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## Contribution of Islamic Law to the Indonesian Constitutional System (Legislative Challenges Amid Legal and Religious Pluralism)

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### Abstrak

Penelitian ini membahas kontribusi hukum Islam dalam sistem ketatanegaraan Indonesia, khususnya dalam penerapan prinsip-prinsip syariah dalam peraturan perundang-undangan yang berlandaskan Pancasila dan Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945. Permasalahan utama yang diangkat adalah bagaimana hukum Islam berperan dalam dinamika hukum nasional serta kendala-kendala yang dihadapi dalam legislasi hukum Islam di tengah pluralisme agama dan hukum. Metode penelitian yang digunakan adalah pendekatan normatif dengan menganalisis bahan-bahan hukum primer dan sekunder terkait konstitusi dan hukum Islam di Indonesia. Penelitian ini juga menyoroti teori-teori yang relevan seperti teori penerimaan otoritas hukum, teori *reception in complexu*, dan teori *receptie* yang menggambarkan bagaimana hukum Islam berkembang dan diintegrasikan ke dalam sistem hukum nasional. Hasil penelitian menunjukkan bahwa hukum Islam memberikan kontribusi signifikan dalam pengembangan sistem hukum Indonesia, terutama dalam bidang hukum perdata dan keluarga, serta lembaga peradilan agama. Namun, kendala yang dihadapi termasuk kesulitan menjaga keseimbangan antara penerapan hukum Islam dan prinsip pluralisme dalam masyarakat Indonesia yang majemuk. Faktor politik dan sosial juga menjadi tantangan yang mempengaruhi proses legislasi hukum Islam.

Kata Kunci: *Hukum Islam, Pluralisme, Sistem Ketatanegaraan*

## Abstract

Islamic law's impact on Indonesia's constitutional system is examined in this research, particularly as it pertains to the incorporation of sharia principles into rules and legislation derived from Pancasila and the Republic of Indonesia's 1945 Constitution. In light of religious and legal plurality, the key question that arises is the function of Islamic law within the framework of national law and the challenges that Islamic legal legislation encounters. Analyzing primary and secondary legal texts pertaining to Islamic law and Indonesia's constitution is the research technique used, which is a normative approach. The research also draws attention to pertinent ideas that explain the evolution and integration of Islamic law into the national legal system, including the theory of reception in complexu, the theory of receptie, and the theory of acceptance of legal authority. This study's findings highlight the ways in which Islamic law has shaped Indonesian law, particularly in the areas of family and civil law and the establishment of religious courts. Nevertheless, challenges include, among other things, the fact that Islamic law must be applied in a diverse Indonesian society while also respecting the idea of pluralism. Other obstacles that impact the development of Islamic law regulation include political and societal concerns.

Keywords : *Islamic Law, Pluralism, State System*

## INTRODUCTION

Various legal systems have evolved and will evolve within Islamic law to fulfill the requirements of Islamic doctrine. There is a great deal of variation and incoherence among these Islamic legal systems (Purwoto et al., 2023). Thus, the idea of legal polycentricity—in which multiple groups and institutions contribute to the creation of Islamic law—and legal pluralism—in which Islamic and non-Islamic legal systems coexist in Islamic societies—must not be eliminated by treating the term "Islamic law" as a singular entity (Gobel et al., 2022a). The ideas of "Muslim legality" and "Islamic law" are quite different, both historically and in substance. 'Muslim legality' denotes the law enforced by the state (whether Muslim majority or minority) or Muslim groups unaffiliated with the state, but 'Islamic law' implies the jurisprudential understanding (fiqh) of divine law (sharia) (Gobel et al., 2022b).

The difference between Islamic jurisprudence, which is derived from the interpretation of Islamic canonical texts, and Muslim legality, which is derived from a legal process that is more reliant on state or other non-Islamic legal systems and applied to populations that are not necessarily predominantly Muslim, is the main distinction between these two often overlapping categories. In addition to this, there is still a lively discussion going on over the connection between Islam and the state. Although it is impossible to call Indonesia a secular state, the Muslim-majority nation does not base its constitution on Islamic law. On the contrary, Indonesia takes a balanced stance, ensuring that its constitution does not go

against Islamic ideals.

Discussions surrounding the nature of the state have preoccupied thinkers from antiquity to the present day. Numerous works by prominent Greek philosophers including Socrates, Plato, and Aristotle deal with the idea of the state (Yudhanegara et al., 2024). Beginning in the classical period with thinkers like Al-Farabi, Al-Mawardi, and Al-Ghazali and continuing into the modern age with scholars like Muhammad Abduh, Muhammad Rasyid Ridha, and Muhammad Iqbal, discourse in Islamic political theory has developed around the foundation of the state and politics. A contemporary Islamic state founded on sharia as the supreme law was proposed by the renowned scholar Rasyid Ridha. According to Ridha, an Islamic state is necessary for the execution of sharia law, and without one, it is impossible to apply Islamic law. According to him, the primary indicator of whether a state is Islamic or not is the degree to which Islamic law is enforced (Muhtar & Kasim, 2023).

Modern thinker Talal Asad challenges the common understanding among academics that Western secularism is only a political ideology that distinguishes between religion and the state. Secularism in the West, according to Asad, ushers in novel ideas about religion, ethics, and politics, in contrast to the medieval Christian and Islamic empires' secular practices (Suryani et al., 2023). Secularism in the West is more than just a political ideology; it permeates the values, beliefs, and practices that define contemporary society.

Ibn Khaldun distinguished three types of political authority in his writings: that which stems from innate human desires to serve one's community, that which is based on reason alone, unencumbered by religion, and that which is based on sharia, the Islamic law that is believed to lead to both earthly and heavenly happiness. These three groups are called *al-mulk al-thabi'iy*, *al-siyasah al-madaniyah*, and *al-siyasah al-diniyah* or *syar'iyah*, according to Ibn Khaldun (Taufiqurrohman et al., 2024).

In the case of Indonesia, the Islamic worldview is reflected in the fundamental state values outlined in the Republic of Indonesia Constitution from 1945. To begin with, the constitution's spiritual basis, the tenet of Belief in One Almighty God, follows Islamic principles. Secondly, human dignity is based on the notion of humanity, which holds that people are created in God's image and so deserving of respect and protection. Third, a sense of family and a commitment to working together for the common good and religious devotion form the social basis of the country. In the end, everyone must answer to God for their moral decisions, and democracy is the governmental model that places a premium on discussion and debate. Fifth, the state's primary objective is the promotion of the well-being of its citizens in accordance with the concept of justice, which encompasses economic, legal, and other dimensions of justice (Muhtar, Maranjaya, et al., 2023).

The creation of the constitution of Indonesia was greatly influenced by the country's independence from colonialism. The country and state are guided in their lives by the constitution, which is the fundamental legislation of the state. In addition to outlining the most ideal practices, the constitution directs the citizens in all aspects of social and political life. The existence of the state, as embodied in the constitution, represents two essential features: the restriction of arbitrary authority and the complete political accountability of the government to its citizens. All governments must be founded on the rule of law, and the use of state authority must always adhere to the letter of the law (Widodo et al., 2023).

M. Natsir claims that even in an Islamic nation, adherents of other faiths have full freedom of worship. Islamic law does not clash with their convictions and often fills in the gaps where their religion does not, so they should not feel oppressed by its application to social matters (Muhtar et al., 2024). These four main principles are reflected in the preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia. Firstly, human freedom as the bearers of God's caliphate. Secondly, the establishment of an independent and prosperous state as the goal. Thirdly, the spirit of faith in God as the moral foundation of the nation's struggle. Lastly, the five principles of Pancasila reflect the basic principles for social life (Muhtar, Kasim, et al., 2023).

Consequently, Islamic law has had a substantial impact on Indonesia's governmental structure. In addition to providing normative answers grounded on sharia principles, Islamic law—a component of a dynamically evolving legal system—offers an ethical framework that may bolster the principles of justice, morality, and social welfare. Applying sharia principles in many areas of legislation demonstrates that Islamic law is important within the setting of the Pancasila state, even though Indonesia is not an Islamic state.

Evidence that sharia principles may live alongside the pluralistic principles of Indonesia's constitution can be seen in the contributions of Islamic law, particularly in the areas of family law, religious courts, and certain civil legislation (Weni Almoravid Dunga et al., 2023). This is in keeping with the spirit of the Republic of Indonesia's 1945 Constitution, which recognizes the supremacy of God and allows all faiths to freely exercise their beliefs within the framework of Indonesian law. Islamic law, which is based on sharia, and Muslim legality, which is primarily concerned with the state's administration of the law, are interdependent in Indonesia's legislative and decision-making processes, despite their differences.

Despite the important contributions of Islamic law, there are still many challenges to enacting and implementing laws, particularly in a multicultural culture like Indonesia. How to keep the religious and governmental paradigms in harmony is one of the biggest

challenges. There are segments of society who believe Islamic law, particularly sharia, should be more broadly enforced in this nation because of the Muslim majority. Conversely, it is the responsibility of the state to make sure that all segments of society, including those with different religious and philosophical backgrounds, may live in harmony with the relevant legislation. Thus, reconciling the implementation of sharia with the public interest in a multicultural society poses the greatest difficulty to Islamic law legislation. There are a number of political considerations that impact the degree to which Islamic law may be assimilated into a country's legal system. The legislative process becomes more complicated when different interest groups have differing opinions on how far Islamic law should be imposed. This calls for an inclusive approach and thorough conversation among all parties involved.

In light of these difficulties, it is critical to learn how Islamic law—which derives its core principles from the Islamic precepts of justice, equality, and welfare—can enrich Indonesia's legal system without compromising the secularism and religious liberty protected by the country's constitution. These matters necessitate additional investigation into how Islamic law can be better integrated into the Pancasila state and how the challenges of Islamic legal legislation can be addressed in a manner consistent with the national pride and diversity that characterize Indonesia. That is why Islamic law is an integral aspect of Indonesia's history and a cornerstone of the country's efforts to create a fair, inclusive, and long-lasting legal system.

In light of the above, the following question is formulated as the basis for this research: (1) In the context of incorporating sharia principles into laws and regulations derived from Pancasila and the 1945 Constitution of the Republic of Indonesia, how does Islamic law impact the Indonesian state system? (2) In a multicultural country like Indonesia, how can the religious and state pillars of Islamic law be balanced? What challenges does this endeavor encounter?

## RESEARCH METHOD

The normative legal research approach was used in this study. This strategy delves into the normative elements of law, particularly Islamic law as it pertains to Indonesian state administration, using a literature-based approach (Amiruddin & Asikin, 2012). Research in normative law often centers on examining foundational legal documents, such as Indonesia's 1945 Constitution, ancillary statutes and regulations, and a variety of Islamic legal theories and concepts as they pertain to the country's constitution. To round up our discussion of the two issue formulations, we shall rely on secondary legal sources like books,

scientific papers, journals, and other pertinent academic works.

Examining Islamic law's impact on Indonesian law will allow us to address the first issue formulation. This involves investigating the ways in which sharia ideas have been incorporated into Indonesian law, particularly as it pertains to matters of state administration. The ideals of Pancasila, the foundational constitution of the Indonesian state, and Islamic ideas, such as justice and discussion, will be examined in legal documents and literature that address this integration. Examining and mapping Islamic law's influence in the dynamics of national legislation, this research employs the normative descriptive analysis approach.

This research will examine the many challenges encountered by Islamic legal law in Indonesia in order to address the second formulation of the issue. Part of this process is looking at the difficulties of balancing religious and secular paradigms in a diverse society from a normative perspective. In order to comprehend the ways in which Islamic law legislation endeavors to address social, political, and cultural issues in Indonesia, the researcher will use a juridical-analytical strategy. This approach will employ legal theories on pluralism, secularism, and constitutionalism as an analytical framework. The research will use this method to find out whether there are good ways to get over these problems.

## Result and Discussion

### 1. Contribution of Islamic Law to the Indonesian State System in the Context of the Application of Sharia Principles in Legislation Based on Pancasila and the 1945 Constitution of the Republic of Indonesia

Islamic law's evolution under Indonesia's constitutional framework has been very dynamic, reflecting both the country's social and political climate. It is not easy for Indonesia to incorporate Islamic law into its national legal system due to the country's ethnic, religious, and cultural diversity (Maria Farida, 2007). Here, a number of hypotheses seek to clarify the role of Islamic law in Indonesia. Orientalist HAR Gibb's notion of accepting legal authority is one applicable framework. The proponents of this view contend that a person's acceptance of Islam as their faith constitutes an implicit acceptance of the supremacy of Islamic law (Nawawie, 2013). A person's degree of allegiance to the sharia depends on their devotion to Allah, but from a sociological standpoint, all Muslims are supposed to adhere to it.

Islamic law, according to Gibb, has a strong theological basis and hence influences the social order of Muslims. There is a school of thought among Muslims that holds that Islamic law may unite their social and moral standards in addition to guiding their spiritual lives (N et al., 2023). Since Islamic law is an expression of Allah's will that must be respected, it is

inseparable from Islamic society, as stated by Gibb.

The reception theory proposed by Lodewijk Willem Christian van den Berg is another significant framework for understanding the implementation of Islamic law in Indonesia. Every community has its own religion, according to this view. Muslims, for example, are entirely subject to Islamic law because they have made that decision. After spending over twenty years in Indonesia, Van den Berg proved that Islamic kingdoms like Samudra Pasai, the Demak Sultanate, and the Mataram Sultanate had already established Islamic law prior to the Dutch arrival (Brotherhood, 2022). Islamic law, argues Van den Berg, is socially practiced and so a living rule. Among his many writings on Islamic law is "Beginnelsen van het Mohammedaansche Recht," an analysis of Islamic law's practical impact on Indonesian society (Achir & Muhtar, 2023). Islamic law, according to Van den Berg, has always played a significant role in Indonesian society, particularly via religious court systems.

Thirdly, this conversation gave rise to Christian Snouck Hurgronje's groundbreaking receptie theory. According to this school of thought, Islamic law can only be enforced if it has been recognized by conventional law. Customary law, not Islamic law, is what matters in Indonesia, says Snouck Hurgronje, and Islamic law can only serve as recognized law after it becomes ingrained in customary law (Zaelani, 2019). This view is reflective of the colonial Dutch policy of excluding Islamic law in an attempt to preserve their power. If indigenous people are to be protected from Islamic law's dominance, Snouck Hurgronje said that Islamic law must be kept apart from customary law. Here, Islamic legal standards that have been established by custom are the only ones recognized by the legal system, and customary law takes precedence over Islamic law.

Nonetheless, upon Indonesia's independence, several legal scholars voiced their opposition to this receptie doctrine. The receptie theory's progenitor, Professor Hazairin, was among the most outspoken critics. After Indonesia gained its independence and started implementing the 1945 Constitution of the Unitary State of the Republic of Indonesia, Hazairin said that the receptie theory was no longer relevant. Hazairin asserts that the right of every person to accept and practice their religion, even in legal matters, is recognized in Article 29 of the 1945 Constitution of the Unitary State of the Republic of Indonesia (Masykhur, 2020). Laws of Islam and other faiths must so be included into the constitution of Indonesia. According to Hazairin, Islamic law and other religion systems have a legitimate role in Indonesian civil and criminal law systems, and the notion of receptie has "gone out" of Indonesian statecraft.

In addition, Hazairin's doctrine of receptie a contrario lends credence to the idea that

Islamic law supersedes customary law in all cases. Islamic law takes precedence over customary law in this view. According to Hazairin, religious law—specifically Islamic law—must serve as the primary framework for governing individuals' daily lives in an Indonesian nation founded on Pancasila and the Republic of Indonesia's 1945 Constitution. To be valid, customary law must conform to Islamic legal norms (Bukido et al., 2022). According to this idea, Indonesia, as a religiously-based autonomous nation, has a responsibility to provide Islamic law a prominent place in its legal framework.

Finally, it is important to include H. Ichtijanto's existence thesis, which clarifies the incorporation of Islamic law into national law. Not only does Islamic law exist as a part of national law, but it also acts as a filter while national law is being formed, according to Ichtijanto. As a significant body of law, Islamic law is revered and acknowledged within Indonesia's legal system. The foundation of Indonesian national law rests on Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia, with Islamic law serving as one of its primary sources within this framework. After the Ministry of Religion was established in 1946, the official acknowledgement of Islamic law's position in Indonesian law was further solidified, and this view reflects that. Islamic law has had a substantial impact on Indonesia's legislative process and law enforcement, since it has been acknowledged and incorporated into the national legal structure.

Islamic law has an indisputable role and significant contribution to Indonesian constitutionalism. As a result of many schools of thought, Islamic law has undergone a dynamic voyage inside Indonesian national law, particularly in regard to Pancasila and the Republic of Indonesia Constitution of 1945, which serve as the foundation of the state. Islamic law evolved from the colonial era to the post-independence era, and difficulties in its integration still exist, according to theories like the reception in complexu, receptie, and the idea of acceptance of legal authority. Despite colonial efforts to suppress it and early struggles for acceptance within customary law, Islamic law is today an essential component of national law. Islamic law in Indonesia is clearly not subservient to customary law anymore, thanks to breakthroughs in ideas like receptie exit and receptie a contrario. Rather, it has a dominating and acknowledged role in governing the lives of Muslims in the country.

In addition, the theory of existence is putting more and more emphasis on the role of Islamic law in Indonesian law, where it is acknowledged as a crucial component in the creation of national law. The Indonesian legal system, which is based on Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia, has achieved diversity while remaining harmonious. This is achieved through the incorporation of Islamic law into different parts of legislation, which allows different religious groups to practice their

teachings within a recognized legal framework. As a result, Indonesia's religious foundations and pluralistic values—the bedrock of national and state life—must be preserved, while Islamic law's role in constructing a fair and inclusive national legal system must be upheld.

## 2. Obstacles Faced in Efforts to Legislate Islamic Law in Indonesia, Especially in Maintaining the Balance Between the Religious Paradigm and the State Paradigm in a Pluralistic Society

Various viewpoints highlight the function and significance of Islamic law in Indonesian culture, shedding light on its impact on the country's governmental structure. First, Islamic law's pervasiveness in many spheres of society proves beyond a reasonable doubt that it colors Indonesia's social and political system. In addition to permeating Muslims' everyday lives, Islamic law also serves as a moral and ethical framework for governmental legislation and policies. In Indonesia, one concrete example of the application of Islamic law is the long-standing Religious Court institution. Islamic law has in fact formed an integral aspect of the archipelago's social fabric ever since it was introduced to the region in the seventh century (Muhtar, Tribakti, et al., 2023). Islamic law had already been established in several Islamic kingdoms in Indonesia, including Samudra Pasai, Demak, and Mataram, according to historical documents, long before the Dutch colonialists arrived. Nevertheless, the legal policies and practices of the Dutch conquerors sought to downplay the significance of Islamic law in favor of Western and customary legal systems, which better served the interests of the colonizers.

The Republic of Indonesia's Pancasila-based legislation, however, must take into account the majority's (particularly Muslims') perception of justice in the wake of Indonesia's independence. It will be difficult, if not impossible, for this Muslim-majority nation to accept and even reject laws that do not align with the socially accepted notions of fairness. Thus, a crucial component of legal legitimacy in Indonesian culture is the incorporation of Islamic legal principles into law. Throughout Indonesian constitutional law's development, Islamic law has influenced governmental decision-making processes. For instance, in many areas of law, particularly those dealing with family, civil, and specific criminal law, Islamic principles are included into the legislative process.

Islamic law has had a noticeable impact on the country's legal system, yet there are still many obstacles to overcome in order to fully adopt it. Attempts by Indonesia to incorporate Islamic law into its legal system were met with several political and technological roadblocks. Islamic law's role as a paradigm bridging the gap between religion and state is one of the primary challenges. In a multicultural society, Islamic law must strike a balance

between religious desires and governmental necessities (Indrayana, 2008). Because the state must take into account the variety of other officially recognized faiths and beliefs, Islam, as the largest religion, does not always have complete room to execute sharia thoroughly. Every person, regardless of their religious affiliation, should have equal rights to practice their faith, according to the Pancasila-based state paradigm.

Legal unification has its own set of difficulties in a diverse society. Because Muslims must follow Islamic law and non-Muslims are not required to do so, the state must find a way to pass laws that are acceptable to everyone without watering down the core teachings of any religion. Maintaining religious identity while adjusting to the needs of a diverse state is a crossroads at which Islamic law finds itself. Legislation pertaining to taxes, traffic, economic crimes, and other such offenses under a contemporary state structure such as Indonesia's must adhere to more inclusive legal concepts that may be acknowledged by all communities.

The political forces that impact the process of law formation in Indonesia also contribute to other challenges in Islamic law legislation. Those who advocate for a more secular approach to lawmaking and those who want a wider application of sharia are often at odds in the argument over the degree to which Islamic law may be implemented in national law. These problems stem from a combination of legislative details and broader political and societal concerns, all of which entail competing interests. Some Indonesian factions may oppose the strict enforcement of Islamic law on the grounds that it violates basic human rights or poses a danger to the country's cohesion.

In addition, disagreements among Muslims about the meaning of sharia contribute to the problems with Islamic legal policy. The body of Islamic law is not uniform but rather comprises several schools of thought, some of which have divergent opinions on certain matters (Umar, 2014). As a result, it becomes more challenging to draft laws that can be accepted by everyone. For instance, alternative schools of thought in Indonesia could disagree with the ruling of the dominant Shafi'i school on issues of family law.

However, initiatives to improve Indonesia's legal system still heavily include Islamic law. Islamic legal canons have provided the basis for a great deal of positive law, particularly in the areas of civil and family law. When it comes to marriage, inheritance, and other family law issues, Muslim disputes in Indonesia are mostly handled by religious court organizations that are officially recognized by the legal system. Applying Islamic law in a larger context also offers a solid moral basis for formulating and enforcing fair laws, with the end objective of striking a balance between individual rights and community interests.

In light of Indonesia's Islamic law laws, any policy suggestions for the government should focus on striking a compromise between Islamic law's priorities and those of the pluralistic state. To begin, the government should promote a collaborative and open process for the development of Islamic law, one that includes a wide range of interested parties from the religious, legal, scholarly, and civic spheres. The overarching goal is to get a more universal agreement on how to moderately incorporate Islamic law so as to avoid unfair treatment of minority populations.

Due to variances in sharia interpretation across Islamic schools of thought, this dialogue process must also account for Islam's internal diversity of opinion. The second point is that the government has to do more to bring Islamic law into line with American law. One way to achieve this goal is by working toward more moderate and adaptable rules that still adhere to human rights and Pancasila principles, while also taking into account Islamic values that may help shape a more equitable national legislation. Without infringing on the individual's ability to select another legal route, religious courts may serve as organizations that enforce Islamic law in restricted areas, including family law.

Furthermore, the value of legal diversity must be emphasized in the new legal education curricula. One way to achieve this goal is to teach the next generation, in both secular and religious schools, how to live in peace with other legal systems in a multicultural nation like Indonesia. By taking this tack, we may at least give the next generation a fighting chance to comprehend and appreciate Islamic law without sweeping it under the rug. Lastly, the government should make sure that all policies on Islamic legal law are well-grounded and do not go against constitutional norms. By prioritizing this component of legality, the government may ensure that Islamic law and state law do not clash, leading to a more inclusive and long-lasting legal system. Not only does this policy approach aim to solidify Islamic law's place in the country's legal system, but it also promotes the establishment of a fair and equitable state structure that welcomes and supports all people, irrespective of their religious affiliation.

## CONCLUSION

Results show that sharia principles are used in several areas of law in Indonesia, particularly in family law and religious court institutions, which contributes to Islamic law and the constitutional structure of the country. While respecting the principles of Pancasila and the Republic of Indonesia's 1945 Constitution, Islamic law is integrated into national law and is implemented in many areas that do not contradict them. Finding a middle ground between Islamic goals and state demands in a diverse society is a challenge for those who

want to implement Islamic law. As an additional obstacle, societal and political issues impact the broader implementation of Islamic law. In order to enhance the implementation of Islamic law in Indonesia, this study's implications suggest that religious groups, the government, and the general public should engage in more inclusive dialogue. Another important step is to make sure that Islamic legal legislation in Indonesia upholds the constitutional principles and legal pluralism that have become characteristics of local law.

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