

UNLOCKING THE POTENTIAL OF "KALOSARA": An Extensive Analysis of Adultery Instances Dispute Resolution in the Tolaki Tribe through the Lens of al-Ishlah Concept

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Abstract: This article delves into the comprehensive examination of the dispute resolution in adultery cases within the Tolaki Tribe, specifically through the traditional practice of "Kalosara." The research also explores the relevance of *Kalosara* to the al-Ishlah concept in Islamic criminal law. This research uses the literature review method to establish a robust theoretical foundation. This research indicates a significant relevance between the *Kalosara* custom and the concept of Ishlah in the context of Islamic criminal law. The practice of *Kalosara* in resolving cases of adultery within the Tolaki Tribe reflects the principles of Ishlah, emphasizing reconciliation, restoration, and conflict resolution. The stages of the resolution process, from the acknowledgment of the perpetrator to the purification ceremony, mirror a holistic approach to achieving restorative justice. The research results show that the integration of *Kalosara* customary law in the Ishlah process reflects the aspirations of the Tolaki community for a comprehensive resolution and effective recovery at various levels, including individual, social, and broader community contexts. In the settlement through *Kalosara*, adulterers are expected to admit their actions, express regret, and carry out a purification process with a holistic approach to resolving conflicts and restoring social relations.

Keywords: *Kalosara*, Tolaki, Adultery Instances, al Ishlah Concept.

Abstrak: Artikel ini mengupas kajian komprehensif terhadap penyelesaian sengketa kasus perzinahan di lingkungan Suku Tolaki, khususnya melalui praktik

adat "Kalosara". Penelitian ini juga menggali relevansi *Kalosara* dengan konsep al-Ishlah dalam hukum pidana Islam. Penelitian ini menggunakan metode tinjauan pustaka untuk membangun landasan teori yang kuat. Identifikasi literatur yang relevan memerlukan pencarian sumber yang cermat mengenai adat istiadat *Kalosara*, penyelesaian sengketa, dan konsep al-Ishlah dalam konteks hukum Islam. Penelitian ini menunjukkan adanya relevansi yang signifikan antara adat *Kalosara* dengan konsep Ishlah dalam konteks hukum pidana Islam. Praktik *Kalosara* dalam menyelesaikan kasus perzinahan di kalangan Suku Tolaki mencerminkan prinsip Ishlah yang menekankan pada rekonsiliasi, restorasi, dan penyelesaian konflik. Tahapan proses penyelesaian, mulai dari pengakuan pelaku hingga upacara penyucian, mencerminkan pendekatan holistik untuk mencapai keadilan restoratif. Hasil Penelitian menunjukkan bahwa Integrasi hukum adat *Kalosara* dalam proses Ishlah mencerminkan aspirasi masyarakat Tolaki terhadap penyelesaian yang komprehensif dan pemulihan yang efektif di berbagai tingkat, termasuk konteks individu, sosial, dan masyarakat yang lebih luas. Dalam penyelesaian melalui *Kalosara*, para pelaku zina diharapkan mengakui perbuatannya, menyatakan penyesalan, dan melakukan proses penyucian dengan pendekatan holistik dalam menyelesaikan konflik dan memulihkan hubungan sosial.

Kata Kunci: *Kalosara*, Tolaki, Kasus Perzinahan, Konsep al Ishlah.

Introduction

Recently, the issue of "*Kalosara*"¹ in resolving adultery cases within the Tolaki Tribe has garnered considerable attention and concern. This article aims to investigate the intricacies of this phenomenon and explain its relevance to the concept of ishlah in Islamic criminal law. The practice of "*Kalosara*" raises important questions about its impact on the outcomes of adultery cases. Does it enhance or hinder justice within the Tolaki community?²

It is essential to acknowledge that the indigenous community of the Tolaki tribe possesses a robust cultural wealth manifested in traditions, customs, and the "*Kalosara*" as a way of life guide.³ The Tolaki indigenous community steadfastly upholds their customs and traditions in their daily interactions, ensuring the preservation and sustainability of Tolaki cultural practices throughout generations.⁴ Therefore, the Tolaki people continue to believe in and adhere to the customs encapsulated in "*Kalosara*" as an unwavering way of life that should not be violated or disregarded.⁵

¹ Kalosara, also commonly known as "kalo," is a symbol of customary law in the Tolaki culture of Southeast Sulawesi, passed down through generations. Kalosara is utilized in various aspects of customary law including governance, land tenure, marriage, inheritance, debts and credits, conflicts, and their resolutions.

² I Ketut Suardika, "Kalosara Di Kalangan Masyarakat Tolaki Di Sulawesi Tenggara," *Mudra Jurnal Seni Budaya* 32, No. 2 (2017). <https://doi.org/10.31091/Mudra.V32i2.111>

³ Subakir, Ahmad, et al. "Synergy of Samin Culture With Environmental Fiqh in Central Java." *Syariah: Jurnal Hukum dan Pemikiran* 24.1 (2024): 224-240.

⁴ Bambang Satriya, "Problematika Pembaharuan Hukum Pidana Nasional" (Jakarta: Komisi Hukum Nasional Republik Indonesia, 2013).

⁵ R Rispan And Ajat Sudrajat, "Pewarisan Nilai-Nilai Kearifan Lokal Kalosara Dalam Pembelajaran Sejarah Untuk Membangun Karakter Siswa," *Historia: Jurnal Program Studi Pendidikan Sejarah* 8, No. 1 (2020): 61-76. <https://doi.org/10.24127/Hj.V8i1.2254>

The customary law of the Tolaki, governing issues related to "Kalosara," is recognized by the community as a traditional decision that is non-negotiable and non-tolerable.⁶ Hence, anyone residing in an area where the Tolaki indigenous community is present will always be subject to their customary law, irrespective of the individual's ethnicity or religion.⁷ This establishes a legal foundation deeply ingrained in the daily lives of the Tolaki community, reinforcing the strength and perpetuity of their cultural values.⁸

For the Tolaki community, Karosara is considered an unbreakable guide to life that must not be violated or set aside. This reflects the firm belief of the Tolaki people in the truth and justice embedded in their customary rules. Tolaki customary law is firm, where decisions made within the customary framework are deemed final and non-negotiable.⁹ This fosters consistency in the enforcement of customary law within the Tolaki community.¹⁰

Karosara (Customary Law) for the Tolaki community is a set of rules meant to regulate, control, and sanction those who violate the established norms within *Kalosara*. Still, it also encompasses both positive law and customary law provisions. In positive law (criminal law), a criminal act is defined as an

action prohibited by a legal rule accompanied by a threat (sanction) in the form of a specific punishment for anyone who violates that prohibition.¹¹ The criminal act of adultery (*umoapi*) violates not only positive law but also breaches customary legal norms, as it inflicts emotional harm and brings shame not only to the family of the perpetrator but also to the entire community within the same society.¹²

In the resolution of criminal acts of adultery (*umoapi*), community involvement is crucial, as the imposition of sanctions such as imprisonment, as stipulated in positive law, does not necessarily mean that the issue is fully resolved.¹³ In other words, the affected party accepting the imposition of sanctions, such as the punishment handed down by the court, is not the ultimate resolution.¹⁴ In the Tolaki tribal community, the primary focus is on restoring the situation to its original state before the occurrence of the criminal act, ensuring the integrity of the community is maintained.

In the context of how the *Kalosara* customary legal system establishes a balanced legal framework, it is expressed that the *Kalosara* customary law plays a crucial role in resolving conflicts within the community.

⁶ Djasas, Mursyid, et al. "The Integration Between Syara'and Ade'in Marriage Tradition Bugis Bone, South Sulawesi." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18.2 (2023): 342-363.

⁷ Arifai, Ahmad, and Januariansyah Arfaizar. "The Jejuluk in Komering tribe weddings in the globalization from a siyasa perspective." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23.2 (2023): 211-234.

⁸ Awal Awal, Andi Aderus, And Indo Santalia, "Moderasi Beragama Pada Masyarakat Konawe Selatan (Studi Atas Toleransi Beragama Berbasis Kearifan Lokal Kalosara Masyarakat Konawe Selatan)," *El-Fata: Journal Of Sharia Economics And Islamic Education* 2, No. 2 (2023): 195-215. <https://doi.org/10.61169/El-Fata.V2i2.64>

⁹ Sa'adah, Sri Lumatus, Saifuddin Zuhri Qudsy, and Nur Quma Laila. "Sigar Semongko and Gilir Waris:

The Controversy of Customary Law and Islamic Law in The Inheritance System." *AHKAM: Jurnal Ilmu Syariah* 23.2 (2023).

¹⁰ Rahmanuddin Tomalili, *Tindak Pidana Perzinahan Dalam Perspektif Hukum Pidana Adat Suku Tolaki* (Penerbit Pkbn Maranai, 2014).

¹¹ Moelijanto, *Perbuatan Pidana Dan Pertanggungjawaban Pidana* (Jakarta: Bina Aksara, 1983).

¹² Satriya, "Problematika Pembaharuan Hukum Pidana Nasional."

¹³ Muzakkir, Muzakkir. "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat." *Al-Ahkam* 32.2 (2022): 131-152.

¹⁴ Rasyid, Arbanur, et al. "Local Wisdom Recognition in Inter-Ethnic Religious Conflict Resolution in Indonesia from Islah Perspective." *JURIS (Jurnal Ilmiah Syariah)* 22.1 (2023): 13.

¹⁵Dispute resolution based on the values of the *Kalosara* customary law is conducted through a mediation process involving discussions and agreements among conflicting parties to find the best solution. These mediation steps arise because the *Kalosara* customary legal system is oriented towards achieving unity and justice, ensuring that the rights of Indigenous and immigrant communities are upheld following applicable norms.¹⁶ The tradition of *Kalosara*, involving a mediation process, is utilized to resolve internal disputes among indigenous community members. Conflict resolution through the *Kalosara* tradition has established social order within the community.¹⁷ The philosophical principle underpinning *Kalosara* namely *ate pute penao morcha* (purity and justice), holds the power to bind disputing parties and enable them to find justice customarily.¹⁸ The theoretical function of customary law in society is to create social harmony, preventing disputes and conflicts.¹⁹ In Islamic law, fostering unity and social

order in the community is one of the primary objectives.²⁰

Several studies have explored the Kalosora custom in Tolaki society. Still, none have specifically addressed the relevance of the Kalosora custom in resolving adultery cases with the concept of *ishlah* in Islamic criminal law.²¹ Among these studies are those conducted by Kamaruddin et al. in the journal *Samarah* titled "Justice, Mediation, and *Kalosara* Custom of the Tolaki Community in Southeast Sulawesi from the Perspective of Islamic Law,"²² an article by Syaiful Arfin in the *Ganaya* journal titled "Efektivitas Adat Suku Tolaki (*Kalosara*), Sebagai Mediasi Penal Terhadap Pelanggaran Lalu Lintas Di Wilayah Hukum Konawe Provinsi Sulawesi Tenggara,"²³ and research by Ramlah Rahim in an article titled "Lingkar Rotan *Kalosara*: Perjumpaan Islam Dan Tradisi Dalam Sejarah Islam Konawe."²⁴ These research findings have yet to address

¹⁵ Zainuddin, Muslim. "The Cancellation of The Weddings for Pre-Marriage Pregnancy Women: An Evaluation of Decision 24/Pdt. G/2020/Ms. Ban." *El-Ushrah: Jurnal Hukum Keluarga* 6.1 (2023): 44-53.

¹⁶ Kamaruddin Kamaruddin Et Al., "Justice, Mediation, And *Kalosara* Custom Of The Tolaki Community In Southeast Sulawesi From The Perspective Of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, No. 2 (2023): 1077-96.

<https://doi.org/10.22373/sjkh.v7i2.13183>

¹⁷ Siregar, Ramadhan Syahmedi, Muhammad Syakban, and Muhammad Ikhlas bin Rosele. "The Role of Marriage Guardian of the Same Clan in the Traditional Marriage of Batak Toba Muslims in Samosir Regency in the Perspective of Islamic Law." *Al-Manahij: Jurnal Kajian Hukum Islam* 17.1 (2023): 41-52.

¹⁸ Rasidin, Mhd, et al. "The Mapping Verses and Application of the Linguistic Approach and Ushul Fiqh Toward the Law of Adultery." *El-Mashlahah* 14.1 (2024): 21-42.

¹⁹ Syawqi, Abdul Haq, et al. "Law Omission in Muslim Society: Inquiring Citizen Rights in the Administration of Islamic Family Law in Madura

Indonesia." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7.3 (2023): 1757-1777.

²⁰ Firman Muntaqo And K N Sopyan Hasan, "Tunggu Tubang As A Method For Peaceful Inheritance Distribution Of Semende Indigenous Peoples Tunggu Tubang Sebagai Metode Pembagian Harta Waris Secara Damai Masyarakat Adat Semende," *De Jure: Jurnal Hukum Dan Syar'iah* 13, No. 1 (2021).

<https://doi.org/10.18860/j-fsh.v13i1.11028>

²¹ Mustafid, Mustafid, et al. "Alternative Legal Strategies and Ninik Mamak Authority: Dual Administration of Malay Marriage in Koto Kampar Hulu, Riau." *Journal of Islamic Law* 5.1 (2024): 1-18.

²² Kamaruddin Et Al., "Justice, Mediation, And *Kalosara* Custom Of The Tolaki Community In Southeast Sulawesi From The Perspective Of Islamic Law."

²³ Syaiful Arpin, "Efektivitas Adat Suku Tolaki (*Kalosara*), Sebagai Mediasi Penal Terhadap Pelanggaran Lalu Lintas Di Wilayah Hukum Konawe Provinsi Sulawesi Tenggara," *Ganaya: Jurnal Ilmu Sosial Dan Humaniora* 2, No. 2 (2019).

²⁴ Ramlah Hakim, "Lingkar Rotan *Kalosara*: Perjumpaan Islam Dan Tradisi Dalam Sejarah Islam Konawe," *Al-Qalam* 17, No. 1 (2011): 39-49.

<https://doi.org/10.31969/alq.v17i1.96>

the relevance of the *Kalosara* custom to the al-Ishlah concept.

Method

The first step in conducting this research involves the literature review method to establish a robust theoretical foundation. Identifying relevant literature will entail a meticulous search for sources addressing *Kalosara* customs, dispute resolution, and the al-Ishlah concept within the context of Islamic law.²⁵ By evaluating the credibility of the found literature, including research methods and information accuracy, we aim to ensure that the utilized literature provides a solid knowledge base. Furthermore, a literature synthesis will be performed to amalgamate these findings, forming a holistic view of the potential of *Kalosara* and the al-Ishlah concept in resolving adultery disputes within the Tolaki tribe.

The data collection process will employ techniques designed to unearth in-depth insights into using *Kalosara* customs in resolving adultery cases by applying the al-Ishlah concept. In-depth interviews with customary leaders, community members, and relevant individuals will enable a deeper understanding of the implementation of *Kalosara* and their perceptions of the al-Ishlah concept. Document analysis, including court decisions and records of *Kalosara* customs, will provide insights into how adultery cases have been handled previously. Utilizing qualitative data analysis techniques, we hope to unveil the potential of *Kalosara* in resolving adultery disputes by detailing how the al-Ishlah concept is implemented within the framework of Islamic law.

The Existence of *Kalosara* Custom in Tolaki Society

Tarimana defines "kalo" as an object with a circular shape involving circular binding processes and collective interactions or activities where participants form a circle. As a circular object, the creation of "kalo" involves uniting or tying both ends of a rope at a single knot, forming a circle.²⁶

Based on the concept of "kalo" as described by Tarimana, in the Tolaki language, "kalo" is interpreted as a "rotan circle" or an object made of rattan that has been scraped and concluded into three parts, with both ends brought together to form a circle.

According to A, the concept of "kalo" in Tolaki culture has a broad scope. Hamid Hasan, Arsamid, Husen A. Chalik, Abdul Rachim, Nehru Dundu, and Mangarati, "kalo" generally encompasses "Sara" (customs), especially Sara Owoseno Tolaki or Sara Mbu'uno Tolaki, which serves as the fundamental custom that is the source of all prevailing customs in Tolaki community life.

The word "Sara" originates from the Tolaki language, etymologically consisting of the qualifying term 'O,' meaning something... and the base word "Sara," meaning law. Therefore, "Sara" can be interpreted as customary law, often equated with "Sara Wonua," signifying regional customary law.

Based on the concepts of "kalo" and the understanding of "Sara" (Nosara) mentioned above, it can be said that *Kalosara* is an object or tool used to implement the rules of customary law (customs) of the Tolaki people, both in the realm of customs itself and in societal matters.

Kalosara is a circular object made of three strands of rattan. It can also be crafted from other materials such as gold, iron, silver, thread, white cloth, roots, pandanus, and bamboo, wound counterclockwise, and the

²⁵ Sainun, Sainun, Hery Zarkasih, and Arif Sugitanata. "Tuan Guru and the Efforts to Prevent Early Marriage Among Sasak Tribe." *De Jure: Jurnal Hukum dan Syariah* 16.1 (2024): 37-57.

²⁶ Arisetyanto Nugroho Chairy, *Komunikasi Dan Konflik Di Indonesia* (Jakarta: Showcasedotcom, 2012).

end is knotted and tied. One of the two ends of the rattan is hidden within the knot, while the other is allowed to protrude. The significance of having three ends of rattan, where two are concealed within the knot, and one is left protruding, is that if there are any deficiencies in carrying out customs, these shortcomings should not be disclosed to the public or a larger audience. Thus, the Tolaki people adhere to the legal principle: "keno Takayuki Nosara mokonggadu'i, too mohair mokongoa'i, pamarenda mokombonoa'i," which means that if there are shortcomings in conducting a customary practice, the customs, relatives, and authorities will address or interpret any deficiencies that occur during a customary procession, and these must be accepted as part of Tolaki customary law.²⁷

Kalo/*Kalosara* cannot be separated from the daily life of the Tolaki people. Kalo/*Kalosara*, as a symbol of unity and customary law, always plays a significant role in various important events in the lives of the Tolaki people. For example, in the resolution of conflicts/disputes, both on a large scale (such as disputes involving villages) and on a small scale (such as disputes involving individuals), in marriage arrangements, in welcoming guests, in conveying oral invitations, delivering sad news, settling criminal and civil cases, and various other events.²⁸

Resolving Adultery Cases with *Kalosara* in Tolaki Society

In Tolaki society, several legal violations or offenses can be resolved through the *Kalosara* mechanism. These include Adultery (Umoapi), Murder (Mombepate), Assault (Mowakati), Theft (*Momboponini*), Defamation (Mowukuti, Mowindu), Asset or

Property Depletion (Mososaa), Embezzlement (Mohiako), Forest Burning (Mohohai), and other cases.²⁹

The offense of adultery is referred to as Umoapi by the Tolaki community. The violation of umoapi itself is considered an act highly condemned by the community, as it tarnishes the principles of the *Kalosara* teachings. Therefore, society believes that individuals who commit such actions are deemed to have lost their dignity and lack a sense of shame. Consequently, the perpetrator is considered deserving of the death penalty. To avoid executing this penalty, the umoapi offender then seeks legal protection from one of the traditional figures of *Kalosara*. Thus, the resolution is carried out through the *Kalosara* customary institution.

There are several types of adultery offenses (umoapi) known in the Tolaki community, including *Umowapi* Wali (adultery with a married person), *Umowapi* Sarapu (eloping with someone else's fiancé), Somba Labu (pregnancy involving more than one man), Olawa Pinasa (forced polygamy), *Mombolasuako* (eloping with someone's daughter), and Omapi Mohewi (ordinary adultery).

The resolution of umoapi varies depending on the type of umoapi involved. As in the case of umoapi wali, the man and woman engaged in umoapi first seek protection from the local customary figure, the local puutobu. The puutobu, which accepts both partners, must keep their presence a secret from the public. If known by other residents, both individuals may become the target of the anger of the family of the second man and other community members who disapprove of their actions. Subsequently, the puutobu

²⁷ Tomalili, *Tindak Pidana Perzinahan Dalam Perspektif Hukum Pidana Adat Suku Tolaki*.

²⁸ Andi Muhammad Fadly, "Efektifitas Hukum Adat Kalosara Dalam Penyelesaian Perkara Pidana Penganiayaan Melalui Alternative Dispute

Resolution (Adr) Pada Masyarakat Suku Tolaki Sulawesi Tenggara," N.D.

²⁹ Tomalili, *Tindak Pidana Perzinahan Dalam Perspektif Hukum Pidana Adat Suku Tolaki*.

contacts the parents of the first man to seek their immediate approval for the actions and to manage the process of resolving this issue. Initially, the puutobu, together with tolea, visits the home of the family of the second man to convey information about who has taken their child. They also express that the individuals involved genuinely intend to come and resolve the issue through the mowea wali customary practice.

In its implementation, first and foremost, *Kalosara* is presented in the mombesara phase by tolea, followed by mesambepe (negotiations) on the fine according to the type of umoapi, whether it is umoapi sarape or umoapi wali. This is followed by the mekindorooa ritual, which involves cutting new using traditional mekindorooa tools and concludes with the nose he ceremony. The entire procession indicates that the act of umoapi is a reprehensible deed that can disrupt the tranquility and peace of the community and may lead to natural disasters due to the wrath of God.³⁰

In the resolution of the *Mombolasuako* offense, there are several stages as follows:

1. Giving Notice (Molomba Obiri): This stage is carried out by bringing *Kalosara* and its accessories by tolea and government officials to meet and inform the woman's parents. "Molomba obiri" means opening ears, indicating that this process involves requesting the woman's family not to

obstruct the resolution of *Mombolasuako* through customary practices. As part of this process, also nimatako is given a piece of traditional sarong.³¹

2. Taking Shelter (Mesokei): Mesokei is performed after molomba obiri. It involves paying customary obligations to the woman's parents, such as a buffalo (kiniku) or a gong (karandu or tawa-tawa).³²
3. Apologizing (Mekopu): Mekopu is meeting the parents of the man and woman involved, along with the customary judge (tolea). At this stage, the man redeems the value (peosawaakoa) equivalent to tolu nimatako, three pieces of clothing or sarongs. This redemption serves as compensation to soothe the emotions of the woman's parents and as an apology for them to accept the *Mombolasuako* incident willingly.³³
4. Consultation (Mesambepe): The negotiation process to reach an agreement on the customary matters to be conveyed during mowindahako (marriage), including the timing of its implementation. Mesambepe is carried out concurrently with the mekopu stage.³⁴
5. Ceremony of Giving Traditional Items (Mowindahako): Conducting the marriage ceremony by giving

³⁰ Siti Rahmawati, "Islam Dan Adat: Tradisi Kalosara Dalam Penyelesaian Hukum Keluarga Pada Masyarakat Tolaki Di Konawe Selatan" (Sekolah Pascasarjana Uin Syarif Hidayatullah Jakarta, 2017).

³¹ Sulsalman Moita, Muhammad Rusli, And Aryuni Salpiana Jabar, "Proses Penyelesaian Kawin Lari (Mombolasuako) Pada Masyarakat Suku Tolaki Di Kabupaten Konawe Selatan," In *Indonesian Annual Conference Series*, 2022, 39-42.

³² Muh Isra Syarif, Islahuddin Ramadhan Mubarak, And Ihwan Wahid Minu, "Adat Pernikahan Mombolasuako Pada Suku Tolaki Dalam Tinjauan Hukum Islam," *Al-Qiblah: Jurnal Studi Islam Dan*

Bahasa Arab 1, No. 1 (2022): 35-52. <https://doi.org/10.36701/Qiblah.V1i1.624>

³³ Ilfan Askul Pehala, "Verbal And Non-Verbal Expressions In Tradition Of Mombolasuako Of Tolaki At Southeast Sulawesi (Ethnolinguistic's Study).," *Lingua* 12, No. 2 (2017). <https://doi.org/10.18860/Ling.V12i2.4158>

³⁴ Sista Sista, La Niampe, And Nurtikawati Nurtikawati, "Tradisi Mombolasuako (Kawin Lari) Dalam Perkawinan Adat Tolaki Di Desa Tiraosu Kecamatan Kolono Kabupaten Konawe Selatan," *Lisani: Jurnal Kelisanan, Sastra, Dan Budaya* 2, No. 2 (2019): 68-75.

traditional items to the woman according to her dowry.³⁵

6. Purification Ceremony (Mosehe): Mosehe, meaning "purification" in the language, is performed at the end of the event using banana leaves and a broken egg at the front door of the bride's house. The purpose of money is to restore the feelings of disappointment within the family during the *Mombolasuako* process.³⁶

Based on the description above, it is known that "kalo" is the result of the creativity and motivation of the Tolaki people to mitigate feelings of hatred and revenge arising from conflicts in marital and social relationships. The Tolaki people are familiar with the messages conveyed by "kalo," which can be translated as: "Even if swords clash and spears cross, if customs have been put forward, then customs are followed." *Kalosara* is a conflict resolution medium against violations in Tolaki society. The role of *Kalosara* aims to create peace in communal life and constantly interact with the surrounding environment.³⁷

By involving the customary law of *Kalosara*, the Tolaki community strives to resolve adultery in a manner consistent with traditional values.³⁸ In addressing adultery through *Kalosara* customary law, the Tolaki community focuses on creating recovery within social and community relationships.³⁹ Beyond conflict resolution, *Kalosara*

customary law may also involve educational and developmental steps. This aims to provide individuals involved with an understanding of traditional values and the consequences of their actions.

Resolving adultery also encompasses efforts to restore trust among the parties involved. This may include a series of actions and commitments to rebuild relationships affected by the adultery incident. A collaborative approach requires support and understanding from the community to ensure holistic recovery.⁴⁰

By engaging the *Kalosara* customary law, the Tolaki community hopes to achieve a comprehensive resolution and effective recovery at the individual level and within the context of social relationships and the broader community.

The Relevance of Resolving Zina Offense with *Kalosara* through the Concept of *Ishlah*

The context of adultery during the time of Prophet Muhammad and within the Tolaki community demonstrates significant differences in their approaches to resolution. In Islam, including practices during the Prophet's time, enforcement of laws regarding adultery often involves physical punishments such as whipping and imprisonment aimed at upholding justice and disciplining individuals who violate moral norms prescribed by the religion. However,

³⁵ Ansi Pinanta, Hanna Hanna, And Wawan Marhanjono Mustamar, "An Analysis Of Speech Acts Of 'Mowindahako' In Tolakinese Wedding Ceremony Procession," *Journal Of Teaching Of English* 7, No. 4 (2022): 19–27.

³⁶ Rilda Yanti And Zainal Zainal, "Ritual Mosebi Pada Masyarakat Tolaki," *Kabanti: Jurnal Kerabat Antropologi* 6, No. 2 (2022): 255–66.

³⁷ Kamaruddin Et Al., "Justice, Mediation, And Kalosara Custom Of The Tolaki Community In Southeast Sulawesi From The Perspective Of Islamic Law."

³⁸ Usman Usman, Sri Rahayu, And Elizabeth Siregar, "Urgensi Penyerapan Nilai Hukum Islam Dan

Hukum Adat Dalam Pengaturan Tindak Pidana Perzinaan," *Undang: Jurnal Hukum* 4, No. 1 (2021): 125–57. <https://doi.org/10.22437/Ujh.4.1.125-157>

³⁹ S H Karim, *Karakteristik Penyelesaian Perkara Tindak Pidana Ringan Melalui Restorative Justice* (Jakad Media Publishing, 2019).

⁴⁰ Handrawan Handrawan, "Sanksi Adat Delik Perzinahan (Umoapi) Dalam Perspektif Hukum Pidana Adat Tolaki," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 21, No. 3 (N.D.): 199–210. <https://doi.org/10.30742/Perspektif.V21i3.582>

these punishments are considered part of efforts to restore social and moral order.

On the other hand, within the Tolaki community, the application of such punishments is not always seen as a sufficient final resolution. Sometimes, the affected family may not be satisfied with such legal enforcement. They tend to view the actual resolution as restoring the situation to its state before the act of adultery, hoping to restore integrity and harmony in interpersonal and familial relationships. This approach emphasizes restoring disrupted social and moral relationships while preserving the valuable cultural values and traditions of the Tolaki community.

In the context of Islamic criminal case resolution, an important concept is called *Ishlah*.⁴¹ *Ishlah* reflects reconciliation efforts and peaceful resolution between parties involved in a conflict or criminal case. This concept promotes relationship restoration and peace through reconciliation, mediation, and education. *Ishlah* not only focuses on punitive aspects but also prioritizes the values of restorative justice, which are healing-oriented. In its implementation, *Ishlah* involves efforts for peaceful resolution between perpetrators and victims, utilizing mediation as a tool to alleviate tension.⁴²

The concept of *Ishlah* in the resolution of Islamic criminal cases includes education and rehabilitation, where perpetrators are provided an understanding of their wrongdoings and allowed to repent.⁴³

Resolution through *Ishlah* concentrates on individual recovery and the recovery of the entire community.⁴⁴ This encompasses the restoration of social relationships and harmony within the community environment.⁴⁵ *Ishlah* also considers local wisdom and cultural values that may play a role in resolving criminal cases. This ensures that resolutions are made with consideration of the cultural and social context of the community.

The legal basis for the concept of *Ishlah* in Islamic criminal law is primarily found in the principles of Sharia law underlying the resolution of criminal cases. Some relevant legal foundations are found in the Quran and the sayings of Prophet Muhammad (PBUH). The Quran often emphasizes the importance of peace, reconciliation, and restorative justice. Surah An-Nisa (4:114) highlights the virtues of those who do good and strive to improve relationships.⁴⁶

Regarding the concept of *Ishlah*, some hadiths reflect the teachings of Prophet Muhammad (PBUH) regarding peace, reconciliation, and conflict resolution. One relevant hadith states, "The best of your affairs are those that mend broken relationships" (HR. Ahmad). The Prophet emphasizes repairing damaged relationships as a primary form of goodness in this hadith. This hadith reflects the principles of *Ishlah*, which highlight peace, agreement, and reconciliation as efforts to improve relationships among individuals and society.

⁴¹ Ariyani Ariyani And Andi Marlina, "The Concept Of Al-Islam And The Restorative Justice Approach In Settlement Of Criminal Cases," *Delictum: Jurnal Hukum Pidana Islam*, 2023, 28–43. <https://doi.org/10.35905/Delictum.Vi0.6403>

⁴² Ahmad Ropei, "Penerapan Restorative Justice Sebagai Alternatif Penyelesaian Masalah Pidana Berdasarkan Hukum Pidana Islam," *Al-Kainah: Journal Of Islamic Studies* 1, No. 2 (2022): 40–83.

⁴³ Syahrizal Syahrizal, "Al-Qabisi's Theory On Physical Punishment Method For Students," *Jurnal Ilmiah Peuradeun* 9, No. 2 (2021): 393–412. <https://doi.org/10.26811/Peuradeun.V9i2.532>

⁴⁴ Islamul Haq Et Al., "Yadah Al-Nadzr (Reconsideration): A Critical Comparative Study Between Indonesian Law And Saudi Arabian Law Perspectives (Fiqh Murafa'at)," *Al-Istinbath: Jurnal Hukum Islam* 7, No. 2 November (2022): 311–28. <https://doi.org/10.29240/Jhi.V7i2.5248>

⁴⁵ Herry Anto Simanjuntak And M H Sh, "Peranan Kearifan Lokal Dalam Penyelesaian Sengketa Pertanahan," *Jurnal Justia* 3, No. 1 (2021): 19–31.

⁴⁶ Abdul Wahid Haddade, "Konsep Al-Ishlah Dalam Al-Qur-An," *Jurnal Tafseer* 4, No. 1 (2016).

Referring to such hadiths, Muslims are encouraged to pursue peace and reconciliation in resolving conflicts while upholding values of goodness and justice in their actions.⁴⁷

Some provisions of Islamic law imply that forgiveness, accepting redemption, or reaching a peaceful agreement can be valid options in resolving criminal cases, mainly if they can prevent more significant conflicts. The main principle of *Ishlah* is to achieve peace and reconciliation between the parties involved while avoiding harsh criminal sanctions.⁴⁸ Here are the methods of *Ishlah* in Islamic criminal law:

1. Mediation and Negotiation: The mediator seeks to facilitate dialogue between the perpetrator and the victim or their family. The mediation and negotiation process aims to reach a mutual agreement that satisfies both parties without involving the judiciary.⁴⁹
2. Monetary Compensation (*Diyah*): This method involves the payment of compensation or *diyat* to the victim or their family as a form of restitution for the committed crime. *Diyat* can serve as an alternative to severe criminal sanctions, especially in cases of murder.⁵⁰

3. Forgiveness and Pardon: The victim or their family can forgive the perpetrator, resulting in the perpetrator being exempted from criminal sanctions. This principle aligns with the concept of forgiveness in Islam.⁵¹
4. Collective Agreements: In some cases, *ishlah* may involve collective agreements among the parties involved in a conflict. These agreements may encompass various forms of reconciliation and compensation.⁵²
5. Therapeutic Approach: Involves the recovery and rehabilitation of the perpetrator. The victim, perpetrator and the community can collaborate to rebuild disrupted relationships and support the reintegration of the perpetrator into society.⁵³
6. Consultation and Deliberation: The process of consultation and negotiation between parties involved in a conflict. In Islamic criminal law, *musyawarah* can be used to achieve fair agreements and resolutions.⁵⁴

The process of *ishlah* in the crime of adultery (*zina*) in the context of Islamic criminal law involves a series of steps aimed at achieving reconciliation and conflict resolution. The

⁴⁷ Elfia Elfia, "Ishlah Dalam Takharuj Menurut Hanafiyah Versus Ishlah Dalam Kompilasi Hukum Islam (Analisis Kebijakan Hukum)," *Juris (Jurnal Ilmiah Syariah)* 17, No. 1 (2018). <https://doi.org/10.31958/Juris.V17i1.1010>

⁴⁸ Zainuddin Zainuddin, "Restorative Justice Concept On Jarimah Qishas In Islamic Criminal Law," *Jurnal Dinamika Hukum* 17, No. 3 (2017): 335-41. <https://doi.org/10.20884/1.Jdh.2017.17.3.826>

⁴⁹ Nastangin Nastangin Nastangin, Soraya Al Latifa, And Muhammad Chairul Huda, "Peran Mediator Dalam Penanganan Perkara Perceraian: Kajian Dalam Perspektif Teori *Ishlah*," *Istinbath: Jurnal Hukum* 19, No. 02 (2022): 205-28. <https://doi.org/10.32332/Istinbath.V19i02.5048>

⁵⁰ Islamul Haq, "Al-Qasamah: Alternatif Pembuktian Tindak Pidana Pembunuhan Dalam Hukum Positif," *Istinbath: Jurnal Hukum* 17 (N.D.): 25-49.

⁵¹ Mira Maulidar, "Korelasi Filosofis Antara Restorative Justice Dan *Diyat* Dalam Sistem Hukum Pidana Islam," *At-Tasyri': Jurnal Ilmiah Prodi Muamalah*, 2021, 143-55. <https://doi.org/10.47498/Tasyri.V13i2.856>

⁵² Khairani Mukdin And Novi Heryanti, "Perspektif Hukum Islam Terhadap Efektifitas Pelaksanaan Restorative Justice Pada Anak Berhadapan Dengan Hukum," *Gender Equality: International Journal Of Child And Gender Studies* 6, No. 2 (2020): 61-70. <https://doi.org/10.22373/Equality.V6i2.7790>

⁵³ Sufriadi Ishak, "Teori-Teori Penghukuman Dalam Hukum Islam:(Perbandingan Dengan Hukum Pidana Umum)," *Ameena Journal* 1, No. 1 (2023): 89-100.

⁵⁴ Maulidar, "Korelasi Filosofis Antara Restorative Justice Dan *Diyat* Dalam Sistem Hukum Pidana Islam."

perpetrator of Zina is first expected to admit their actions and express genuine remorse. This acknowledgment and repentance are the initial steps to initiate the *ishlah* process. Subsequently, a mediation process engages relevant parties, including the perpetrator, victim, families, and traditional or religious figures. The mediator's role is to facilitate open dialogue between the perpetrator and the affected parties to reach a mutual agreement.⁵⁵

For the perpetrator of Zina, the *ishlah* process may involve rehabilitation and guidance programs. The goal is to guide the perpetrators to reflect on their actions, change their behavior, and reintegrate into society as a better individual. The victim or their family may consider forgiving the perpetrator. This forgiveness process is integral to *ishlah*, aiming to create reconciliation and restore relationships between individuals and families.⁵⁶

In the context of *ishlah* in the crime of adultery, customary sanctions or punishments in line with the values of Islam and local traditions can be determined.^{57,58} These sanctions may include the payment of *diyat* (compensation), atonement for the offense through specific obligations, or other measures that can serve as alternatives to more severe criminal penalties.⁵⁹

Based on the explanation, the author believes that resolving the crime of adultery through *Kalosara* and the concept of *Ishlah* in Islamic criminal law has strong relevance. *Ishlah*

emphasizes efforts to restore social relationships among individuals, similar to the role of *Kalosara*. *Ishlah* focuses on reconciliation and resolution to restore peace and harmony in society.

The process of resolving adultery also involves efforts to restore trust among the parties involved. This may include a series of actions and commitments to rebuild relationships affected by the events of adultery. The collaborative approach relies on support and understanding from the community to ensure holistic recovery. By involving *Kalosara* customary law, the Tolaki community hopes to achieve a comprehensive resolution and effective recovery at the individual level and in the context of social relationships and society at large.

The concept of *Ishlah* also accommodates the application of traditional values in conflict resolution. Through *Kalosara*, the Tolaki community can maintain their culture's and traditions' integrity in addressing legal violations, such as adultery. Furthermore, *Ishlah* involves educational and mentoring efforts to provide individuals with an understanding of adultery's cultural values and consequences. This approach includes aspects of education and mentoring to prevent the recurrence of similar violations.

Conclusion

The article demonstrates a strong relevance between resolving adultery through *Kalosara* and the concept of *Ishlah* in Islamic criminal

⁵⁵ Suhardi Akbar, "Konsep Restorative Justice Dalam Tidak Pidana Pembunuhan Berencana (Carok) Perspektif Hukum Islam (Studi Kasus Di Desa Gunung Sereng Kabupaten Bangkalan)" (Uin Kiai Haji Achmad Siddiq Jember, 2023).

⁵⁶ Sudirman; Iskandar, "Isbat Marriage Resolution In Indonesia: A Masalah Approach," *J. Islamic L.* 1 (2020): 100. <https://doi.org/10.24260/jil.V1i1.16>

⁵⁷ Mustaqim Pabbajah, Abdul Hayyaqhdhan Ashufah, And Zehratul Eitriya, "Songkabala In Al-'Urf Perspective On Pinisi Vesselbuilding In Coastal Sulawesi," *Mazahibuna: Jurnal Perbandingan Mazhab*,

N.D., 99–116. <https://doi.org/10.24252/Mazahibuna.Vi.35653>

⁵⁸ Ismail Ismail Et Al., "The Contribution Of 'Urf To The Reform Of Islamic Inheritance Law In Indonesia," In *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, Vol. 22, 2022, 165–78. <https://doi.org/10.30631/Alrisalah.V22i2.1243>

⁵⁹ Sudarti Sudarti, "Hukum Qishash Diyat: Sebuah Alternatif Hukuman Bagi Pelaku Kejahatan Pembunuhan Berencana Di Indonesia," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 12, No. 1 (2021): 35–50. <https://doi.org/10.21043/Yudisia.V12i1.8991>

law. Both emphasize restoring social relationships, focusing on reconciliation, peace, and harmony – efforts to rebuild trust and achieve holistic recovery involving community support. Integrating *Kalosara* customary law in the *Ishlah* process reflects the Tolaki community's aspiration for comprehensive resolution and effective recovery at various levels, including individual, social, and broader societal contexts.

In the resolution through *Kalosara*, the perpetrators of adultery expect to acknowledge their actions, express remorse, and engage in the *merembinggare* process up to the purification ceremony. All these stages reflect a holistic approach to resolving conflicts and restoring social relationships. The concept of *Ishlah*, which also emphasizes recovery efforts, includes mediation and rehabilitation steps, aligning with the approach taken in the *Kalosara* tradition.

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