

Research Article

Islamic Constitutionalism and Legal Pluralism in Indonesia: Dynamics of Qanun, Pancasila, and Human Rights from the Old Order to the Reform

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ABSTRACT: The historical disputes between Islamic law, Pancasila, and human rights are examined in this research of Islamic constitutionalism in Indonesia's complex legal landscape. This study examines Old Order to Reform Era developments from a historical-legal standpoint. It covers the Jakarta Charter discussions, the Masyumi party ban, and the changing relationship between state and religion during the New Order. It shows how Indonesia institutionalizes legal diversity by integrating state, Islamic, and customary law while upholding constitutional supremacy. Aceh's qanun implementation shows that maintaining regional sovereignty, Sharia-based legislation, and constitutional equality and religious freedom is challenging. The rise of Sharia-inspired rules, particularly in Aceh, raises questions about Indonesia's constitutional identity and human rights, particularly gender discrimination and minority rights. This paper promotes legal harmonization, institutional monitoring, and an inclusive approach to Indonesia's complex legal structure to match Islamic legal ambitions with democratic ideals.

KEYWORDS: Constitutionalism, Islamic Law, Qanun, Pluralism, and Human Rights.

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Submitted: 27 July 2025 | **Reviewed:** 6 November 2025 | **Revised:** 8 December 2025 | **Accepted:** 20 December 2025

I. INTRODUCTION

This essay analyzes the dynamics of Islamic constitutionalism in Indonesia, emphasizing the continuous attempts to harmonize Sharia values, democratic government, and the protection of human rights within a pluralistic constitutional framework. Indonesia, the largest Muslim-majority democracy globally, has encountered ongoing disagreements since the formulation of the 1945 Constitution, encompassing conflicts regarding the Jakarta Charter and the official position of Islam within the state philosophy of Pancasila. Recent developments, including the adoption of Sharia-based qanun in Aceh and significant Constitutional Court decisions, underscore the conflicts between religious objectives and constitutional assurances of equality and liberty. This study highlights Indonesia's efforts to reconcile Islamic beliefs with democratic ideals and universal human rights by examining historical compromises and contemporary law reforms.

The issue of constitutionalism emerged as an embodiment of social movements that could try to radically change the state order by ignoring the role of the government, albeit bringing about change, against non-elite political forces that sought to disrupt the establishment of the elite, as well as movements that used influence based on established social and intellectual support.¹

Constitutionalism, according to Henkin, entails a constitution-based government, the separation of executive, legislative, and judicial powers, democratic governance, judicial oversight of state actions, an independent judiciary, individual rights protection, control over police authority, civilian control of the military, and the limitation of state power through constitutional rules.²

In recent years, this concept has evolved into discussions of religious constitutionalism, particularly in nations where a major religion impacts the constitutional framework, such as Buddhism in Thailand, Catholicism in the Vatican, Hinduism in India, and Islam in Saudi Arabia.³ The rise of religious

¹ Muzayyin Ahyar & Ni'Matul Huda, "Islamic Constitutionalism: Social Movement and the Framework of the Indonesian Constitution" (2021) 7:2 Constitutional Review at 327–328.

² Moamen Gouda, "Islamic constitutionalism and rule of law: A constitutional economics perspective" (2013) 24:1 Constitutional Political Economy at 59.

³ Muhammad Siddiq Armia, "Implementing Islamic Constitutionalism: How Islamic Is Indonesia Constitution?" (2018) 15:2 AL-ADALAH at 438–439.

constitutionalism became more visible after Muslim-majority countries gained independence, such as Pakistan, where debates erupted over blasphemy laws and whether their enforcement was consistent with the constitutional guarantee of equal rights and protection for all citizens, which was not implemented fairly at the time.⁴

Islam has served as a significant influence across regions in Asia, Africa, and Europe, with various Muslim-majority countries adopting diverse methods for integrating Islamic principles into their constitutional frameworks. Bangladesh employs the principle of *sadzzu dzari'ah* to limit actions perceived as threats to public order, whereas Saudi Arabia and Iran focus on implementing Islamic justice and ethical equality for both Muslims and non-Muslims.⁵

Islamic constitutionalism has emerged as a prominent variant of religious constitutionalism, evident in Iran's Constitution and in specific provisions like Article 2 of the Egyptian and Iraqi Constitutions and Article 3 of the Brunei Constitution. Ahmed and Ginsburg refer to these as "Islamic supremacy clauses," illustrating the trends of constitutional Islamization.⁶

The relationship between Sharia and democracy is a subject of ongoing debate. However, various Muslim-majority states endeavor to incorporate Sharia within democratic frameworks, wherein the constitution influences the interpretation and implementation of Islamic law,⁷ via legislative and representative processes. Countries such as Indonesia, Pakistan, Malaysia, Egypt, and Tunisia exemplify this model by incorporating forms of Sharia into constitutional democratic frameworks.⁸

Muslim-majority countries do not only adopt constitutions but also practice constitutionalism by ensuring that the state protects religious believers through

⁴ Muhammad Siddiq Armia, "Implementing Islamic Constitutionalism: How Islamic Is Indonesia Constitution?" (2018) 15:2 AL-ADALAH at 438–439.

⁵ Md Abdul & Awal Khan, "The need of Uniform Islamic Constitution for the Muslim Ummah: A study of Islamic provisions on the Constitution of selected countries" (2006) 3:3 IIUC Studies at 67–68.

⁶ Anicée Van Engeland, "The balance between islamic law, customary law and human rights in islamic constitutionalism through the prism of legal pluralism" (2014) 3:4 Cambridge International Law Journal at 1325.

⁷ Sadiq Reza, "Islam's Fourth Amendment: Search and Seizure in Islamic Doctrine and Muslim Practice" (2009) 40:3 Georgetown Journal of International Law at 777 & 783.

⁸ AH Asari Taufiqurrohman et al, "The Role of Islamic Law, Constitution, and Culture in Democracy in the UAE and Indonesia" (2024) 24:1 AHKAM : Jurnal Ilmu Syariah at 92 & 95.

state administration, behavior, and relationships between institutions and citizens,⁹ all guided by mutually agreed constitutional principles.¹⁰ At the same time, many post-independence Arab states maintain constitutions that are largely secular, where Sharia is not the sole source of law, as seen in the 1973 Bahraini Constitution, the 1972 Egyptian Constitution, and the 2012 Syrian Constitution, which emphasize popular sovereignty and governance based on the will of the people.¹¹

However, the relationship between constitutional law and Islam in modern nation-states remains contested, especially in global discourse such as in the United States, where Islam is often portrayed negatively as encouraging violence or justifying harmful actions, leading to tension and misunderstandings about the role of religion in public life.¹²

A similar issue arose during the early formation of Indonesia as an independent nation, free from Dutch colonial rule, with debates between two factions, nationalists and Islamists, regarding the structure of the state. These constitutional debates revolved around the formalization of Islam within Pancasila as the *staatsfundamentálnorm* and the constitution as the *staatsgrundgesetz*, particularly in relation to the normative inclusion of the term "Islam" in these foundational state principles of Indonesia.

The division between the two factions stems from contrasting perspectives on the formal acknowledgment of Islam as the basis of the state, linked to the concept of Indonesia as an Islamic state that integrates religious symbols into its national identity.¹³ Jeremy Menchik observes that the evolution of religion and politics in Indonesia has occurred in a dynamic interplay, resulting in intersecting

⁹ Masykuri Abdillah & Syarif Hidayatullah, *Islam and Human Rights: Theoretical And Practical Framework In Indonesia* (Jakarta: Atlantis Press, 2018) at 67.

¹⁰ R E Elson, "Two failed attempts to Islamize the Indonesian constitution" (2013) 28:3 *Sojourn* at 402.

¹¹ Mashail Haydar Ali, "The language policy of the Caliphate State" (2020) 57:2 *Middle East Stud* at 395.

¹² Charles D Russell, "Islam as A Danger To Republican Virtue: Broadening Religious Liberty in Revolutionary Pennsylvania" (2009) 76:3 *History: A Journal of Mid-Atlantic Studies* at 262.

¹³ Nathalie Bernard-Maugiron, "Religious References in the Constitutions of the Arab World: Islamization of the Constitution or Constitutionalization of Religion?" in *Constitutional Review in the Middle East and North Africa* (Nomos Verlagsgesellschaft mbH & Co. KG, 2021) at 271.

domains between state and religious communities, thereby complicating the delineation of their boundaries.¹⁴

This scenario presents difficulties in reconciling the constitution with Islamic principles, as illustrated by Constitutional Court Decision No. 19/PUU-VI/2008, which underscores the necessity for legal sovereignty to constrain governmental actions to safeguard fundamental rights, including freedom of expression, justice, and privacy. In Malaysia, a distinct yet analogous scenario is present, as the constitution explicitly incorporates Islamic influence in aspects such as marriage, inheritance, and criminal law, bolstered by legal precedents like the *Che Omar bin Che Soh* (1988) case.¹⁵

The constitutional framework of Indonesia embodies a protracted dialogue between Islamic aspirations and democratic ideals. Since the discussions surrounding the Jakarta Charter in 1945, a notable tension has arisen between Islamic factions advocating for a more pronounced incorporation of Sharia and nationalist figures who emphasize the importance of a pluralistic state ideology as embodied in Pancasila.¹⁶ The tensions persisted throughout the Sukarno and Soeharto administrations, characterized by the dismissal of Mohammad Natsir's proposal and the disbandment of Masyumi, which further entrenched the distrust between the state and Islamic movements.¹⁷

In comparison with nations like Saudi Arabia or Iran, which enshrine Sharia as the cornerstone of their legal frameworks, Indonesia embraces a pluralistic methodology, striving to harmonize Islamic principles with democratic ideals, human rights, and notions of equality. Nonetheless, obstacles persist, as international discussions frequently depict Islam as antithetical to liberal

¹⁴ Muchamad Ali Safa'at, "The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations" (2022) 8:1 Constitutional Review at 115.

¹⁵ Syed Fadhil Hanafi Syed A Rahman, "The Malaysian Federal Constitution: An Islamic or a Secular Constitution?" (2019) 5:1 Constitutional Review at 137-138.

¹⁶ Islamic constitutions and religious minorities, by Moamen Gouda & Jerg Gutmann, in 19 (Hamburg, 20 November 2018) at 5.

¹⁷ Alexander R Arifianto, "The State of Political Islam in Indonesia: The Historical Antecedent and Future Prospects" (2020) 15:4 Asia Policy at 116-117.

constitutionalism, a viewpoint bolstered by academics like Samuel Huntington, who forecasted a conflict between Islamic and Western civilizations.¹⁸

Nimer Sultany calls it the normative and realism political framework. Islamic constitutionalism strikes the correct balance between popular sentiment and rights, according to the normative approach. Realist politicians argue that Islamic constitutionalism is not desirable but rather historical nostalgia that is repeatedly revisited.¹⁹

An example of a concrete compromise between Islam and the state in the post-reform era is Aceh's official adoption of Sharia law through qanun-based rules.²⁰ Aceh's autonomy serves as an example of how to incorporate Islamic law into a constitutional framework, but it also calls into question Indonesia's ability to uphold religious plurality, democratic administration, and national unity.²¹ This emphasizes how different Indonesia is from other Muslim-majority nations like Saudi Arabia, Iran, and Pakistan, where Sharia is the constitutional basis, in that Indonesia embraces a pluralistic paradigm that blends secular and religious components.²²

The fundamental problem is not to diminish Islam's role in Indonesia's constitutional framework, which includes the 1945 Constitution, but to critically explore how Islamic values and constitutional principles may coexist in a democratic and pluralistic legal system. The challenge stems from the belief that Islamic constitutionalism frequently contradicts the rule of law, democracy, and human rights as articulated in liberal constitutional theory. This tension places Indonesia in a unique position, where harmonizing religious values with constitutional safeguards is critical for preserving national unity and inclusive.²³

¹⁸ Dawood Ahmed & Tom Ginsburg, "Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions" (2014) 54 VA J Int Law at 622–623.

¹⁹ Nimer Sultany, "Religion and Constitutionalism: Lessons from American and Religion and Constitutionalism" (2014) 28:1 Emory Int Law Rev at 351–352.

²⁰ Law of The Republic of Indonesia Number 44 of 1999 Concerning The Administration of Special Autonomy for The Special Region of Aceh Province, 1999, Article 4 Verse 1.

²¹ Law of The Republic of Indonesia Number 11 of 2006 Concerning The Governance of Aceh, 2006, Article 7 Verse 2.

²² Mohammad Fadel, "Islamic Law and Constitution-Making: The Authoritarian Temptation and the Arab Spring" (2016) 53:2 Osgoode Hall Law J at 477–478.

²³ Gouda & Gutmann, *supra* note 16.

II. METHODOLOGY

This study uses a legal-historical method to explore Islam's impact on Indonesia's constitution and legal modernization's merits and cons. Ashish Kumar Srivastava and David M. Rabban's legal-historical method contextualizes legal standards in political, social, and historical settings. BPUPKI, PPKI, the 1945 Constitution, the Jakarta Charter, and Aceh's qanun are examined.

Parliamentary debates, court decisions, and academic research are secondary sources. Islam, democracy, and constitutionalism debates from 1945 to post-reform are discussed in this essay. The study examines Old Order, New Order, and Reform constitutional texts and political discourses utilizing documentary analysis and normative legal interpretation. Triangulation ensures data validity and reliability. This method is ideal for researching Indonesia's Islamic constitutionalism and distinctive contribution to Sharia, democracy, and human rights.

III. HISTORICAL ROOTS: THE INTERSECTION OF ISLAM AND INDONESIA'S LEGAL EVOLUTION

A. Old Order: The Jakarta Charter Debate (1945)

Indonesia's independence allowed the nation to establish its identity and political trajectory, subsequently codified in the 1945 Constitution. Dutch legal traditions and Western constitutionalism introduced concepts such as limited state power, rule of law, equality, and popular sovereignty, while the founders also needed to integrate Islamic values within a pluralistic society.²⁴

The Jakarta Charter originally mandated the implementation of Islamic law for Muslims; however, this was substituted with the phrase “Belief in One God” to preserve unity. Subsequent proposals to include Islamic clauses were also dismissed.²⁵

²⁴ Mina E Khalil, “Early Modern Constitutionalism in Egypt and Iran” (2016) 15:1 UCLA Journal of Islamic and Near Eastern Law at 35–36.

²⁵ Didik Hariyanto Didik & Athoillah Islamy Athoillah, “Pola Interaksi Sosial Kelompok Islam dalam Sejarah Konsensus Dasar Negara Indonesia” (2022) 15:2 At-Tafkir at 209.

This illustrates Indonesia's strategy of harmonizing Islamic identity with diversity, akin to the Medina Charter's framework for coexistence among religious groups. Indonesian constitutionalism differentiates between *siyasa* (state policy for public welfare) and *fiqh* (religious legal interpretation), thereby permitting Islamic principles to function within a pluralistic constitutional framework.²⁶

Indonesia's Islamic constitutionalism is founded on three principles: government policy should promote the public good within a democratic framework, religious practice exists within a plural *fiqh* context alongside state law, and political decisions are informed by *maqasid al-sharia* to ensure justice, welfare, democracy, and pluralism.²⁷

This balance is evident in Pancasila and in regional implementations such as Aceh's *qanun*-based Sharia. *Maqasid* operates in both individual religious practices, as safeguarded by Article 29(2), and within institutional frameworks, including zakat, waqf, hajj, and sharia finance.²⁸

The model originates from the 1945 constitutional compromise, during which the Jakarta Charter's provision on mandatory Sharia was substituted with "The One and Only God" to ensure national unity. Indonesia employs a moderate secular framework wherein religion shapes social norms, while the state maintains a position of neutrality.²⁹

Islamic aspirations manifest in standard legal frameworks, including the Marriage Law, Hajj administration, and sharia banking. The concepts of *maqasid al-sharia* and sharia review facilitate the alignment of Islamic values with constitutional rights, democracy, and pluralism.³⁰

²⁶ Robert Audi, "Religion & democracy: Interactions, tensions, possibilities" (2020) 149:3 *Daedalus* at 5.

²⁷ Landes Asifa Q, "Islamic Constitutionalism: Not Secular. Not Theocratic. Not Impossible." (2015) 16 *Rutgers Journal of Law & Religion* at 554–555.

²⁸ Raesitha Zildjianda, *Democratic System in the Indonesian Constitution According to Maqasid Shari'ah* (Lampung: Atlantis Press, 2020) at 246.

²⁹ Ahmad Rofii, "The Religiosity of The Indonesian Constitution: Article 29(1) And Its Interpretation" (2021) 7:2 *Constitutional Review* at 210.

³⁰ Nadirsyah Hosen, "Religion and the Indonesian Constitution: A recent debate" (2005) 36:3 *J Southeast Asian Studies* at 430.

B. New Order: Modernist vs. Traditionalist Conflict: The 1974 Marriage Law

Muslim activists and opponents disagree on how to apply Islamic law in Indonesia's varied society. Indonesian Islamic law implementation uses formalistic-legalistic, structuralist, culturalist, and academic theories. Some extremists advocate an Islamic state, while others prioritize political conflict, cultural criticism, and public education.³¹ Islamic democracy explores how the legal system promotes religious motivation through Islamic rules. Muslims believe Islam is a whole life guidance, not only values.³²

Under Dutch colonial authority, the *Freijer Compendium* (1760) applied Islamic principles to Muslim marriage and inheritance while preserving local norms, as seen by works like the *Tjirebonsche Rechtsboek* and provincial legal codes. The founding of the Palembang Religious Court in 1823 was the first state recognition of Islamic family law, and it later inspired the 1974 Marriage Law, which aimed to align Islamic principles with Indonesia's multiple constitutional frameworks.³³

Prior to 1974, marriage laws differed greatly due to religious diversity, ethnic traditions, and Dutch legal classification under Article 131 IS, which split society into three groups: Europeans, Foreign Orientals, and Indigenous peoples, each with their own legal systems.³⁴ During the New Order, the Ministry of Religious Affairs oversaw Islamic groups, education, and courts under Suharto's bureaucratic, stability-focused rule in the name of Pancasila. After the dictatorship fell, many Indonesian Muslims tried to reclaim political power during the Reformasi era, including increasing their representation in parliament and public policymaking.³⁵

After the dictatorship of Orde Baru (New Order), many Indonesian Muslims have fought to retake their Islamic political stage following Orde Reformasi. They

³¹ Ahmad Fernanda, Salma & Rahmat Hidayat, "TAQNIN FIKIH Transformation of Marriage Law in Indonesia" (2024) 23:2 Jurnal Hukum dan Ekonomi Islam at 255.

³² Taufiqurrohman et al, *supra* note 8 at 86-87.

³³ Syawaluddin Hanafi, "Legal Politics of Changes to Marriage Laws in Indonesia" (2024) 11:1 Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan at 77.

³⁴ Nurul Miqat et al, "The Development of Indonesian Marriage Law in Contemporary Era" (2023) 15:1 De Jure: Jurnal Hukum dan Syar'iah at 56.

³⁵ Jan Michiel Otto, "Sharia and National Law in Indonesia" in Jan Otto, ed, *In Sharia Incorporated A Comparative Overview of the Legal Systems in Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010) at 433.

also fought to dominate parliament and the House of Representatives to assert their rights, which the New Order had muted.³⁶

Family law, notably polygamy and divorce, divides Islamic modernists and traditionalists in regulatory discussions. Modernists support governmental monitoring and women's rights, while traditionalists oppose measures they believe violate religious precepts. This disagreement illustrates Indonesia's attempt to integrate state law, Islamic law, and social standards into a legal system. Traditionalist rallies prompted discussions after the government proposed a reform measure under modernist pressure.³⁷

The Prophet Muhammad PBUH built, determined, and provided sustainable solutions to conflicts through political and social interaction mechanisms based on dialogue in a pluralistic society outlined in the Medina Charter. Prioritizing the public interest eliminates documents that emphasize personal will in regulation.³⁸

Kristen Stilt argues that marriage regulation is promulgated with a novel set of interests and expectations rooted in historical developments, not local expectations and ambitions. Modernists and traditionalists should focus on this. Individuals and state entities can interpret and make meaning of this regulation.³⁹

Maududi and Tahir-ul-Qadri argue that expression, minority rights, women's rights, and general civil liberties are not anchored in Islamic teachings, rendering Islam and democracy incompatible.⁴⁰ In the 1974 Indonesian Marriage Law debate, modernists wanted stronger state control and women's rights, while traditionalists upheld strict Islamic teachings on polygamy and divorce. A compromise between Islamic beliefs, customary standards, and state power was reached after enormous protests and political gridlock. It shows Indonesia's

³⁶ Imam Sukardi, "Islamic state utopia: investigating Khilafatul Muslimin movement in contemporary Indonesia" (2023) 13:2 Indonesian Journal of Islam and Muslim Societies at 341–342.

³⁷ Simon Butt, "Polygamy and mixed marriage in Indonesia: The application of the marriage law in the Courts" in Lindsey Timothy, ed, *Indonesia: Law and society*, (New South Wales: The Federation Press, 1999) at 122.

³⁸ Ishak Badruzzaman & Ab Aziz Shamrahayu, "The Madinah Charter In Light Of A Modern Constitution" (2022) 30:1 IIUM Law Journal at 197-198.

³⁹ Kristen Stilt, "Contextualizing constitutional Islam: The Malayan experience" (2015) 13:2 Int J Const Law at 426–427.

⁴⁰ Khalid Manzoor Butt & Naeema Siddiqui, "Compatibility between Islam and Democracy" (2018) 33:2 A Research Journal of South Asian Studies at 513.

ability to incorporate Islamic law into national law while upholding constitutional values of equality, fairness, and individual rights in a plural legal system.⁴¹

The desired legal approach should not rely only on positivistic enforcement but also prioritize humanity, justice, and social needs.⁴² Muhammad Amin Suma explains that Indonesia's marriage law, including the 1974 Marriage Law, aligns with *fiqh al-hayâh* or the living law practiced in society, which includes both religious and customary norms. Islamic law, especially family and marriage law (*al-ahwâl al-syakhsiyyah and munâkabât*), receives strong recognition and protection within Indonesia's legal and administrative system.⁴³

Islamic law legislation in Indonesia struggles to provide a consistent framework that works with its multicultural legal system. To ensure wider acceptance, the national legal system must include several Islamic law interpretations. Indonesia must reconcile state, customary, and religious law for legal pluralism and unity. The integration is supported by notions like *fiqh al-hayâh* and *maqâṣid al-shari'ah*, which prioritize social welfare, justice, and public interest. This technique is helping Indonesia create an Islamic constitutionalism model that integrates human rights, constitutional ideals, and modern legal reform with Islamic values.⁴⁴

C. Reform Order: Aceh's Special Autonomy and Implementation of Sharia

1. The Special Status of Islami Law in Aceh

Indonesia's reform movement has promoted democratization in society, government, and legislation since 1998. Law No. 22 of 1999 and Law No. 32 of 2004 on municipal governance, stipulated by Article 18 of the 1945 Constitution, led to major government reforms. Law No. 22 and Law No. 25 of 1999 on fiscal balance superseded the 1974 Regional Government Act, giving regions more autonomy. Law No. 22, enacted on May 7, 1999, implemented MPR Decree No.

⁴¹ Taufiq, Kunantiyorini Anik & Soeharto Achmad, "Islam, HAM dan Konstitualisme Indonesia" (2022) 36 PENA at 56.

⁴² Jayusman et al, "The Development of Indonesian Marriage Law in Jakarta Governor Regulation No. 185 of 2017" (2021) 5:2 Samarah at 832.

⁴³ Sri Pujiati, "Article 29 of 1945 Constitution, Legal Basis for Marriage in Indonesia" (2022), online: Constitutional Court of the Republic of Indonesia <https://en.mkri.id/news/details/2022-09-07/Article_29_of_1945_Constitution_Legal_Basis_for_Marriage_in_Indonesia>.

⁴⁴ Fernanda, Salma & Hidayat, supra note 31.

XV/MPR/1998 on Regional Autonomy, switching from centralized to decentralized governance in response to the political context.⁴⁵

Aceh, or Nanggroe Aceh Darussalam (NAD), gained special autonomy from centralized governance to regional authority under Law No. 18 of 2001, allowing the province to enact Islamic regulations in public life.⁴⁶ Aceh can implement Sharia independently from the national legal system in areas like creed (aqidah), jurisprudence (syar'iiyyah), morality (akhlak), worship, family law, civil transactions, criminal law, judicial processes, education, religious outreach, public observance, and Islam protection, all of which are codified in the Qanun.⁴⁷

Yasa Abubakar argues that this implementation has four positive outcomes: it integrates Sharia into Indonesia's national legal system, continues a historical struggle for Islamic identity since independence, represents a unique legal development, and allows flexible enforcement through both formal mechanisms and cultural or community-based approaches.⁴⁸

Islamic law holds a significant and equal place in Indonesia's legal system since it can be directly applied to Muslim individuals through statutory regulations and serves as one of the main pillars of national law, alongside Western and customary legal traditions.⁴⁹ Law No. 44 of 1999 and Law No. 18 of 2001, which offer special autonomy in religious, educational, and customary issues, strengthen this stance in Aceh. Law No. 11 of 2006,⁵⁰ then broadens this autonomy to allow the creation of qanun based on Sharia.⁵¹ However, due to the absence of precise constitutional definitions, the necessity that such rules be "consistent" with the

⁴⁵ Abdul Gani Isa, "Implementation of Islamic Shariah in Special Autonomy: A Case of Aceh Province" (2014) 38:1 MIQOT 120–121.

⁴⁶ Yasrul Huda, "Islamic Sharia in Aceh and Its Implications in Other Regions in Indonesia: Case Study During Implementation Aceh Nanggroe Aceh Darussalam" (2020) 5:2 PETITA: Jurnal Kajian Ilmu Hukum dan Syariah at 191.

⁴⁷ Muhamad Rizki Nugraha Darma Nagara & Mesy Faridah Hendiyani, "The Analysis of Aceh Law and Its Relevancy on National Law from Human Right Perspective" (2022) 2:2 Jurnal Terapan Pemerintahan Minangkabau at 165-166.

⁴⁸ Muhammad Amin Suma, Ridwan Nurdin & Irfan Khairul Umam, "The Implementation of Sharia in Aceh: Between the Ideal and Factual Achievements" (2020) 20:1 Ahkam at 21.

⁴⁹ Nasrullah, Novendra Carissa Shifa & Reyhan M Farel, "The Challenges of Islamic Criminal Law Implementation in Aceh Shariah Court" (2024) 09:1 Diponegoro Law Review at 123.

⁵⁰ Husni Mubarrak et al, "Sharia as a New Culture System of Identity in the Post-Conflict Aceh, Indonesia" (2024) 11:2 Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan at 181.

⁵¹ Hary Abdul Hakim et al, "The Islamic Law within the Indonesian Legal System (A Case Study of Islamic Sharia Law in Aceh)" (2022) 17:2 TSAQAFAH at 355.

national legal framework has created interpretation difficulties. Farid Wajdi warns that too much legal formality could damage Sharia's ethical and transformative aspects by reducing it to procedural compliance.⁵²

Jimly Ashshiddiqie disagreed, claiming that legal diversity in Aceh led to sharia. This system supports a decentralized approach to national development by allowing areas to create regional regulations or qanuns that meet their needs. Thus, *lex specialis derogate lex generalis*.⁵³

2. Constitutional Perspective on the *Qanun*

Some constitutional experts compare the qanun to regional regulations. After the Aceh Qanun Jinayat No. 6/2014 was passed, the Aceh Provincial Qanun enjoyed national law-like jurisdiction. The direct mandate of the Aceh Government Law and the qanun's ability to impose criminal sanctions, a capability not granted to other local regulations in Indonesia, give it this jurisdiction. The Qanun of Aceh Province now has the power typically reserved for national law, once the Qanun was ratified with criminal provisions.⁵⁴

In Aceh, qanun is a binding affirmative law established by the government with consequences for breaches. Acehnese believe sharia governs education, economics, and society. Qanun is an area of Islamic legal research where legislatures and administrations adopt Islamic rules and regulations. Islam underpins Acehnese customs and laws, creating a cohesive legal system.⁵⁵

Qanun is binding positive legislation in Aceh that formalizes Islamic norms in courts, education, trade, and society. Law No. 11 of 2006 under the *lex specialis* concept allows the Qanun Jinayat to override the Indonesian Penal Code and create a Mahkamah Syar'iyah-enforced parallel system.⁵⁶ The dual structure often

⁵² Zuly Qodir et al, "The Formalization of Sharia in Aceh to Discipline the Female Body" (2022) 60:1 Al-Jami'ah ar 76-77.

⁵³ Hasnil Basri Siregar, "Lessons Learned from The Implementation of Islamic Shariah criminal Law in Aceh, Indonesia" (2008) 24:1 Journal of Law and Religion at 143.

⁵⁴ Salma et al, "The Other Side of the History of the Formulation of Aceh Jinayat Qanun" (2022) 22:1 AHKAM at 86.

⁵⁵ Rico Novianto Hafidz, "Regulatory Implementation in Aceh Special Autonomy Eraby Local Government" (2024) 4:2 Nitiparitat Journal at 49.

⁵⁶ Syarifah Rahmatillah Aljamalulail, Faisal A Rani & Muazzin Muazzin, "The Politics of Law on the Fulfillment of Restitution Rights for Rape Victims Based on the Qanun Jinayat in Aceh" (2024) 8:1 Samarah: Jurnal Hukum Keluarga dan Hukum Islam at 309.

results in treatment and sentencing discrepancies, presenting constitutional questions concerning equality before the law and regional autonomy vs. national legal supremacy. Aceh's Qanun must be reviewed more strictly to accord with the national criminal system and maintain the unitary legal order.⁵⁷

Mahkamah Syar'iyah enforces Qanun Jinayat, which has distinct rules and penalties from other provinces. Local populations are affected by these disparities in prosecuting and settling identical offenses. These differences pose problems regarding legal equality and a national justice system. To overcome these challenges, we must examine how Aceh's regulatory system can operate with Indonesia's general criminal law policies and judicial norms while allowing the province to maintain its independence within the unitary state structure.⁵⁸

IV. STRIKING A BALANCE: SECULAR CONSTITUTIONALISM AND THE ROLE OF SHARIA

A. Old Order: The Masyumi Party and the Effort to Implement Sharia

Old order and new order are political terms. Why do you use this term instead of the Sukarno or Suharto era?

1. The Three Paradigms of Religion-State Relations

J. Paul Wogeman delineates three models of religion-state relations: the integrated model, wherein religion and the state operate as a singular entity; the symbiotic model, characterized by mutual interaction and support; and the secularist model, which advocates for the separation of religion from the state.⁵⁹ Islamic political parties typically embody the integrated model. The relationship between Islamic law and Islamic political entities, exemplified by Masyumi, aims to establish a national legal framework based on Pancasila while honoring religious diversity, as stated in Article 29 of the 1945 Constitution.⁶⁰ Masyumi was established post-

⁵⁷ Salma et al, "Between Flogging and Imprisonment: The Disparity Effect of the Sharia Court's Decision on the Supremacy of the Qanun Jinayat of Aceh" (2024) 9:2 Al-Istinbath: Jurnal Hukum Islam at 574–575.

⁵⁸ Muhammad Rusydan Fauzi et al, "The Existence of Qanun Jinayat: Legislative Efforts to Integrate Islamic Law into National Law" (2024) 4:1 As-Siyasi: Journal of Constitutional Law at 84-85.

⁵⁹ Lili Romli, "Electoral Power Structure of Islamic Parties in Reform Era Indonesia" (2020) 5:2 Politik Indonesia: Indonesian Political Science Review at 195.

⁶⁰ Arip Purkon, "Political Parties and Islamic Law Positivization in Contemporary Indonesian Governance" (2021) 9:2 Humanities & Social Sciences Reviews at 80.

independence, bringing together leaders from prominent Islamic organizations, including Muhammadiyah, NU, Persis, PERTI, and PSII,⁶¹ which allowed it to achieve significant influence among the Muslim community.⁶²

2. Masyumi: History, Role, and Stigmatization

Masyumi included members from NU, Muhammadiyah, and other Islamic groups and expanded outside Java and Sumatra to adapt to political upheaval. Although this method was short-lived before the party fragmented, Masyumi played a vital role in advancing Muslim political objectives.⁶³ In the late 1920s, tensions emerged between Soekarno's secular nationalism and Mohammad Natsir's Islamic political vision: Soekarno emphasized national unity over religious identity, while Natsir argued for Islam's rightful role in politics. This disagreement led to mutual accusations, nationalists viewed Islamic politics as divisive, while Natsir viewed secular nationalism as sidelining Muslim aspirations.⁶⁴

In 1967, Soekarno ultimately prohibited Masyumi, alleging that the party was advocating for the reinstatement of the Jakarta Charter's mandate for Islamic law.⁶⁵ The Old Order cultivated a sense of distrust regarding Islamic political movements, depicting Masyumi and its leaders as dangers to the nation's stability. To diminish the political influence of Islam, Soekarno promoted the unification of various Islamic parties into the Muslim League while excluding Masyumi.⁶⁶

Following Natsir and other Masyumi leaders being linked to separatist movements in 1957, Soekarno passed a law in 1960 to dissolve parties that opposed the state ideology, which led to Masyumi's disbandment and the leaders'

⁶¹ Rahmatul Yushar, Hasaruddin & Syamzan Syukur, "Islam and Politics: The Basic Propaganda of The Islamic State by Masyumi in Selayar" (2023) 3:1 International Journal of Islamic Studies (IJIS) at 49.

⁶² Hasanuddin Yusuf Adan et al, "Islam and the Foundation of the State in Indonesia: The Role of the Masyumi Party in the Constituent Assembly the Perspective of Fiqh al-Siyāsah" (2023) 7:1 Samarah at 394.

⁶³ Imam Sukardi, *supra* note 36.

⁶⁴ Peter Suwarno, "Conservative Islamic factions vs. secular nationalists: toward a civil contestation in democratic Indonesia" (2021) 13:2 Indonesian Journal of Social Sciences at 63-64.

⁶⁵ Syafiq Hasyim, "The Shadow of Neo-Hanbalism: The Idea of Islamic Extremism in Indonesia" (2022) 1:1 Islamic Studies Review at 80.

⁶⁶ Mohammad Hidayatullahman et al, "Political Strategy of Islamophobia in Indonesia: From the Old Order to the Reform Era" (2025) 7:1 POLITICON at 38.

imprisonment. This hindered Islamic political forces and helped defeat Soekarno's NASAKOM agenda, resulting in his collapse.⁶⁷

3. The Legacy of Political Islam and Post-new Order Challenges

Masyumi failed to make the Jakarta Charter the Old Order state constitution. Islamic political activists expected the New Order regime to empower Muslims to incorporate Islamic sharia into national laws and the constitution. They wanted the New Order dictatorship to liberate their leaders, reinstall the Masyumi Party, which Sukarno had dissolved, and reintroduce the seven Jakarta Charter phrases into the state constitution to allow Islamic sharia.⁶⁸

The Jakarta Charter and 1945 Constitution, passed at the Second Plenary Session from July 10 to 16, 1945, broke with the Old Order. The Jakarta Charter's draft preamble said that Muslims' foundation was Islam and that they must follow Islamic law.⁶⁹ Masyumi's radical right and left-wing Indonesian Communist Party ties were criticized after the 1955 election. Both seemed to influence national ideology. Critics feared that this position would change from revolutionary independence from Western colonialism to anti-modernization religion. This framework favored Muslims and discriminated against others.⁷⁰

Distrust of Islamic political factions continued after Sukarno's tenure, resulting in strategies designed to depoliticize the Muslim populace via intelligence activities, party amalgamation, the floating mass policy, and the Single Pancasila Principle.⁷¹ The New Order inherited anxieties and traumas linked to Islamic political activism, encompassing apprehensions over radical movements, the revival of Islamic parties, and the discourse surrounding an Islamic state.⁷² These worries frequently stemmed from inflated beliefs that organizations such as

⁶⁷ Suwarno, *supra* note 64.

⁶⁸ Anton Minardi, "The New Islamic Revivalism In Indonesia Accommodationist and Confrontationist" (2018) 12:2 *Journal of Indonesian Islam* at 248.

⁶⁹ Ahmad Yani & Megawati Barthos, "Transforming Islamic Law in Indonesia from a Legal Political Perspective" (2020) 30:2 *Al-Ahkam* at 159–178.

⁷⁰ Lahaji & Ahmad Faisal, "'Caliphate no in Indonesia': Nurcholish Madjid and Yudian Wahyudi critiques toward Islamic State discourse in Indonesian Islam" (2023) 9:2 *Cogent Soc Sci* at 4.

⁷¹ Siti Malaiha Dewi et al, "Islamic Revivalism: Dynamics of Islamic Parties in Legalizing Islamic Law Policies in Indonesia and Malaysia" (2024) 9:1 *Al-Istinbath: Jurnal Hukum Islam* at 243.

⁷² Ahmad Nasir, Muhammad Syukri Albani Nasution & Ramadhan Syahmedi Siregar, "Transformation of Islamic Law into a Political Historical Law Foundation" (2024) 12:2 *Jurnal Akta* at 299-300.

Masyumi aimed to create a state entirely regulated by the Qur'an and Sunnah, with its own legal framework, security apparatus, economic assets, and territorial autonomy.⁷³

Islam has historically been integral to Indonesia's identity, influencing both personal religious practices and the formal regulation of social relationships.⁷⁴ Tensions continue to exist among Indonesia's Islamic, colonial, and customary legal systems, with overlaps that historically originate from Dutch divide-and-rule strategies.⁷⁵

The integration of these systems is an ongoing national initiative, influenced by the policy decisions of the founders. The disagreement between Soekarno and Natsir regarding the role of Islam in the constitution underscores a fundamental constitutional issue: should the state embody a secular-nationalist perspective or integrate Islamic principles?⁷⁶ Gurvitch indicate that these ideological differences established a path dependency that persists in shaping discussions on sharia within Indonesia's plural legal framework, where constitutional democracy aims to reconcile national unity, religious diversity, and individual rights.⁷⁷

B. New Order: Soeharto's Relationship with ICMI

During the latter half of the 1980s, Suharto's relationship with the military began to deteriorate, particularly after confrontations with General Murdani. This prompted him to look for new political support opportunities.⁷⁸ Suharto strategically connected himself with Islamic groups to lessen his reliance on the military. He did this by appointing a greater number of civilian Muslims to key positions and by providing support for the establishment of ICMI working under

⁷³ Ahmad Nasir, Muhammad Syukri Albani Nasution & Ramadhan Syahmedi Siregar, "Transformation of Islamic Law into a Political Historical Law Foundation" (2024) 12:2 Jurnal Akta at 299-300.

⁷⁴ Agus Miranto, Kurniati & Abd Rahman, "The Role of Islamic organizations in Development and Enforcement of Islamic Law in Indonesia" (2022) 5:3 International Journal on Advanced Science, Education, and Religion at 129.

⁷⁵ Muhazir Muhazir, "Islamic Law Politics in The Contemporary Era (Revealing The Struggle for The Positivization of Islamic Law in Indonesia)" (2021) 6:1 Al Hurriyah : Jurnal Hukum Islam at 30-31.

⁷⁶ Deconstructing Constitutional Identity in Light of the Turn to Populism, by Michel Rosenfeld at 659.

⁷⁷ Keebet von Benda-Beckmann & Bertram Turner, "Legal pluralism, social theory, and the state" (2018) 50:3 The Journal of Legal Pluralism and Unofficial Law at 262.

⁷⁸ Abdil Mughis Mudhoffir, "Political Islam and Religious Violence in Post-New Order Indonesia" (2015) 20:1 Jurnal Sosiologi at 5 & 8.

Habibie.⁷⁹ In addition, he adopted greater public demonstrations of Islamic identity, such as performing the hajj in 1991 and adopting the name Mohammad. These actions indicated a shift in his political base as well as the growing influence of Islamic constituents.⁸⁰

ICMI was established to unite Muslim intellectuals with the objective of promoting religious, educational, and socioeconomic progress within Indonesia's Muslim community. Over time, its role evolved to encompass more than just intellectual collaboration but also supporting Soeharto's administration.⁸¹ During Habibie's leadership, and in the context of Suharto's evolving political strategy in the late New Order, ICMI saw a growing integration within state structures. The approach enabled Suharto to reestablish connections with Islamic groups that had been sidelined and to garner backing from the expanding Muslim middle class.⁸²

Suharto's formation of ICMI marked a shift toward appeasing Islamic interests, giving previously disadvantaged Muslim groups more clout in the late New Order. While this action provided a platform for Muslim academics to engage in official decision-making, detractors saw it as a ploy to shore up Suharto's political support and boost his image among Muslims,⁸³ particularly after years of restrictions on Islamic political organizations like the PPP.⁸⁴ Suharto described ICMI as a tool for strengthening the state and incorporating Islamic values into government, rather than an attempt to broaden democracy or reignite sectarian politics.⁸⁵

⁷⁹ Rika Kurniaty, *Democracy and Human Security: Analysis on the Trajectory of Indonesia's Democratization* (Malang: Atlantis Press, 2020) at 282-283.

⁸⁰ Soeharto's New Order and its Legacy Essays in honour of Harold Crouch, by Crouch Harold, in 2 (Canberra: The Australian National University, April 2010) at 36.

⁸¹ Abdul Haris Fatgehipon, "The Relationship Amongst Soeharto, Military, And Muslim In The End Of New Order Regime" (2016) 26:1 Paramita: Historical Studies Journal at 4.

⁸² *Political Islam in Post-Authoritarian Indonesia*, by Vedi R Hadiz (Oxford, February 2010) at 74.

⁸³ Winsidi, Abdullah Idi & Rifa'i Abu, "The Dynamics of Religious Political Assertiveness of President Soeharto" (2020) 7:4 International Journal of Multicultural Multireligious Understanding at 127-128.

⁸⁴ Imron Rosidi, "The Political Role of The Icmi After The 1999 General Election: From Political Vehicle to An "Umbrella" Organization" (2018) 2:2 Asia Pacific Journal On Religion And Society at 64.

⁸⁵ Masykur Hakim, "Soeharto and the politicization of Indonesian Islam (1968-1998)" (2016) 10:2 Journal of Indonesian Islam at 173.

Building on this role, ICMI played a key role in the establishment of Bank Muamalat Indonesia, which became the basis for Islamic banking and the application of Islamic legal principles in finance. It also supported policies such as allowing female students to wear the hijab in schools and later reinforced Suharto's shift toward accommodating Islamic aspirations.⁸⁶ ICMI further encouraged the Ministry of Religious Affairs to issue the 1991 Compilation of Islamic Law (KHI), the first standardized codification of Islamic legal provisions in Indonesia.⁸⁷ According to R. William Liddle, however, ICMI functioned less as an independent Islamic organization and more as a corporatist instrument of the New Order used by Suharto to secure Muslim support and maintain political control.⁸⁸

R. William Liddle describes ICMI as a quasi-political body under Habibie, allowing Islamic modernists who had opposed the administration to participate if they disassociated from anti-government action.⁸⁹ Through ICMI, the New Order promoted Pancasila as an inclusive state ideology among Islamic groups by the early 1990s. The regime's pragmatic approach to redefining state-religion ties was shown by ICMI's transition from repression of Islamic politics to absorption of Islamic intellectual elites.⁹⁰ Liddle claims that ICMI was an extension of state authority rather than an independent movement, offering a socially grounded intellectual platform that was more appealing than direct political struggle. He shows how elite intellectual frameworks might strengthen constitutional pluralism in Indonesia beyond party conflict.⁹¹

Robinson and Hadiz contend that the establishment of ICMI marked a new era in which Islam achieved increased visibility and impact within Indonesia's political landscape, providing numerous Muslims with a feeling of

⁸⁶ Robert W Hefner, "Islam, State, and Civil Society: ICMI and the Struggle for the Indonesian Middle Class" (1993) 56 *Indonesia* at 26

⁸⁷ Mirjam Künkler, "Constitutionalism, Islamic Law, and Religious Freedom in Postindependence Indonesia" in *Constitution Writing, Religion and Democracy* (Cambridge: Cambridge University Press, 2017) at 179.

⁸⁸ R William Liddle, "The Islamic Turn in Indonesia: A Political Explanation" (1996) 55:3 *J Asian Studies* at 615-616.

⁸⁹ R William Liddle, "Indonesia's Democratic Opening" (1999) 34:1 *Government and Opposition* at 101 & 110.

⁹⁰ R William Liddle, "Indonesia's Democratic Past and Future" (1992) 24:4 *Comp Polit* at 449 & 451.

⁹¹ R William Liddle & Saiful Mujani, "Leadership, Party, and Religion: Explaining Voting Behavior in Indonesia" (2007) 40:7 *Comp Polit Stud* at 834-835.

acknowledgment following prolonged marginalization. For segments of the Muslim community, ICMI represented a corrective movement against previous repression, even serving as a challenge to certain elements within the military that had influenced the power dynamics of the New Order.⁹² Nevertheless, the organization continued to be closely overseen by Suharto, predominantly composed of state-appointed officials, and functioned without an autonomous legislative agenda, thereby strengthening its role as a regulated avenue for Muslim involvement.⁹³

Abdurrahman Wahid expressed concerns about ICMI, describing it as a political tool aimed at garnering Muslim backing while upholding authoritarian governance. He cautioned that its connection to elite interests might exacerbate internal rifts and undermine interreligious harmony.⁹⁴ The organization's strong connection with the state became increasingly apparent when several figures affiliated with ICMI took on significant ministerial positions during Habibie's presidency.⁹⁵ Nonetheless, the 1997 financial crisis revealed the shortcomings of this approach, as Suharto depended on his personal connections instead of technocrats or ICMI intellectuals, hastening the regime's downfall and illustrating the vulnerability of Islamic co-optation as a foundation for political legitimacy.⁹⁶

C. Reform Order: Decentralization and the Local Implementation of Sharia

Sharia has historically directed Muslim life, but its interpretation and application have transformed over time and in different places. In contemporary situations, its function within national legal systems has grown increasingly intricate.⁹⁷ In Indonesia, attempts to institutionalize Sharia via legislation highlight the difficulties of incorporating religious standards within a secular state. Proponents view this as harmonizing legislation with the Qur'an and ethical standards;

⁹² Vedi R Hadiz, "Indonesian Political Islam: Capitalist Development and the Legacies of the Cold War" (2011) 30:1 *Journal of Current Southeast Asian Affairs* at 23-24.

⁹³ R William Liddle, *supra* note 88.

⁹⁴ Muhammad Saleh Tajuddin, "The Discourse of Islamic Civil Society in Indonesia during The Reformation" (2012) 1:1 *JICSA (Journal of Islamic Civilization in Southeast Asia)* at 200-201.

⁹⁵ Khoirun Niam, "Between Unity And Diversity Resketching the Relation between Institutional-Affiliated Indonesian Muslim Intellectuals and the Government (1990-2001)" (2020) 14:2 *Journal of Indonesian Islam* at 489-490.

⁹⁶ Henk Schulte Nordholt, "Renegotiating boundaries Access, agency and identity in post-Soeharto Indonesia" (2003) 159:4 *Bijdr Taal Land Volkenkd* at 556-567.

⁹⁷ Yasrul Huda, *Contesting sharia : state law, decentralization and* Leiden University, 2013) at 19.

however, detractors contend it poses concerns of discrimination, gender bias, and inequitable law treatment.⁹⁸ Griffiths' notion of legal pluralism elucidates this contradiction, demonstrating how Indonesia's Pancasila-based constitutional identity integrates several legal systems, Islamic, customary, and state, within a cohesive framework, thereby contesting the notion of a singular dominant legal authority.⁹⁹

Building on Griffiths' concept, scholars distinguish between weak legal pluralism, where customary and religious norms are integrated into state law, and strong legal pluralism where such systems operate independently.¹⁰⁰ Tamanaha extends this idea, viewing legal pluralism as an inevitable feature of modern societies where state law constantly interacts with social, religious, and customary norms.¹⁰¹ In Indonesia, with its diverse cultural and religious composition, legal pluralism enables Sharia-based and other local norms to coexist within one constitutional system. However, decentralization after the Regional Autonomy Law has complicated this balance, as Sharia law reveals tensions between local aspirations and the maintenance of national legal coherence.¹⁰²

In a case that came up in 2021, a school rule in Padang, West Sumatra, that demanded all female students, including non-Muslims, wear headscarves were challenged. This case clearly demonstrated the legal tension in the area. The discriminatory rule was deemed by the Supreme Court (Decision No. 17P/HUM/2021), drawing attention to the tensions between municipal regulations based on Sharia law and constitutional guarantees of equality.¹⁰³ There are comparable concerns in Aceh, where Qanun No. 6/2014 mandates corporal punishment and incarceration, among other municipal regulations that have come under fire for allegedly infringing on women's rights, such as dress

⁹⁸ Rohidin Rohidin et al, "Exclusive policy in guaranteeing freedom of religion and belief: A study on the existence of sharia-based local regulations in Indonesia and its problems" (2023) 9:1 Cogent Soc Sci at 10.

⁹⁹ John Griffiths, "What is Legal Pluralism?" (1986) 18:24 The Journal of Legal Pluralism and Unofficial Law at 4.

¹⁰⁰ Suci Flambonita, "The Concept of Legal Pluralism in Indonesia in The New Social Movement" (2021) 10:3 Jurnal Analisa Sosiologi at 365.

¹⁰¹ Brian Z Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global" (2008) 30:3 Sydney Law Review at 376–377.

¹⁰² Musahadi Musahadi, "The Struggle Between Political and Ideological Over The Implementation Sharia-Nuanced Regional Regulation" (2020) 5:1 PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH at 47–48.

¹⁰³ Rohidin et al, *supra* note 98.

requirements and curfews.¹⁰⁴ The continuous difficulty in Indonesia is to strike a balance between regional autonomy, Islamic law, and constitutional equality, as shown in judicial decisions like Takengon Syar'iyah Court Decision No. 269/Pdt.G/2017/Ms-Tkn, which further demonstrate how judges emphasize.¹⁰⁵

Furthermore, Aceh's Qanun No. 7/2004 mandates zakat payments from Muslims and eligible businesses through Baitul Mal, with sanctions for noncompliance including fines, imprisonment, or caning. This reflects the formal integration of Sharia into Aceh's legal system, prioritizing Islamic norms over local customs.¹⁰⁶ In other Muslim-majority regions, demands for Sharia implementation have reemerged alongside the revival of customary institutions suppressed during the New Order.¹⁰⁷ Within Indonesia's plural legal framework, combining Western, customary, and Islamic law, Sharia-based regional regulations must still align with national objectives, ensuring that religious principles coexist with constitutional values of unity, equality, goals, and aspirations.¹⁰⁸

Regional regulations based on Sharia, like Aceh's qanun, frequently contradict the 1945 Constitution and the equality and human rights tenets of Pancasila. The Supreme Court (MA) has the authority to revoke bylaws that conflict with higher laws or the public interest, while the Constitutional Court (MK) examines their legal underpinnings.¹⁰⁹ However, many discriminatory bylaws remain in place since MK is unable to directly review municipal legislation, and MA's ability is restricted to technical assessment. This disparity emphasizes the necessity of more robust legal systems to balance constitutional rights with Islamic principles.¹¹⁰ Therefore, the court is essential in making sure that Sharia-inspired

¹⁰⁴ Khairul Hasni, "Qanun Jinayat And Sharia Police: A New Violence In The Context Of Gender In Aceh Indonesia" (2021) 19:2 *Musāwa Jurnal Studi Gender dan Islam* at 190.

¹⁰⁵ Hazar Kusmayanti et al, "Judges' Acceptance of Sharia-Inspired Laws in Indonesia" (2023) *Al-Manahij: Jurnal Kajian Hukum Islam* at 209.

¹⁰⁶ Yasrul Huda, "Islamic Sharia In Aceh And Its Implications In Other Regions In Indonesia" (2020) 5:2 *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* at 191.

¹⁰⁷ Nur Hidayah, "Islamic Law and Women's Rights in Indonesia: A Case of Regional Sharia Legislation" (2019) 19:1 *Ahkam: Jurnal Ilmu Syariah* at 23.

¹⁰⁸ Muhammad Sabir & Nazaruddin, "Manifestation of Sharia Regional Regulations in Managing Social Morality" (2021) 20:2 *Jurnal Ilmiah Syari'ah* at 195.

¹⁰⁹ Jan Michiel Otto, *supra* note 35.

¹¹⁰ Muzayyin Ahyar & Ni'Matul Huda, *supra* note 1.

laws, such as clothing regulations, moral restraints, and public caning, remain in line with Indonesia's legal and constitutional framework.¹¹¹

Regional Sharia-based rules show evolving efforts to improve Islam's role in government, starting with prioritizing Islamic leadership and autonomy in lawmaking and progressing to national goals for greater application.¹¹² By 2017, more than 78 Sharia-inspired bylaws had been passed in over 50 regions, addressing public morality, religious duties, and Islamic dress regulations. These regulations convey local Islamic identity and cultural traditions while also emphasizing contradictions between regional autonomy and national legal unity.¹¹³ In principle, decentralization should empower communities within Indonesia's democratic framework rather than just passing religiously motivated local legislation.¹¹⁴

Local culture plays a central role in shaping how regional autonomy is practiced in Indonesia, as it influences the behaviors, priorities, and policies of local governments. Regional autonomy aims to improve local governance through more efficient and professional administration, requiring bureaucratic restructuring in response to global pressures and growing public demands for better services.¹¹⁵ In this decentralized framework, civil society, including Muslim communities, helps guide local development by providing oversight and ensuring that policies reflect community needs.¹¹⁶ The rise of Sharia-inspired regional regulations reflects changing religious attitudes, yet their form varies significantly across regions due to differences in socio-economic conditions, education levels,

¹¹¹ R Michael Feener, "Introduction", *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh* (Oxford: Oxford University Press, 2013) at 10.

¹¹² Diego Fossati, "Support for Decentralization and Political Islam Go Together in Indonesia" (2017) 69 *ISEAS Perspective* at 4.

¹¹³ Ahmad Fuad Fanani, "The implementation of sharia bylaws and its negative social outcome for Indonesian women" (2017) 7:2 *Indonesian Journal of Islam and Muslim Societies* at 155.

¹¹⁴ Anang Zubaidy, "The Sharia Legislation In Tasikmalaya" (2009) 15:3 *Jurnal Hukum IUS QUIA IUSTUM* at 5.

¹¹⁵ Saadatul Maghfira & Ridho Oktoviana Amran, *Decentralization Polemics in Regional Use* (Batusangkar: IAIN Batusangkar, 2018) at 170.

¹¹⁶ *Decentralisation and local governance: Pursuing area-based approaches that support accountability in the restoration of basic services and economic recovery in Syria*, by Urban Recovery Framework (Nairobi, July 2022) at 54-55.

religious interpretations, and cultural contexts, resulting in diverse understandings of the relationship between Islam, Muslims, and the state.¹¹⁷

The Helsinki MoU and Law No. 11 of 2006 gave Aceh more autonomy after the 2004 disaster, allowing each district to administer public affairs and issue Islamic qanun.¹¹⁸ Sharia-inspired regional legislation in Indonesia represents local values, although it often raises issues about human rights, gender equality, and constitutional guarantees of equal protection. This shows how difficult it is to balance regional autonomy and Islamic aspirations with the 1945 Constitution and Pancasila state. To maintain legal pluralism in line with Indonesia's constitutional identity and national unity, stronger national guidelines, more substantive judicial review by the Supreme Court and Constitutional Court, and active cooperation among local governments, religious authorities, and civil society are needed.

V. LEGAL MODERNIZATION IN PRACTICE: CASE STUDIES OF ISLAMIC LAW AND CONSTITUTIONAL CHALLENGES

A. Old Order: Early Post-Independence Religious Courts and Family Law Class

1. 1945-1959: Foundations of Islamic Legal Recognition

Family law shapes daily life and reflects cultural and religious values by regulating interactions within the family, including marriage, divorce, and individual rights.¹¹⁹ Following independence, Indonesia replaced colonial regulations with Law No. 22 of 1946, which placed Islamic judicial authority under the Ministry of Religious Affairs and mandated marriage, divorce, and reconciliation

¹¹⁷ Bani Syarif Maula, "The State Legal Policies on Sharia Application in Changing Pattern of Indonesia's Islamic Movements" (2022) 7:1 Al Hurriyah : Jurnal Hukum Islam at 23-25.

¹¹⁸ A Ilham Saputra & Jum Angriani, Implementation of Central and Local Government Relations Through Asymmetric Decentralization (Purwokerto: Atlantis Press, 2023) at 794-795.

¹¹⁹ Maimun et al, "Dynamics of Family Law in Indonesia: Bibliometric Analysis of Past and Future Trends" (2024) 8:1 Samarah at 519-520.

registration.¹²⁰ Law No. 32 of 1954 enforced the law gradually, first in Java and Madura in 1947, then in Sumatra in 1949, and eventually countrywide in 1954.¹²¹

After Law No. 22/1946 was passed, the Minister of Religious Affairs issued Decree No. 6/1947, which streamlined the administration of Islamic family law by delegating jurisdiction over religious courts and the Islamic High Court to the Ministry of Religious Affairs.¹²² The government subsequently enacted Regulation No. 45/1957, which established religious courts outside of Java and Madura with authority over marriage, inheritance, waqf, hadana, grants, and charity.¹²³ Over time, religious courts were established throughout Indonesia, replacing several customary courts. The state formalized family law based on *fiqh al-munākahāt* through legislation and judicial structures. This integration of Islamic law into Indonesia's plural legal system created tensions between state law, Islamic legal traditions, and institutional interests.¹²⁴

Government Regulation No. 45/1957 expanded religious courts outside Java and Madura, giving them authority over marriage, inheritance, hadana, waqf, grants, and charity, leading to the establishment of a new framework of religious courts across Indonesia and the conversion of many customary courts into this system.¹²⁵ This marked the state's systematic institutionalization of *fiqh al-munākahāt* into the formal legal structure, recognizing Islamic family law as part of Indonesia's plural legal system while standardizing its application. Over time, the authority of religious courts was strengthened through Law No. 1/1974 on Marriage and later through Law No. 7/1989, Law No. 3/2006, and Law No. 50/2009, which expanded their jurisdiction to include marriage, divorce,

¹²⁰ Hervin Yoki Pradikta, Aan Budianto & Habib Shulton Asnawi, *History of Development and Reform of Family Law in Indonesia and Malaysia* (Bandar Lampung: Knowledge E DMCC, 2024) at 319.

¹²¹ Nurhikmah Hairak H Biga, "Sejarah Pembaruan Hukum Keluarga Islam Di Indonesia" (2017) 13:2 *Al-Mizan* at 194.

¹²² Stijn Cornelis Van Huis, "The religious courts: Does lev's analysis still hold?" in Crouch Melissa, ed, *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia* (Cambridge: Cambridge University Press, 2019) at 117.

¹²³ Raihan Azzahra & Farid Sufian Shuaib, "Religious Courts in Indonesia and Malaysia: History, Structure, and Jurisdiction" (2022) 4:2 *Indonesian Comparative Law Review* at 118.

¹²⁴ Idri, "Religious Court In Indonesia History and Prospect" (2009) 3:2 *Journal of Indonesian Islam* at 307.

¹²⁵ Raihan Azzahra & Farid Sufian Shuaib, *supra* note 123.

inheritance, wills, and Islamic economic matters, showing the continuing integration of Islamic family law into Indonesia's national legal framework.¹²⁶

2. 1960s-1970s: Codification and Centralization

The government extended the jurisdiction of religious courts beyond Java and Madura to address ambiguities in religious disputes. Nevertheless, their development encountered opposition from legal scholars influenced by Dutch legal thought and officials lacking familiarity with Islamic law, resulting in a disconnect between state legal institutions and Muslim communities.¹²⁷ The integration of customary courts into religious courts sought to establish a legal framework that reflects the requirements of Indonesia's Muslim majority, facilitating the role of Islamic law in promoting legal order and justice.¹²⁸ Religious courts, recognized by the state as judicial institutions, implement Islamic material law within their designated authority, executing their functions in accordance with statutory regulations and established legal procedures.¹²⁹

Religious courts in Indonesia are state courts with a special jurisdiction to enforce Islamic material law, following laws and using codified regulations and legal processes. Their unification intended to strengthen their status as vital dispute resolution agencies, especially in Islamic and cultural affairs, but the outcomes have not always been fair.¹³⁰ Ismail Sunny explains that Islamic law in Indonesia has been recognized in two phases: persuasive law from 1945 to 1959, when there were no constitutional references to Sharia, and authoritative law after the presidential system was restored, when the Jakarta Charter shaped constitutional interpretation.¹³¹

¹²⁶ Hasnul Arifin Melayu, "The Religious Court in Indonesia: A Preliminary Overview of Mahkamah Syar'iyah Aceh" (2012) 1:1 *Journal of Islamic Civilization in Southeast Asia* at 64.

¹²⁷ Ratno Lukito, "Law and Politics in Post Independence Indonesia: A Case Study of Religious and Adat Courts" (1999) 6:2 *Studia Islamika* at 78-79.

¹²⁸ Arip Purkon, Ahmat Hidayat Buang & Mohd Hafiz Jamaludin, "The Role of Supreme Court Jurisprudence in Development of Islamic Family Law in Indonesia" (2022) 9:2 *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* at 367.

¹²⁹ Hazar Kusmayanti & Sherly Ayuna Puteri, "Dispute Settlement Practices through the Religious Court's Mobile Court (Sidang Keliling)" (2020) 14:3 *Fiat Justisia: Jurnal Ilmu Hukum* at 293.

¹³⁰ Dharmayani et al, "The Urgency of Mediation of the Religious Courts System on Islamic Law Perspective" (2022) 7:1 *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* at 27.

¹³¹ Ahmad Imam Mawardi, "The Influence of Colonial Laws on Islamic Legal Developments in Indonesia, Malaysia and Singapore: A Comparative Study" (2010) 13:1 *Al-Qānūn* at 194-195.

3. Post-1989: Equalization and Expansion of Jurisdiction

M. Hatta Ali stressed that the development of Islamic law in Indonesia is tied to its unique legal character, marked by its comprehensive scope, its balance between legal ideals and social realities, and its dynamic ability to adapt to changing conditions and societal needs.¹³² However, the application of Islamic family law also affects daily social practices, where women often struggle to obtain fair outcomes in cases of divorce, child marriage, custody, polygamy, and property division, despite PERMA No. 3/2017 promoting gender justice.¹³³ This tension is evident in cases such as the Surabaya Religious Court Decision No. 3950/Pdt.G/2023/PA. Sby, where women continued to face barriers in securing rights to iddah, muth'ah, custody, and shared property due to limited legal awareness and court procedural challenges. Although courts increasingly use ex officio authority under PERMA No. 3/2017 to strengthen protections, the situation shows that Islamic legal norms must continue to be interpreted in line with constitutional principles of justice and equality.¹³⁴

Nadirsyah Hosen emphasizes the ongoing debate over Indonesia's Religious Courts' jurisdiction. Proponents say strengthening these courts strengthens Muslims' constitutional right to Sharia and clarifies Islamic family law. Critics worry that this extension will undermine Pancasila's pluralism, undermine legal equality, and disfavor non-Muslims and minorities.¹³⁵ This discourse shows Indonesia's struggle to balance legal plurality, national cohesiveness, and Islamic principles in a constitutional democracy.¹³⁶ Harmonizing Islamic legal concepts with social and cultural beliefs about marriage and family life is crucial to justice. The restriction of legal references to specific fiqh texts in 1956 and the enactment of Government Regulation No. 14/1970, Marriage Law No. 1/1974, and

¹³² Amran Suadi, "The Role of Religious Court in Islamic Law Reform in Indonesia" (2019) 21:2 *Asy-Syari'ah* at 129-130.

¹³³ Muhammad Isna Wahyudi, "Women Dealing with The Law in Religious Courts" (2018) 18:2 *AHKAM : Jurnal Ilmu Syariah* at 307.

¹³⁴ Azizah, Mohammad Ali Hisyam & Omaina Abou-Bakr, "Application of Ex Officio Rights Based on Gender Justice in Divorce Lawsuit in Surabaya Religious Court, Indonesia" (2023) 8:2 *Jurnal Mahkamah : Kajian Ilmu Hukum dan Hukum Islam* at 189.

¹³⁵ Nadirsyah Hosen, *supra* note 30.

¹³⁶ Nofan Nurkhafid Azmi et al, "Application of Progressive Law to Marriage Annulment Cases: Prospects and Development in Indonesia's Religious Court" (2024) 11:1 *Al-Qadha : Jurnal Hukum Islam dan Perundang-Undangan* at 131-132.

Religious Courts Law No. 7/1989 formalized Islamic family law and placed religious courts on par with other judicial institutions in Indonesia.¹³⁷

B. New Order: Interpretation of the 1974 Marriage Law by Religious Courts

Indonesia's marriage law exhibits substantial legal pluralism, with governmental, Islamic, and customary laws all influencing marital patterns, including early marriages. Although Marriage Law No. 1/1974, as amended by Law No. 16/2019, establishes a minimum marriage age of 19, cultural and religious norms in some groups continue to define maturity differently, resulting in varying legal standards. This is consistent with John Griffiths' definition of "strong legal pluralism," in which numerous legal systems coexist alongside the state.¹³⁸ The presence of different systems can lead to problems in interfaith marriage, child custody, inheritance, and women's rights, generating questions about legal equality and human rights.¹³⁹ To provide justice and legal certainty, state law, Islamic beliefs, and constitutional obligations to plurality must be reconciled. This challenge discusses Suharto's early changes, which mandated marriage registration and court approval for divorce and polygamy as part of efforts to modernize Islamic family law and increase women's legal rights.¹⁴⁰

According to Article 66 of Law Number 1 of 1974 on Marriage, all Dutch East Indies marriage laws are nullified. The New Order legal framework clearly defines marital principles, conditions, and criteria. The formal component addresses administrative issues like marriage registration, whereas the religious component establishes a marriage's legality.¹⁴¹

Prior Dutch colonial marriage laws were repealed by Law No. 1 of 1974 on Marriage, which established a single legal framework that defines marriage

¹³⁷ Mawardi, *supra* note 131.

¹³⁸ Endah Mustika Pertiwi, Surya Sukti & Mustar, "The Urgency of Legal Pluralism in Addressing Early Marriage in Indonesia" (2025) 21:1 Medina-Te : Jurnal Studi Islam at 65.

¹³⁹ Candra Andreansah Harahap & Agung Syarifudin, "Legal Construction of Interfaith Marriage in Indonesian Pluralism Context: Analysis of Regulation and Practice" (2024) 1:4 International Journal of Social Science and Humanity at 54-55.

¹⁴⁰ Noorhaidi Hasan, "Debating gender, women, and Islam: Indonesia's marriage law of 1974 revisited" in Noorhaidi Hasan & Firtz Schulze, eds, *Indonesian and German views on the Islamic legal discourse on gender and civil rights*, 1st ed (Harrassowitz Verlag • Wiesbaden: Hubert & Co., Göttingen, 2015) at 75.

¹⁴¹ Rahmat Suhargon & Faulia Anggeraini, "The Juridical Review of Law Number 1 of Year 1974 on Marriage and the Compilation of Islamic Law Concerning Status of Different Religious Wedding Abroad" (2021) 10:2 Legal Brief at 196.

according to official administrative registration and religious validity or Islamic legal tradition.¹⁴² The law was crucial in advancing gender equality and incorporating Islamic legal precepts into Indonesia's domestic legal framework. However, conflicts between Sharia-based interpretations and constitutional religious freedom have arisen because of Article 2(1), which placed marital validity under Islamic authority. Religious authority and state law continue to clash, as evidenced by disagreements among Islamic scholars, the 2005 MUI edict that forbade interfaith marriage, and Constitutional Court rulings No. 68/PUU-XII/2014 and No. 24/PUU-XX/2022.¹⁴³

M.B. Hooker characterizes Indonesia as engaging in a form of state-controlled legal pluralism, wherein state law, Islamic law, and customary law coexist, yet all remain subordinate to state authority. Marriage law, specifically Law No. 1 of 1974, incorporates Islamic principles while imposing limitations to maintain alignment with national legislation and the 1945 Constitution.¹⁴⁴

Interfaith marriage, inheritance, and child custody are complicated when religious precepts conflict with constitutional equality and religious freedom. According to Article 2(1), religious institutions must obey the couple's religious law and prevent interfaith marriages. Thus, couples must contemplate marrying overseas or converting temporarily, which has legal ramifications. Hooker believes these discrepancies require a clearer framework that harmonizes religious principles with constitutional rights for legal coherence and Pancasila.

Debates over interfaith marriage under the 1974 Marriage Law persist in religious courts because many Indonesian couples continue to enter such unions while maintaining different religious identities. Although the law is often interpreted as prohibiting interfaith marriage,¹⁴⁵ it does not explicitly forbid it, leading to differing public interpretations. Some view such marriages as invalid, while others argue they are permissible if recognized by a competent authority.¹⁴⁶ Legal

¹⁴² Noorhadi Hasan, *supra* note 140.

¹⁴³ Iwan Setiawan et al, "Reforming Marriage Law in Indonesia: A Critical Examination of Islamic Law on the Ban of Interfaith Marriages" (2024) *Al-Manahij: Jurnal Kajian Hukum Islam* at 182 & 189.

¹⁴⁴ Arskal Salim, "Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh" (2010) 42:61 *The Journal of Legal Pluralism and Unofficial Law* at 15.

¹⁴⁵ Desimaliati, "Legality of Registration for International Religious Marriage Based on Court Decisions According to Law And Regulations in Indonesia" (2022) 6:2 *Cepalo* at 83.

¹⁴⁶ Syahrul & Evie Syalviana, "Unification Of Marriage Law And Its Problems" (2020) 12:2 *Tasamuh* at 288.

support for permitting interfaith marriage appears in Article 10(1) of Law No. 39/1999 on Human Rights and Supreme Court Decision No. 1400K/PDT/1986, which allowed the issuance of an interfaith marriage license. The court justified its decision based on Indonesia's cultural diversity and plural religious landscape, affirming that interfaith marriage can be legally and socially acceptable within Indonesia's heterogeneous society.¹⁴⁷

Various factors prompted the implementation of Law No. 1 of 1974, such as the necessity for a cohesive marital framework, national unification, and the constitutional requirement in Article 29(2) to reconcile religious liberty with public order.¹⁴⁸ The law acknowledges that the legitimacy of marriage is established by religious authority, although the state records weddings to guarantee legal certainty in accordance with Article 28D (1) of the 1945 Constitution.¹⁴⁹ Nonetheless, the rule has been broadly construed as forbidding interfaith marriage, as registration mandates adherence to a single recognized religion for the ceremony, thus imposing practical impediments for couples of differing faiths.¹⁵⁰

Polygamous Muslim women are affected by the law. Despite the requirement for judicial approval, many men marry without it, leaving women without legal protections for property, inheritance, or financial aid. Polygamous marriages can be financially and emotionally tough for women because Indonesia's marital system is patriarchal and males are heads of households.¹⁵¹

Recent research indicates that discrepancies between Islamic norms and state law result in a lack of protection for many Muslim women. The 1974 Marriage Law stipulates that court approval and the wife's consent are necessary for polygamy; however, numerous husbands engage in remarriage without transparency, leading

¹⁴⁷ Bani Syarif Maula & Ilyya Muhsin, "Interfaith Marriage and the Religion-State Relationship: Debates between Human Rights Basis and Religious Precepts" (2024) 8:2 Samarah at 802-803.

¹⁴⁸ Hervin Yoki Pradikta, Aan Budianto & Habib Shulton Asnawi, *supra* note 120.

¹⁴⁹ Sri Pujiati, "Court Rejects Petition on Interfaith Marriage" (2023), online: Constitutional Court of the Republic of Indonesia <https://en.mkri.id/news/details/2023-01-31/Court_Rejects_Petition_on_Interfaith_Marriage>.

¹⁵⁰ Indonesia: Inter-Religious Marriage, by Kelly Buchanan (Washington DC, July 2010) at 2-3.

¹⁵¹ Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property" (2016) 54:2 Al-Jami'ah: Journal of Islamic Studies at 433.

to financial instability and emotional distress.¹⁵² In practice, judges in religious courts frequently endorse polygamy despite the incomplete fulfillment of legal requirements, placing greater emphasis on interpretations of fiqh than on established statutory protections. This judicial flexibility perpetuates structural gender inequality and undermines women's rights. Enhancing legal coherence and institutional enforcement is crucial for safeguarding women within Indonesia's plural marriage framework.¹⁵³ Religious courts may acknowledge marriages between individuals of varying backgrounds, including nationality. However, these unions are required to adhere to the principle that marriage is fundamentally based on a shared religious belief.¹⁵⁴

The 1974 Marriage Law reflects Indonesia's ongoing conflict between individual rights, religious traditions, and official power. S. Pompe and J.M. Otto say the statute left open the question of whether state law or Islamic law should apply to Muslims.¹⁵⁵ Muslim women cannot marry non-Muslim men unless they convert, which limits their freedom of choice and violates Pancasila's egalitarian and pluralistic values.¹⁵⁶ Under the New Order, religious judges had increased control over Muslim family issues to remove colonial restraints and impose new ones by requiring both partners to practice the same religion. Thus, Muslim family law cases are heard in religious courts and non-Muslim proceedings in district courts.¹⁵⁷

¹⁵² Firdaus Firdaus et al, "The Protection of Islamic Women in Indonesia: Evaluation of Polygamy Sanctions and Its Implications" (2023) 31:1 KARSA Journal of Social and Islamic Culture at 91.

¹⁵³ Nabiela Naili, A Kemal Riza & Ta'mirotul Biroroh, "Dynamic Problems of Polygamy Cases in Indonesia: The Showcase of Juridical Authority, Implementation of Contra Legem and Fiqh Argumentations" (2022) 12:1 al-Daulah Jurnal Hukum dan Perundangan Islam at 57.

¹⁵⁴ Vivia Damayanti, Isti Sulistyorini & Sri Pujiningsih, The analysis of interfaith marriage was reviewed by Law Number 1 of 1974 (as amended by Law Number 16 of 2019) and Law Number 23 of 2006 (Pekalongan: Faculty of Law Pekalongan University, 2023) at 152.

¹⁵⁵ Sebastiaan Pompe & Jan Michiel Otto, "Some Comments on Recent Developments in the Indonesian Marriage Law with Particular Respect to the Rights of Women" (1990) 23:4 *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* at 418.

¹⁵⁶ *Ibid.*

¹⁵⁷ Syawaluddin Hanafi, *supra* note 33.

The 1974 Marriage Law shows how Indonesia recognizes religious law but ultimately limits it to maintain legal uniformity, creating ongoing tension between state rules, religious norms, and human rights, particularly in gender equality. Restrictions on interfaith marriage for Muslim women and uneven access to justice in polygamy and inheritance cases reveal conflicts between religious interpretations and constitutional guarantees of equality and freedom of religion.¹⁵⁸ Addressing these issues requires clearer regulations on interfaith marriage, more consistent judicial practice, and stronger protection of women's rights in family law. Aligning legal pluralism with constitutional principles can reduce ambiguity, support gender equality, and strengthen Indonesia's commitment to Pancasila while ensuring fairness and legal certainty in the marriage system.

C. Reform Order: Controversial Sharia Cases in Aceh

The introduction of Islamic law in Aceh created a dual legal system of secular and religious courts. Islamic law in Aceh has long governed beliefs, worship, and religious socialization, reflecting what B. J. Boland described as the deep link between Acehnese identity and Islam.¹⁵⁹ After Soeharto's fall in 1998, Sharia provisions were granted under President Abdurrahman Wahid as a political compromise to ease tensions with GAM, enabling Aceh to gain special legal autonomy.¹⁶⁰

However, the implementation of Sharia, especially morality-based Qanun, remains contested by moderate and secular Muslim groups who view some regulations as conflicting with constitutional rights. Women are disproportionately targeted in morality enforcement, leading to public criticism such as the March 9, 2005, protest, where around 1,000 Acehnese accused Sharia officers of unfair treatment and public humiliation, highlighting ongoing tensions between religious identity, human dignity, and equality.¹⁶¹

¹⁵⁸ Baidhowi Baidhowi & Dian Latifiani, "Istbat of Marriage Implementation for Marriage After Enactment of Law No. 1 of 1974" (2021) 2:1 Journal of Islamic Law Studies at 9.

¹⁵⁹ Siregar, *supra* note 72 at 16-17

¹⁶⁰ New Desk, "Q&A: What you need to know about sharia in Aceh " (4 March 2018), online: The Jakarta Post.

¹⁶¹ Fadlullah Wilmot, *Reconfiguring politics: the Indonesia-Aceh peace process*, 20th ed by Aguswandi & Judith Large (London: Conciliation Resources, 2008) at 78.

Aceh's Sharia enforcement is criticized for its arbitrariness, which disproportionately affects women and the poor. Unverified public complaints, morality raids, and severe dress and khalwat laws have eroded public trust and violated Indonesia's human rights duties. Female groups criticize these practices but are rebuffed and underrepresented in Aceh's parliament. Aceh's Sharia system combines regional sovereignty, religious identity, and constitutional rights.¹⁶² Although qanun laws promote Islamic ideals, inconsistent enforcement shows a disconnect between legislative goals and social reality. Reform should clarify enforcement, increase vulnerable group protections, and connect Aceh's autonomy with national law and human rights.¹⁶³ According to Feener, many local actors support Sharia implementation, reflecting a more nuanced pattern of acceptance and contestation.¹⁶⁴

Feener observes that Sharia in Aceh is not solely concerned with legal institutions; it also involves the promotion of specific Islamic values and the formation of social behavior as a foundation for social change.¹⁶⁵ When Daud Beureueh rebelled against Sukarno, GAM under Tgk. Hasan Di Tiro waged political struggles that shaped Aceh's Sharia history. Despite GAM's rejection of autonomy and demand for independence, the Indonesian government granted Aceh special autonomy under Law No. 44/1999 and Law No. 18/2001, allowing Islamic law to be implemented.¹⁶⁶ The local government subsequently issued qanuns to help ensure the full implementation of Sharia. As these qanuns operate within the national legal framework, they are required to comply with more stringent laws to preserve legal consistency.¹⁶⁷

¹⁶² Conflict Resolution, Political Decentralization, Disaster Risk Management and the Practice of Sharia Law: The Case of Aceh, Indonesia, by Hans Ferdinand Illy (Freiburg, January 2012) at 10.

¹⁶³ Sehat Ihsan Shadiqin & Eka Srimulyani, "The Contested Authorities: Institution and Agency in the Enforcement of Sharia Law in Aceh, Indonesia" (2021) 5:2 Journal of Contemporary Islam and Muslim Societies at 199 & 207.

¹⁶⁴ Al Makin, "Islamic Acehnese Identity, Sharia, And Christianization Rumors: A Study of the Narratives of the Attack on the Bethel Church in Penauyong Banda Aceh" (2016) 10:1 Journal of Indonesian Islam at 7.

¹⁶⁵ R Michael Feener, *supra* note 111.

¹⁶⁶ Kamaruzzaman Bustamam-Ahmad, "The Application Of Islamic Law In Indonesia: The Case Study of Aceh 1" (2007) 01:1 Journal Of Indonesian Islam at 155 & 163.

¹⁶⁷ Teuku Saiful, Indra Kesuma Hadi & Humaira, "The Formalization Of Sharia In Aceh Province: A Gender Perspective" (2023) 25:1 Kanun Jurnal Ilmu Hukum at 161–162.

VI. CONCLUSION

This paper shows that Indonesia's constitutional framework negotiates Islamic constitutionalism, legal pluralism, and democracy. The Jakarta Charter talks, the Masyumi party ban, and Aceh's qanun show persistent disputes between regional autonomy and the 1945 Constitution. Findings show that Sharia-based legislation, particularly in Aceh, fulfills religious desires but also raise human rights, gender equality, and minority protection issues. Inconsistencies and the Supreme Court and Constitutional Court's inability to directly review regional bylaws allow discriminatory rules like public caning and obligatory clothing requirements to exist.

These dynamics support Griffiths' legal pluralism, where multiple legal systems operate without integration, causing ambiguity and contradictory norms. Adopting a *maqāṣid al-sharī'ah* paradigm aligns Islamic legal principles with constitutional ideals by prioritizing justice, public welfare, and equality.

The report recommends harmonizing national and regional legislation and strengthening judicial review processes to ensure local Sharia-based laws comply with constitutional guarantees and Indonesia's human rights duties. To balance religious variety with Pancasila and democracy, policymakers must strengthen collaboration between the central government, regional authorities, and civil society. The measures listed are necessary to ensure coherence, inclusion, and respect for fundamental rights in Indonesia's multi-layered legal system while respecting religious views.

ACKNOWLEDGMENTS

None.

COMPETING INTEREST

None.

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