

**FULFILMENT EDUCATION RIGHTS OF BADUY  
COMMUNITY PERSPECTIVE POSITIVE LAW, CUSTOMARY,  
AND ISLAMIC****Andi Asril Bin Risal<sup>1</sup>, Ahmad<sup>2</sup>**<sup>1,2</sup>Universitas Muhammadiyah Tangerange-mail : [ahmadfh@umt.ac.id](mailto:ahmadfh@umt.ac.id)

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**ABSTRACT**

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*The right to obtain access to education is clearly stated in the 1945 Constitution of the Republic of Indonesia (UUDNRI). However, it turns out that there are still Indonesian indigenous people who do not feel the right to education at all, they are the Baduy tribe. This research aims to explain and provide solutions so that the fulfillment of the right to education in Indonesia is equitable, especially for the Baduy community. This research compares the perspectives of positive law, customary law and Islamic law in understanding the right to education, and reveals the urgency of all three in determining priority actions for the Baduy tribe. Researchers used the Systematic Literature Review (SLR) method to collect data to find out and answer the problems in this research. The research results reveal that the right to education is part of Human Rights (HAM) which is very fundamental in nature. and Positive law is the highest rule in Indonesia which also guarantees the implementation of the right to education for all Indonesian people. The government must be firm and active in providing guarantees for the right to education in accordance with the mandate of the Constitution and several other state regulations, and play an important role in establishing positive law as the main guideline that must be obeyed and followed by all Indonesian citizens..*

**Keywords:** *Baduy; Customar; Education Rights; Islamic.***Journal History**

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**INTRODUCTION**

Education is a real manifestation in determining the fate and success of a nation in the structure of national development. Therefore, it is important to monitor the

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implementation of educational activities in Indonesia so that they are integrated towards a goal that focuses on achieving insight on a national scale.<sup>1</sup>

Through education, this nation will become more educated and will certainly have the opportunity to develop and increase the potential that exists within them.<sup>2</sup> Apart from that, with well-structured education it will also produce quality human resources (HR).<sup>3</sup>

Meanwhile, according to data from *the World Talent Ranking* presented by the *Institute for Management Development (IMD)*, Indonesia is in 9th place in the ranking of Human Resources based on their quality as measured on the scale of the Asian continent for 2023. Even though it is in the top ten, its Indonesia's human resource competitiveness is still relatively low and far from being superior.<sup>4</sup> In fact, Indonesia does not stand out. When the ranking size is reduced to the level of Southeast Asia only, Indonesia still loses and is below Singapore, Malaysia and also Thailand.<sup>5</sup> Therefore, it must be noted by Indonesia that the development of human resources or human resources is very important for the progress of this country, and one way to make this happen is by paying attention to the education sector.

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<sup>1</sup> Ilyas Husti, Nurhadi Kusmiran, "Pendidikan Formal, Non Formal Dan Informal Dalam Desain Hadits Tarbawi," *Jurnal Penelitian Ilmu Pendidikan Indonesia* 1, no. 2 (2022): 485–492, accessed March 18, 2024, <https://jpcion.org/index.php/jpi/article/view/82>.

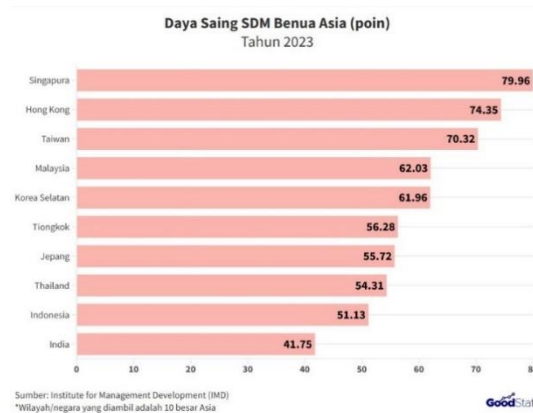
<sup>2</sup> Yayan Alpian et al., "PENTINGNYA PENDIDIKAN BAGI MANUSIA," *JURNAL BUANA PENGABDIAN* 1, no. 1 (August 15, 2019): 66–72, accessed March 18, 2024, <https://journal.ubpkarawang.ac.id/index.php/JurnalBuanaPengabdian/article/view/581>.

<sup>3</sup> Ahmad Qadir et al., "Pentingnya Pendidikan Bagi Generas Muda Dalam Meningkatkan Kualitas Pendidikan," *Jurnal Pendidikan Indonesia* 3, no. 11 (November 24, 2022): 1023–1033, accessed March 18, 2024, <https://japendi publikasiindonesia.id/index.php/japendi/article/view/1289>.

<sup>4</sup> Pierre Rainer, "Ranking IMD: Daya Saing SDM Indonesia Peringkat 9 Asia," *GoodStats*, last modified January 28, 2024, accessed March 21, 2024, <https://goodstats.id/article/ranking-imd-daya-saing-sdm-indonesia-peringkat-9-asia-XzJOJ>.

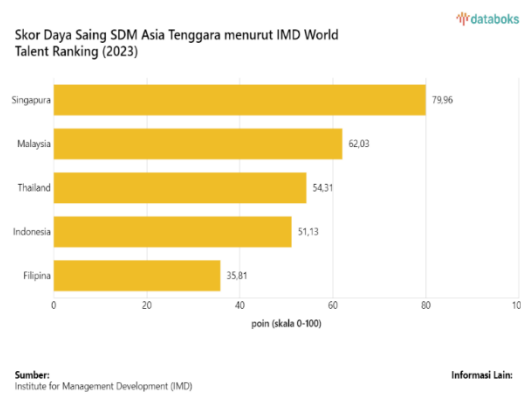
<sup>5</sup> Adi Ahdiat, "Daya Saing SDM Indonesia Tak Menonjol Di Asia Tenggara," *Databoks*, last modified January 26, 2024, accessed March 21, 2024, <https://databoks.katadata.co.id/datapublish/2024/01/26/daya-saing-sdm-indonesia-tak-menonjol-di-asia-tenggara>.

**Figure 1. Indonesia's Human Resources (HR) are measured on the scale of the Asian continent**



Source: GoodStats, January 2024

**Figure 2. Indonesian human resources measured from the Southeast Asia Scale**



Source: databoks, January 2024

Human resources have quite a big influence on the quality of a country, in line with this Ridwan (2016)<sup>6</sup> it explains that education is one of the important foundations and has a fairly high and strategic role in improving human resources. So, to achieve superior human resources, there needs to be improvement and monitoring of the education sector.<sup>7</sup>

<sup>6</sup> Ita Rustiati Ridwan, "KETERKAITAN PENDIDIKAN DENGAN PENINGKATAN PERTUMBUHAN EKONOMI DAN SUMBER DAYA MANUSIA (SDM)," *Jurnal Geografi Gea* 9, no. 1 (March 14, 2016), accessed March 18, 2024, <https://ejournal.upi.edu/index.php/gea/article/view/1677>.

<sup>7</sup> Thaus Sugihilmi Arya Putra, "Pendidikan Kunci Utama Kemajuan Bangsa," *Kementerian Keuangan Republik Indonesia*, last modified May 9, 2022, accessed March 18, 2024, <https://www.djkn.kemenkeu.go.id/artikel/baca/15010/Pendidikan-Kunci-Utama-Kemajuan-Bangsa.html>.

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Getting an education is the right of every individual, Nida (2018) saying that the right to education is a right that everyone has since birth, and the right to get an education is part of human rights (HAM). Human rights are a form of absolute gift from God, where no individual or group can disturb or seize them.<sup>8</sup>

One of the human rights that must be protected and fulfilled is the right to obtain education, according to which Sujatmoko (2016)<sup>9</sup> the rights of Indonesian citizens to access education are regulated in the constitution as a guarantee of legal certainty and a form of state recognition of the rights of its people. The right to education is a civil and political right that must be fulfilled, protected and respected by the state.<sup>10</sup>

Therefore, The right to education must be realized for all people in the Republic of Indonesia, even though this desire is the dream of this nation, the fact is that currently there are still many Indonesian people who have not received their rights as citizens in the context of the right to education, one of which is the Baduy tribe. Most children from the Baduy tribe do not have access to education because they comply with customs.<sup>11</sup>

The prohibition on receiving education is a customary rule implemented by the Baduy tribe, a community group that still maintains customs in their daily life. The Baduy people do not allow anyone from their tribe to attend formal education, this is because formal education is considered something that will disturb their customary legal order.<sup>12</sup>

The Baduy indigenous community consistently continues to reject all forms of education that are deemed not in accordance with the teachings and provisions of their customary law.<sup>13</sup> In the perspective of Baduy customary law, going to school or

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<sup>8</sup> Qotrun Nida, "BENTUK TANGGUNGJAWAB PEMERINTAH DAERAH TERHADAP PEMENUHAN HAK HAK PENDIDIKAN," *Untirta Civic Education Journal* 3, no. 1 (May 1, 2018), accessed March 8, 2024, <https://jurnal.untirta.ac.id/index.php/UCEJ/article/view/3613>.

<sup>9</sup> Emmanuel Sujatmoko, "Hak Warga Negara Dalam Memperoleh Pendidikan," *Jurnal Konstitusi* 7, no. 1 (May 20, 2016): 181, accessed March 8, 2024, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/718>.

<sup>10</sup> Imam Machali, "ISLAM MEMANDANG HAK ASASI PENDIDIKAN," *Jurnal Pendidikan Islam* 27, no. 1 (February 18, 2016): 1, accessed March 8, 2024, <https://journal.uinsgd.ac.id/index.php/jpi/article/view/492>.

<sup>11</sup> Muhammad Iqbal, "Fakta Di Balik Anak-Anak Suku Baduy Yang Tak Enyam Pendidikan Formal," *IDN TIMES BANTEN*, last modified July 23, 2020, accessed March 19, 2024, <https://banten.idntimes.com/news/banten/muhammad-iqbal-15/tak-enyam-pendidikan-formal-ini-fakta-anak-anak-suku-baduy>.

<sup>12</sup> TATANG MULYANA SINAGA, "Jalan Sunyi Pendidikan Anak-Anak Baduy," *KOMPAS.Id*, last modified March 29, 2023, accessed March 8, 2024, <https://www.kompas.id/baca/humaniora/2023/03/26/jalan-sunyi-pendidikan-anak-anak-baduy>.

<sup>13</sup> Hasyim Asyari, Syaripullah Syaripullah, and Rudini Irawan, "Pendidikan Dalam Pandangan Masyarakat Baduy Dalam," *IJER (Indonesian Journal of Educational Research)* 2, no. 1 (October 26, 2017): 11, accessed March 8, 2024, <https://www.ijer.ftk.uinjambi.ac.id/index.php/ijer/article/view/25>.

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receiving an education is something that is against customary provisions and can endanger their own tribe.<sup>14</sup>

On the other hand, according to the researcher's assumption, this customary prohibition is a form of violation of human rights and disobedience to the highest law in force in Indonesia. Where these restrictions on education have robbed them of their right to freedom to develop themselves and their potential, as well as covering opportunities for community participation in national development. Accordingly, Article 28C of the 1945 Constitution states that gaining access to education has been regulated and guaranteed by the State.<sup>15</sup>

Even though the State has expressed the position of the right to education as one of the needs that must be fulfilled,<sup>16</sup> the Baduy tribe is reluctant to implement it on the grounds that it complies with their customary laws. Meanwhile, the Indonesian state itself adheres to and implements three legal systems at once, namely positive law, customary law and Islamic law.<sup>17</sup> Then, customary law is not the only law that applies in Indonesia, so the Baduy community should not only be focused and shackled to a legal system based on hereditary customs. Moreover, customary law is considered too conservative, ancient and rigid, so that it overlaps slightly with current developments.<sup>18</sup>

Therefore, further research is urgently needed regarding the fulfillment of the right to education in the Baduy tribe. So it becomes clear what appropriate action should be taken by the Baduy tribe in the context of the understanding of the people in a legal state where all aspects of life are guaranteed through legislation, regulations and policies that have been established by the Government.<sup>19</sup> And thus the mandate of the

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<sup>14</sup> Sutoto Sutoto, "DINAMIKA TRANSFORMASI BUDAYA BELAJAR SUKU BADUY," *Jurnal Penelitian Pendidikan* 17, no. 2 (September 22, 2017), accessed March 8, 2024, <https://ejournal.upi.edu/index.php/JER/article/view/8249>.

<sup>15</sup> MAHKAMAH KONSTITUSI REPUBLIK INDONESIA, "HAK DAN KEWAJIBAN WARGA NEGARA INDONESIA DENGAN UUD 45," *MAHKAMAH KONSTITUSI REPUBLIK INDONESIA*, last modified August 11, 2015, accessed March 20, 2024, <https://www.mkri.id/index.php?id=11732&page=web.Berita>.

<sup>16</sup> Willa Wahyuni, "HAK WARGA NEGARA DALAM MEMPEROLEH PENDIDIKAN," *JDIH | Pemerintah Kota Probolinggo*, last modified May 3, 2023, accessed March 20, 2024, <https://jdih.probolinggotkota.go.id/2023/05/03/hak-warga-negara-dalam-memperoleh-pendidikan/>.

<sup>17</sup> Zaka Firma Aditya, "ROMANTISME SISTEM HUKUM DI INDONESIA : KAJIAN ATAS KONTRIBUSI HUKUM ADAT DAN HUKUM ISLAM TERHADAP PEMBANGUNAN HUKUM DI INDONESIA," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (May 15, 2019): 37, accessed March 20, 2024, <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/305>.

<sup>18</sup> Eka Susylawati, "EKSISTENSI HUKUM ADAT DALAM SISTEM HUKUM DI INDONESIA," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 4, no. 1 (September 3, 2013): 124-140, accessed March 20, 2024, <https://ejournal.iainmadura.ac.id/alihkam/article/view/267>.

<sup>19</sup> Enizahura binti Abdul Aziz, "Kebijakan Rakyat Perlu Diberi Keutamaan," *Institut Kefahaman Islam Malaysia*, last modified February 13, 2022, accessed March 20, 2024, <https://www.ikim.gov.my/index.php/2022/02/13/kebijakan-rakyat-perlu-diberi-keutamaan/>.

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1945 Constitution concerning; to make the nation's life more intelligent, can be implemented well.<sup>20</sup>

There is also something that differentiates this research from other research, namely that this research focuses on understanding the right to education from the perspective of customary law, positive law and Islamic law. As well as revealing the role of the three legal systems to be used as a reference as a priority for action. Meanwhile, this research is important because the right to education is a fundamental human right. The Baduy tribe, as a traditional community group, has the same right to receive proper education. In line with this, Affan (2021) it explains that every community has human rights which are guaranteed by the constitution as stated in the 1945 Constitution of the Republic of Indonesia (UUD NRI).<sup>21</sup>

## METHOD

In this research, the author uses a normative legal research method, a legal research methodology that bases its analysis on applicable laws and regulations that are still relevant to the legal issues that are the focus point of the research.<sup>22</sup> Apart from that, the author also uses other methods in the form of literature, where research activities are carried out by collecting a number of information and data with the help of various kinds of materials in the library or sources on the internet which are still related to the discussion or problem to be solved. The author categorizes this research as comparative legal research with a descriptive approach whose aim is to increase insight into national law (all laws that apply in a country), where the author compares 3 (three) legal systems currently in force in Indonesia to find The best solution to the problem being researched. In carrying out this research, researchers collected various journals and articles from trusted and accountable sources such as Google Scholar, Sinta Ristekdikti, the Indonesian Government *website* , and several other credible websites. The data was then collected through a *Systematic Literature Review* (SLR), to be identified, selected and critically evaluated.<sup>23</sup>

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<sup>20</sup> Willa Wahyuni, "Pasal Tentang Pendidikan Dalam UUD 1945," *HukumOnline.Com*, last modified November 27, 2023, accessed March 20, 2024, <https://www.hukumonline.com/berita/a/pasal-tentang-pendidikan-dalam-uud-1945-lt6451cc49192a5/>.

<sup>21</sup> I. Affan, "Urgensi Partisipasi Masyarakat Dalam Penyelenggaraan Pemerintahan Daerah," *DE LEGA LATA: Jurnal Ilmu Hukum* 6, no. 1 (January 7, 2021): 127–138, accessed March 30, 2024, <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/5318/4977>.

<sup>22</sup> Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (April 1, 2020): 20–33, accessed March 20, 2024, <https://ejournal2.undip.ac.id/index.php/gk/article/view/7504>.

<sup>23</sup> M. F., Amiludin, A., & Ahmad, D. N. F. Juanda, "International Law Enforcement Against Immigrant Smuggling in Indonesian Waters," *DE LEGA LATA: Jurnal Ilmu Hukum* 8, no. 2 (July 1, 2023): 148–163, accessed March 20, 2024, <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/14702>.

**DISCUSSION****Understanding The Tright To Education From The Perspective Of Customary Law, Positive Law And Islamic Law**

Before the Dutch arrived in the archipelago (the name for the entire archipelagic region of the country), Indonesia still used customary law as regulations that functioned as norms in social life.<sup>24</sup> In line with this, Van Vollenhoven (in Zulherman Idris & Miftahul Rachman)<sup>25</sup> said that customary law is unwritten law and does not originate from the laws and regulations of the Dutch East Indies. This means that customary law is purely the result of indigenous customs which are then agreed to become the rules of society in a region.

Each region has its own customary rules, such as the Baduy tribe, which is a group of indigenous people from Kanekes Village, Lauwidamar District, Lebak Regency, Banten Province. The Baduy tribe has a very clear identity and characteristics, which can be seen specifically in their culture and traditions, which are hereinafter referred to as customs and then referred to as customary law.<sup>26</sup>

One of the customary laws of the Baduy tribe that is most often highlighted is the prohibition on receiving education. The Baduy indigenous community believes that the provision of education, whether formal or *non*-formal, will definitely have a negative impact on their lifestyle, so there is always a refusal to provide space for access to education.<sup>27</sup> From the perspective of Baduy customary law, the right to education or the right to receive education is not something that is mandatory and must be carried out, the proof is that the Baduy community to this day does not consider it and continues to prohibit the existence of educational services in their environment.<sup>28</sup>

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<sup>24</sup> Laurensius Arliman, "Hukum Adat Di Indonesia Dalam Pandangan Para Ahli Dan Konsep Pemberlakuannya Di Indonesia," *Jurnal Selat* 5, no. 2 (August 11, 2018): 177–190, accessed March 20, 2024, <https://ojs.umrah.ac.id/index.php/selat/article/view/320>.

<sup>25</sup> Zulherman Idris and Miftahur Rachman, "IDENTIFIKASI HUKUM ADAT (PERSPEKTIF BAHAGIAN KAJIAN SOSIOLOGI HUKUM)," *JOURNAL EQUITABLE* 6, no. 2 (December 28, 2021): 121–134, accessed March 20, 2024, <https://ejournal.umri.ac.id/index.php/JEQ/article/view/3269>.

<sup>26</sup> Lisa Nurfalah, Chesya Sera De Claesya, and Muhammad Brilliant Bidjaksone, "Adaptasi Masyarakat Suku Baduy Luar Terhadap Perkembangan Global Berbasis Kearifan Lokal," *Journal of Socio-Cultural Sustainability and Resilience* 1, no. 1 (July 30, 2023), accessed March 8, 2024, <https://www.journal-iasssf.com/index.php/JSCSR/article/view/182>.

<sup>27</sup> Fransisca Nuraini Krisna, "Studi Kasus Layanan Pendidikan Nonformal Suku Baduy," *Jurnal Pendidikan dan Kebudayaan* 20, no. 1 (March 26, 2014): 1–13, accessed March 20, 2024, <https://jurnaldikbud.kemdikbud.go.id/index.php/jpnk/article/view/121>.

<sup>28</sup> Ila Rosmilawati and Dadan Darmawan, "Family Literacy of Baduy Tribe: An Ethnographic Study," *KOLOKIUM Jurnal Pendidikan Luar Sekolah* 8, no. 2 (October 30, 2020): 92–102, accessed March 20, 2024, <https://www.academia.edu/download/78885266/pdf.pdf>.

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Similar to Baduy customary law, other customary laws also have characteristics in the form of unwritten laws, which are then implemented only based on customs passed down from generation to generation. The same thing was also expressed by JHP Bellefroid in Prof.'s book. Dr. C. Dewi Wulansari, SH., MH., SE., MM. entitled "INDONESIAN CUSTOMARY LAW An Introduction". JHP Bellefroid explains that customary law is a rule of life which, even though it is not promulgated (not written) by the government, is still respected and obeyed by the people with the belief that these regulations apply as law.<sup>29</sup>

As far as researchers analyze customary law, especially in Indonesia, only the Baduy tribe views the right to education as unimportant. Meanwhile, other customary laws do not oppose and instead accept developments over time with advances in thinking through educational services. So, in the context of understanding Baduy customary law and other customary law, the right to education has different perspectives and assessments. Even though obtaining education is a basic human need, especially for children. Children are the next generation who have an important role in ensuring the future success of a nation.<sup>30</sup>

The 1945 Constitution (UUD) is a state regulation with the highest hierarchy.<sup>31</sup> In the 1945 Constitution, one of the points contained in it is regarding the right to education.<sup>32</sup> Specifically, it is stated in Article 31 of the 1945 Constitution, which contains a number of rights and obligations as Indonesian citizens (WNI) in the field of education.<sup>33</sup> Article 31 of the 1945 Constitution reads: 1) All citizens have the right to education. 2) All citizens are obliged to attend basic education and the state is also obliged to pay for it. 3) The government seeks and implements a national education system that prioritizes faith, devotion and noble personality within the framework of the country's spiritual life which is legally regulated. 4) The state prioritizes a budget for education of at least 20% (twenty

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<sup>29</sup> MM. Prof. Dr. C Dewi Wulansari, SH., MH., SE., *HUKUM ADAT INDONESIA Suatu Pengantar*, 2016.

<sup>30</sup> N., & Faisal, F. Simatupang, "Bullying Oleh Anak Di Sekolah Dan Pencegahannya," *DE LEGA LATA: Jurnal Ilmu Hukum* 6, no. 2 (August 21, 2021): 446–464, accessed March 30, 2024, <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/9430>.

<sup>31</sup> KONGRES ADVOKAT INDONESIA, "Tata Urutan Perundang-Undangan Di Indonesia Disertai Jenis Dan Fungsinya," *KONGRES ADVOKAT INDONESIA*, last modified July 25, 2021, accessed March 20, 2024, <https://www.kai.or.id/berita/19246/tata-urutan-perundang-undangan-di-indonesia-disertai-jenis-dan-fungsinya.html>.

<sup>32</sup> Nida, "BENTUK TANGGUNGJAWAB PEMERINTAH DAERAH TERHADAP PEMENUHAN HAK HAK PENDIDIKAN."

<sup>33</sup> Mohammad Atik Fajardin, "Pasal 31 UUD 1945 Tentang Masalah Pendidikan, Ini Isi Lengkapnya," *SINDOnews*, last modified April 28, 2022, accessed March 20, 2024, <https://nasional.sindonews.com/read/756409/12/pasal-31-uud-1945-tentang-masalah-pendidikan-ini-isi-lengkapnya-1651082675>.

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percent) of the state revenue and expenditure budget as well as regional revenue and expenditure budgets to meet the needs of implementing the national education system. 5) The government plays an important role in advancing science and technology by supporting religious values and national unity for the advancement of civilization and the welfare of humanity<sup>34</sup>. This means that the highest regulations alone regulate education as one of the things that is the responsibility of the Republic of Indonesia.

Then Indonesia is a country of law.<sup>35</sup> As a rule of law country, Indonesia plays an active role in guaranteeing and protecting the human rights of its people, including the right to access education. Based on Law Number 20 of 2003 concerning the national education system, there is an obligation for the state or government to fulfill its people's right to education.<sup>36</sup>

Apart from that, Human Rights (HAM) are regulated in Law no. 39 of 1999 also emphasizes that the right to obtain and participate in education is part of individual human rights which cannot be contested or revoked. So that all humans have the right to access education in accordance with the provisions regulated in Law no. 39 of 1999 concerning Human Rights.

Thus, it is quite clear that from a positive legal perspective, the right to education is something that has been guaranteed by the state and government based on laws and regulations that have been legally recognized and are binding. The right to education is also included in human rights and constitutional rights for all Indonesian citizens.<sup>37</sup>

In addition, the state and government have also made clear their support for fulfilling the right to education through the State Revenue and Expenditure Budget (APBN). Quoted from data presented by GoodStats, the 2024 APBN makes spending on education a priority, the education sector is in first place with the largest and largest budget in the 2024 APBN.<sup>38</sup> Apart from that, the APBN for the Education sector also continues to experience budget increases every year,

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<sup>34</sup> R., Firman, F., & Ahmad, R. Rahmiati, "Implementasi Pendidikan Sebagai Hak Asasi Manusia," *Jurnal Pendidikan Tambusai* 5, no. 3 (December 29, 2021): 10160–10165, accessed March 21, 2024, <https://www.jptam.org/index.php/jptam/article/view/2594>.

<sup>35</sup> Haposan Siallagan, "PENERAPAN PRINSIP NEGARA HUKUM DI INDONESIA," *Sosiohumaniora* 18, no. 2 (October 26, 2016): 122–128, accessed March 21, 2024, <https://jurnal.unpad.ac.id/sosiohumaniora/article/view/9947>.

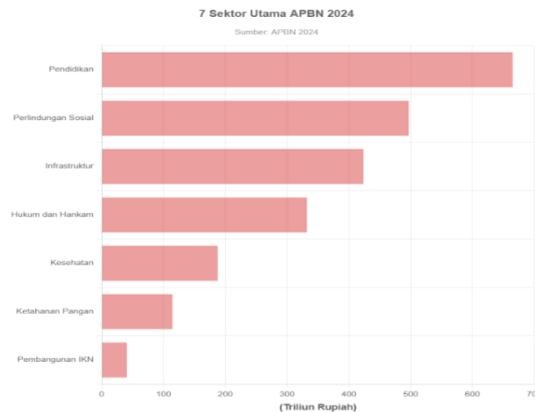
<sup>36</sup> Rahmiati, "Implementasi Pendidikan Sebagai Hak Asasi Manusia."

<sup>37</sup> Ibid.

<sup>38</sup> Agnes Z. Yonatan, "APBN 2024: Belanja Pendidikan Jadi Prioritas," *GoodStats*, last modified January 28, 2024, accessed March 21, 2024, <https://data.goodstats.id/statistic/agneszeffanyayonatan/apbn-2024-belanja-pendidikan-jadi-prioritas-DXhpa>.

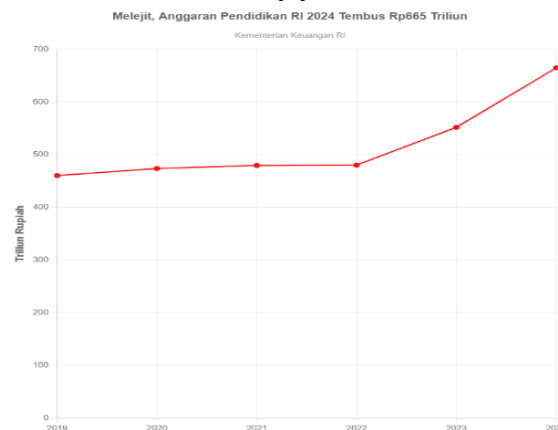
reviewing from 2019 to 2024 the budget for Education has never decreased, on the contrary it has always increased from year to year.<sup>39</sup> This is proof that positive law explicitly takes an active role in guaranteeing the right to education in Indonesia.

**Figure 3. 2024 APBN Prioritizes the Education Sector**



Source: GoodStats, January 2024

**Figure 4. ABPN's budget for the education sector continues to increase every year**



Source: Goodstats, January 2024

The Qur'an, Hadith, and Ijma' (agreement of the scholars) are the sources of the enactment of Islamic Law.<sup>40</sup> Similar to customary law, Islamic law in

<sup>39</sup> Pierre Rainer, "Melejit, Anggaran Pendidikan RI 2024 Tembus Rp665 Triliun," *GoodStats*, last modified January 27, 2024, accessed March 21, 2024, <https://data.goodstats.id/statistic/pierrainer/melejit-anggaran-pendidikan-ri-2024-tembus-rp665-triliun-oPUHw>.

<sup>40</sup> Muannif Ridwan, M. Hasbi Umar, and Abdul Ghafar, "SUMBER-SUMBER HUKUM ISLAM DAN IMPLEMENTASINYA," *Borneo : Journal of Islamic Studies* 1, no. 2 (April 16, 2021): 28–41, accessed March 21, 2024, <https://doi.org/10.37567/borneo.v1i2.404>.

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Indonesia is also characterized as unwritten law.<sup>41</sup> Nevertheless, Islamic Law is still recognized as one of the three legal systems adopted and applied in the Unitary State of the Republic of Indonesia.<sup>42</sup>

Although not promulgated (unwritten), Islamic Law has an important role in contributing to National Law to date, one of which is in terms of Education. Receiving education in an Islamic perspective has quite an important meaning, according to Islamic Law the excellence of a people or nation will depend on how much it uses the gift of Allah SWT to learn.<sup>43</sup>

In the viewpoint of Islam, learning activities are the first and main thing ordered by Allah SWT (Nata in Ahmad et al., 2021).<sup>44</sup> Then look from the side of the Qur'an in Surah Al'Alaq Verses 1 to 5 which are the first verses revealed as well as the first revelation from Allah SWT which was ordered to the Angel Gabriel to be conveyed to the Prophet Muhammad SAW. Allah SWT says:

- أَفْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ  
خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ  
أَفْرَأْ وَرَبُّكَ الْأَكْرَمُ  
الَّذِي عَلَّمَ بِالْقَلَمِ  
عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمُ
- (1) "Recite in the name of your Lord who created,
  - (2) He has created human from a clot of blood,
  - (3) Recite, and your Lord is the most gracious,
  - (4) who teaches (human) by the medium of the kalam,
  - (5) He taught human what he did not know."

From QS Al'Alaq verses 1-5, Allah SWT told the followers or people of the Prophet Muhammad SAW to study, in other words, to seek knowledge. Allah SWT also commands humans to read and carry out teaching and learning activities. With the aim of avoiding ignorance or illiteracy. Then so that you can become part of

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<sup>41</sup> Puji Utomo, "Hukum Islam Dapat Dijadikan Sumber Hukum Tak Tertulis," *NU Online*, last modified August 14, 2004, accessed March 21, 2024, <https://nu.or.id/warta/hukum-islam-dapat-dijadikan-sumber-hukum-tak-tertulis-L6Ev7>.

<sup>42</sup> Aditya, "ROMANTISME SISTEM HUKUM DI INDONESIA: KAJIAN ATAS KONTRIBUSI HUKUM ADAT DAN HUKUM ISLAM TERHADAP PEMBANGUNAN HUKUM DI INDONESIA."

<sup>43</sup> Zainuddin, "KONSEP BELAJAR MENURUT PANDANGAN ISLAM," *UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG*, last modified November 8, 2013, accessed March 21, 2024, <https://uin-malang.ac.id/blog/post/read/131101/konsep-belajar-menurut-pandangan-islam.html>.

<sup>44</sup> Dwi Nur Fauziah Ahmad et al., "MERDEKA BELAJAR DALAM PERSPEKTIF HUKUM INDONESIA," *Indonesian Journal of Law and Policy Studies* 2, no. 1 (May 31, 2021): 66–85, accessed March 21, 2024, <https://jurnal.umt.ac.id/index.php/IJLP/article/view/4452>.

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the knowledgeable people and have the knowledge and faith in protecting nature and the life in it.<sup>45</sup>

Then there are a number of Hadiths which explain the obligations, necessity, priorities and benefits of the process of studying or receiving education, including;

وَمَنْ سَلَكَ طَرِيقًا يَلْتَمِسُ فِيهِ عِلْمًا سَهَّلَ اللَّهُ لَهُ بِهِ طَرِيقًا إِلَى الْجَنَّةِ

Meaning: "Whoever takes the path to seek knowledge, Allah will facilitate for him the path to Paradise" (HR Muslim, No. 2699).

مَنْ خَرَجَ جَفِطَ طَلِبُ الْعِلْمِ فَهُوَ فِي سَبِيلِ اللَّهِ حَتَّى يَرْجِعَ

Meaning: "Whoever goes out to seek knowledge, then he is on the path of Allah until he returns" (HR Tirmidhi).

طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ وَوَضِعُ الْعِلْمِ عِنْدَ غَيْرِ أَهْلِهِ كَمَقْلَدِ الْخَنَازِيرِ الْجَوْهَرَ وَاللُّؤْلُؤَ وَالذَّهَبَ

Meaning: "Seeking knowledge is the duty of every Muslim, and whoever imparts knowledge to the unworthy is like putting a necklace of jewels, pearls, and gold around the neck of an animal" (HR Ibn Majah).

From the explanation above, it is clear that Islamic law, which is based on the Koran and Al-Hadith, confirms that seeking knowledge is an obligation and must be fulfilled. So from the perspective of Islamic law, the right to education is a right that must be guaranteed and supported, because education is the process of forming useful knowledge. In line with that, Khasanah (2021) explained that in Islam seeking knowledge is obligatory for every Muslim, male and female.<sup>46</sup>

### **measuring the behavior of the Baduy tribe from the perspective of positive law, customary law, Islamic law**

Law is a number of rules that have the nature of controlling and providing guarantees in the form of justice and truth.<sup>47</sup> Meanwhile, national law is a combination of all laws that are recognized as existing in a region or country. Meanwhile in the Republic of Indonesia there are 3 (three) legal systems which are the source of the formation of national law, namely; positive law, Islamic law, and

<sup>45</sup> Ibid.

<sup>46</sup> Wikhdaton Khasanah, "Kewajiban Menuntut Ilmu Dalam Islam," *Jurnal Riset Agama* 1, no. 2 (October 17, 2021): 296–307, accessed March 22, 2024, <https://journal.uinsgd.ac.id/index.php/jra/article/view/14568>.

<sup>47</sup> M. Irsyad, "Hukum Dan Penyelesaian Konflik Hukum," *DE LEGA LATA: Jurnal Ilmu Hukum* 6, no. 2 (August 19, 2021): 389–395, accessed March 30, 2024, <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/7836>.

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also customary law.<sup>48</sup> All three have been instrumental in making contributions to Indonesian national law to date.

Even though Indonesia recognizes the existence of these three legal systems, in their implementation, positive law, Islamic law and customary law have their respective portions. The hierarchy between the three influences the implementation procedures within the Republic of Indonesia. Moreover, two of these legal systems are not recorded laws in accordance with the provisions of the Indonesian legal system which adheres to the Continental European legal school. The Continental European legal system is a written codification of law in order to obtain binding force.<sup>49</sup>

Islamic law is unwritten or unrecorded law.<sup>50</sup> So that its position is not so dominant and cannot be applied to all people in Indonesia. Considering that the Unitary State of the Republic of Indonesia (NKRI) is a country with adherents of different religions, the application of Islamic Law cannot be evenly distributed to all people in the country. Moreover, unwritten laws do not have binding force.

Just like Islamic law, customary law is also the same, an unwritten legal system.<sup>51</sup> Customary law is a regulation that is formed based on the habits of the people in an area. So that every region in the archipelago definitely has its own customary laws. However, customary law can only apply in certain areas and conditions, and cannot be applied comprehensively to all people in a country. Customary law also does not have binding force because it is not written.

Meanwhile, different from Islamic law and customary law, positive law is law that is written both in laws and regulations. In accordance with the Continental European Law system adopted by Indonesia, positive law has binding and coercive power, so that all Indonesian people must obey and submit to the provisions

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<sup>48</sup> Aditya, "ROMANTISME SISTEM HUKUM DI INDONESIA: KAJIAN ATAS KONTRIBUSI HUKUM ADAT DAN HUKUM ISLAM TERHADAP PEMBANGUNAN HUKUM DI INDONESIA."

<sup>49</sup> Firdaus Muhamad Iqbal, "KONTRIBUSI SISTEM CIVIL LAW (EROPA KONTINENTAL) TERHADAP PERKEMBANGAN SISTEM HUKUM DI INDONESIA," *Jurnal Dialektika Hukum* 4, no. 2 (December 15, 2022): 180–200, accessed March 22, 2024, <https://ejournal.fisip.unjani.ac.id/index.php/jurnal-dialektika-hukum/article/view/1120>.

<sup>50</sup> M. Baharuddin, "ANALISIS KEDUDUKAN HUKUM ISLAM DALAM SISTEM HUKUM DI INDONESIA," *Jurnal Hukum Diktum* 10, no. 2 (July 2012): 166–172, accessed March 22, 2024, <https://ejournal.iainpare.ac.id/index.php/diktum/article/view/268>.

<sup>51</sup> N.B. Pasla, "Hukum Tidak Tertulis: Pengertian Beserta Contohnya," *Pemerintah Provinsi Jambi*, last modified February 17, 2023, accessed March 22, 2024, <https://bnp.jambiprov.go.id/hukum-tidak-tertulis-pengertian-beserta-contohnya/#>.

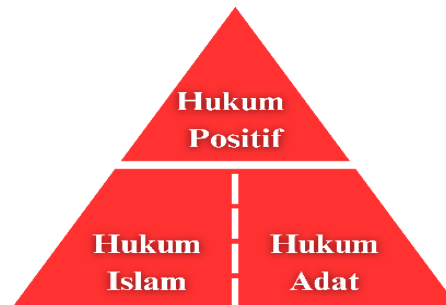
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regulated in positive law. Widyastuti in Arfana (2021) explained that all written regulations which then contain legal norms are generally binding.<sup>52</sup>

It can be interpreted that positive law has a more dominant role than Islamic law and customary law in the context of its application in the Unitary State of the Republic of Indonesia. So if you measure the priority scale, it is clear that positive law is the law that must be prioritized in all actions. Apart from its characteristics that are binding on all people in a country, positive law also has a very strong role in regulating and guaranteeing the rights and obligations of every people in an independent and sovereign country like Indonesia.

**Figure 5. Levels of Positive Law, Islamic Law, and Customary Law Based on Their Role**



Source: Personal Documents, March 2024

From the discussion above, it is clear that positive law has a higher and dominant role compared to the other two sources of national law (customary law and Islamic law). So, in determining legal priorities for action, the Baduy people must prioritize or are obliged to be guided by positive law, as the highest law and has a binding nature for all levels of society in the Unitary State of the Republic of Indonesia. Apart from that, positive law is also a number of written rules, so that all aspects contained in it can be accounted for, and rights and obligations have also been regulated and guaranteed in it clearly and in detail.

## CONCLUSION

As an unwritten law, customary law does not have a clear reason why the right to education is important or vice versa. However, of the many customary laws that exist in Indonesia, only the Baduy community still opposes the existence of

<sup>52</sup> T. N Arfana, "Bimtek Bahas Konstelasi Peraturan Perundang-Undangan," *MAHKAMAH KONSTITUSI REPUBLIK INDONESIA*, last modified July 28, 2021, accessed March 22, 2024, <https://www.mkri.id/index.php?page=web.Berita&id=17426&menu=2>.

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education services, and considers that the right to education is not mandatory for their tribe. Meanwhile, other customary laws do not seem to mind this, and in fact they take part in efforts to fulfill the right to education for their community. Then according to Islamic law, the right to education is an obligation that must be fulfilled, this is clearly conveyed through the word of Allah SWT which is written in the Al-Qur'an as the primary source of Islamic law. Apart from that, a number of hadiths also encourage the right to education to be fulfilled through the learning process and as a form of people who obey the commands of Allah SWT. Then according to positive law, the right to education is a fundamental right regulated in law and guaranteed by the state. Positive law views the right to education as a need that must be fulfilled, therefore the state and government have the responsibility to ensure that every citizen obtains this right without discrimination in any way.

To this day, the Baduy tribe still adheres to regulations based on their customary law. Meanwhile, according to the national legal hierarchy in the Unitary State of the Republic of Indonesia, positive law is the law with the highest position, while customary law is in a more or less parallel position with Islamic law. Seeing that the level of positive law is higher than customary law, the Baduy people should be more obedient and obedient to positive law along with everything that has been regulated in it, including the right to education. And as legal Indonesian citizens whose existence is recognized, the Baduy people should or should consider following all aspects that have been determined by positive law. In this way, there will be no more violations of human rights, especially the right to education, as is currently rampant among the Baduy community.

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