



Legal Pluralism in the Tayade System: Reconciling Land and Plant Ownership Laws in Gorontalo

Hijrah Lahaling^{1*}, Arhjayati Rahim², Sumiyati Beddu³, Dzikra Ridha Dwi Aribah⁴, Saharuddin⁵

^{1,3}Universitas Ihsan Gorontalo, Indonesia

²Institut Agama Islam Negeri Sultan Amai Gorontalo, Indonesia

⁴Universiti Malaya, Malaysia

⁵Universitas Hasanuddin, Indonesia

*Corresponding E-mail: saharuddin40.sd@gmail.com

ABSTRACT

This study examines the legal uncertainty surrounding the *Tayade* land and tree transaction system in Gorontalo, Indonesia, which lacks formal regulations under both positive and Islamic law. The *Tayade* system separates ownership rights between land and vegetation, resulting in dual ownership over a single plot. This research explores solutions to the dual ownership issue and its implications for land and tree owners. A comparative approach with descriptive methods was used, analyzing land and tree transaction rules from positive and Islamic law perspectives through a literature review. The findings reveal that the absence of clear regulations creates legal uncertainty and potential conflicts due to inconsistencies between *Tayade* customary law, positive law, and Islamic law. The study concludes that harmonizing these legal systems is essential for effectively managing land and vegetation rights. Such harmonization would strengthen legal certainty and reduce conflicts in transferring rights under the *Tayade* system. The study recommends the development of more specific regulations to govern the practice, ensuring more transparent and more appropriate legal frameworks for the community.

How to cite:

Lahaling, H., Rahim, A., Beddu, S., Aribah, D. R. D., & Saharuddin, S. (2024). Legal Pluralism in the Tayade System: Reconciling Land and Plant Ownership Laws in Gorontalo. *Jurnal Ilmiah Al-Syir'ah*, 23(1), 1-17. <https://doi.org/10.30984/jis.v23i1.3325>

ARTICLE INFO

Article History:

Submitted/ Received 12 Dec 2024

First Revised 7 Jun 2025

Accepted 10 Jun 2025

First Available online 20 Jun 2025

Publication Date 20 Jun 2025

Keywords:

Legal pluralism,
Tayade system
Dual ownership,
Islamic Law,
Positive Law.

© 2025 Hijrah Lahaling, Arhjayati Rahim, Sumiyati Beddu, Dzikra Ridha Dwi Aribah, Saharuddin



All publications by Jurnal Ilmiah Al-Syir'ah are licensed under a Creative Commons Attribution 4.0 International license.

1. INTRODUCTION

Gorontalo, located on the island of Sulawesi, presents a unique case study of legal pluralism through its *Tayade* system, a customary law mechanism that separates ownership rights over land and plants (Ibrahim, 2016; Kadir et al., 2024). This practice allows individuals to transfer ownership of plants, such as trees, without transferring ownership of the land itself, a concept not recognized under Indonesian positive law (Pongoliu et al., 2018; Une, 2021). Under Law Number 5 of 1960 (the Basic Agrarian Law), Indonesian land law asserts that land and its attached objects, such as trees, are inseparable. This creates legal uncertainty and raises concerns about the rights of landowners and plant owners. Similarly, from an Islamic law perspective, this practice may be problematic due to the potential for *gharar* (uncertainty), which is prohibited in transactions (Latief & Tuloli, 2024). The separation of land and plant ownership poses legal challenges for the community, as it risks creating dual ownership rights without clear legal protection, potentially harming one of the parties involved (Mutawali, 2022). Therefore, addressing the issues arising from the *Tayade* system requires thoroughly investigating the intersection between customary law, Islamic law, and positive law, and developing solutions to ensure legal certainty in transactions.

Previous research has delved into the legal complexities of the *Tayade* system, particularly concerning the separation of land and plant ownership. Nasrullah (2018) argued that this practice, which separates tree rights from land rights, lacks a legal foundation in positive law and is merely a customary practice without legal support. Similarly, Nasrulloh et al. (2021) analyzed the *Tebas* system (buyer pays in advance) of selling trees, categorizing it as *gharar* under Islamic law due to its inherent uncertainty and potential for legal ambiguity. Rosyadi et al. (2022) further examined the challenges of separating ownership rights, questioning their alignment with Islamic law and emphasizing the legal risks involved. While these studies focus on the legal uncertainties created by the *Tayade* system, they primarily address the consequences rather than proposing solutions that bridge the gap between customary, Islamic, and positive law.

In parallel, the studies by Bukido et al. (2018) demonstrate the importance of customary law in Indonesia's legal landscape. The first study illustrates how Larwul Ngabal supports regional autonomy but is hindered by political factors and leadership competence. And then, Sinay et al. (2022) highlight the lack of recognition of indigenous peoples' rights to their living spaces, calling for legal harmonization to protect these rights. Lastly, the study by Saharuddin et al. (2024) seeks practical solutions to harmonize the *Tayade* system with Indonesia's land law framework by analyzing the alignment between customary and positive law. These studies underscore the need for stronger recognition and integration of customary law into Indonesia's legal framework to address legal uncertainties and mitigate potential social conflicts.

However, this research focuses on reconciling customary law, Islamic law, and positive law in the context of the *Tayade* system. This area has not been comprehensively addressed in existing literature. This study seeks to propose alternative solutions to the dual ownership rights that arise from the separation of land and plant ownership, aiming to create a legal framework that is both culturally sensitive and legally sound. Additionally, this research introduces the concept of legal pluralism, exploring how traditional land practices in Gorontalo can coexist with modern legal frameworks. This novel approach not only addresses the legal uncertainty but also contributes to discussions on biocultural diversity, where the rights of local communities are balanced with the need for legal certainty. By exploring how legal pluralism can facilitate the preservation of local

traditions, this research contributes new insights into the challenges of maintaining indigenous practices within contemporary legal systems.

The primary objective of this study is to examine the practice of separating ownership rights over land and plants in the *Tayade* system and its implications for legal certainty. Specifically, this research aims to investigate how customary law, Islamic law, and positive law can be harmonized to address the legal challenges arising from this system. The study will propose solutions for bridging the legal gap, focusing on protecting the rights of both land and plant owners. Furthermore, this research will explore the broader implications of biocultural diversity and legal pluralism, considering how local practices can be integrated into the broader legal landscape to ensure the rights of Gorontalo's people while preserving their cultural and ecological heritage (Buergin, 2015). Through these objectives, this study will contribute to a more nuanced understanding of how legal systems coexist and how traditional practices can be preserved within a modern legal framework.

2. METHODS

This research adopts a mixed methods approach, integrating qualitative and quantitative techniques. It was conducted in the province of Gorontalo, with samples taken from several regions, namely Gorontalo Regency, Pohuwato Regency, Boalemo Regency, North Gorontalo Regency, and Gorontalo City. The selection of these locations was based on the fact that they still implement the *Tayade* system, a customary legal mechanism that governs land transactions. The study uses a juridical-sociological-anthropological approach to explore the relationship between customary law, positive law, Islamic law, and the social phenomena present in the community (Irwansyah, 2020).

The study involves all components of society living in the province of Gorontalo as research subjects, focusing on implementing the still-active *Tayade* system in these communities (Nurnazli et al., 2024). Sampling was done using purposive sampling, which involves selecting samples based on specific criteria, such as understanding and direct experience with the *Tayade* system. This technique ensures that the chosen samples provide in-depth and representative information relevant to the research objectives.

In this research, data were collected through interviews and field observations. Interviews were conducted with respondents selected based on specific criteria, including individuals or groups with direct knowledge of implementing the *Tayade* system. Observations were made to examine how this system is applied in social and legal practices in the community. The interview and observation instruments were tailored to the research variables. To enhance the validity of the data, triangulation techniques were employed by comparing information obtained from interviews, observations, and other sources, enabling the researcher to gather more accurate and comprehensive data (AR & Heriyanto, 2024).

The data analysis technique used in this study is descriptive analysis. The data collected from interviews and observations were organized, analyzed, and explained in detail to better understand the phenomenon under investigation. This analysis involves coding and thematic mapping to identify relevant patterns and categories. The analysis results will be linked to applicable legal principles, the *Tayade* customary law, and the social norms existing in the Gorontalo community,

offering a broader insight into the interaction between customary law, positive law, and Islamic law (Manda & Banda, 2023).

3. RESULTS AND DISCUSSION

Legal Pluralism in the Tayade Legal System of Gorontalo

In Indonesia, customary land law significantly regulates the relationship between indigenous peoples and the land, an integral aspect of the nation's identity and way of life (Pujiani, 2021). Moreover, it is called pluralism. This arrangement is divided into several main categories, including the customary law of inheritance, which regulates the inheritance of Land Title within families (Pelupessy, 2017; Ramli et al., 2024), the customary law of land communal rights, which regulates the joint ownership of land by indigenous people and the customary law of 'Tanah Ulayat' (customary communal land), which manages the customary land that is collectively owned and used by customary community (Gayo et al., 2024). Each category reflects how indigenous peoples maintain their relationship with the land. The Agrarian Principles Law (UUPA) was enacted in 1960 to unify the dualism approach to land law that had emerged during the colonial period, which clearly distinguished local customary law and Western law (Nur & Polontoh, 2024).

The Indonesian customary law reflects the local wisdom prevailing in Indonesian societies (Zein et al., 2023), whereas the Western legal system was adopted from the legal system brought by the colonizers. The enactment of the UUPA officially ended this dualism, and customary and Western law are no longer applied independently in land affairs in Indonesia. However, the application of Agrarian Principles Law does not remove the existence of customary law (Arisaputra, 2021). Conversely, the Agrarian Principles Law (UUPA) continues to recognize and accommodate customary land law, provided it does not contravene the national land law framework. In this regard, customary law remains to be used in particular contexts, particularly in regions with a strong tradition of customary practices, to the extent it is aligned with the principles set out in the UUPA and not in violation of national interests.

The *Tayade* customary system in Indonesia is a practice where the community traditionally separates land ownership from the rights to the growing plants. According to data from the Ministry of Religious Affairs, in 2023, the majority of the population in Gorontalo, about 98% of its population of 1.24 million, follows Islam. The Gorontalo people have two sources of customary law: local customary law and Islamic principles, which are based on the philosophy *Adat Bersendi Sara' and Sara' Bersendikan Kitabullah* (Customs based on Islamic Law) (Kau, 2020). In practice, the *Tayade* method allows for the separate selling of land and plants. The land ownership remains with one party, while the rights to trees or plants can be transferred to another. However, this practice may conflict with the principles of Indonesian land law as outlined in Article 20 of the Basic Agrarian Law (UUPA), which asserts that land ownership is absolute, the strongest, and protected from interference by other parties. In the context of *Tayade*, a single plot of land may have multiple owners, both for the land itself and the plants on it, which contradicts the singular ownership principle in national land law (Saharuddin et al., 2024). This phenomenon reflects a legal dualism, where local traditions deeply rooted in culture and religion often clash with state regulations. However, it remains a dominant practice compared to formal legal frameworks.

The *Tayade* system is a sale and purchase mechanism that separates the right of ownership between land and crops erected on it. Under the system, land title and crop ownership may be held by different parties. In addition, the system is also used for inheritance distribution and

cultivated land utilization with a profit-sharing system to accommodate the interests of various parties, according to local customs and values. The mechanism of sale and purchase separating land and crops is illustrated in the following flowchart:

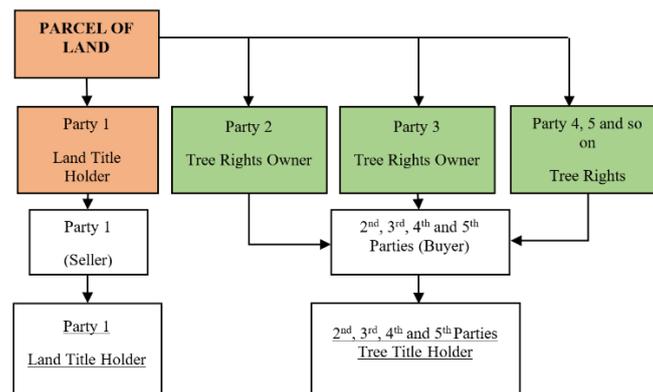


Figure 1. Land and Tree Rights Transaction in the Tayade System

Source: Data Analysis (2024)

The landowner has the right to sell the land title to one party, while the right of ownership or control for the buildings, trees, or plants on the land can also be sold or transferred to another party. In such a case, Party (1) Land Title Holder represents the legal land owner and is therefore entitled to exercise full rights over the land. The parties can dispose of or transfer the land title to others. In contrast, parties (2, 3, 4, etc.) designated as Tree/Crops Owner authorize the natural growth and vegetation on the land, including trees, plants, and buildings. They may sell the rights separately from the land title. Here is some data on land or tree transactions conducted separately regarding ownership rights:

First, the Sale and Purchase of Non-Crop Land. In the first case, several research studies were conducted regarding selling land without including trees or plants. These findings were obtained from several areas, such as Dulamayo Selatan Village and Telaga Biru Village in Gorontalo District, as well as in Gorontalo City and North Gorontalo District. Below are some data tables summarizing land/tree transactions in several areas in Gorontalo Province:

Table 1. Sales and Purchases of Non-Crop Land

No	Location	Buyer	Price (IDR)	Description
1	South Dulamayo Village, Telaga Biru Sub-district, Gorontalo Regency	J (initials)	-	Plants/Vegetation are not included in the sales object.
2	Gorontalo City	As (initials)	35.000.000	
3	North Gorontalo Regency	FS (initials)	25.000.000	

Source: Data Analysis (2024)

In Dulamayo South, Telaga Biru, Gorontalo Regency, a buyer designated as J purchased a plot of non-planted land as part of the transaction. In Gorontalo City, a buyer with initial AS purchased

a plot of land for IDR 35,000,000. However, the plants on the land were not included in the sale and purchase agreement. A similar situation occurred in the North Gorontalo District, where a buyer with the initials FS purchased land for IDR 25,000,000, without including the plants in the sale and purchase agreement.

Second, Sale and Purchase of Trees without Land. Meanwhile, tree purchase transactions separate from Land Titles were also found in the following locations:

Table 2. Sale and Purchase of Trees without Land

No.	Location	Price (IDR)/Tree	Tree Quantity	Description
1	Bulango Raya Village, Tomilito Sub-district, North Gorontalo Regency	250.000	124	
2	Suka Makmur Village, Patilanggio Sub-district, Pohuwato Regency	150.000	40	Separate Right of Ownership: 1. Seller (Tree Ownership) 2. Purchaser (Land Title)
3	Potanga Village, Boliyohuto Sub-district, Gorontalo Regency	500.000	45	
4	Mutiara Village, Paguyaman Subdistrict, Boalemo Regency	125.000	220	

Source: Data Analysis (2024)

In Bulango Raya Village, Tomilito Sub-district, North Gorontalo District, the purchase of 124 coconut trees was carried out with the separation of rights between crop ownership and land title, at IDR 250,000 per tree. A similar transaction occurred in Suka Makmur Village, Patilanggio Sub-district, Pohuwato District, for 40 trees at IDR 150,000 per tree, although the separation of rights was not detailed. In Potanga Village, Boliyohuto Sub-district, the price per tree reached IDR 500,000 for 45 trees, but no details about the separation of rights were provided. Similarly, in Mutiara Village, Paguyaman Sub-district, the purchase of 220 trees at IDR 125,000 per tree followed the same practice, though no details were provided regarding the separation of ownership rights.

The research results indicated that the number of land or tree sale and purchase transactions conducted through the *Tayade* system remains considerable. This practice is not only in contravention of national land legislation but also has the potential to have adverse implications for future generations, particularly regarding the possibility of a monopoly of crop ownership within the community. Interviews with members of the Gorontalo community highlighted some social issues that have emerged due to this system.

Land Ownership and Transfer Mechanisms in Positive Law and Islamic Law: A Comparison with the Tayade System

Land Ownership and Transfer Under Positive Law

From the perspective of positive law, the transfer of land rights is carried out as regulated in the Agrarian Law and several government regulations regarding land registration. According to Article 20, paragraph (1) of Law No. 5 of 1960 on Basic Agrarian Principles, ownership is defined as the strongest, most complete, and hereditary right an individual can have over land, considering the provisions of Article 6. One standard method the community uses to transfer ownership rights over land is through a sale transaction (Sutedi, 2023). Ownership is recognized as the strongest right because no other rights can rival it in terms of power and control over the land. Additionally, this right is hereditary, meaning ownership can be passed on to heirs and remains valid even if the landowner changes. This makes it a fundamental right in the Indonesian land law system, clearly regulated in the Basic Agrarian Law (UUPA) No. 5 of 1960 (Hulu & Telaumbanua, 2022).

The UUPA (Basic Agrarian Law) regulates that the transfer of land rights can be carried out through a sale transaction, which is one of the primary methods for transferring ownership from one party to another by applicable laws and regulations (Pulungan & Muazzul, 2019). The transfer of land rights is defined as a legal action carried out intentionally to transfer land ownership from the previous holder to another party. This process involves a series of legal steps that ensure the land rights, initially owned by someone, are lawfully transferred to the new owner once the transaction is completed. In other words, the transfer of land rights is a formal mechanism for the official and legitimate transfer of ownership, making the new owner the legitimate holder of the land rights and considered the complete and strongest owner with control over the property.

Government Regulation Number 37 of 1998 concerning the Regulation of the Land Deed Official (PP-PPAT) plays a significant role in legalizing land sale agreements. The Land Deed Official (PPAT) is important in Indonesia's land registration system. According to Article 2, paragraph (2) of the regulation, the PPAT is primarily responsible for carrying out land registration activities by preparing deeds as valid evidence of legal actions related to land rights or Ownership of Strata Title Units. The main goal of the Land Deed Official in land administration and registration is to ensure that the recorded information accurately reflects the actual status or condition of the land parcel, including physical data about the land and relevant legal information, especially when recording changes to previously existing legal data (Maghribi & Ispriyarso, 2022).

Based on these provisions, *first*, the validity of land sales in Indonesia is determined by the regulations in force since the implementation of Law No. 5 of 1960 and Government Regulation No. 24 of 1997, which require land rights transfers to follow the established procedures. *Second*, land ownership can be transferred through a valid sale transaction by creating a deed as legal evidence. Government Regulation No. 37 of 1998 stipulates that the Land Deed Official (PPAT) is responsible for preparing the deed that documents the land sale transaction as the basis for registering the change of ownership.

According to Positive Law, the *Tayade* system cannot be recognized and is considered to conflict with positive law because the transfer mechanism is carried out solely based on the agreement between the two parties, without involving the relevant authorities, such as a Land Deed Official.

It potentially creates uncertainty regarding land ownership rights for the following reasons: *First*, the transfer of land rights in the *Tayade* system is not carried out in front of the relevant authorities, but only based on the agreement between the two parties, witnessed by the village head. However, the village head does not have the authority to legalize the sale and purchase agreement for land rights or rights over trees. *Second*, the land ownership rights in the *Tayade* system contradict Article 20, paragraph (1) of Law No. 5 of 1960 on Basic Agrarian Law, which defines ownership as the strongest, most complete, and inheritable right over land. The *Tayade* system results in dual ownership of rights over a single parcel of land, thus failing to fulfill the concept of complete and strongest ownership rights stipulated in the law.

Land Ownership and Transfer Under Islamic Law

In Islamic law, a sale must fulfill several elements established by Islamic sharia to ensure that the object being traded brings benefit and is valid. The sharia (*akad*) contract is a formally written agreement (Sapuan, 2016). Generally, an agreement is the process of offer and acceptance that results in inevitable legal consequences. In other words, *akad* refers to the agreement based on the offer and acceptance (*ijab qabul*) between the parties involved in the contract, by the applicable legal principles (Nafsah, 2023). In addition, as explained in Surah Al-Maidah 5:8, a sale in Islamic law must be conducted fairly and transparently, requiring clarity of rights and obligations in the transaction.

In Islamic law, a sale must be conducted with clarity, fairness, and proper formalities, including a valid contract through offer and acceptance or *ijab qabul* (Setiawan et al., 2022). This transaction must be transparent and involve parties with authority according to the principles of Sharia, which emphasize the importance of fairness and clarity in every transaction. The contract, whether verbal or written, must align with the principles of justice, as stated in Surah Al-Maidah 5:8, which highlights the need for fairness and upholding the truth (Alwi et al., 2013)

However, in the *Tayade* system, the transfer of land rights is carried out based on an agreement between the two parties, witnessed by the village head, who does not have the authority to legalize the agreement. This process does not involve the relevant authorities or formal procedures necessary to ensure the legality and clarity of the transaction under Islamic law. This leads to legal uncertainty and ambiguity regarding ownership rights, which contradicts the Sharia principles of fairness and transparency in sales transactions. Therefore, the *Tayade* system demonstrates inconsistency with the principles of Islamic law, which require formalities and apparent authority in the transfer of rights, as well as with Indonesian positive law that establishes formal procedures for land sale transactions.

Inconsistencies of the Tayade System with Positive and Islamic Law

The ownership of land in the *Tayade* system also contradicts the principles of Islamic law regarding land ownership and control. In Islamic law, the ownership of land and everything on it must be clear and complete, in line with the principles of fairness and transparency in transactions (Kwakye & Sasu, 2024). The *Tayade* system, which separates land ownership from ownership of the trees on it, creates a duality of ownership within a single piece of land. This is inconsistent with the Sharia principle, which requires clarity and unity in ownership.

According to Islamic law, transactions must be carried out with the principles of justice and transparency, as outlined in Surah Al-Maidah 5:8, emphasizing the importance of fairness and

upholding the truth in every transaction (Kashi et al., 2024). The *Tayade* system, with its separation of ownership, disregards these principles by creating a situation where the rights to land and crops may be held by different parties, potentially leading to conflicts and legal uncertainties. Therefore, the practice of *Tayade* does not align with the principles of Islamic law, which prioritize clarity, justice, and unity in land ownership. Here is a comparison of buying and selling land/trees under the *Tayade* system from the perspective of positive and Islamic laws.

Table 3. Comparison of Land/Tree Transactions in the Tayade System

Aspects	Customary Law	Positive Law	Islamic Law
Buying and Selling Mechanism	Oral/Written (handwritten agreement)	The transaction procedure is conducted formally before the Land Deed Official (PPAT) by creating a legalized Sale and Purchase Deed based on state regulations (Government Regulation No. 37 of 1998).	The transaction procedure involves valid documents and witnesses, a written agreement, and witnesses recognized in Islamic law. The transaction must comply with Islamic principles, such as the existence of <i>ijab-qabul</i> (offer and acceptance). Sales and purchases are only made with mutual consent (HR. Ibn Majah 2185).
Ownership Rights	Ownership of land or trees that are separated, resulting in a duality of ownership rights within a single piece of land.	Land ownership is a strong and hereditary unity along with everything on the land (Article 20 of the Basic Agrarian Law).	Land ownership and trees can be separated, but it must be clearly stated in the agreement and by Islamic law. The principle of justice in Islam requires clarity of rights and obligations in transactions (Surah al-Maidah 5:8).
Registration and Recognition	Land ownership can be registered, whereas the ownership of trees cannot be registered as property ownership.	The land law, specifically regarding land ownership, only recognizes the Certificate of Ownership (<i>Sertifikat Hak Milik</i>) and does not recognize the concept of ownership rights for plants.	Unlike positive law, land and tree ownership are recognized under Islamic law but lack formal certificates. Registration occurs through contractual documents and witness approval. Islamic law acknowledges only clear, transparent transactions (Surah Al-Baqarah 5:275). A sale transaction must meet specific conditions (<i>rukun</i>); otherwise, it is legally invalid.
Dispute Resolution	Disputes are resolved in front of the village head, based on the results of deliberations, but	Ownership disputes are resolved before the competent court (district court).	Disputes are generally resolved through arbitration or mediation, emphasizing fairness and mutual respect. The process prioritizes reconciliation and transparency, by

	there are no written rules regarding the dispute resolution mechanism.		Islamic principles of justice (Surah Al-Hujurat 49:9).
Validity and Legality	It does not have formal documents or legal status under land law.	Property rights ownership has formal documents such as a Certificate of Ownership (<i>Sertifikat Hak Milik</i>) and a Deed of Sale and Purchase (<i>Akta Jual Beli</i>).	The validity of transactions and property ownership is recognized in Islamic law, but it does not have formal certificates like in positive law. Legality is determined by the Islamic agreement (<i>akad</i>) and valid documents according to Islamic Sharia.

Source: Data Analysis (2024)

The comparison table above illustrates the differences and similarities in the land and tree sale process under customary, positive, and Islamic law. Under customary law, the transaction can be conducted verbally or in writing, with ownership often separated between land and trees, and without formal documentation. Positive law requires the transaction to be conducted formally before a Land Deed Official (PPAT) with official documents, where land ownership and trees are considered a single entity and registered in the ownership certificate. In Islamic law, the transaction is conducted with valid documents and witnesses, adhering to Sharia principles such as *ijab-qabul* (offer and acceptance), and although there is no formal certificate, the validity of the transaction is recognized through a clear and transparent Sharia agreement, by the principles of justice and Islamic ethics.

The *Tayade* system, where land ownership is separated from tree ownership, conflicts with positive and Islamic laws. Under positive law, such a system creates dual ownership over a single piece of land, which is inconsistent with the concept of the strongest and most complete right of ownership as defined by Law No. 5 of 1960. A Land Deed Official's lack of formal registration and involvement in the *Tayade* system leads to legal uncertainty and potential disputes. Similarly, under Islamic law, the *Tayade* system fails to meet the principles of fairness, transparency, and clarity. Separating land and tree ownership introduces ambiguity and conflict, undermining the Islamic requirement for clear and unified land ownership. Additionally, the lack of a formal contract process and the absence of appropriate authority in the land transaction process violate the Islamic principles of justice and transparency.

Implications of Land Sale under the Tayade System

The landowner and the tree owner do not have legal certainty regarding ownership rights due to the dual ownership of rights over a single piece of land. In the *Tayade* system, the duality of ownership rights over land and trees on the same land creates legal uncertainty for both the landowner and the tree owner. When the ownership rights of the land and the trees are separated and owned by different parties, it confuses the boundaries of rights and responsibilities for each party. This situation leads to a lack of legal certainty, as there is no precise determination of who holds full rights over all elements on the land. As a result, both the landowner and the tree owner

may face legal issues related to unclear rights and control, potentially leading to disputes and uncertainty in the management and use of the land.

The ownership of trees lacks legal power under positive law because no clear regulations govern it. Tree ownership does not have legal force recognized under Indonesia's positive law because no clear regulations govern the ownership of trees separately from the land. Under positive law, ownership rights over trees are not recognized as an entity that can be pledged or transferred legally. This is due to the absence of regulations establishing tree collateral rights, meaning tree ownership cannot be used as collateral in financial or legal transactions. As a result, tree owners face difficulties utilizing or protecting their ownership rights within the framework of positive law, which only recognizes ownership of land as a whole.

Tree ownership grants the owner complete control over the tree. It allows them to harvest their produce as long as the ownership remains under their control, without any specific time limit. This provides flexibility and complete control to the tree owner over the benefits derived from it. In contrast, horizontal separation regulated under agrarian law, such as land use rights (*bak guna usaha*), rental rights (*bak guna sewa*), and usage rights (*bak pakai*), includes apparent time limitations for land use. These regulations set a specific duration for these rights, after which the land ownership can return to the original owner. With these time limitations, the landowner can regain and fully utilize the land without interference from other ownership rights. This ensures that the land use complies with the provisions in agrarian law and prevents conflicts between land ownership and tree ownership.

As previously discussed, the sale of land/trees in Islamic law requires the transaction to be conducted with the principles of justice and transparency, as outlined in Surah Al-Maidah 5:8, which emphasizes the importance of justice and the enforcement of truth in every transaction. The lack of clarity regarding ownership rights between the landowner and the tree owner can fall under the *gharar* category (uncertainty). In Islamic law, *gharar* refers to ambiguity or uncertainty in a contract or transaction. In Arabic, *gharar* means *al-Khatr* (gambling). Sheikh As-Sadi mentions that *gharar* can also be interpreted as *al-Mikhatbarah* (betting) and *al-Jahalab* (uncertainty) (Azzahra et al., 2024). The *Tayade* sale system falls under the category of *gharar* because: *First*, the absence of legal certainty regarding ownership means that something being sold in Islamic law, if not clearly stated, is considered *gharar*. A sale transaction that involves ambiguity is seen as a form of gambling or betting. Such actions are forbidden in Islam and are considered *haram* (unlawful) (Muchtar, 2017). *Second*, the limited control over ownership rights between land ownership and tree ownership, creating the potential for the *Tayade* sale system to harm both parties. In Islam, the sale of something must be clear and transparent, and if this clarity is not met, it falls into the category of *haram*.

Reconciliation of the Tayade System with Islamic Law and Positive Law: A Framework for Legal Integration

The principle of Islamic Sharia regarding the sale of land (*Muamalah*) in Islamic law is permissible (*halal*). However, if violated, some limitations could render it prohibited (*haram*) if not carried out by the rules and mutual fairness (Ningsih, 2021). Referring to the mechanism of the *Tayade* customary land sale system, which separates the rights to land and the rights to trees, leading

to the emergence of dualism in land ownership, when examined through the lens of Islamic law, it falls under the category of *gharar* or uncertainty due to the lack of time limitations and certainty about who has the full right to manage the ownership. Islamic law prohibits the sale of land under the following conditions:

First, a sale that is unclear, speculative, or ambiguous is forbidden because it harms one of the parties involved. A hadith about the prohibition of *gharar* states: "The Messenger of Allah forbade sales that involve *gharar*" (HR. Muslim, no. 1513). The term *gharar* here refers to uncertainty, ambiguity, or significant risks that could result in losses in ownership, quality, or the condition of the goods sold. In the context of the *Tayade* system, dual ownership rights over a single piece of land make this principle relevant. The dualism of ownership, which includes the rights to the substance (*raqabah*) and the rights to the benefits (*manfaah*), often leads to uncertainty, particularly in transactions like sales or rights transfer. The lack of clarity regarding the ownership status in the *Tayade* system can cause losses or disputes, which contradicts the principles of clarity and justice taught in Islam. Therefore, integrating the *Tayade* customary law with Islamic and national law is essential to ensure that all land transactions are conducted with transparency and legal certainty, per Sharia principles.

Second, *Mubaqalah* sales, which refer to selling crops still standing in the field or farmland, are prohibited in Islam because such sales are ambiguous (unclear) and involve deception. In general, Rasulullah said: "The Messenger of Allah forbade the sale of *mubaqalah*, *muzabanah*, and *mu'avamah*." (HR. Bukhari, no. 2202; Muslim, no. 1536). In this hadith, *mubaqalah* is defined as the sale of crops still standing in the field without certainty of the harvest, making the transaction involve *gharar* or uncertainty. The *Tayade* system, which allows the sale of trees or plants still in the field, can be considered inconsistent with the principles of Islamic sales. This prohibition aims to avoid potential harm to one of the parties in the transaction due to uncertainty about the quantity or quality of the crops. Therefore, such sales practices in the *Tayade* system require adjustment to align with the principles of Islamic Sharia, which emphasize clarity, justice, and the protection of the rights of all parties involved in any transaction.

Concrete Solutions to Resolve Issues in the *Tayade* System According to *Ijma'* and *Syura*. One of the pillars of the fiqh of minorities formulated by Al Qardawi (1999) emphasizes the importance of consultation (*syura*) in resolving conflicts, particularly those related to land and vegetation ownership arising from the *Tayade* System. Indigenous communities, local scholars (*ulama*), and government authorities can engage in *syura* to establish regulations that align with Islamic principles while respecting local traditions (Faiz & Afrita, 2024). Furthermore, suppose the *Tayade* System provides significant benefits to indigenous communities, such as preserving traditions, enhancing economic welfare, or preventing social conflicts. In that case, the minority fiqh approach may permit its implementation, provided it does not contradict the primary objectives of Islamic law (*maqasid al-shariah*), namely justice, protection of property, and the promotion of public welfare (*maslahah*).

The *Tayade* system needs to be adjusted to align with the principles of Islamic Sharia in order to eliminate the dualism of ownership that causes uncertainty (*gharar*) in land transactions. The sale of land and trees should be conducted separately with a clear and transparent contract, along with complete information regarding rights and the time limitations of ownership. Integration with Islamic law and national law is necessary to create justice and legal certainty, while public education

becomes an important step to ensure understanding and compliance with these regulations. With this approach, the *Tayade* system can operate according to Sharia and avoid disputes.

The principle of unification between customary law and national land law is a legal framework that the 1945 Constitution has mandated. Article 18B paragraph (2) explicitly recognizes customary law communities and their traditional rights, provided that these rights remain pertinent and align with the societal development and the principles of the Unitary State of the Republic of Indonesia. This recognition demonstrates an attempt to reconcile the local values espoused by indigenous communities with the national legal framework regulating land affairs. This emphasis is by the theory put forward by Pound (2006) in his "Law As A Tool of Social Engineering Theory", which states that, in reality, the laws that are applied in society reflect what actually happens and, therefore, must be assessed in order to ascertain whether they are by existing rules. Consequently, this theory emphasizes the existing reality rather than the function and position of the law in society.

Some problems related to the *Tayade* system adopted by Gorontalo people, especially in sale and purchase which separates land or crops, contradict the principle of national land law with social situation, that requires every possession and transfer of land title, either under customary mechanism or formal regulation, must be by the provisions of national land law. Meanwhile, implementing the *Tayade* system contradicts the Agrarian Principles Law (UUPA) provisions, government regulations, and the land administration system, especially in land registration and formal legal recognition of land title, which are mandatory in national law. Therefore, the *Tayade* system requires adjustment to align with national land law to provide legal certainty and protect the customary community's rights within a recognized legal framework. The following is a flowchart of the Concept of Integration of Customary Land Rights with Islamic and national land law as a findings model.

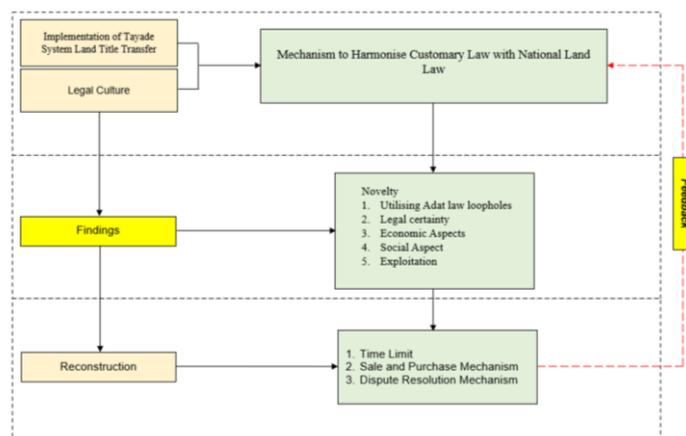


Figure 2. Conceptual Framework for Reconciling the Tayade System

Source: Data Analysis (2024)

For the *Tayade* system to be integrated with national land law, it is necessary to introduce a new regulation that explicitly regulates and guarantees the social rights of the Gorontalo people. This will ensure that the balance between customary and national law can be achieved fairly and sustainably. The transfer of land rights in the *Tayade* system must be aligned with the relevant legal

provisions, while safeguarding the values of local wisdom that distinguish the Gorontalo people. In the absence of clear legal guidelines, the risk of agrarian conflicts in the future is more intensified, particularly given that the *Tayade* system represents a customary practice deeply entrenched in the local community's traditions.

This research offers a conceptual framework for integrating the National Land Law and *Tayade* Customary Law in Gorontalo society, where both systems are recognized as equal in principle. The local community and the state legal system legally recognise both legal systems. However, in daily practice, the *Tayade* Customary Law is more commonly used by the Gorontalo community, especially in buying and selling land or crops. This is due to the strong influence of tradition and culture in the community, where customary values form the primary foundation in land transactions.

Nevertheless, the primary challenge lies in the incompatibility of the *Tayade* Customary Law with the National Land Law. This creates a gap that requires a solution to ensure harmonization between the two legal systems. This research proposes a new regulatory concept addressing three main aspects: Duration of Tree Ownership Right. Precise regulation on the duration of tree ownership is required, as this is part of the practice of land sale and purchase in the *Tayade* customary system. This regulation is important to provide legal certainty in the transaction, which is in line with national regulations. *Second*, the Sale and Purchase Mechanism. The traditional mechanism for land sale and purchase of crops needs to be adapted to the positive legal system so that the national land law can legally recognize the transaction. Moreover, the *third* is a dispute settlement mechanism. There is an urgent need to bridge the gap between *Tayade* Customary Law and National Law. The *Tayade* system is known for lacking a formal and structured dispute resolution mechanism, which often leads to legal uncertainty and the potential for prolonged conflict in Gorontalo society.

A forum is needed to bridge the differences between the two legal systems and provide legal certainty for all parties. These concepts must be translated into a binding Regional Regulation, the legal basis for every land title transfer transaction. It will ensure that the principles of national land law conduct the process of sale and purchase, ownership, and dispute resolution, and also respect the traditions and local wisdom of the Gorontalo people. Therefore, it will harmonize customary Islamic and national law and create legal certainty for all relevant parties.

4. CONCLUSION

This study emphasizes the necessity for clear regulations that align the *Tayade* system with Islamic and positive laws to resolve the dual ownership issue. The legal uncertainty caused by the separation of land and plant ownership within the *Tayade* system leads to confusion, which can result in disputes. A feasible solution involves establishing a defined duration for tree ownership and implementing formal procedures for land and tree transactions, ensuring their recognition under positive law. This process should be standardized through written agreements and the participation of a Land Deed Official (PPAT), ensuring transparency and legal certainty in land transfers while maintaining adherence to Islamic principles of fairness and clarity.

To address these challenges, the government must introduce regional regulations incorporating customary law within the national legal framework. This approach would safeguard Gorontalo's cultural heritage while ensuring that land transactions are carried out in a legally recognized and transparent manner. Furthermore, establishing a formal dispute resolution process that respects

customary traditions and national law is crucial for resolving ownership conflicts. By adopting these strategies, the *Tayade* system can be updated to comply with national and Islamic legal standards, enhancing legal protection for the Gorontalo community while preserving its traditions.

5. ACKNOWLEDGMENT

I sincerely thank the traditional leaders, customary council, institutions, and the Gorontalo community for their invaluable support in this research. Their wisdom, insights, and active participation have greatly enriched this study. I am deeply grateful for their dedication to preserving Gorontalo's cultural heritage and legal traditions, which have been essential to this work. Their support has been a constant source of inspiration. Thank you for your trust and collaboration.

6. REFERENCES

- Al Qardawi, Y. (1999). *Madkhal Ilaa Diraasab al Syariah al Islamiyah*. Kairo: Makabah Wahbah.
- Alwi, S. F. S., Ibrahim, U., & Sawari, M. F. (2013). An Issue on Uniform Customs and Practice for Documentary Credits (UCP) No 600 for Islamic Letter of Credit. *Procedia Economics and Finance*, 7(Icebr), 126–133. [https://doi.org/10.1016/S2212-5671\(13\)00226-8](https://doi.org/10.1016/S2212-5671(13)00226-8)
- AR, M. I. D., & Heriyanto, D. S. N. (2024). Striking A Balance Between Job Creation and Sustainability: The Need to Establish A True Environmental Protection Authority in Indonesia. *Jambe Law Journal*, 7(1), 1–23. <https://doi.org/10.22437/home.v7i1.317>
- Arisaputra. (2021). *Reforma Agraria di Indonesia* (Maya Sari (ed.); 1st ed.). Sinar Grafika Bumi Aksara.
- Azzahra, M., Alma, L. D., Azzahra, I. N., & Wismanto, W. (2024). Gharar Konsep Memahami dalam Fiqih: Definisi dan Implikasinya dalam Transaksi. *Hikmah: Jurnal Studi Pendidikan Agama Islam*, 1(4), 145–153. <https://doi.org/10.61132/hikmah.v1i4.265>
- Buergin, R. (2015). Contested Rights of Local Communities and Indigenous Peoples in Conflicts over Biocultural Diversity: The case of Karen communities in Thung Yai, a World Heritage Site in Thailand. *Modern Asian Studies*, 49(6), 2022–2062. <https://doi.org/10.1017/S0026749X14000390>
- Bukido, R., Rumkel, N., Wekke, I. S., & Palm, E. (2018). Customary Law of Larwul Ngabal in Implementing Regional Autonomy in North Moluccas. *Hasanuddin Law Review*, 4(2), 242. <https://doi.org/10.20956/halrev.v4i2.1351>
- Faiz, M., & Afrita, J. (2024). Kajian Literatur Terhadap Tantangan dan Prospek Fiqih Minoritas di Kalangan Muslim Barat. *Lentera: Multidisciplinary Studies*, 2(3), 349–362. <https://doi.org/10.57096/lentera.v2i3.105>
- Gayo, A., Makinara, I. K., Aristeus, S., Djuniarti, E., & Putri Nungrahani, E. L. (2024). Pengulu Uten's Forest Management in Central Aceh: A Perspective of Fiqh al-Bi'ah. *AHKAM: Jurnal Ilmu Syariah*, 24(1), 17–36. <https://doi.org/10.15408/ajis.v24i1.34518>
- Hulu, K. I., & Telaumbanua, D. (2022). Kepemilikan Hak Atas Tanah Warisan Yang Diperoleh Melalui Harta Peninggalan Orang Tua. *Jurnal Panah Keadilan*, 1(2), 52–61. <https://doi.org/doi.org/10.57094/jpk.v1i2.453>
- Ibrahim, M. R. (2016). Persepsi Masyarakat tentang Makam Raja dan Wali Gorontalo. *EL-HARAKAH (TERAKREDITASI)*, 18(1), 76. <https://doi.org/10.18860/el.v18i1.3417>
- Irwansyah. (2020). Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel. In *Mirra Buana Media*.
- Kadir, H., Bilondatu, A., & Tumuhulawa, A. (2024). Kajian Historis “Buwatulo Toulongo” Pada Sistem Hukum Tata Negara Adat Gorontalo “Adati Hula-Hula To Syar'a. Syara Hula-hula'a To Quru'ani.” *Journal Evidence Of Law*, 3(2), 74–92. <https://doi.org/10.59066/jel.v3i2.372>
- Kashi, A., Laallam, A., Mansour Nomran, N., Azmi Abumughli, A., & Al-Binali, T. (2024). Do institutional environment and corporate governance structures determine Islamic Banks'

- sustainability performance? Evidence across key jurisdictions in Islamic finance industry. *Borsa Istanbul Review*, 24(6), 1088–1100. <https://doi.org/10.1016/j.bir.2024.06.005>
- Kau, S. A. P. (2020). Islam dan Budaya Lokal Adat Gorontalo: Makna Filosofis, Normatif, Edukatif, dan Gender. In Z. Suleman (Ed.), *Buku-Buku karya dosen IAIN Sultan Amai Gorontalo*. Inteligencia Media.
- Kwakye, B., & Sasu, A. (2024). Determinants of sustainable customary land secretariats in Ghana: An economic modelling approach. *Land Use Policy*, 146, 107327. <https://doi.org/10.1016/j.landusepol.2024.107327>
- Latief, M., & Tuloli, M. S. (2024). Development of Karawo Motif Design System Based on Philosophical Values of Gorontalo Regional Culture. *Procedia Computer Science*, 234, 1442–1450. <https://doi.org/10.1016/j.procs.2024.03.144>
- Maghribi, M. F., & Ispriyarso, B. (2022). Peran PPAT Terhadap Aspek Perpajakan Dalam Transaksi Jual Beli Tanah Dan Bangunan. *Notarius*, 15(1), 105–119. <https://doi.org/10.14710/nts.v15i1.46027>
- Manda, S., & Banda, L. (2023). Seeing like the state? Customary land pressures and fracturing tenure systems in rural Zambia. *Land Use Policy*, 132(July), 106833. <https://doi.org/10.1016/j.landusepol.2023.106833>
- Muchtar, E. H. (2017). Muamalah Terlarang: Maysir Dan Gharar. *Jurnal Asy-Syukriyyah*, 18(1), 82–100.
- Mutawali, M. (2022). Customary Law of Dou Donggo Bima from the Perspective of Islamic and Indonesian Positive Law. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 17(1), 1–27. <https://doi.org/10.19105/al-lhkam.v17i1.6007>
- Nafsah, Z. (2023). Jual Beli Dalam Ekonomi Islam (Aplikasi Jual Beli Dalam Fiqih Dan Perbankan Syariah). *Jurnal Ilmiah Ekonomi Islam*, 9(2), 2071. <https://doi.org/10.29040/jiei.v9i2.8680>
- Nasrullah, N. (2018). Analisis Hukum Secara Analogi Penerapan Asas Pemisahan Horizontal Pada Praktek Jual Beli Tanah Tidak Beserta Dengan Pohon Kelapa Di Atasnya Di Kec. Patilanggio Kab. Pohuwato. *Jurnal Hukum Volkgeist*, 2(2), 135–157. <https://doi.org/10.35326/volkgeist.v2i2.90>
- Nasrulloh, M. A., Faizi, F. F., Kunci, K., Beli, J., Tebas, S., & Islam, H. (2021). Praktek Jual Beli Buah Durian Sistem Tebas Dalam Perspektif Hukum Islam Di Desa Songgon Kabupaten Banyuwangi. *Jurnal Ekonomi Syariah Darussalam*, 2(2), 2745–8407. <https://doi.org/doi.org/10.30739/jesdar.v2i2>
- Ningsih, P. K. (2021). *Fiqh Muamalah*. Rajawali Pers.
- Nur, S. S., & Polontoh, H. M. (2024). *Hak Penguasaan dan Kepemilikan atas Tanah Adat Tongkonan: Dalam Perspektif Hukum Agraria Nasional*. PT. Sonpedia Publishing Indonesia.
- Nurnazli, N., Ahmad, H. O., Firdawaty, L., Al Arif, M. Y., & Akmansyah, M. (2024). The Contestation of Islamic Boarding School Womens’s View of Wives’ Rights in Poligamy. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 24(1), 141–160. <https://doi.org/10.30631/alrisalah.v24i1.1349>
- Pelupessy, E. (2017). The Land Rights of Indigenous Peoples: Revaluation of Papua Special Autonomy. *Hasanuddin Law Review*, 3(1), 77. <https://doi.org/10.20956/halrev.v3i1.1047>
- Pongoliu, H., Jafar, U., Djalaluddin, M., & Sanusi, N. T. (2018). Eksistensi Hukum Waris Adat dalam Masyarakat Muslim di Kota Gorontalo dalam Perspektif Sejarah. *Jurnal Diskursus Islam*, 6(2), 361–401.
- Pound, R. (2006). *New Paths of The Law*. The Lawbook Exchange, LTD.
- Pujiani, R. S. (2021). Land Acquisition for Customary Law Communities: A Review of The Book “Perlindungan Hak atas Tanah Masyarakat Hukum Adat dalam Pengadaan Tanah untuk Kepentingan Umum”; *Lex Scientia Law Review*, 5(1), 185–188. <https://doi.org/10.15294/lesrev.v5i1.46903>
- Pulungan, M. T., & Muazzul, M. (2019). Tinjauan Hukum tentang Peralihan Hak Atas Tanah melalui Perjanjian Gadai di Bawah Tangan. *Jurnal Ilmiah Penegakan Hukum*, 4(2), 60. <https://doi.org/10.31289/jiph.v4i2.1959>

- Ramli, M., Rijal, S., Surya, R., & Malika, I. (2024). State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(2), 872. <https://doi.org/10.22373/sjkh.v8i2.15924>
- Rosyadi, I., Athief, F. H. N., & Rizki, D. (2022). Islamic Solution on the Agricultural Land Leasing Problem: Case of Excessive Time Dispute. *Jurnal Ilmiah Al-Syir'ah*, 20(2), 139. <https://doi.org/10.30984/jis.v20i2.1679>
- Saharuddin, Pide, A. S. M., Wahid, Y., Arisaputra, M. I., Aribah, D. R. D., & Sahabuddin, R. (2024). Tayade System Land Rights: The Concept of Unification of Customary Law and Indonesian Positive Law. *IOP Conference Series: Earth and Environmental Science*, 1430(1), 012005. <https://doi.org/10.1088/1755-1315/1430/1/012005>
- Sapuan, N. M. (2016). An Evolution of Mudarabah Contract: A Viewpoint From Classical and Contemporary Islamic Scholars. *Procedia Economics and Finance*, 35(October 2015), 349–358. [https://doi.org/10.1016/S2212-5671\(16\)00043-5](https://doi.org/10.1016/S2212-5671(16)00043-5)
- Setiawan, B., Afin, R., Wikurendra, E. A., Nathan, R. J., & Fekete-Farkas, M. (2022). Covid-19 pandemic, asset prices, risks, and their convergence: A survey of Islamic and G7 stock market, and alternative assets. *Borsa Istanbul Review*, 22, S47–S59. <https://doi.org/10.1016/j.bir.2022.11.011>
- Sutedi, A. (2023). *Peralihan hak atas tanah dan pendaftarannya*. Sinar Grafika.
- Une, D. (2021). Islamisasi dan Pola Adat Masyarakat Gorontalo dalam Perspektif Sejarah Kebudayaan Islam. *Ideas: Jurnal Pendidikan, Sosial, Dan Budaya*, 7(3), 259. <https://doi.org/10.32884/ideas.v7i3.474>
- Zein, Y. A., Syaprillah, A., & Idris, R. (2023). The Regulations for Management of Coastal Natural Resource Conflicts in Indonesia-Malaysia Border. *BESTUUR*, 11(2), 192. <https://doi.org/10.20961/bestuur.v11i2.69205>