency, people use Javanese or Madurese just like the majority of people in East Java province as opposed to the Osing language.

**Figure 2:** The Gandrung dance



Source: Pepenk, 2021.

The fabulous arts of the Osing ethnic group contain mystical elements, similar to those of the Bali and Tengger indigenous peoples. A special art from Banyuwangi is the *Gandrung* dance (literally meaning 'falling in love' in Javanese) which serves to welcome guests. This dance is a tourism mascot of Banyuwangi. Other arts include *Seblang* ceremony (to seek welfare and safety), *Prabuworo* (dramatic dance on legendary warriors), *Damarwulan* (a drama concerning the ancient Majapahit and Blambangan kingdoms), *Angklung* (musical instrument), *Barong* dance (a dance using costumes of a panther-like creature), *Jaranan* (a traditional song about horses), and *Jedor* (a traditional orchestra). Apart from different dances, there are also annual customary traditional ceremonies, such as the *petik laut* tradition

(harvesting the sea), *metik* (harvesting rice paddy and coffee), *Rebo Wekasan* (asking God to protect people from bad luck and disasters), *Kebo-keboan* (a thanksgiving ceremony unique to Banyuwangi), *Ruwatan* (a Javanese tradition to free people from dangers), *Tumplek Punjen* (parents giving advice to children), *Gredoan* (an Osing tradition to find partners), *Endog-endogan* (a Banyuwangi tradition to celebrate Prophet Muhammad's birthday), etc. (Paramita et al., 2021).

The Osing ethnic group still has a strong understanding towards their group's cultures, customs, and values. People with high awareness and enthusiasm for culture often participate in the routine customary ceremonies, such as *moco lontar* (reading a script on Prophet Joseph) that is carried out every Wednesday night, *tumpeng sewu*, *seblang*, *ider bumi*, and *kebo-keboan*. The cultures they are associated with are deemed as a set of human behavioral patterns that rely on creativity and beliefs that are essential for life. These cultures that have been passed on from generation to generation are still practiced today. Kemiren villagers still strongly hold on to the customs and traditions of their village. They still carry out traditional ceremonies with independent out-of-pocket funding.

The Banyuwangi Regency government realizes the great and unique cultural potential of the Osing ethnic group. This led the government to determine Kemiren Village in Glagah District as a customary village that is developed to still preserve the traditional values of Osing culture. This village is inhabited by indigenous Osing people who still preserve their traditions, values, and local wisdom (The Republic of Indonesia's Ministry of Tourism, 2022).

Cultural preservation is not limited to preserving customary cultures or arts. Children's traditional games must also be preserved as an effort to preserve national culture. Kampong Batara was originally established as a children's library by a young man from Papring Village, called *Cak* (Brother) Widi. He wanted children in his village who are mostly school dropouts to learn how to read. After helping their parents tend to ricefields and plantations, children use their free time to visit the library that also serves as a place to learn how to read the Holy Koran. With his artistic abilities, *Cak* Widi also taught the children how to play musical instruments from bamboo. They were taught how to dance and sing. They were introduced to various arts and traditional children's games, such as *egrang* (stilts), *gobak sodor* (a strategy game to escape from the opponents), *dakon* (a game of distributing shells in fourteen holes, played by two people), etc. This provided children of Kampong Batara who only knew of their village with greater insights into the outside world and expanded their horizons (Permadi, 2018).

Cultural preservation is not merely the responsibility of individuals or local communities. But it is a mutual responsibility of society (including individuals and companies) and the regional government. Society's participation in preserving

culture can be in the form of direct participation as actors in applying traditions. People can also provide funds and participate in other forms (procuring location, clothes, or other equipment).

The efforts to empower, preserve, and develop customs, community habits and customary institutions are implemented through the issuing of policies, including the Decree of the Banyuwangi Regent and other laws under the guidance of regional regulations. These laws were issued only after deliberation with customary leaders. According to the Regional Regulation of Banyuwangi Regency, customary institutions are naturally or intentionally formed social organizations. They grow and develop in the history of a certain society or indigenous people in legal territory. It concerns the rights or wealth in that territory. These customary institutions have the right and authority to manage and organize various issues that refer to the applicable customary customs and laws (Syahbana & Arief, 2021, p. 12). According to that the Regional Regulation of Banyuwangi Regency, regional culture is defined as the culture in Banyuwangi and new cultures that emerge as a result of intercultural interactions in societal life according to the identity and noble values of Banyuwangi citizens.

#### **4.2 The Harmonization of Osing People Through the Indigenous and the Islamic Laws**

In the tradition of the Osing people, the dialogic process between the Islamic law and the customary law results in an interesting relational pattern. Some existing traditions show that there has been a tranquilizing harmonization in Osing people. Clifford Geertz argued that religion does not only have a role in achieving integrity, but it also has a role in dividing societies. Geertz defined religion as a cultural system that is inseparable from symbols.

For him, religion is a system of symbols that aim to make the heart tranquil. It boosts people's spirits to survive with formulations from the perception of senses from inside of a person that is then expressed into real practices. The practices carried out by humans are inseparable from the issue of meaning. To understand these religious practices, Geertz provided a model that has a double aspect, namely the model of reality and the model for reality. Geertz emphasized that to understand religious symbols, two steps are required, i.e., analyzing the system of meaning obtained from religious practices and connecting them with the socio-cultural and psychological conditions of the local people (Geertz, 1970).

The model of reality is defined as an adaptation towards reality. Then, the model for reality is its continuation, where religion provides concepts and doctrines which aid the rituals among Osing people (Geertz, 1973, p. 93). This creates a harmonization that combines all elements of the Osing people. The results of this harmonization

must be practiced and preserved. These elements complete one and another in creating unity among Osing people. The results of this harmonization include dowries and similar wealth as well as the ngaturi, barong, ider bumi, surup, and lontaran rituals. The rituals practiced by the Osing people are strongly tied to shifts, either in the form of status or as a symbol of faithfulness and dignity.

The Osing customs, the Islamic law, and the positive law are three entities that influence each other. It is not seldom that they are perceived differently. Customs are positioned as a context, meanwhile the Islamic and positive laws are positioned as texts. Independence or even a protagonist role between the three often happen. Even so, the Islamic and positive laws have a similarity: they cannot be separated from the ever-dynamic reality. The positive law guarantees the existence of legal certainty. Reality is the people themselves. A law without society is mere voiceless texts. It is the people that understand, interpret, discuss, and practice them. Thus, harmonization among these three entities is required. Customs is a societal reality that becomes the most important part of Islamic law. As a newcomer, the Islamic law needs to understand and make dialogues on their discourse with the existing context, namely the customs. Then, the positive law strives to make efforts on the existence of legal certainty. Thus, it is crucial to make entography as part of the Islamic law, so that the Islamic law may become the balancer between the customary and the positive laws.

### **4.3 Osing Architecture**

Osing architecture is unique architecture created by Banyuwangi indigenous people. This architecture which is usually applied to traditional Osing houses has special characteristics including building typology, spatial structure, spatial organization, ornaments, facilities, and infrastructure. This architecture influences Banyuwangi Regency's tourism apart from its natural beauty, arts, and culture (Zulfikar, 2020, p. 15).

A traditional house is a building that symbolizes the culture of a society in a certain area. There are various cultures, languages, and ethnic groups that spread from the east to the west of Indonesia. Thus, there are many special customary house architecture styles. There are still many ethnic groups or areas in Indonesia that maintain their traditional houses in an effort to preserve cultural values that have started to shift due to modernization. Traditional houses are sometimes used as halls (meeting venues), museums, or tourist attractions.

The traditional architecture reflects traditional society's personality. Therefore, it is a manifestation of the people's ideals, materials, social conditions, and culture. For instance, in East Java, there are different traditional houses with special characteristics based on the environmental and societal conditions in each area.

Javanese architecture differentiates the roofs of houses and places of worship (Kholid & Abdul, 2019). Houses usually have roofs with the *Limasan*, *Panggang Pe*, *Kampung*, and *Joglo* forms. Then, the *Tajug* roof is used for places of worship. These different roof forms indicate a social structure in society. Then, values and regulations are reflected in a similar spatial arrangement. The cultures that are specifically agreed upon by societies can be identified from the room forms and the spaces. For instance, the division of propane-sacred, opened-closed, private-public rooms, etc.

**Figure 3:** A traditional Osing house



Source: Fanani, 2022.

The traditional Osing house is one of the traditional architectural creations that reflect Osing culture. It symbolizes the customs and traditions that have been embraced from generation to generation by the Banyuwangi indigenous people (Zulfikar, 2020). Based on the Decree of the Banyuwangi Regent No. 11 of 2019 part 2 Article 6 clause (1), the building structure of Osing traditional buildings are as follows:

- a. *Soko* is a wood pillar that functions as the main pillar in constructing a house. There are four *soko* in a traditional house.

- b. *Onggo tepas* is an additional pillar that supports the large *rab* (roof area). There are four of these *onggo tepas*.
- c. *Ander* is wood that is installed in the center, perpendicular to *lambang*.
- d. *Penglari* is the longest part of the roof, located over the *jait dhowo*. Its location protrudes beyond the roof. Thus, it can be seen from outside of the house.
- e. *Lambang* is the wood located at the end.
- f. *Jait dhowo* is the wood located under the *penglari*. *Jait dhowo*'s surface width is no larger than the *penglari*.
- g. *Jait cendhek* is the wood located under the *lambang*.
- h. *Ubeg-ubeg* is the wood located under the *soko* that functions as the foundation.

Then, the building typology of Osing architecture is divided into three types based on the roof form, namely:

- a. *Tikel* house is the most impeccable form of the traditional Osing house. This house has a roof with the *srotong* kampong form, with four *rab*, four *soko*, and two *songgo tepas*;
- b. *Cerocogan* house is a house with a common kampong form, usually with two *rab* and four *soko*, without *songgo tepas*. In a complete house, the *cerocogan* form is often used for the kitchen;
- c. *Baresan* house has two *rab*, four *soko*, and two *songgo tepas*. This house is similar to the *tikel* house, but it looks imperfect. The *baresan* house is often used as a kitchen if the hall has a *cerocogan* form.

Osing people's villages, especially Kemiren Village have the perspective that customary houses must have their form maintained. But the materials can be substituted according to the available materials around the village. Kemiren villagers still maintain the traditions inherited from their ancestors in terms of the building method, material usage, and values. They stay true to the original form of ancient times. The traditional houses in Kemiren Village still maintain the floor plans, orientation, structures, construction, and materials that are special to the Osing ethnic group traditional house (Senjaya, 2014).

## 5 Discussion

The current human civilization is ever-developed and modern due to high mobility. In essence, modernization encompasses the social transformation of traditional or premodern co-habitation, in terms of technology and social organization, towards economic patterns.

Modernization is manifested through the development of modern life aspects, such as mechanization, well-run mass media, urbanization, the increase in per capita income, etc. It also encompasses changes in social structure, social relationships, etc. (Maylinda & Sudarmono, 2021).

It can truly be seen that Banyuwangi currently undergoes great transformation in various aspects, including the education, economic, and cultural aspects. It has succeeded in creating a regency with international tourist destinations. Thus, Banyuwangi also opens an opportunity for social mobility. Banyuwangi people, especially those in the productive age, are highly mobile. Scientific and technological developments highly influence the existence of customs and culture. Such developments bring positive and negative impacts on Banyuwangi people (Senjaya, 2014).

A significant change is the shift of marital customs in Banyuwangi due to the people's high mobility. This opens a great opportunity for acculturation in society. Marital customs in Kemiren Village have started to slowly fade due to modernization. Customary laws are the first strategy to preserve marital customs amid modernization, as they encourage Osing people to preserve traditional marital customs.

*Kawin colong* (marriage carried out by 'stealing' the bride-to-be) is a marital tradition of Osing culture. There was a case where Nur Sugiati rejected this tradition by reporting a *kawin colong* event to the authorities with the accusation of kidnapping someone's daughter. The family wanted to resolve this through legal norms or the 1945 Constitution. But in this case, the *kawin colong* was carried out according to the procedures. Thus, this case was in the end resolved using the customary law led by some elderly. Because of that, the *kawin colong* was declared the victor and it must be followed with marriage. In the end, the family of the bride was powerless. This case ended with a marital ceremony procession (Rofikoh, 2018). This showed that the customary law is a very effective strategy in preserving customs, including marital traditions, amid modernization in Banyuwangi Regency.

The first socialization is that people have indirectly introduced traditional customs at an early stage to their children. This happened because each martial procession starting from the *melabot* to the event peak must be participated by all age groups from toddlers to the elderly. This will influence the children's mindset to keep on preserving these customs (Permadi, 2018). Cultural socialization is society's second strategy to preserve customs amid modernization.

The next strategy is customary village development. As aforementioned, the Kemiren Village is chosen as the Osing customary village as its people apply the Osing customs well. This customary village encourages teenagers to care for and have a sense of belonging towards this culture.

The formation of the Kemiren customary village led to the formation of the customary institution led by the Osing customary group leader. Before the



formation of this customary institution, there was no Osing customary group leader, but there were only elderly customary group members. The customary leader is elderly. Because this village has turned into a tourism village, the customary institution was formed to ease the people in undergoing rituals (Poespasari, 2006, pp. 114–129).

Currently, there are many elderly, but the Osing customary group leader is preferred. Through this social institution, society can ask for opinions or suggestions on rituals that must be implemented in marital processions. The social institution has an active role in the structural functionalism theory. This is the same as the social fact in the customary village.

According to Saleha, Osing people strongly apply the customs inherited from their ancestors. They honor their ancestors that developed the customary village with all means and efforts. The Osing people of Kemiren village have high solidarity (Saleha, personal communication, November 15<sup>th</sup>, 2022). They are afraid of violating their ancestral laws because they are afraid to be inflicted with disasters (*kualat*). The ancestors have also said that they demand nothing from their children and grandchildren except for preserving customs and cultures that have been passed on from generation to generation. This is so that the Osing ethnic group cultures in the customary village can still be maintained without contamination from other destructive cultures (Nursafitri et al., 2020).

Because of that, customary villages were appointed as exemplary villages. This is because the Osing customary village still holds on to and applies the customs and cultures well. This is shown that society strongly holds on to the customs. As stated by an informant, Osing customs must be preserved and they cannot be violated. According to Suhaemo, the local wisdom that grows and develops among the Osing indigenous people must be perceived in unity with the community and the territory of the local village that encompasses land, territory, and natural resources. It also includes a law that becomes an instrument for development in reaching the welfare goal of the customary people (Suhaemo, personal communication, November 13<sup>th</sup>, 2022).

In establishing the village-level government, legal pluralism is applied up to now. People's plural socio-cultural values contained in well-preserved local wisdom, including those of Osing indigenous people in Banyuwangi, are often unwritten. They are usually verbal laws that lack complete documentation. Apart from that, there are norms in social life, including those that aim to suggest or prohibit, as well as customary requirements for certain activities such as customary forest management. Guidelines and frameworks of various local wisdom must be developed to become a reference in the process of sustainably planning, guiding, and developing people's welfare (Dimiyati et al., 2021, pp. 1–8).

The normalization of the Osing people's local wisdom in Banyuwangi as a living law in Indonesian society has become a long-preserved social reality. On one hand, there is a perspective that views that the Osing customary laws need not become official laws or normalization. This is because if the customary laws are written, it will decrease Osing people's awareness towards their customary laws.

Legal-formal acknowledgement on the existence of the Osing customary law in the national legal system, as well as the normalization of that customary law in the national positive law aims so that the customary law becomes part of the national legal system. This effort can be carried out through dialogue and consultation between leaders of the Osing people and related parties, such as the government and national legal institutions, as well as the legalization of the Osing customary law as national law with a territory-limited validity (just like the Aceh Qanun, i.e., customary law of the Aceh based on the sharia that only applies in Aceh province) (Abdurrahman, 2015). This can help Osing people understand and utilize their rights in the national legal system as well as to strengthen their position in the effort to acknowledge and normalize their customary law.

Research on the normalization of the Osing indigenous people's customary law model in the legal system that applies in Indonesia is also very interesting to analyze it concerns the continuity of the customary law and the cultural diversity in Indonesia. Customary laws are an inseparable part of Osing people's lives. But differences between customary laws and the legal system applicable in Indonesia often cause conflicts.

When conflicts happen between customary laws and the national law, law apparatus and the court will choose the national law (the criminal code) compared to the local wisdom of the Osing customary law. Therefore, this research will be highly beneficial in maintaining the continuity of the Osing people's customary law as well as making sure that this customary law may apply parallel with the positive law system in Indonesia. Apart from that, this research may also provide clear description on the legalization and normalization of the Osing people's customary law model in the legal system that applies in Indonesia which only applies to Osing people, just like the Aceh customary law (Qanun) sourced from the Islamic sharia that only applies in the Aceh territory.

Without the legalization of the Osing customary law as positive law or national law, the Osing customary law that is more effective for Osing people may disappear. This is because customary laws and their local wisdom have started to be marginalized under the pressure of written laws that contradict the traditional rights of indigenous people (Budiono et al., 2022, pp. 223–233).

According to the researchers' analysis, there are some important points that need to obtain special attention. First, Osing customs are a unique culture from Osing people. Second, Osing customs have special philosophies in their wedding ceremonies that involve processions and rituals that these people deem to be important and sacred. Third, Osing customs are deemed important for the Osing people as they are part of their history and were passed down from their ancestors. Fourth, the Osing people's customary laws contain regulations that govern the relationship between individuals, families, and society. Fifth, Osing customs have an influence on the Indonesian legal system as they are acknowledged as one the valid types of laws in Indonesia.

The Osing people's customary law is acknowledged as one of the types of laws that is valid in Indonesia. There is a significant difference between the Osing people's customary law and the positive law. One of the main differences is the source of legal authority. The Indonesian positive law originated from laws and regulations made by the government. Meanwhile, the Osing people's customary law originated from traditions and customs of that society that were inherited from their ancestors. Apart from that, there are differences in the method of dispute resolution. The Indonesian positive law have formal justice institutions such as courts, while Osing people's customary law tend to depend on dispute resolution through deliberation and mediation between disputing parties. But even though there are differences between the Osing people's customary law and the positive law in Indonesia, the two can be simultaneously applied. They can complete each other to reach the same goal, i.e., maintaining justice and harmony in society. Because of that, it is important for the government and the Indonesian people to strengthen the acknowledgement and protection of different societies' customary laws such as those of the Osing people (Qiram & Ramadhani, 2020).

## **6 Conclusions**

The normalization of customary laws into written laws in the form of national regulations (national positive law) can be applied through the procedures and mechanisms regulated in Law No. 12 of 2012 on the Formation of Constitutional Regulations. Efforts to provide legal-formal acknowledgement on the existence of Osing people's customary laws in the national legal system is carried out through normalization with the legalization of these customary laws in the national law that apply limited to the area where that Osing customary law lives. The national law with a territory-limited application has been applied in Aceh province with the Aceh Qanun, which is the Aceh customary law that is based on the Islamic sharia (law) which only applies in that province. Thus, it is highly possible to apply the Osing customary law as a national positive law within a limited territory. This research is significant because it shows that the customary laws of indigenous tribes can be

normalized into the formal legal system (positive law) with an application that is limited by location.

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