



Legal Politics of Fulfilling Constitutional Rights to Education and Health for Baduy Women: Intersections of Customary Law, State Policy, and Islamic Values

Ade Fartini¹, Eka Julaiha², Nina Chairina,³ Ni'matul Huda⁴

¹²³ UIN Sultan Maulana Hasanuddin Serang, Indonesia

⁴ Universitas Islam Indonesia, Yogyakarta, Indonesia

Corresponding Author, Email: ade.fartini@uinbanten.ac.id

Received: February 15, 2026, *Revised:* May 20, 2026, *Accepted:* June 1, 2026, *Published:* June 5, 2026

Abstract: The constitutional amendments enacted between 1999 and 2002 substantially enhanced the protection of human rights in Indonesia, particularly in the areas of education and healthcare. However, despite these strengthened constitutional guarantees, indigenous women within the Baduy community continue to encounter structural and cultural barriers that limit their effective access to these rights. This study applies a juridical-empirical approach to analyze the legal politics surrounding the implementation of constitutional rights in Kanekes Village. The findings reveal that internal challenges—primarily stemming from the community's strict observance of "Pikukuh," a set of binding customary rules and prohibitions play a significant role in restricting access to formal education and modern health services. In addition, external factors, including limited infrastructure and inadequate state outreach, further exacerbate inequalities in service delivery. The research also examines the religious identity of the Baduy people, particularly their adherence to "Slam Wiwitan," and how this belief system interacts with dominant Islamic values in the broader Banten region. This intersection creates both tensions and opportunities in the realization of constitutional rights. The study proposes a collaborative model of legal politics that incorporates the "Papagahan" peer-learning tradition alongside culturally responsive healthcare services tailored to community norms. Ultimately, the research concludes that the effective fulfilment of state obligations depends on harmonising national legal frameworks, customary living law, and the community's religious characteristics. Such an integrated approach is necessary to ensure that constitutional rights are upheld without undermining the preservation of indigenous cultural identity.

Keywords: Baduy tribe; constitutional rights; indigenous women; Islam and tradition; legal politics.

Introduction

The reform era in Indonesia, marked by the four stages of amendments to the 1945 Constitution between 1999 and 2002, fundamentally restructured the nation's legal landscape and human rights protections. According to (Asshiddiqie, 2005), these amendments transformed Indonesia from a state based on executive power into a constitutional democracy that prioritizes the rule of law. The inclusion of a comprehensive Bill of Rights within the constitutional text ensures that every citizen possesses inherent rights that the state is obligated to fulfill. This evolution aligns with the global shift toward protecting marginalized groups, as explored by (Donnelly, 2013), who emphasizes that human rights are universal. Consequently, the state is legally bound to implement policies that bridge the gap between constitutional ideals and practical realities. The success of this legal transformation is measured by how effectively these rights reach traditionally isolated communities.

In the realm of state governance, legal politics plays a pivotal role in translating constitutional mandates into actionable legislation. (Mahfud, 2009) defines legal politics as the state's official policy regarding the laws that will be enacted to achieve national objectives. Within the Indonesian context, this involves harmonizing national interests with the diverse local customs of the archipelago. As noted by (Kelsen, 1971), every legal norm must derive its validity from a higher authority, which in Indonesia is the 1945 Constitution. Therefore, any political decision regarding citizens' rights must be anchored in principles of justice and social welfare. This framework provides a lens to analyze the tension between state-led modernization and indigenous autonomy. It is through this lens that the state must address the specific needs of communities like the Baduy.

The right to education is explicitly guaranteed under Article 31 of the amended Constitution. (Smith, 2014) argues that education serves as a 'multiplier right' because it enables the exercise of other fundamental freedoms. International standards, such as those set by the (Assembly, 2007), stipulate that indigenous groups have the right to control their educational systems. However, in Indonesia, the challenge lies in providing a system that is acceptable to communities that reject formal state institutions. For the Baduy, the traditional prohibition against formal schooling creates a significant hurdle for mandatory state programs. Bridging this divide requires a legal political strategy that respects cultural integrity while ensuring literacy. This balance is critical for the long-term empowerment of indigenous youth.

Similarly, the right to health is a fundamental constitutional guarantee mandated by Article 28H. (An-Na'im, 2009) posits that health is a cultural construct that requires inclusive policy frameworks. The state's obligation to provide quality health services is complicated by indigenous peoples' traditional healing practices. In many cases, these communities rely on local wisdom and ancestral knowledge rather than modern facilities. According to (Iskandar, 2005), the Baduy maintain a unique medical system deeply intertwined with their spiritual beliefs. This reliance often leads to low participation in state-sponsored programs, particularly maternal health services. The state must navigate the balance between medical science and traditional indigenous healing.

Indigenous women face unique challenges stemming from their ethnic identity and gender roles. As discussed by (Moore, 1998), they are frequently excluded from decision-making and confined to domestic labor. In Indonesia, patriarchal customary laws (*hukum adat*) can lead to the marginalization of women regarding education and health. (Kania, 2016) highlights that a lack of legal literacy exacerbates their vulnerability to discrimination. While the state has ratified CEDAW, implementation within customary territories remains inconsistent. The protection of Baduy women's rights requires an approach addressing both state legal gaps and local cultural norms. Without gender-sensitive policies, constitutional promises remain largely symbolic for these women.

The sociocultural identity of the Baduy is further defined by its unique religious character, often referred to as "Slam Wiwitan." While they are frequently categorized as followers of an ancestral faith, their traditions show significant intersections with Islamic values. (Garna, 1988) notes that the Baduy claim descent from Adam and practice traditions like male and female circumcision, which mirror Islamic rites. This religious syncretism places them in a unique position within the majority-Muslim province of Banten. The interaction between their "Pikukuh" and the surrounding Islamic environment influences how they perceive state laws and social changes. Understanding this religious intersection is vital for crafting inclusive legal policies that do not alienate the community.

Legal tensions arise when state mandates clash with the "Living Law" of the indigenous community. (Ehrlich, 2008) argued that the center of legal development lies in society itself. In the Baduy community, the "Pikukuh" serves as the ultimate source of authority, often superseding state regulations. (Ehrlich, 2008) suggests that the state must recognize these informal systems to ensure social justice. If the state ignores customary laws, its policies are likely to meet resistance. For the Baduy, the "Pikukuh" is the foundation of their identity, and its preservation is a spiritual duty. Therefore, a purely positivist approach to the fulfillment of rights is insufficient in this setting.

The role of local government in Lebak Regency is critical in facilitating the fulfillment of rights. Under Law No. 23 of 2014, local authorities have the autonomy to manage services in accordance with local wisdom. However, the lack of specific regulations addressing the needs of Baduy women has hindered progress. (Thontowi, 2015) points out that the state often lacks the cultural sensitivity required for indigenous areas. As a result, many government initiatives are

underutilized because they do not align with customary values. The local government must act as a bridge, creating a legal framework for cultural adaptation. Without this, the rights of Baduy women will continue to be marginalized by administrative rigidity.

In light of these conditions, this research seeks to answer three fundamental questions. First, why have Baduy women not had equal access to constitutional rights to education and health? Second, what is the dynamic of state legal politics and customary law in the collaborative effort to fulfill these rights? Third, how do the traditions of the Baduy community intersect with Islamic values, as the majority religion of the surrounding society? These questions are essential to understanding the gap between normative standards and empirical realities. Addressing these issues aims to provide a comprehensive analysis of the barriers to rights fulfillment. Furthermore, it seeks to identify a model of legal engagement that empowers indigenous women.

This article explores these issues through a juridical-empirical lens, focusing on the interplay between legislation, religion, and customary practices. The study aims to contribute to the discourse on indigenous rights and legal pluralism in Indonesia. By examining the Baduy case, we can draw broader conclusions about the challenges of fulfilling rights in diverse societies. Subsequent sections will detail the research methodology and analyze the findings. Ultimately, the goal is to ensure that the spirit of the 1945 Constitution reaches every citizen, including those in the secluded valleys of the Baduy territory. This research offers practical insights for policymakers and scholars at the intersection of tradition, religion, and modern constitutionalism.

Legal politics serves as the architecture for state decision-making regarding the implementation of law. As noted by (Mahfud, 2017), it represents the official state line that determines which laws are prioritized. In the post-reform era, Indonesian legal politics has shifted toward a human rights-oriented framework. (Asshiddiqie, 2006) argues that this necessitates the transformation of state power into a system that safeguards liberties through a hierarchy of norms. Consequently, the state's political will is tested by its ability to fulfill the needs of indigenous groups. This process requires negotiation between the universalism of rights and the particularism of local traditions.

The fulfillment of rights for indigenous peoples is governed by international standards that demand physical and cultural accessibility. According to the (Assembly, 2007), the state must ensure services are culturally appropriate. In education, the state is obligated to adapt delivery methods to align with indigenous values, a concept known as 'adaptability'. (Tomasevski, 2002) highlights that a rights-based approach must prevent the erosion of cultural identity. Similarly, the right to health requires integrating traditional medicine with modern systems to build trust. This holistic approach is essential for the effective realization of constitutional mandates.

Indigenous women navigate a complex intersection of discrimination rooted in identity and gender. As explored by (Merry, 2006), the 'vernacularization' of human rights occurs when standards like CEDAW are translated into local settings. Within indigenous legal structures, patriarchal norms may limit women's autonomy over their own education and health. (Moore, 1998) notes that the exclusion of women from leadership roles results in their specific needs being overlooked. Therefore, the state has a unique obligation to provide an extra layer of protection. Harmonizing these two legal systems remains one of the most significant challenges in human rights protection.

The religious dimension of indigenous law often serves as a primary driver of legal compliance. In the Baduy context, the intersection with Islamic values creates a unique form of 'Living Law' that (Ehrlich, 2008) views as the true regulator of social conduct. The community's adherence to "Slam Wiwitan" suggests that their legal resistance is not a rejection of modern statehood but a preservation of a sacred cosmic order. (Griffiths, 1986) emphasizes that legal pluralism is a normative necessity for justice in diverse nations. By understanding the religious underpinnings of Baduy traditions, the state can identify shared values—such as the Islamic emphasis on seeking knowledge and preserving life to bridge the gap in rights fulfillment.

Academic discourse on indigenous rights in Indonesia has evolved through several key studies. Investigations into the intersection of gender and customary law were pioneered by (Irianto, 2005), who explored the legal choices made by Batak Toba women. Her work highlighted the tension between state law and patriarchal norms, illustrating how women navigate marginalization. This dialogue on the 'living law' directly informs the current study's approach to the "Pikukuh" structures. While Irianto focused on inheritance, her findings regarding the necessity of a pluralistic legal perspective remain relevant to the discussion of social rights.

Studies on the Baduy community have often prioritized territorial issues. (Batubara, 2010) focused on the implementation of land rights (Hak Ulayat), noting that compliance with local regulations remained suboptimal. Similarly, (Senoaji, 2011) examined forest management, emphasizing how ancestral taboos serve as tools for conservation. These studies establish the “Pikukuh” as a powerful force, yet they largely leave women's education and health rights unaddressed. This research fills that gap by analyzing individual social rights within a communal legal framework.

Recent scholarship has analyzed constitutional mandates in specific geographic contexts. (Zein, 2014) investigated rights fulfillment in border regions, identifying geographic isolation as a primary barrier. His research underscored the state's failure to provide equitable access in peripheral areas. Furthermore, (Erlina, 2016) analyzed the formation of regional regulations to fulfill women's rights, concluding that laws must accommodate reproductive needs to be effective. These contributions demonstrate a growing recognition of the state's obligation to tailor its legal politics.

The religious and historical origins of the Baduy have also been explored, providing context for their legal identity. (Permana, 2009) examined the role of traditional medicine, while (Garna, 1988) investigated their social hierarchy and religious syncretism. These researchers highlight that the Baduy do not exist in total isolation but in a state of ‘calculated interaction’ with Islamic society. However, few studies have specifically linked this religious intersection to the fulfillment of constitutional rights. By synthesizing these elements, this research provides a novel analysis of how synergy between state, religion, and custom can be achieved.

Despite these contributions, a critical gap exists regarding the triple intersection of legal politics, indigenous autonomy, and religious values. Previous studies have analyzed these elements in isolation. This study fills that niche by examining how the state's legal politics must adapt to the “Slam Wiwitan” identity of the Baduy to fulfill constitutional promises. By focusing on the dual rights of education and health, this research provides a comprehensive analysis of synergy. This study offers a blueprint for how state law can coexist with diverse cultural and religious identities in Indonesia.

The analysis of rights fulfillment for indigenous communities requires a framework centered on legal politics and modern constitutionalism. Legal politics represents the strategy in determining which norms are prioritized to achieve national goals. As established by (Mahfud, 2017), this involves negotiation between formal regulations and social aspirations. In a constitutional democracy, all directives must remain subordinate to the supreme law. (Asshiddiqie, 2005) argues that the state must ensure justice reaches the most marginalized. Therefore, the state's political will is the engine for transforming guarantees into tangible services.

At the intermediate level, this study applies human rights theory with a focus on the intersection of gender and identity. Universal standards for the protection of women are grounded in CEDAW, which mandates the elimination of barriers to health and education. (Merry, 2006) posits that the effectiveness of standards depends on their ‘vernacularization’. Furthermore, the fulfillment of these rights is evaluated through the 4A framework—availability, accessibility, acceptability, and adaptability—proposed by (Tomasevski, 2002). This standard ensures that services are culturally appropriate for communities that maintain traditional lifestyles.

The applied dimension is guided by the theory of living law and the concept of the ‘Volkgeist’. (Ehrlich, 2008) contended that the law governing human conduct is found in deep-seated customs rather than statutes. For the Baduy, the “Pikukuh” functions as a sovereign legal system. (Nelken, 2008) suggests that when state law enters such a territory, it requires collaborative governance. This study also integrates the concept of ‘Religious Identity in Law’, recognizing that the Baduy's “Slam Wiwitan” faith provides a moral basis for their legal resistance and eventual adaptation to modernization. Ultimately, the synthesis of these theories suggests that rights fulfillment requires a move toward transformative legal pluralism. (Griffiths, 1986) emphasizes that pluralism is a normative necessity for justice. The state must adopt a ‘soft-law’ approach that incorporates customary methods into national strategies. This framework allows the research to move beyond a critique of state failure toward a culturally sensitive legal model. By aligning state obligations with the community's spirit and religious nuances, the state can achieve its goals without causing alienation. This multidimensional framework ensures that findings are grounded in both universal standards and local realities.

Method

This study employs a juridical-empirical research method, designed to analyze the implementation of legal norms within social reality. As described by (Soekanto, 1989), this approach allows the researcher to observe the gap between the law in the books (*das Sollen*) and the law in action (*das Sein*). The method is used to investigate how the Baduy community navigates constitutional guarantees for education and health. By focusing on the interplay between legislation and social behavior, the research provides a qualitative analysis of the legal politics involved. This methodology is effective for examining the resilience of customary law in the face of modern mandates.

Primary legal materials include the 1945 Constitution, serving as the ultimate source of human rights protection. Additionally, the research scrutinizes Law No. 20 of 2003 on National Education and Law No. 36 of 2009 on Health. At the local level, the study examines Lebak Regency Regulation No. 2 of 2010 and No. 7 of 2009. These documents are evaluated against international standards, such as CEDAW, which was ratified through Law No. 7 of 1984. As noted by (Asshiddiqie, 2006), these regulations form the hierarchical structure that the state must implement to ensure citizen welfare.

Empirical data were collected through intensive field research in Kanekes Village, Banten. Data collection included in-depth interviews to gain a multi-perspective understanding. Primary informants included customary leaders such as Jaro Saija and Ayah Mursyid, who provided insights into the “Pikukuh” and religious intersections. Interviews were also conducted with Baduy women, health workers from the Cisimeut Puskesmas, and Regency Education officials. (Moleong, 2019) argues that qualitative inquiry is essential for capturing the lived experiences and cultural nuances of isolated communities.

The collected data were analyzed using a qualitative descriptive technique to identify barriers to rights fulfillment. This involved triangulating normative legal frameworks with field findings to determine the effectiveness of state policies. The research focuses on the 65 hamlets within the Baduy territory to understand how geography and religion influence accessibility. By categorizing findings into internal customary obstacles and external administrative limitations, the study identifies necessary shifts in legal politics. Ultimately, the methodology is designed to synthesize a model that aligns state duties with the community’s “Living Law” and religious identity.

Results and Discussion

Internal and External Factors Hindering Rights Fulfillment

The primary internal obstacle identified in this research is the deep-seated adherence to the ‘Pikukuh’ philosophy, which serves as the cultural DNA of the Baduy tribe. As documented by (Fartini, 2020), the customary mandate of “*lojor teu meunang dipotong, pondok teu meunang disambung*” creates a natural resistance to any external system that disrupts the ancestral order. These values are firmly rooted in what (Savigny, 1986) describes as the ‘*Volksgeist*’, or the spirit of the people, where law is seen as an organic growth of history rather than a set of imposed rules. For generations, this traditional stance was interpreted as a total prohibition of formal schooling and modern chemical medicine. Because the Baduy view their territory as a sacred space that must remain untainted, top-down state interventions often face immediate psychological barriers. Consequently, the constitutional rights provided by the state are frequently viewed not as benefits, but as potential threats to their cultural purity.

The Baduy's internal social structure also places heavy emphasis on the division of labor, creating a double burden for women. Within this indigenous framework, women are primarily responsible for domestic duties, weaving, and the intensive demands of the ‘*Ngahuma*’ agricultural cycle. As analyzed by (Merry, 2006), the process of vernacularizing human rights is often impeded when traditional gender roles are strictly enforced by customary authorities. Baduy women spend most of their day in the fields or at home, leaving little time for external educational activities or health consultations. This routine is not merely a practical matter but a ritualistic expression of their spiritual connection to the earth. Therefore, state programs that require fixed schedules or centralized attendance are inherently incompatible with the daily lives of Baduy women.

Geographical isolation remains a formidable barrier, with the Baduy population spread across 65 scattered hamlets deep within the Kendeng Mountains. The difficult terrain and the lack of accessible roads within the territory significantly complicate the delivery of essential services. (Zein, 2014) points out that in remote regions, geographic distance often translates into legal distance, where the arm of the state cannot reach the citizens it is meant to protect. For a Baduy woman, seeking

medical attention or attending a literacy gathering may require hours of walking through rugged mountains. This physical isolation reinforces the cultural preference for local solutions over state-provided alternatives. Without a decentralized approach to service delivery, the constitutional mandates for health and education remain largely theoretical for those living in the farthest hamlets.

The intersection of Baduy tradition with their unique religious identity, known as 'Slam Wiwitan', also creates a selective filter for accepting state rights. While they maintain ancestral rites, their claim of descent from Prophet Adam and the practice of circumcision show a historical dialogue with Islamic values. (Ikhwan, 2018) argues that this syncretic identity allows the community to negotiate its boundaries with the surrounding Islamic society in Banten. However, this same identity makes them wary of state-led 'Islamization' efforts through formal religious education in schools. They fear that formal education will dilute their specific spiritual heritage in favor of a homogenized national identity. Thus, the fulfillment of educational rights is often hindered by the community's strategic decision to maintain their spiritual autonomy.

On the external side, the state's failure is primarily marked by a significant lack of infrastructure that is tailored to indigenous needs. For years, the government attempted to implement standardized national models for education and health that did not account for the 'Pikukuh' prohibitions. (Thontowi, 2015) argues that a state-centric approach often ignores the necessity of providing 'culturally safe' spaces that indigenous peoples can trust. The existing government buildings are often located outside the customary territory, making them seem alien and intimidating to the Baduy. Furthermore, the lack of budget allocation for non-formal, mobile units has left the community without a viable bridge to state services. This systemic mismatch between state supply and community demand has resulted in decades of administrative neglect.

A critical shortage of female human resources within the state apparatus further exacerbates the gap in the fulfillment of rights. Cultural norms within the Baduy community often dictate that women should only interact with other women regarding sensitive issues like reproductive health and early education. (Moore, 1998) emphasizes that indigenous women are more likely to participate in social programs when they are facilitated by individuals who share their gender and respect their cultural protocols. The field research revealed that there are very few female midwives or educators willing to stay in the remote Baduy hamlets for extended periods. The lack of financial incentives and career rewards for field staff working in these difficult areas has led to high turnover and low service quality. Consequently, Baduy women are left to rely on traditional birth attendants, even when modern interventions might be medically necessary.

The state's historical reliance on legal positivism has also hindered the development of a structured synergy between the government and customary institutions. (Mahfud, 2009) notes that legal politics must be translated into clear legislative frameworks to be effective and sustainable. However, at the regional level, there has been a lack of specific regulations (Perda) that explicitly recognize and integrate Baduy customary methods into the Regency's development plan. Most state initiatives in Kanekes have been project-based rather than integrated into a permanent legal structure that respects the community's 'Living Law'. This administrative rigidity prevents the local government from being sufficiently flexible to adopt indigenous models such as 'Papagahan'. Without a legal political framework for collaboration, every new administration must reinvent the wheel of cultural engagement.

Trust is a fundamental component of the fulfillment of rights that the state has often failed to cultivate through its top-down policies. The long history of isolationist 'Pikukuh' was partly a reaction to the coercive modernization attempts during the colonial and New Order eras. (Ehrlich, 2008) posited that when formal law clashes with the living law of a society, the society will choose to protect its customs at all costs. The Baduy community's fear of cultural erosion makes them highly suspicious of any state-led program that requires data collection or formal registration. For Baduy women, the act of going to a modern hospital or joining a formal classroom can be seen as an act of cultural betrayal. Rebuilding this trust requires the state to prove that its services can coexist with, rather than replace, indigenous traditions.

Finally, the lack of structured communication between the 'Jaro Pamarentah' (customary administrative leader) and regency officials has slowed the implementation of constitutional rights. While the customary leadership has shown a willingness to adapt, as seen in the 1997 internal amendment, the state has been slow to formalize this collaboration. (Griffiths, 1986) highlights that legal pluralism requires a constant dialogue between different sources of authority within a nation. In the Baduy context, this

dialogue is often sporadic and depends on the personal relationships of individual officials rather than a systemic policy. This lack of institutionalized synergy means that successes in one village are rarely scaled up to the entire territory. To truly fulfill the rights of Baduy women, the state must move beyond symbolic recognition and toward an active partnership with the 'Living Law' of the community.

The interaction with the surrounding Islamic society further shapes the external environment in which Baduy women exercise their rights. The province of Banten is known for its strong Islamic character, and many state officials approach the Baduy through a lens of religious outreach. (Permana, 2009) notes that while the Baduy value certain Islamic principles, they are highly protective of their distinct identity as 'Urang Kanekes'. When state health or education programs are perceived as vehicles for religious conversion, the community's resistance increases exponentially. Therefore, the state's legal politics must be secular and culturally sensitive, focusing purely on the fulfillment of constitutional rights. By respecting the religious syncretism of 'Slam Wiwitan', the state can find common ground with the community without triggering defensive cultural reactions.

Intersection of Baduy Traditions and Islamic Values

The investigation reveals a profound and complex intersection between Baduy traditions and Islamic values, a religious dimension often locally referred to as 'Slam Wiwitan'. This term itself signifies a syncretic blend, where the word 'Slam' is derived from Islam and 'Wiwitan' refers to the original or beginning. Informants within the community explained that their belief system is not entirely separate from the Abrahamic tradition, as it centers on the narrative of Prophet Adam as the first human and the root of their lineage. According to (Ikhwan, 2018), this religious identity functions as a theological bridge that connects the isolated Baduy with the wider Islamic society of Banten. By identifying as the keepers of the 'original faith' of Adam, the Baduy establish a spiritual legitimacy that commands respect from their Muslim neighbors. This intersection is a crucial element in their legal identity, influencing how they negotiate their rights with the state.

A significant shared value between the Baduy tradition and Islam is the rigorous emphasis on cleanliness and purity, known in the community as 'suci'. This concept closely mirrors the Islamic principle of 'thaharah', where physical and spiritual cleanliness is a prerequisite for a righteous life. The Baduy manifest this value through strict water management systems and the preservation of their natural environment, which they view as a sacred duty. (Senoaji, 2010) argues that this environmental stewardship aligns perfectly with the Islamic concept of 'Khalifatullah', or the role of humans as vicegerents of the earth. For the Baduy, protecting the forest is not merely a custom but a religious obligation to maintain the cosmic balance ordained by the Creator. This shared moral foundation provides a potential entry point for state-led health programs that emphasize sanitation and hygiene.

The ritualistic intersections between these two systems are most visible in practices such as male and female circumcision, which are mandatory for all Baduy members. These rites of passage are performed using traditional methods but carry the same symbolic weight as the Islamic 'khitan', signifying the entry into a state of purity. (Garna, 1988) notes that such practices demonstrate a long-standing historical dialogue between the Baduy and the surrounding Islamic sultanates. Furthermore, the Baduy's dietary restrictions, which include the prohibition of certain animals, share a conceptual framework with the Islamic 'halal' and 'haram' laws. These shared markers of identity suggest that the Baduy do not exist in a vacuum but in a state of calculated interaction with Islamic norms. Understanding these ritualistic similarities is vital for policymakers who seek to implement culturally acceptable social services.

The concept of 'Seba', the annual pilgrimage where the Baduy visit the regional government to deliver agricultural yields, serves as a powerful political and religious ritual. This ceremony is not merely a formal administrative visit but a demonstration of loyalty to the state while maintaining spiritual autonomy. (Permana, 2009) points out that this ritual mirrors the Islamic concept of paying homage to legitimate leadership, or 'ulul amri', provided that the leadership respects the people's faith. During Seba, the Baduy reaffirm their social contract with the 'Father' of the state, bridging the gap between customary law and national authority. This ritualistic submission provides a framework for the state to fulfill its constitutional obligations as a form of 'protection' rather than 'intervention'. It is through this traditional political lens that the community views the state's provision of health and education.

Despite these intersections, the relationship is often marked by a defensive tension regarding state-led 'Islamization' efforts. Historically, the state has used formal schooling as a vehicle to promote an orthodox version of Islam, which the Baduy resist to preserve their unique ancestral

syncretism. (Merry, 2006) observes that when human rights are perceived as tools for religious or cultural homogenization, the local community's defensive mechanisms are triggered. The Baduy fear that if their children attend formal religious classes, they will lose the specific nuances of 'Slam Wiwitan' that define their ethnic boundaries. Consequently, the rejection of formal education is often a strategic choice to prevent the dilution of their spiritual heritage by external religious authorities. To be effective, the state's educational politics must remain strictly secular and respect the community's unique religious interpretation.

For Baduy women, the intersection of tradition and Islam offers a way to reframe literacy and education as a moral duty. In Islamic thought, the pursuit of knowledge is a mandatory duty for every individual, a principle that can be applied in the Baduy context to promote literacy. The state can frame literacy not as a transition toward modern schooling, but as a way to protect the family from external deception and exploitation. (Kania, 2016) highlights that when indigenous women are empowered with literacy, they are better equipped to safeguard their customary rights and land. By aligning the goal of literacy with the shared values of honesty and protection of the weak, the state reduces perceptions of education as a cultural threat. This reframing allows Baduy women to embrace learning as an extension of their traditional roles as household guardians.

In the health sector, the principle of preserving life, or 'Maqasid al-Shari'a', provides a strong theological justification for accepting modern medical interventions. While the Baduy primarily rely on herbal medicine, their core philosophy prioritizes the community's survival and wellness above all else. (Iskandar, 2005) observes that the community's openness to 'belajar' (learning) now extends to understanding medical practices that can prevent maternal and infant mortality. The state can bridge the medical divide by highlighting how modern vaccinations and prenatal care fulfill the religious duty to preserve the next generation of 'Adam's descendants. When modern medicine is presented as a gift from the state to help fulfill this sacred duty, it becomes more acceptable than if it were presented as a superior replacement for traditional wisdom. This collaborative framing ensures that health rights are fulfilled in a manner that honors both customary and spiritual beliefs.

The role of women in maintaining this religious-traditional intersection is critical, as they are the primary educators of the next generation within the home. Baduy women transmit the values of 'Slam Wiwitan' through daily rituals, weaving patterns, and agricultural songs that carry ancestral messages. (Moore, 1998) emphasizes that indigenous women act as the cultural anchors of their society, ensuring that the community's spiritual identity survives in the face of external pressure. By engaging directly with women through non-formal educational circles, the state can foster a dialogue that respects their role as cultural transmitters. These educational gatherings can become spaces where traditional values and essential literacy exist in a harmonious, syncretic state. Empowering these women ensures that the community's internal legal evolution is led by those who understand its spiritual heart.

Ultimately, the state's legal politics must move toward a model of 'transformative pluralism' that recognizes the syncretic reality of the Baduy community. As argued by (Griffiths, 1986), a just legal system must acknowledge that individuals often live under multiple overlapping legal and religious orders simultaneously. For the Baduy, the fulfillment of constitutional rights is only possible if the state acknowledges that their tradition is already in a historical dialogue with Islamic values. By building on these shared foundations—such as environmental ethics, cleanliness, and the preservation of life—the state can create a more inclusive policy framework. This approach ensures that the constitutional promises of the post-amendment era are not seen as a foreign imposition but as a fulfillment of the community's own moral aspirations. The synergy between state law, Islamic ethics, and Baduy tradition offers a sustainable path toward the realization of rights in a diverse Indonesia.

State and Customary Legal Politics Dynamic

The dynamic relationship between state law and Baduy customary law reached a historical turning point in 1997 through a strategic internal reinterpretation of the "Pikukuh." During this period, the customary leadership, or "Kokolot," led by figures such as Ayah Mursyid, engaged in an internal dialogue to address the rising challenge of illiteracy and external exploitation. They successfully established a linguistic and legal distinction between "sakola" (formal schooling) and "belajar" (the act of learning). While "sakola" remains prohibited because it involves formal uniforms, rigid schedules, and state-centric buildings that violate ancestral purity, "belajar" is now recognized as an essential tool for community survival. As documented by (Fartini, 2020), this shift allowed the community to accept

basic literacy and numeracy training as long as the delivery methods remained within the boundaries of traditional life. This internal amendment demonstrates that indigenous legal systems possess the resilience and flexibility to adapt to modern needs without sacrificing their core identity.

This internal evolution of Baduy customary law provides strong empirical evidence for the theory of living law. (Ehrlich, 2008) famously argued that the effective rules governing a society are those that arise from its internal social associations rather than those imposed by a central state authority. For the Baduy, the “Pikukuh” serves as this living legal heart, and the 1997 shift demonstrates its capacity for organic growth in response to social pressures. (Nelken, 2008) suggests that when state legal politics acknowledges such internal transformations, the resulting legal pluralism becomes a productive force rather than a source of conflict. The state’s subsequent willingness to work within this new customary definition of ‘learning’ represents a transition from a coercive legal strategy to a collaborative one. This synergy is fundamental to ensuring that constitutional rights are respected in a way that the community can psychologically and culturally accept.

The state’s primary educational response to this customary opening has been the adoption and formalization of the ‘Papagahan’ model. This model is a peer-to-peer learning approach deeply rooted in Baduy oral tradition, where knowledge is passed down through informal social interaction. Instead of formal classrooms, learning takes place during the ‘Ngawangkong’—the traditional evening gatherings at the home of a leader or in agricultural fields. (Fartini, 2020) observes that by utilizing local tutors like Sarpin and Pulung, the state removes the alienating presence of outside authority figures. The ‘Papagahan’ model focuses on ‘Calistung’ (reading, writing, and arithmetic) while simultaneously reinforcing the community’s spiritual and agricultural values. This approach ensures that the state fulfills its mandate for universal literacy without disrupting the delicate sociocultural fabric of Kanekes Village.

From a legislative perspective, the implementation of this model is supported by the flexible provisions of Law No. 20 of 2003 regarding the National Education System. This law recognizes non-formal and informal education as valid pathways for fulfilling the state’s obligation to ‘educate the nation’s life.’ (Asshiddiqie, 2006) points out that such flexible legal frameworks are necessary to bridge the gap between national standards and the specific needs of indigenous citizens. By classifying the Baduy learning circles as ‘Pendidikan Layanan Khusus’ (Special Service Education), the state provides a legal ‘safety valve’ that accommodates indigenous taboos. This legal political strategy allows for the allocation of government resources and tutors while bypassing the customary ban on formal school buildings. Consequently, the state’s constitutional duty to provide education is successfully vernacularized to fit the indigenous context.

In the health sector, the dynamic has similarly shifted from a standoff between modern medicine and traditional healing toward a collaborative model. Historically, Baduy women were prohibited from using modern chemical drugs or visiting state hospitals, relying entirely on the ‘Paraji’ (traditional birth attendants) and ‘Dukun’ (healers). However, high maternal and infant mortality rates prompted the customary leadership to reconsider the role of modern medical safety. (Iskandar, 2005) notes that the community began to accept the presence of state midwives, provided their interventions did not involve the immediate violation of spiritual rites. The current legal dynamic focuses on integrating these two systems, in which modern medical science serves as technical support for traditional indigenous knowledge. This shift reflects a practical realization that preserving the community’s health is a prerequisite for preserving its culture.

The most innovative manifestation of this health-sector legal politics is the establishment of ‘Imah Pangubaran,’ or traditional healing houses. These facilities are intentionally designed using traditional Baduy architecture and materials to ensure they are perceived as ‘culturally safe’ spaces. Unlike standardized government health clinics, ‘Imah Pangubaran’ serves as a neutral ground where state-certified midwives and traditional ‘Paraji’ can work together in providing maternal care. (Thontowi, 2015) argues that such architectural and institutional adaptation is essential for building trust among indigenous populations. This model allows Baduy women to receive essential medical interventions, such as immunizations or post-partum care, without feeling that they are betraying their ancestral taboos. The healing house embodies the synergy between constitutional rights and the community’s ‘Living Law.’

The role of the ‘Paraji’ is pivotal in this new health dynamic, as they act as the gatekeepers of community trust for pregnant women. Legal politics in Lebak Regency has evolved to include ‘Paraji’ as recognized partners in the maternal health system, training them to identify emergency symptoms

while respecting their traditional massage and spiritual roles. (Merry, 2006) observes that human rights are best protected when local intermediaries are empowered to lead implementation. By providing a synergy where midwives handle medical safety and Paraji manages cultural comfort, the state has significantly reduced maternal mortality in the region. This collaborative model ensures that health rights are not merely ‘delivered’ by the state but are ‘produced’ through indigenous partnership. This approach effectively addresses the constitutional mandate of Article 28H in a culturally sensitive manner.

Despite these empirical successes, a significant gap remains in formalizing these collaborative models within regional legislation. While the ‘Papagahan’ and ‘Imah Pangubaran’ initiatives are operational, they are currently based on administrative circulars and project-level budgets. (Mahfud, 2017) emphasizes that for a legal political shift to be permanent and sustainable, it must be codified into formal regional regulations or ‘Perda.’ Lebak Regency Regulation No. 2 of 2010 and No. 7 of 2009 remain somewhat generic and do not explicitly outline the funding mechanisms for indigenous-specific models. The lack of a specific ‘Perda’ for Baduy rights fulfillment means these programs are vulnerable to changes in local political leadership or shifting regency priorities. Establishing a permanent legislative anchor is the next necessary step for Indonesian legal politics in the Kendeng Mountains.

The socio-legal dynamic is further enriched by the community’s interaction with Islamic values through their “Slam Wiwitan” identity. As the community moves toward greater literacy, they are increasingly able to frame their rights within the moral context of the surrounding Islamic society in Banten. (Ikhwan, 2018) argues that the Baduy use their syncretic religious narrative to claim a shared moral space with the state and their Muslim neighbors. For example, literacy is now framed as a way to fulfill the sacred duty of protecting the family from deception, a value held in high regard by both customary law and Islam. This religious dimension provides an additional layer of legitimacy for the state’s education and health programs. By tapping into these shared ethical frameworks, the state can foster a deeper, more enduring acceptance of constitutional rights among the Baduy.

For Baduy women, this collaborative dynamic has led to significant empowerment within their traditional domestic and agricultural spheres. Literacy and better access to health care allow these women to manage their families’ welfare more effectively and protect themselves from being cheated during agricultural trade with outsiders. (Moore, 1998) notes that indigenous women’s empowerment should not aim to extract them from their culture but to provide the tools to help them thrive within it. The ‘Papagahan’ and ‘Imah Pangubaran’ models provide exactly these tools, ensuring that the constitutional promises of equality reach even those in total isolation. By honoring the indigenous women’s roles as cultural transmitters, the state ensures that modernization does not come at the cost of cultural decimation. This model serves as a vital case study for the application of gender-sensitive legal pluralism in modern Indonesia.

Ultimately, the dynamic between state and customary legal politics must be seen as a form of ‘transformative pluralism.’ As proposed by (Griffiths, 1986), the state must move beyond the myth of legal centralism and acknowledge that different legal orders can and should coexist to achieve justice. The Baduy case proves that constitutional rights are most effective when they are not ‘imposed’ but ‘negotiated’ through the lens of the community’s spirit. The synergy of Law No. 20 of 2003, Law No. 36 of 2009, and the customary “Pikukuh” creates a hybrid legal space where individual rights and communal autonomy can both flourish. This collaborative strategy offers a sustainable path for the Indonesian state to fulfill its constitutional obligations while preserving the nation’s rich indigenous heritage. The success in Kanekes provides a blueprint for the future of indigenous rights across the entire archipelago.

Conclusion

The research concludes that the unequal access to constitutional rights for Baduy women is the result of a multifaceted interplay between internal customary values and external administrative barriers. Internally, the strict adherence to the ‘Pikukuh’ philosophy historically created a cultural wall against modern state structures, while the demands of geographical isolation and the ‘Ngahuma’ agricultural labor cycle significantly limited community engagement with outside services. Externally, the state’s historical reliance on monolithic, standardized models failed to account for these indigenous specificities, resulting in inadequate infrastructure and a lack of culturally sensitive delivery mechanisms. However, the dynamic

of legal politics has evolved from a period of defensive isolation to one of constructive synergy. The 1997 customary amendment, which distinguished the spiritual act of learning from the formal institution of schooling, provided a vital legal opening for the state to introduce the ‘Papagahan’ non-formal education model and the ‘Imah Pangubaran’ health facilities. These initiatives prove that constitutional rights can be successfully fulfilled when state law integrates the community’s ‘Living Law’ and acknowledges the profound religious syncretism inherent in their ‘Slam Wiwitan’ identity. The intersection of Baduy tradition with Islamic values provides a unique and powerful moral framework for the realization of these rights. By recognizing that the community’s ancestral faith already shares foundational goals with Islam—such as the preservation of nature, the pursuit of honesty, and the protection of life—the state can foster a deeper dialogue that reframes constitutional duties as a fulfillment of shared ethical aspirations. Reframing literacy and maternal health as tools to protect the family and ensure the survival of ‘Adam’s descendants’ allows Baduy women to embrace these services without fear of cultural decimation. This collaborative approach ensures that the state’s mandates under Article 28 and Article 31 of the Constitution are not perceived as foreign impositions but as a protective shield for the community’s autonomy. For these rights to transition from temporary projects to sustainable lived realities, the local government must take the final step of formalizing these collaborative models within the regional legislative structure. To achieve this sustainability, the Lebak Regency government should prioritize the enactment of a specific Regional Regulation (*Perda*) that formally recognizes and budgets for these non-formal indigenous models of education and health. Such legislation would provide the necessary legal anchor to ensure that programs like ‘Papagahan’ are not vulnerable to shifting political leadership. Furthermore, the state should implement a targeted recruitment and training strategy to deploy female health workers and educators from within or near the indigenous territory, thereby minimizing cultural friction and building long-term trust. In tandem with these administrative efforts, customary leaders are encouraged to continue their internal dialogue to further adapt ancestral interpretations to the urgent reproductive health needs of women, ensuring that traditional birth attendants and state midwives work as equal partners. Ultimately, the state must remain committed to designing all legal political interventions through a gender-sensitive lens that empowers Baduy women to exercise their constitutional rights while remaining the spiritual anchors of their unique cultural heritage.

References

- An-Na’im, A. A. (2009). *Islam and the secular state: Negotiating the future of Shari’a*. Harvard University Press.
- Assembly, U. N. G. (2007). *United Nations declaration on the rights of indigenous peoples*.
- Asshiddiqie, J. (2005). *Konstitusi & konstitusionalisme Indonesia [Indonesian Constitution & Constitutionalism]* (Revised). Konstitusi Press.
- Asshiddiqie, J. (2006). *Pengantar ilmu hukum tata negara jilid 2 [Introduction to Constitutional Law Volume 2]*. Konstitusi Press.
- Batubara, S. (2010). *Perlindungan terhadap masyarakat hukum adat: Studi mengenai pelaksanaan hak ulayat dan sumber daya alam Suku Baduy (Doctoral dissertation [Protection of customary law communities: A study on the implementation of customary rights and natural resources of]*. Universitas Islam Indonesia.
- Donnelly, J. (2013). *Universal human rights in theory and practice*. Cornell University Press.
- Ehrlich, E. (2008). *Fundamental principles of the sociology of law* (L. Moll (trans.)). Transaction Publishers.
- Erlina. (2016). *Pemenuhan hak konstitusional perempuan melalui pembentukan peraturan daerah: Studi pembentukan peraturan daerah di Provinsi DIY dan Kalsel [Fulfillment of women’s constitutional rights through the formation of regional regulations: A study of the formatio]*.
- Fartini, A. (2020). *Politik hukum pemenuhan hak konstitusional pendidikan dan kesehatan terhadap perempuan Suku Baduy pasca amandemen UUD 1945 [Legal policy on the fulfillment of constitutional rights to education and health for Baduy women after the amendment to the 1945 Co]*.
- Garna, Y. (1988). *Tangtu telu jero tujuh*. Universitas Kebangsaan Malaysia.

- Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, 18(24), 1–55. <https://doi.org/10.1080/07329113.1986.10756355>.
- Ikhwan, H. (2018). Palatable Sharia: “Killing Two Birds with One Stone.” *Al-Jami’ah: Journal of Islamic Studies*, 56(1), 1–28. <https://doi.org/10.14421/ajis.2018.561.1-28>
- Irianto, S. (2005). *Perempuan di antara berbagai pilihan hukum: Studi strategi perempuan Batak Toba untuk mendapatkan akses kepada harta waris [Women among various legal options: A study of Toba Batak women’s strategies for gaining access to inheritance]*. Yayasan Obor Indonesia.
- Iskandar, J. (2005). *Pengobatan alternatif ala Baduy [Baduy-style alternative medicine]*. Humaniora.
- Kania, D. (2016). Hak asasi perempuan dalam perspektif hukum dan agama [Women’s human rights from a legal and religious perspective]. *Jurnal Konstitusi*, 12(4), 716. <https://doi.org/10.31078/jk1243> [In Indonesian]
- Kelsen, H. (1971). *General theory of law and state* (A. Wedberg (trans.)). Russel & Russel.
- Mahfud, M. (2009). *Politik hukum di Indonesia [Legal politics in Indonesia]*. Rajawali Pers.
- Mahfud, M. (2017). *Membangun politik hukum menegakkan konstitusi [Building legal policies to uphold the constitution]*. Raja Grafindo Persada.
- Merry, S. E. (2006). *Human rights and gender violence: Translating international law into local justice*. University of Chicago Press.
- Moleong, L. J. (2019). *Metodologi Penelitian Kualitatif (Edisi revisi) [Qualitative Research Methodology (Revised Edition)]*. PT Remaja Rosdakarya.
- Moore, H. L. (1998). *Feminisme dan antropologi [Feminism and anthropology]*. Obor.
- Nelken, D. (2008). Eugen Ehrlich, living law, and plural legalities. *Theoretical Inquiries in Law*, 9(2), 443–471. <https://doi.org/10.1515/til.2008.9.2.443>.
- Permana, R. C. E. (2009). Masyarakat Baduy dan pengobatan tradisional berbasis tanaman [Baduy people and traditional plant-based medicine]. *Wacana, Journal of the Humanities of Indonesia*, 11(1), 81. <https://doi.org/10.17510/wjhi.v11i1.145> [In Indonesian]
- Savigny, F. C. V. (1986). *Of the vocation of our age for legislation and jurisprudence* (A. Hayward (trans.)). Wildy & Sons.
- Senoaji, G. (2010). Masyarakat Baduy, hutan, dan lingkungannya di Banten Selatan [Baduy people, forests and their environment in South Banten]. *Jurnal Manusia Dan Lingkungan*, 17(1), 12–22. <https://doi.org/10.22146/jml.18710> [In Indonesian]
- Senoaji, G. (2011). *Pengelolaan hutan dan lingkungan oleh masyarakat Baduy dalam perspektif etnoekologi [Forest and environmental management by the Baduy community from an ethnoecological perspective]*.
- Smith, R. K. M. (2014). *Textbook on international human rights*. Oxford University Press.
- Soekanto, S. (1989). *Penelitian hukum normatif: Suatu tinjauan singkat [Normative legal research: A brief overview]*. Rajawali Pers.
- Thontowi, J. (2015). Pengaturan masyarakat hukum adat dan implementasi perlindungan hak-hak tradisionalnya [Regulation of customary law communities and implementation of protection of their traditional rights]. *Pandecta: Research Law Journal*, 10(1), 1–13. <https://doi.org/10.15294/pandecta.v10i1.4187> [In Indonesian]
- Tomasevski, K. (2002). *Human rights in education as prerequisite for development*. UNESCO Asia and Pacific Regional Bureau for Education.
- Zein, Y. A. (2014). *Pemenuhan hak atas pendidikan dan kesehatan sebagai hak konstitusional warga negara di wilayah perbatasan Kabupaten Nunukan, Kalimantan Utara [Fulfillment of the right to education and health as constitutional rights of citizens in the border area of Nu]*. Universitas Islam Indonesia.



© 2026 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<http://creativecommons.org/licenses/by-sa/4.0/>).