



Islamic Law and the Constitution: Analyzing the Compatibility of Religion-Based Legislation in Indonesia

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Abstract

This study explores the constitutional compatibility of religion-based legislation in Indonesia, particularly laws influenced by Islamic jurisprudence, within the framework of the 1945 Constitution. As a Muslim-majority nation that embraces both religious values and democratic pluralism, Indonesia faces ongoing tensions between the demands for the formalization of Islamic norms and the constitutional commitment to human rights, legal equality, and religious freedom. The expansion of Sharia-inspired by laws at the regional level and Islamic influences in national statutes underscore the urgency of addressing this legal-religious interplay. While existing scholarship has addressed the sociopolitical and administrative aspects of religion-based lawmaking, there remains a lack of doctrinal analysis focused on constitutional alignment. This study employs a legal research method, which focuses on the analysis of legal norms, statutory regulations, and constitutional principles as textual constructs. This research fills that gap by applying a juridical-doctrinal approach to evaluate whether such legislation adheres to principles enshrined in the Constitution, including legal certainty, non-discrimination, and constitutional supremacy. Through critical analysis of legislation and Constitutional Court decisions, the study demonstrates that while certain religious laws can coexist with Pancasila and constitutional values, many pose substantive challenges to Indonesia's legal order. The findings contribute to broader debates on legal pluralism, constitutionalism, and the appropriate role of religion in legislation, offering normative guidance for aligning religious norms with democratic constitutional principles.

Keywords: Indonesian Constitution; Religious-Based Legislation; Legal Pluralism; Democratic Constitutionalism

Abstrak

Studi ini mengkaji kompatibilitas konstitusional dari peraturan perundang-undangan yang berbasis agama di Indonesia, khususnya peraturan yang dipengaruhi oleh hukum Islam, dalam kerangka Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD 1945). Sebagai negara dengan mayoritas penduduk Muslim yang juga menjunjung nilai-nilai demokrasi dan pluralisme, Indonesia menghadapi ketegangan yang berkelanjutan antara



dorongan untuk formalisasi norma-norma Islam dan komitmen konstitusional terhadap hak asasi manusia, kesetaraan hukum, serta kebebasan beragama. Ekspansi peraturan daerah bercorak syariah (*perda syariah*) dan pengaruh hukum Islam dalam peraturan perundang-undangan nasional menegaskan urgensi untuk menelaah hubungan antara hukum dan agama dalam konteks konstitusional. Meskipun kajian sebelumnya telah membahas aspek sosiopolitik dan administratif dari legislasi berbasis agama, masih terdapat kekurangan dalam analisis yuridis normatif yang secara khusus memfokuskan pada keselarasan konstitusional. Studi ini menggunakan metode penelitian hukum normatif, yang menitikberatkan pada analisis terhadap norma hukum, peraturan perundang-undangan, dan prinsip-prinsip konstitusi sebagai konstruksi tekstual. Melalui pendekatan doktrinal, penelitian ini menilai apakah legislasi berbasis agama sejalan dengan prinsip-prinsip konstitusional seperti kepastian hukum, non-diskriminasi, dan supremasi konstitusi. Melalui analisis kritis terhadap peraturan dan putusan Mahkamah Konstitusi, studi ini menunjukkan bahwa meskipun sebagian hukum berbasis agama dapat berkoeksistensi dengan nilai-nilai Pancasila dan konstitusi, banyak di antaranya menimbulkan tantangan substantif terhadap tatanan hukum Indonesia. Temuan ini memberikan kontribusi terhadap diskursus lebih luas mengenai pluralisme hukum, konstitusionalisme, dan peran agama dalam legislasi, serta menawarkan panduan normatif untuk menyelaraskan norma-norma keagamaan dengan prinsip-prinsip demokrasi konstitusional.

Keywords: Konstitusi Indonesia; Legislasi Berbasis Agama, Pluralisme Hukum; Konstitusionalisme Demokratis.

Introduction

Indonesia stands as a compelling testament to the possibility of a Muslim-majority democracy that navigates the complex currents between religious identity and constitutional secularism.¹ Since proclaiming its independence in 1945, the nation has committed itself to *Pancasila*, a set of five guiding principles that affirm belief in one supreme God while embracing pluralism, social justice, and democratic governance. Importantly, Pancasila enshrines neither a specific religion nor a theocratic system, carefully distinguishing Indonesia's political and legal architecture from the Islamic legal systems found in some other Muslim-majority nations. Yet despite—or perhaps because of—this commitment to religious neutrality, the candle of Islamic jurisprudence has continued to burn brightly within the Indonesian legal panorama.²

The relationship between religion and constitutional law represents a persistent area of inquiry in the legal development of modern states, particularly within pluralist societies. Indonesia, with its official recognition of six religions and a Muslim-majority population, presents a unique constitutional framework that neither explicitly embraces secularism nor adopts theocratic principles.³ Instead, the Indonesian legal system is formally grounded in Pancasila, the state ideology whose first principle affirms *Ketuhanan Yang Maha Esa* (Belief in

¹ Andar Nubowo, "Promoting Indonesian Moderate Islam on the Global Stage: Non-State Actors' Soft Power Diplomacy in the Post-New Order Era," *Muslim Politics Review* 2.2 (2023): 238-283. <https://doi.org/10.56529/mpr.v2i2.204>.

² Arik Dwijayanto, and Dawam Multazam, "Pancasila and Rukun Negara: A Relation of Identity, State, and Nationalism in Indonesia and Malaysia," *Tebuireng: Journal of Islamic Studies and Society* 2.1 (2021): 43-54. <https://doi.org/10.33752/tjiss.v2i1.2254>.

³ Lene Pedersen, "Religious Pluralism in Indonesia," *The Asia Pacific Journal of Anthropology* 17.5 (2016): 387-398. <https://doi.org/10.1080/14442213.2016.1218534>.

the One and Only God), and in the 1945 Constitution (*Undang-Undang Dasar 1945*). Despite these normative foundations, the increasing incorporation of Islamic legal norms into both national and regional legislation, particularly since the post-Reformasi era—has raised significant constitutional concerns.⁴

This phenomenon is particularly salient in the context of regional autonomy, where several provincial governments have enacted Sharia-inspired bylaws, invoking religious and moral considerations. In parallel, certain national laws reflect Islamic jurisprudential influences, notably in areas such as marriage, banking, and criminal behavior.⁵ The resulting legal pluralism has created tensions between constitutional guarantees, such as freedom of religion, equality before the law, and non-discrimination and the normative aspirations of Islamic law.⁶ Within this evolving legal terrain, critical questions arise regarding the extent to which religion-based legislation aligns with the supremacy, coherence, and principles of the 1945 Constitution.

From the fall of the New Order regime in 1998 onward, Indonesia has entered an era characterized by democratic renewal and the decentralization of power. As part of this reformasi (reformation) period, local governments were granted greater autonomy to reflect their communities' values and aspirations.⁷ It was against this backdrop that regional assemblies in several provinces began drafting and implementing *Qanun* (local regulations) explicitly grounded in Islamic principles. Areas like Aceh, within which Sharia-based regulations were formalized, exemplify how religion-led lawmaking has gained traction. But Islamic legal influence has not remained confined to the periphery—it has also permeated national legislation in domains such as family law, zakat management, and Islamic finance.⁸

This gradual entwinement of religious normativity with constitutional democracy has sparked unease in some quarters. Civil society groups and legal scholars have questioned whether religion-based laws might encroach upon protections afforded to religious and ethnic minorities or whether they might undermine key freedoms enshrined in the Constitution, including freedom of religion and freedom of expression. International

⁴ Judith Koschorke, "Legal Pluralism in Indonesia: The Case of Interfaith Marriages Involving Muslims," *Legal Pluralism in Muslim Contexts* (2019): 199-229. https://doi.org/10.1163/9789004398269_010.

⁵ Krismono, Supriyanto Abdi, and Syahmirwan Syahmirwan, "Negotiating Islam, Democracy and Pluralism: Islamic Politics and the State in Post-Reform Indonesia," *Mazahib* 24.1 (2025): 101-130. <https://doi.org/10.21093/mj.v24i1.10078>.

⁶ Silvio Ferrari, "Religious Rules and Legal Pluralism: An Introduction," *Religious Rules, State Law, and Normative Pluralism-A Comparative Overview*. Cham: Springer International Publishing, 2016. 1-25. https://doi.org/10.1007/978-3-319-28335-7_1.

⁷ Henk Schulte Nordholt, "Renegotiating Boundaries: Access, Agency and Identity in post-Soeharto Indonesia," *Bijdragen tot de Taal-, land-en Volkenkunde* 159.4 (2003): 550-589. <http://www.jstor.org/stable/27868069>.

⁸ Syahrizal Abbas, and Ramzi Murziqin, "Sharia-based Regional Regulations in the Indonesian National Law System," *Jurnal Ilmiah Peuradeun* 9.3 (2021): 529-548. <http://dx.doi.org/10.26811/peuradeun.v9i3.673>.

observers have raised similar concerns, alerting to the risks that religiously motivated regulations might pose to gender equality, minority rights, and judicial independence.⁹

At the same time, proponents of these developments assert that the integration of Islamic legal principles into the public legal order does not necessarily conflict with constitutional values.¹⁰ They argue that democratic legitimacy resides in the people's voice, and to the extent that Muslim Indonesians continue to reject the strict separation of religion and state, Islamic norms incorporated through the legislative process can enhance rather than undermine constitutional democracy. Moreover, defenders assert, Pancasila itself includes a spiritual core that enshrines monotheistic belief; embedding Islamic values into legislation may thus resonate with Indonesia's foundational philosophy.¹¹

This tension between secular pluralism and religious expression forms the heart of the present study.¹² By exploring how Islamic law finds its way into legislation at both the regional and national levels, this paper seeks to engage the deeper question of how constitutional democracy can accommodate religious voices without diluting its core principles. Central to this exploration is the role of the 1945 Constitution and how it has been interpreted and reinterpreted by lawmakers, judges, and scholars to respond to the pull of Islamization on one side and the need for inclusive rule of law on the other.¹³

Equally significant to this study are the cultural and political dynamics informing legislative change. Since democratization, a burgeoning Islamic civil society—comprising political parties, religious NGOs, pesantren (Islamic boarding schools), and charismatic ulema—has asserted a more assertive role in shaping legislation.¹⁴ Islamic political currents, even when not narrowly Islamist in agenda, continue to articulate demands for moral regulation, public religious formation, and alignment of state law with Islamic ethics. At the same time, secular activists, feminist collectives, and minority rights groups have mobilized resistance, emphasizing the risks of majoritarian overreach and the imperative of juridical protections.¹⁵

Taken together, these overlapping legal, social, and political processes illustrate a nation wrestling with identity. The present study does not aim to pass normative judgment

⁹ Yüksel Sezgin, and Mirjam Künkler, "Regulation of "Religion" and the "Religious": The Politics of Judicialization and Bureaucratization in India and Indonesia," *Comparative Studies in Society and History* 56.2 (2014): 448-478. <https://doi.org/10.1017/S0010417514000103>.

¹⁰ Timo Duile, and Jonas Bens, "Indonesia and the "Conflictual Consensus": a Discursive Perspective on Indonesian Democracy," *Critical Asian Studies* 49.2 (2017): 139-162. <https://doi.org/10.1080/14672715.2017.1295358>.

¹¹ Yogi Prasetyo, "Indonesian Integral Law Based on Pancasila," *Pancasila and Law Review* 3.1 (2022): 1-12. <https://doi.org/10.25041/plr.v3i1.2443>.

¹² Diana L. Eck, "Prospects for Pluralism: Voice and Vision in the Study of Religion," *Journal of the American Academy of Religion* 75.4 (2007): 743-776. <https://doi.org/10.1093/jaarel/lfm061>.

¹³ Demson Tiopan, and Shelly Kurniawan, "An Ideal Relationship Between Central and Regional Authorities in Indonesia: The 1945 Constitution Perspective," *Technium Soc. Sci. J.* 44 (2023): 716. <https://doi.org/10.47577/tssj.v44i1.8887>.

¹⁴ Noorhadi Hasan, "Between the Global and the Local: Negotiating Islam and Democracy in Provincial Indonesia," *In Search of Middle Indonesia: Middle Classes in Provincial Towns*, edited by Gerry van Klinken and Ward Berenschot (2014): 171-98.

¹⁵ Andi Jufri, Rosmini Rosmini, and Latifah Abdul Majid, "The Transformation of Political Islam in Indonesia: Adapting to Modernization and Secularization," *Jurnal Adabiyah* 24.2 (2024): 226-250. <https://doi.org/10.24252/jad.v24i2a5>.

on whether Indonesia should or should not adopt religiously-informed laws.¹⁶ Rather, it seeks to shed empirical and legal light on how such laws emerge, how they are justified, how they interact with constitutional norms, and what consequences—both intended and unintended—they yield. In doing so, this paper contributes to broader discussions in comparative constitutional law and political theory, highlighting the Indonesian experience as an instructive case of religion-state entanglement in a democratic-republican framework.

In the sections that follow, the study first delves into the theoretical and doctrinal foundations of constitutionalism and Islamic jurisprudence. It then offers a detailed overview of the 1945 Constitution's core provisions, exploring judicial interpretations and constitutional scholarship. Next, it systematically charts the integration of Islamic principles into legislation at both regional and national levels, underpinned by representative case studies. Following that, it analyzes constitutional tensions, exploring patterns of conflict and synergy as mediated through judicial and political institutions. Finally, it reflects upon the implications of these findings for democratic pluralism, religious freedom, rule of law, and national unity.¹⁷

Although the presence of Islamic legal influences in Indonesian legislation has been widely documented, there remains a distinct lack of rigorous constitutional analysis concerning their normative validity and systemic integration within the constitutional order. Existing research tends to treat religion-based legislation primarily from sociopolitical, cultural, or administrative perspectives, often neglecting its implications for constitutional coherence and interpretative consistency.

The interaction between Islamic law and Indonesian statutory law has been examined from various angles. Salim¹⁸ and Cammack¹⁹ have explored the codification of Islamic norms in Indonesia's legal system, particularly in the fields of family law and finance. Feener²⁰ have emphasized the role of decentralization in enabling regional governments to experiment with Sharia-based regulations. More recent works, such as Crouch²¹, have analyzed the Constitutional Court's handling of religious legislation, focusing on its limited capacity to intervene in regional legal pluralism.

¹⁶ Annemarie Samuels, "Hikmah and Narratives of Change: How Different Temporalities Shape the Present and the Future in Post-tsunami Aceh," *Islam and the Limits of the State*. Brill, 2016. 24-55. https://doi.org/10.1163/9789004304864_003.

¹⁷ Nurhayati Manto, "Contribution of Islamic Law to the Indonesian Constitutional System (Legislative Challenges Amid Legal and Religious Pluralism)," *Innovative: Journal Of Social Science Research* 4.6 (2024): 2496-2509. <https://doi.org/10.31004/innovative.v4i6.15341>.

¹⁸ Arskal Salim, "The Islamisation of Regional Regulations and Its Impact on Good Governance in Contemporary Indonesia 1," *Religion, Law and Intolerance in Indonesia*. Routledge, 2016. 319-334. <https://doi.org/10.4324/9781315657356>.

¹⁹ Mark Cammack, "The Punishment of Islamic Sex Crimes in a Modern Legal System: The Islamic Qanun of Aceh, Indonesia," *Southwestern Law Review*. 45 (2015): 595. https://doi.org/10.1163/9789004472785_003.

²⁰ R. Michael Feener, "Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia," 1st ed. Oxford University Press Oxford, 2013. <https://doi.org/10.1093/acprof:oso/9780199678846.001.0001>.

²¹ Melissa Crouch, "Legislating Inter-Religious Harmony: Attempts at Reform in Indonesia," *Religion, Law and Intolerance in Indonesia*. Routledge, 2016. 95-112. <https://doi.org/10.4324/9781315657356>.

However, these studies often fail to situate religion-based legislation within a comprehensive constitutional framework. They tend to emphasize empirical developments without offering sufficient doctrinal analysis of how such legislation interacts with constitutional principles such as legal hierarchy, judicial review, non-derogable rights, and the nature of constitutional supremacy. As such, this study addresses an under-theorized area of legal scholarship: the constitutional positioning of Islamic law within the Indonesian legal system, particularly as it relates to formal sources of law and judicial interpretation.

This study employs a normative legal research method, focusing on the analysis of legal norms as they are formulated in formal sources of law, particularly within the Indonesian constitutional and statutory framework.²² As a doctrinal approach, normative legal research is concerned primarily with legal principles, rules, and interpretations, and seeks to answer the question of how the law should be understood in its ideal and authoritative form. This method is particularly suited for examining the relationship between Islamic law and the 1945 Constitution of Indonesia, as it allows for a structured exploration of legal texts and judicial reasoning within the context of Indonesia's plural legal system.

To support the interpretation of these primary sources, the research also draws on secondary legal materials including scholarly commentary, academic journals, and legal treatises on constitutional theory, Islamic jurisprudence, and Indonesian legal development. These materials serve to contextualize and critique the legal doctrines and institutional practices at play.

This research offers a distinct contribution by applying a juridical-doctrinal and normative constitutional analysis to assess the compatibility of religion-based legislation with the 1945 Constitution.²³ It moves beyond descriptive accounts and regional case studies by interrogating the legal-theoretical foundations of constitutionalism in Indonesia and how they are affected by the substantive content and legitimacy of religion-based laws. Specifically, this study contributes a critical evaluation of how Islamic legal norms are translated into statutory provisions and the extent to which these translations uphold or violate constitutional guarantees.

This study has both academic and practical relevance. Theoretically, it contributes to the fields of constitutional law, legal pluralism, and comparative constitutionalism, particularly within the context of Muslim-majority democracies. It enhances our understanding of how constitutions mediate between majoritarian religious aspirations and universal constitutional norms. Practically, the research offers insights for legislators, judges, and policymakers seeking to navigate the challenges of religious accommodation within a constitutional democracy. By identifying the doctrinal boundaries of permissible religious legislation, this study provides guidance for ensuring constitutional consistency, judicial accountability, and the protection of minority rights within Indonesia's evolving legal landscape.

²² Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4.1 (2023): 1-9. <https://doi.org/10.22219/aclj.v4i1.24855>.

²³ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia-Social and Behavioral Sciences* 219 (2016): 201-207. <https://doi.org/10.1016/j.sbspro.2016.05.006>.

Islamic Law within the Framework of the Indonesian Constitution

Islamic law holds a complex and multidimensional position within the Indonesian legal system. Although Indonesia does not explicitly declare itself an Islamic state, the sociological reality reveals that the majority of its population adheres to Islam. This condition has generated expectations from various groups for Islamic law to play a more significant role in the national legal framework. At the same time, as a state governed by the rule of law, founded on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945), Indonesia upholds constitutionalism, democracy, and the protection of human rights. The tension between the aspirations for enforcing Islamic law and the constitutional principles results in a unique and layered legal dynamic.²⁴

Historically, the relationship between Islamic law and the constitution has been part of national discourse since the country's independence. The Jakarta Charter, formulated on 22 June 1945 by the Committee of Nine, included the phrase "with the obligation for adherents of Islam to observe Islamic law" in the first principle of Pancasila. However, to preserve national cohesion and embrace the diversity of Indonesian society, this phrase was removed on 18 August 1945. This removal was a political and social consensus to prevent the foundational principles of the state from privileging one religion in the legal system. Nevertheless, the spirit of the Jakarta Charter continues to influence legal and political discourse, especially among those advocating for the inclusion of Islamic values in national law.²⁵

Normatively, the 1945 Constitution does not preclude the development of Islamic law. Article 29 (1) asserts that the state is based on the belief in One Supreme God, while Article 29 (2) guarantees the freedom of every citizen to practice their religion and worship according to their beliefs. These provisions, reinforced by Articles 28E and 28I of the Constitution, demonstrate that religious freedom is a fundamental, non-derogable right. On this basis, Islamic law can be applied to Muslims as an expression of religious freedom, provided it does not conflict with the constitutional rights of other citizens or the fundamental principles of the rule of law.

The implementation of Islamic law in Indonesia's national legal system is evident in several legal instruments. The Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI),²⁶ prepared by the Ministry of Religious Affairs in 1991, serves as the primary reference in resolving civil matters in religious courts, including marriage, inheritance, and endowments (*waqf*). Additionally, Law No. 7 of 1989 concerning Religious Courts, later amended by Law No. 3 of 2006 and Law No. 50 of 2009, provides structural and legal legitimacy to religious courts in resolving disputes among Muslims. This framework is further supported by laws

²⁴ Mohammad Wahyu Adji Setio Budi, "Indonesian State System Based on Pancasila and the 1945 Constitution: A Contemporary Developments," *Indonesian Journal of Pancasila and Global Constitutionalism* 1.1 (2022): 1-16. <https://doi.org/10.15294/ijpgc.v1i1.56875>.

²⁵ Zainal Arifin Hoesein, "Transformation of Islamic Law on the National Legal System in Indonesian Constitutional Perspective," *UUM Journal of Legal Studies* 3 (2012): 77-109.

²⁶ M. Doni, and Silfia Hanani, "The Compilation of Islamic Law as a Socio-Digital Product in the Reform of Islamic Law in Indonesia," *Hakamain: Journal of Sharia and Law Studies* 4.1 (2025): 14-25. <https://doi.org/10.57255/hakamain.v4i1.1335>.

regulating zakat (almsgiving), hajj (pilgrimage), and waqf, which substantively incorporate Islamic legal norms into the positive legal system.

However, it is important to emphasize that the acceptance of Islamic law within the Indonesian legal system is not absolute. Islamic law must operate within the pluralistic national legal framework, subject to constitutional principles and without infringing on the fundamental rights of citizens.²⁷ In this context, the Constitutional Court (Mahkamah Konstitusi, MK) plays a vital role as the guardian of the Constitution. The Court is authorized to review the constitutionality of laws, including those with religious content. In several rulings, the MK has demonstrated a progressive stance by annulling legal provisions deemed discriminatory, even when rooted in religious interpretation.²⁸ For instance, the Court has struck down regulations that limited women's rights in marriage or imposed differential treatment based on gender and religious belief.

The trajectory toward Islamic-infused legislation cannot be fully understood without examining Indonesia's legal evolution. Indonesia's founding Constitution was designed as a malleable yet principled charter, setting out rudimentary government structures and the philosophical scaffolding necessary for nation-building but leaving space for future refinement. Amidst post-independence political upheavals, including the Guided Democracy era and later authoritarian rule under President Suharto's New Order (1966–1998), the Constitution underwent various formal and informal rewritings. These changes often suppressed pluralistic currents, yet did not extinguish them. After 1998, a revitalized Constitutional Court began exerting genuine judicial review, prompting renewed discussions on how law could be both democratic and principled. It is within this arena of intensified legal debate that religion-based regulation has taken hold.^{29,30}

This study adopts a dual analytical lens. First, it traces the legal mechanisms through which Islamic norms have been introduced—from political mobilization and parliamentary lawmaking to local bureaucracy and judicial interpretation. Local regulations (*qanun*) in Aceh, for instance, have introduced visible Sharia-based governance schemes regulating personal behavior, public morality, and religious practice, often with the full endorsement of local majorities. National legislation, such as revisions to personal status laws and formalized zakat collection statutes, similarly offers insight into how Islamic ideals have ascended into formal lawmaking. Through close readings of legislative texts, procedural histories, and rhetorical justifications, this paper systematically documents the morphing of religious precepts from theological discourse into legal doctrine.³¹

²⁷ Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib* 21.2 (2022): 213-244. <https://doi.org/10.21093/mj.v21i2.4800>.

²⁸ Dony Setyawan, Atma Suganda, and Supaphorn Akkapin, "The Role of The Constitutional Court in Maintaining the Balance of Power in Indonesia," *LAW&PASS: International Journal of Law, Public Administration and Social Studies* 1.4 (2024): 415-424. <https://doi.org/10.47353/lawpass.v1i4.40>.

²⁹ Jamie S. Davidson, "Dilemmas of Democratic Consolidation in Indonesia," *Contemporary Authoritarianism in Southeast Asia*. Routledge, 2013. 125-142.

³⁰ David Jenkins, *Suharto and his Generals: Indonesian Military Politics, 1975-1983*, Equinox Publishing, 2010.

³¹ Malihatul Azizah, Muntaha Mahfud, and Abdul Basit, "The Contribution of Sharia Regional Regulations Policy In Indonesian Legal System As An Alternative For Character Building In The

Second, the study interrogates the constitutional legitimacy of these developments. The 1945 Constitution contains several provisions significant to this inquiry: Article 29 guarantees freedom, both for individuals and communities – to adhere to and practice their religion; Article 28E affirms freedom of conscience and expression; Article 1(3) posits the Republic as based on law; and Pancasila’s first principle unambiguously acknowledges belief in one God. Critics draw attention to how religion-based regulations might yield discriminatory effects: anti-blasphemy laws marginalizing dissenters, Sharia enforcement threatening gender rights, or religious bureaucracies limiting civil liberties. Advocates, by contrast, challenge these assumptions, arguing that laws shaped by religious ethics may coexist with constitutional values, provided they are legislated under democratic norms and vetted by the Constitutional Court.

Key to this discourse is the role of legal adjudication. Since 2003, Indonesia’s Constitutional Court has logged multiple important rulings examining the limits of religious legislation, especially where national law confronts local religious ordinances or where personal rights are invoked. These decisions form a rich corpus revealing how judicial actors have mediated tensions between religious communities and constitutional pluralism. In many instances, the Court has affirmed the principle that religious regulations are permissible so long as they do not infringe upon constitutionally protected rights, such as religious freedom and gender equality. Other rulings have struck down religious provisions deemed excessive or discriminatory, reinforcing a legal doctrine that respects religious expression while upholding fundamental rights.³²

Moreover, the dynamics of Islamic law implementation can also be observed at the local level. The reform era and decentralization have provided regional governments with the authority to enact local regulations (Qanun) with Islamic nuances. This phenomenon is most prominent in Aceh, which, under Law No. 11 of 2006 on the Governance of Aceh, enjoys special autonomy to formally apply Islamic law. Aceh’s Qanun (Islamic bylaws) regulate various aspects of life, from religious practices and public morality to Islamic criminal law.³³ Other regions, such as West Sumatra, South Kalimantan, and Banten, have also enacted local regulations concerning dress codes, alcohol bans, and curfews for women.

Although these regulations are intended to promote public morality, they have drawn criticism for restricting individual freedoms, being discriminatory, and conflicting with the inclusive spirit of the Constitution. Many argue that such religion-based legislation

Community,” *International Journal Of Social Science* 1.5 (2022): 829-838. <https://doi.org/10.53625/ijss.v1i5.1334>.

³² Simon Butt, “Religious Conservatism, Islamic Criminal Law and the Judiciary in Indonesia: a Tale of Three Courts,” *The Journal of Legal Pluralism and Unofficial Law* 50.3 (2018): 402-434. <https://doi.org/10.1080/07329113.2018.1532025>.

³³ Dimar Bahtera, and Bonaventura Ngarawula, “Social Dynamics Towards an Advanced and Prosperous Acehnese Society: Study of the Dynamics of Social Reality in the People of West Aceh After the Implementation of Law No. 18 of 2001 Concerning Special Autonomy for the Province of the Special Region of Aceh,” *International Journal of Research in Social Science and Humanities*, 4.5 (2023): 1-19. <https://doi.org/10.47505/IJRSS.2023.V4.5.1>.

at the local level is often driven by identity politics rather than objective legal necessity.³⁴ Consequently, there is a risk of inconsistency between local and national laws, as well as potential for horizontal social conflict. In this regard, oversight mechanisms by the Ministry of Home Affairs, the Supreme Court, and the Constitutional Court are essential to maintaining the cohesion of the national legal system.

Criticism of religious legislation does not imply rejection of Islamic law in its entirety. On the contrary, Islamic law can serve as a catalyst for social ethics and justice, provided it is developed contextually and oriented toward the public good (*maslahah*).³⁵ The challenge lies in how to actualize Islamic values in non-exclusive, non-discriminatory legislation aligned with universal human rights principles. Legal stakeholders and religious leaders must therefore adopt moderate, dialogical, and inclusive perspectives.

Ultimately, Islamic law within the framework of the Indonesian Constitution cannot exist independently from the national legal system. It must be part of a holistic legal structure, subordinated to the normative hierarchy with the 1945 Constitution as the supreme law of the land. Every form of religion-based legislation must undergo a constitutional fitness test to ensure its application does not violate principles of justice, equality, and human dignity.

As a multicultural nation, Indonesia requires a model of Islamic legal integration that is both constructive and inclusive. Not a coercive formalization, but a guiding internalization. Not legal exclusivity, but value participation. With a commitment to constitutional supremacy and a spirit of pluralism, Islamic law can meaningfully contribute to strengthening a national legal foundation that is just, equitable, and rooted in the respect for human dignity.

The Role of Islamic Law in Indonesian Legal Development

The position of Islamic law within Indonesia's legal system has undergone significant transformation, particularly since the Reform Era (*Era Reformasi*) following the fall of the New Order regime in 1998. Historically, Islamic law in Indonesia was confined largely to the realm of private and family matters, codified through state law and administered within the Religious Courts.³⁶ During the New Order period, while certain Islamic legal norms were recognized—particularly in marriage, inheritance, and charitable endowments (*wakaf*)—they remained tightly regulated by a centralized state apparatus that prioritized national integration and political control over religious autonomy.

The post-1998 Reform Era marked a shift in the relationship between religion and law, driven by democratization, decentralization, and greater openness to religious expression. These changes created the conditions for a more assertive role for Islamic

³⁴ Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State," *Multiculturalism: Examining the politics of recognition* 107 (1994): 117. <https://doi.org/10.1515/9781400821402-008>.

³⁵ Sumiyati Beddu, et al., "From Doctrine to Action: Islamic Law's Journey Towards Social Change," *Jurnal Wawasan Yuridika* 8.1 (2024): 1-24. <https://doi.org/10.25072/jwy.v8i1.4177>.

³⁶ Mark Cammack, Adriaan Bedner, and Stijn Van Huis, "Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia," *Human Rights, and Islamic Family Law in Post-Soeharto Indonesia (February 19, 2015)*. *New Middle Eastern Studies, Forthcoming, Southwestern Law School Research Paper* 2015-06 (2015). <http://dx.doi.org/10.29311/nmes.v5i0.2656>.

jurisprudence in public law.³⁷ A key development was the rise of Sharia-inspired local regulations (*peraturan daerah berbasis syariah*) in various provinces, facilitated by regional autonomy laws such as Law No. 22 of 1999 and its successor, Law No. 23 of 2014. In parallel, Islamic legal principles gained formal recognition in national laws, particularly in the fields of Islamic banking and finance, culminating in Law No. 21 of 2008. The jurisdiction of the Religious Courts was also expanded through Law No. 3 of 2006, further institutionalizing Islamic legal authority in civil matters for Muslims.

These developments reflect the growing influence of Islamic law in Indonesia's plural legal landscape. However, they have also sparked debates regarding their compatibility with the 1945 Constitution. The implementation of religion-based laws—whether at the national or regional level—raises fundamental constitutional issues, including equality before the law, legal certainty, and protection of minority rights.³⁸ Recent legislation, such as the Anti-Pornography Law (Law No. 44 of 2008) and provisions in the revised Criminal Code (KUHP 2022), reflect moral and religious aspirations, yet also raise concerns about their alignment with constitutional guarantees of freedom of religion and belief.

Although Islamic law occupies a formally recognized position within the national legal system, particularly in specific domains such as family law and finance, it remains subordinate to the Constitution.³⁹ The Constitutional Court has consistently reinforced the supremacy of the Constitution over religious or local norms that conflict with universal constitutional principles.⁴⁰ Thus, while the post-Reform era has expanded the scope and visibility of Islamic law in Indonesia, this expansion is not without legal and constitutional limits. The tension between democratic pluralism, regional autonomy, and the aspiration for Islamic moral governance continues to shape the contemporary discourse on law and religion in Indonesia.

The debate over *Qanun Syariah* also underscores the inherent tension between the concept of regional autonomy and the principle of national legal unity. In certain instances, the central government finds itself in a dilemma between accommodating local aspirations and upholding the uniformity of legal norms throughout Indonesia. The Constitutional Court's decisions to annul several discriminatory regional bylaws reflect the enduring primacy of constitutional principles, even in the face of strong local demands for the implementation of Islamic law. The Court has maintained that, although religion constitutes a legitimate source of legal values, the laws it inspires must nonetheless conform to the

³⁷ Mirjam Künkler, "Law, Legitimacy, and Equality: The Bureaucratization of Religion and Conditions of Belief in Indonesia," *A Secular Age Beyond the West Religion, Law and the State in Asia, the Middle East and North Africa* (2018): 107-127. <http://dx.doi.org/10.1017/9781108278195.006>.

³⁸ Saldi Isra, and Hilaire Tegnan, "Legal Syncretism or the Theory of Unity in Diversity as an Alternative to Legal Pluralism in Indonesia," *International Journal of Law and Management* 63.6 (2021): 553-568. <https://doi.org/10.1108/IJLMA-04-2018-0082>.

³⁹ Annelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," *A Social History of Women and Gender in the Modern Middle East*. Routledge, 2018. 141-175. <https://doi.org/10.4324/9780429502606>.

⁴⁰ Nico Steytler, "Constitutional Approaches to Diversity and Non-Discrimination in Multi-Level States: Indonesian and South African Jurisprudential Perspectives," *Courts and Diversity*. Brill Nijhoff, 2024. 260-282. https://doi.org/10.1163/9789004691698_011.

standards of constitutional justice, be non-discriminatory, and must not infringe upon the fundamental rights of citizens.⁴¹

In addition to its role in family law and Islamic banking, the implementation of Islamic law within the national legal framework in Indonesia has also evolved through institutional and regulatory developments grounded in religious values and administered by the state, particularly in the post-Reformasi era.⁴² The emergence of numerous *Qanun Syariah* (Sharia-based local regulations) across various regions exemplifies the concrete manifestation of decentralization and democratization following 1998, while simultaneously presenting serious challenges to the principles of equality, non-discrimination, and religious freedom. Several regions outside of Aceh, such as Padang, Tasikmalaya, and Bulukumba, have enacted regulations mandating Islamic dress codes, banning alcohol, or restricting nighttime activities—all of which are justified as expressions of local identity and the moral values of the Muslim majority.

However, these regional regulations have sparked significant national debate. Critics argue that such laws undermine the spirit of pluralism and may violate the constitutional rights of non-Muslims and women. In some instances, *Qanun Syariah* have been used to limit civil liberties—for example, imposing sanctions on women deemed to have violated “Islamic dress norms.” In this context, Islamic law, which is ideally a moral and faith-based guide, becomes a coercive legal instrument when enforced by local authorities.⁴³ The Constitutional Court of Indonesia plays a pivotal role in ensuring that local legislation remains in line with the Constitution. In several rulings, the Court has emphasized the importance of non-discrimination and the national legal principles that guarantee fundamental rights for all citizens, regardless of religion.

Debates surrounding *Qanun Syariah* further highlight the tension between the concept of regional autonomy and the principle of national legal unity. In some cases, the central government has found itself in a dilemma between respecting local religious aspirations and upholding uniform legal norms across the country. The Constitutional Court’s decisions to annul certain discriminatory local regulations affirm that constitutional principles remain the highest legal standard, even amid strong local demands for the application of Islamic law. The Court has maintained that, while religion is a legitimate source of legal values, any resulting law must meet constitutional standards of justice, non-discrimination, and protection of basic rights.

Beyond regional legislation, the institutional strengthening of Islamic law has also occurred through the formalization of religious bodies such as the Indonesian Ulama Council (Majelis Ulama Indonesia, MUI). Although MUI does not possess legislative authority, its *fatwas* often influence public policy, particularly in areas such as food, finance,

⁴¹ Muhammad Mutawalli Mukhlis, “Regional Government Autonomy in Indonesia: The Ambiguity of the Federalism of Republic Model,” *Malaysian J. Syariah & L.* 13 (2025): 35. <https://doi.org/10.33102/mjssl.vol13no1.760>.

⁴² Utama Wardi, et al., “Comparative Analysis of Islamic Family Law and Customary Law in the Settlement of Inheritance Disputes in Indonesia,” *Hakamain: Journal of Sharia and Law Studies* 3.1 (2024): 13-25. <https://doi.org/10.57255/hakamain.v3i1.330>.

⁴³ Tim Lindsey, and Kerstin Steiner, “Islam, the Monarchy and Criminal Law in Brunei: the Syariah Penal Code Order, 2013,” *Griffith Law Review* 25.4 (2016): 552-580. <https://doi.org/10.1080/10383441.2016.1273294>.

and social morality.⁴⁴ MUI has taken on an increasingly important role in certifying halal products, issuing financial rulings for Islamic finance, and setting national halal standards. With the enactment of the Halal Product Assurance Law (Law No. 33 of 2014), the influence of Islamic law via religious institutions has become further institutionalized within the legal system, although its implementation remains under state control through the Halal Product Assurance Agency (BPJPH).⁴⁵

In the economic sector, the development of Islamic law is most clearly visible in the growth of Islamic finance. Islamic banking in Indonesia has expanded significantly since the early 2000s, with the establishment of fully Sharia-compliant banks and Islamic business units within conventional banks. Financial products such as *murabaha*, *mudharaba*, *ijarah*, and *musharaka* are formally recognized and regulated by the Financial Services Authority (OJK) and Bank Indonesia.⁴⁶ Islamic banking now functions not merely as an alternative, but as an integral part of the national financial system. The government has even issued Sharia-compliant sovereign bonds (*Sukuk*) as part of its national financing strategy, demonstrating that Islamic legal principles are not merely symbolic but actively operationalized in state fiscal policies.

Nevertheless, the integration of Islamic law into national legal policy continues to face challenges concerning legal cohesion and constitutional consistency. A central issue is the extent to which the state should accommodate Islamic norms that may conflict with universal human rights principles.⁴⁷ For instance, in the context of Islamic criminal law in Aceh—such as flogging punishments for *zina* or alcohol consumption—some argue that such practices violate the right to physical integrity as protected by international human rights covenants ratified by Indonesia. However, the central government tends to maintain a conciliatory stance in the name of regional autonomy, as long as the implementation of Sharia does not explicitly contravene national constitutional principles.⁴⁸

Furthermore, it is crucial to recognize that Islamic legal thought in Indonesia is far from monolithic. Among scholars, jurists, and Muslim political actors, there exists a broad spectrum of views regarding the extent to which Islamic law should be integrated into national legislation. Some moderate Islamic groups advocate a substantive approach, emphasizing universal Islamic values such as justice, honesty, and anti-corruption within the

⁴⁴ Moch Nur Ichwan, "Official Ulema and the Politics of Re-Islamization: The Majelis Permusyawaratan Ulama, Shari'atization and Contested Authority in Post-new Order Aceh," *Journal of Islamic Studies* 22.2 (2011): 183-214. <https://doi.org/10.1093/jis/etr026>.

⁴⁵ Supriyadi, et al, "Legal Effectiveness of Halal Product Certification in Improving Business Economics in Indonesia and Malaysia," *Al-Ahkam* 34.1 (2024): 193-220. <https://doi.org/10.21580/ahkam.2024.34.1.20546>.

⁴⁶ Rita Wijayanti, Y. Anni Aryani, and Doddy Setiawan, "Islamic Social Reporting in Indonesian Islamic Bank: A systematic Literature Review," *Global Business & Finance Review (GBFR)* 28.5 (2023): 82-98. <https://doi.org/10.18196/afkaruna.v20i1.21393>.

⁴⁷ Sahin Husain, Nasir Purkon Ayoub, and Mukhammadolim Hassmann, "Legal Pluralism in Contemporary Societies: Dynamics of Interaction Between Islamic Law and Secular Civil Law," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 1.1 (2024): 1-17. <https://doi.org/10.35335/cfb3wk76>.

⁴⁸ Basyira Syadza Chayra, and Dalilatul Zahratussalamah, "Analysis of the Relevance of Hudud Punishment in the Context of Law Enforcement in Indonesia," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 2.1 (2025): 16-24. <https://doi.org/10.35335/ym5ehj17>.

framework of national law. In contrast, more conservative factions demand a more formal application of Sharia through definitive legislation, extending even to criminal and public morality laws. This push and pull reflects the ever-evolving political-legal dynamic of Islamic law in Indonesia, shaped by shifting power structures, public opinion trends, and national legal priorities.

Although Indonesia operates under a secular national legal system, the reality of Islamic law's presence demonstrates what may be termed a model of "Islamic law accommodation in a non-Islamic state." This model allows Islamic law to function within specific boundaries, without transforming the state into an Islamic one. From a legal theory perspective, this results in a form of negotiated legal pluralism, in which various normative systems coexist under a unified national legal structure governed by constitutional supremacy. In this model, Islamic law does not function as an independent legal system but is integrated through formal mechanisms such as legislation, regulation, and judicial interpretation.

Religious-Based Legislation in Practice: Challenges, Impacts, and Prospects for Reform

The position of Islamic law in Indonesia has become increasingly prominent since the Reform Era, as democratization and decentralization have created greater space for the formalization of religious norms within the legal system.⁴⁹ This has led to the proliferation of religion-based legislation, particularly *perda syariah*—and the institutional expansion of Islamic principles into financial, judicial, and moral domains. While this development reflects the aspirations of a significant portion of the Muslim majority, it also introduces several challenges, produces a range of legal and social impacts, and raises critical questions about the prospects for constitutional reform and legal harmonization.

One of the central challenges lies in the tension between Islamic-inspired legislation and the normative principles of the 1945 Constitution, particularly in relation to universal human rights, legal equality, and freedom of religion.⁵⁰ Certain *perda syariah* and national laws have been criticized for disproportionately targeting women, religious minorities, or individuals with differing moral views, raising concerns about discriminatory enforcement and the erosion of individual liberties. Moreover, the fragmentation of legal authority, especially under regional autonomy, has led to inconsistencies in the application of law across regions, undermining the principles of legal certainty and the unitary character of the Indonesian legal system.

The impacts of these developments are both juridical and sociopolitical. Juridically, the integration of Islamic norms into legislation has forced the Constitutional Court and other legal institutions to navigate complex questions of constitutional hierarchy, pluralism, and judicial review. Although the Court has occasionally acted as a safeguard against religious overreach, its jurisprudence has also been marked by restraint, often deferring to legislative discretion in matters of religious morality. Sociopolitically, the visible

⁴⁹ Michael Buehler, and Dani Muhtada, "Democratization and the Diffusion of Shari'a Law: Comparative Insights from Indonesia," *South East Asia Research* 24.2 (2016): 261-282. <https://doi.org/10.1177/0967828X16649311>.

⁵⁰ Stewart Fenwick, "Faith and Freedom in Indonesian Law: Liberal Pluralism, Religion and the Democratic State," *Religion, law and intolerance in Indonesia*. Routledge, 2016. 68-94. <https://doi.org/10.4324/97813156573565>.

entrenchment of Islamic norms in public law has deepened identity-based politics and occasionally marginalized religious minorities, thus threatening Indonesia's constitutional commitment to inclusivity and pluralism.

Nevertheless, the situation presents important prospects for reform. There is growing recognition—both among scholars and within segments of the judiciary and civil society—of the need to reconcile Islamic legal aspirations with constitutional principles in a more coherent and balanced manner.⁵¹ Reform efforts could include strengthening constitutional oversight over local regulations, promoting clearer legislative guidelines for the accommodation of religious values, and ensuring that universal human rights remain non-negotiable in any interpretation of religious law. Additionally, greater engagement between Islamic legal scholarship and constitutional theory may help generate new frameworks for integrating religious norms in a way that upholds both democratic values and religious legitimacy.

In sum, while Islamic law has become more deeply embedded in Indonesia's legal landscape since the Reform Era, its integration has produced a complex mix of legal pluralism, normative conflict, and constitutional contestation. Addressing these challenges requires not only judicial intervention but also a broader normative discourse on the future direction of religion-based legislation within a democratic constitutional state.

In contemporary legal and political discourse, religious-based legislation stands as one of the most controversial yet strategic topics. It embodies fundamental tensions between sacred norms and the demands of modernity, between communal identity and universal rights, and between national legal unity and the cultural and religious diversity of society.⁵² This form of legislation refers to the process of formulating legal norms derived primarily or explicitly from religious teachings. It not only reflects the aspirations of segments of society to preserve religious morality in public life but also intersects with the dynamics of power, social identity, and political legitimacy within the state.

Religious-based legislation can be found in a variety of forms and contexts across the world. In its most extreme form, countries such as Iran and Saudi Arabia explicitly base their entire legal systems on Islamic law (sharia).⁵³ In contrast, in countries with secular constitutional frameworks such as India or Indonesia, religious legislation often emerges in the form of personal laws or local regulations that accommodate specific religious values.⁵⁴ In Western countries, debates over religious legislation often center on the boundaries between religious expression and secular public space, such as the banning of veils or halal

⁵¹ Massimo Campanini, and Mohamed Arafa, "Islam and Democracy: Appreciating the Nuance and Complexity of Legal Systems with a Basis in Religion," *Barry L. Rev.* 26 (2020): 1. <https://lawpublications.barry.edu/barryrev/vol26/iss1/1>.

⁵² David Nelken, "Comparative Legal Research and Legal Culture: Facts, Approaches, and Values." *Annual Review of Law and Social Science* 12.1 (2016): 45-62. <https://doi.org/10.1146/annurev-lawsocsci-110615-084950>.

⁵³ Manisuli Ssenyonjo, "Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari'a: A Human Rights Critique," *International Human Rights Law Review* 13.2 (2024): 265-312. <https://doi.org/10.1163/22131035-13020005>.

⁵⁴ Mirjam Künkler, and Yüksel Sezgin, "The Unification of Law and the Postcolonial State: The Limits of State Monism in India and Indonesia," *American Behavioral Scientist* 60.8 (2016): 987-1012. <https://doi.org/10.1177/0002764216643808>.

slaughter practices. In other words, religious legislation is not alien to global legal systems, but its form and intensity vary depending on the state's ideology, demographic composition, and domestic political dynamics.⁵⁵

In the Indonesian context, religious-based legislation operates within a constitutional framework that does not define the state as a religious one, yet upholds the values of divinity and religious diversity. Pancasila, the foundational ideology of the state, guarantees religious freedom while uniting diverse faiths under the principle of belief in one supreme God.⁵⁶ In practice, this creates a space of ambiguity: Indonesia is not a secular state in the Western sense, nor is it entirely a religious state. As a result, many laws and regulations incorporate religious values, both explicitly and implicitly. This tendency is reinforced by the system of regional autonomy, which grants local governments the authority to formulate regional regulations (Qanun) reflecting local values, including religious norms.

However, the practice of religious-based legislation in Indonesia often creates tension between civil liberties and majoritarian norms. In Aceh, for instance, the implementation of Qanun Sharia as part of its special autonomy has resulted in various regulations governing moral and social conduct in strict terms, such as prohibitions on men and women being alone together, mandatory veiling, and public caning as punishment for adultery.⁵⁷ While these regulations enjoy local legitimacy and are seen as expressions of cultural and religious identity, they have been widely criticized for violating universal human rights principles and curtailing individual freedoms, particularly those of women and minority groups.⁵⁸

One of the fundamental challenges of religious legislation lies in interpretation. Religions—especially those with sacred texts and deep legal traditions such as Islam—provide a broad spectrum of interpretations regarding law and morality. When a state adopts religious-based legislation, the question is not only which religious law will be implemented but also whose interpretation will be privileged. In societies that are pluralistic in terms of religious thought and schools of jurisprudence, there is no single authority that can definitively determine which interpretation is valid. Consequently, the state often defaults to conservative and patriarchal interpretations, considered safer in terms of political stability and dominant public morality.

Beyond issues of interpretation, the implementation of religious legislation poses serious challenges. When laws are formulated based on religious norms, their enforcement is often carried out by authorities who do not merely apply legal-formal standards but also

⁵⁵ Şerif Onur Bahçecik, "State, Religion and Muslims: Between Discrimination and Protection at the Legislative, Executive and Judicial Levels: An Overview," *State, Religion and Muslims* (2020): 598-610.

⁵⁶ Abdul Mu'ti, and Ahmad Najib Burhani, "The Limits of Religious Freedom in Indonesia: with reference to the first pillar Ketuhanan Yang Maha Esa of Pancasila," *Indonesian Journal of Islam and Muslim Societies* 9.1 (2019): 111-134. <https://doi.org/10.18326/ijims.v9i1.111-134>.

⁵⁷ Yusrizal Hasbi, et al., "Criminalising Women, Silencing Victims: Human Rights and Sharia Enforcement in Aceh," *De Jure: Jurnal Hukum dan Syar'iah* 17.1 (2025): 175-203. <https://doi.org/10.18860/j-fsh.v17i1.29635>.

⁵⁸ Mariam Rawan Abdulla, "Culture, Religion, and Freedom of Religion or Belief," *The Review of Faith & International Affairs* 16.4 (2018): 102-115. <https://doi.org/10.1080/15570274.2018.1535033>.

invoke moral and social judgments.⁵⁹ This opens space for abuse of power, violations of privacy rights, and the stigmatization of certain groups. Practices such as moral policing, raids, and corporal punishments without due process illustrate how religious law can become a tool of social control when not grounded in the principles of the modern rule of law.

The impact of religious-based legislation is not only felt at the individual level but also affects social structures and political stability. In pluralistic societies, laws based on the religion of the majority can lead to feelings of exclusion and discrimination among minority groups. This not only creates injustice but also has the potential to trigger social conflict, both in symbolic and physical forms. Furthermore, such legislation can be exploited by political elites to gain populist support through religious sentiments, ultimately degrading the quality of democracy and public rationality.⁶⁰

From an economic perspective, rigid and human-rights-incompatible religious legislation can create an unfriendly business climate. Foreign investment, for example, is highly dependent on legal stability, human rights protections, and non-discrimination.⁶¹ When a region enacts religiously rigid regulations – such as bans on alcohol, restrictions on entertainment, or limitations on women’s mobility – its attractiveness as an investment or tourism destination may decline. Reports have shown that several regions in Indonesia experienced drops in tourist arrivals and foreign investment following the enactment of stringent religious-based local laws.

Nevertheless, it cannot be denied that religious legislation also arises from genuine aspirations to protect religious and moral values perceived to be under threat from globalization, secularization, and moral liberalism. In this context, religious law is framed as a form of cultural resistance and an effort to preserve identity. Therefore, reform efforts aimed at religious legislation cannot be unilateral or top-down; they must involve dialogical, participatory, and contextual processes that respect local identities.

The prospect of reforming religious-based legislation lies in the ability of the state and society to manage the relationship between religion and law in a balanced manner. The state must promote progressive and contextual religious interpretations through education,⁶² the strengthening of civil society, and the involvement of religious institutions that are open to evolving with the times. At the same time, the judiciary must be empowered to uphold constitutional principles and human rights when reviewing potentially discriminatory regulations. Constitutional courts or equivalent judicial bodies must be strengthened to

⁵⁹ Stephanie H. Barclay, and Mark L. Rienzi, “Constitutional Anomalies or As-Applied Challenges-A Defense of Religious Exemptions,” *BCL Rev.* 59 (2018): 1595. <https://dx.doi.org/10.2139/ssrn.3079777>.

⁶⁰ Saipul Haq, “Religious Moderation as a Pillar of Social Peace: Its Impact on the Development of Inclusive Social Policies in Religiously Diverse Countries,” *Fast in Humanities* 1.1 (2025): 46-62.

⁶¹ Michail Risvas, “Non-discrimination and the Protection of Foreign Investments in the Context of an Armed Conflict,” *International Investment Law and the Law of Armed Conflict* (2019): 199-215. https://doi.org/10.1007/978-3-030-10746-8_10.

⁶² Najwan Saada, “Educating for Global Citizenship in Religious Education: Islamic Perspective,” *International Journal of Educational Development* 103 (2023): 102894. <https://doi.org/10.1016/j.ijedudev.2023.102894>.

ensure the constitutionality of religious legislation that may contradict the core values of the rule of law.

Reform also requires a paradigm shift in how society views religion and law. Religion should be understood as a source of justice and compassion, not as a justification for discrimination or symbolic violence.⁶³ Law, in turn, must be seen as a dynamic and contextual social instrument rather than a dogmatic and unquestionable doctrine. Legal and religious education should equip younger generations with critical thinking skills, dialogical ethics, and an appreciation for diversity. Only then can religious-based legislation be developed within a framework of pluralism, not hegemony.

Looking to the future, religious societies face a difficult choice: to uphold religious identity or to adapt to global norms on rights and freedoms. However, this is not a binary choice. A middle path is entirely possible if the state can construct a legal framework that respects the beliefs of the majority without sacrificing the rights of minorities. The experiences of countries such as Morocco and Tunisia show that Islamic legal reform can be pursued without abandoning its religious foundations, provided the process involves broad public consultation, is data-driven, and grounded in democratic values.

Ultimately, the debate over religious-based legislation is not merely a legal issue—it is a civilizational one. It challenges us to consider whether society will construct a legal order that is just, inclusive, and humane, or whether it will entrench laws that privilege dominant religious interpretations to the detriment of pluralism and minority rights. Based on the findings of this research, it is evident that a sustainable and democratic legal framework must be built upon the principles of constitutional supremacy, legal equality, and religious freedom as guaranteed in the 1945 Constitution. To achieve this, Islamic legal norms must be contextualized through *maqāṣid al-sharī'ah*—the higher objectives of Islamic law—emphasizing justice (*'adl*), public welfare (*maṣlaḥah*), and human dignity (*karāmah insāniyyah*). These principles are not only compatible with the Constitution but can serve as ethical foundations for religious legislation that respects democratic values. Therefore, any effort to incorporate religious norms into national law should undergo a rigorous constitutional review and be framed through inclusive deliberation involving not just religious authorities but also civil society, minority groups, and legal scholars.

Taken together, these reforms can support the evolution of a constitutional model that may be termed “constitutional theonomy”: a framework in which religious values are permitted to ethically inform the law, but are subordinated to constitutional supremacy and democratic accountability. In this model, religion enriches the moral fabric of the law without compromising its pluralistic and rights-based foundations. Such an approach ensures that Indonesia’s religious diversity is not only recognized but harmonized within a constitutional democracy that aspires to justice for all its citizens.

Conclusion

The position of Islamic law within the Indonesian legal system reflects a unique model of legal pluralism—one that neither wholly secularizes the legal space nor enforces a

⁶³ Femina P. Varghese, et al., “Injustice in the Justice System: Reforming Inequities for True “Justice for all,” *The Counseling Psychologist* 47.5 (2019): 682-740. <https://doi.org/10.1177/0011000019892329>.

theocratic order. While Islamic legal norms have significantly influenced legislation in areas such as family law, finance, and regional governance, they remain constitutionally bounded by the supremacy of the 1945 Constitution and the principles of Pancasila. The integration of Islamic values into positive law must be conducted with careful adherence to the rule of law, human rights, and democratic values.

The Constitutional Court, along with judicial and administrative oversight mechanisms, plays a pivotal role in maintaining this balance by reviewing and, where necessary, nullifying religious-based regulations that contravene fundamental rights or discriminate against minorities. Although religious legislation may arise from legitimate moral and cultural aspirations, its implementation must not lead to coercion, legal fragmentation, or social exclusion.

Moving forward, Indonesia must cultivate an inclusive and principled approach to religious-based legislation—one that neither marginalizes religious expression nor compromises constitutional ideals. Islamic law, when interpreted progressively and implemented within the bounds of constitutionalism, can contribute constructively to national legal development. It must serve as a source of ethical guidance and public good (*maslahah*), not as an instrument of domination. A mature, pluralistic legal culture, rooted in dialogue, equity, and mutual respect—is essential for ensuring that religious and constitutional values coexist harmoniously in Indonesia’s evolving legal landscape.

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