

**THE DYNAMICS OF POLITICS AND THE POSITIVIZATION  
OF ISLAMIC LAW IN INDONESIA: A HISTORICAL AND  
CONSTITUTIONAL ANALYSIS****Aditia M Yusup<sup>1</sup>, Kasman Bakry<sup>2</sup>, Samsuddin<sup>3</sup>**<sup>1</sup>UIN Syarif Hidayatullah, Jakarta, Indonesia<sup>2</sup> Sekolah Tinggi Ilmu Islam dan Bahasa Arab (STIBA), Makassar, Indonesia<sup>3</sup> Sekolah Tinggi Ilmu Agama Islam Al-Hidayah (STAIA), Bogor, Indonesia**Email:** aditia.myusup22@mhs.uinjkt.ac.id<sup>1</sup>, Kasmanbakry@stiba.ac.id<sup>2</sup>samsuddin@staiabogor.ac.id<sup>3</sup>**Abstract :**

*This study aims to analyze the political dynamics and the process of positivizing Islamic law in Indonesia by highlighting the history of its formalization and the development of Islamic law within the national legal system. The methodology employed is qualitative research with a historical and constitutional approach, involving the analysis of legal documents, scholarly literature, and theories of Islamic legal politics. This approach provides an in-depth understanding of the evolution of Islamic law within Indonesia's pluralistic legal context. The findings of the study indicate that the relationship between Islam and the state within the framework of national law has undergone three major phases: the Confrontational phase, characterized by conflict; the Reciprocal-Critical phase, reflecting efforts toward integration; and the Synergistic phase, which marks the harmonization of Islamic law and national law. The study also identifies several key pieces of legislation based on Islamic law, such as Law No. 7/1989 on Religious Courts and Presidential Instruction No. 1/1991 on the Compilation of Islamic Law, demonstrating the role of Islamic law in shaping the national legal system. The study concludes that the integration of Islamic law into Indonesia's legal framework, when implemented proportionally and harmoniously, can contribute to social and political stability while respecting the nation's diversity. The implications of this research underscore the importance of integrating Islamic law into the national system to ensure justice for Muslim communities. The study recommends policies that support spiritual and local values, as well as more inclusive harmonization strategies to ensure the sustainability of Islamic law in the modern context.*

**Keywords :** Islamic Law, legal politic, islamization**INTRODUCTION**

The advancement of religion in Indonesia has progressed in parallel with the rapid development of the nation, encompassing economic, social, cultural, and educational aspects. This progress has significantly influenced the social lives of Indonesia's diverse society. With the increasing religious awareness among the population, there is often an impact on their perspectives regarding nationalism and statehood. The relationship between the state and religion is difficult to separate and has long been interconnected. Historically, Indonesian nationalism was also supported by the contributions of religious figures, demonstrating that religion has provided substantial support to the nation's spirit of nationalism.

Efforts to positivize Islamic Law, which pertain to the inclusion of Islamic law within the framework of the national constitution, have sparked debates since the time of independence, including discussions surrounding the Jakarta Charter, which was perceived as reflecting Islamic law (*sharia*). Over time, the positivization of Islamic law as part of national legal reform has continued to face challenges from a legal system rooted in Dutch East Indies law, which often

conflicts with the culture, traditions, and legal values of Indonesia's predominantly Muslim society. Therefore, the positivization of Islamic law cannot be separated from the development of national legal politics, which continuously evolves to align with the identity of the nation. (Itmam, 2015)

Indonesia's cultural diversity, each region with its unique historical background, also influences the interaction between the state and religion. Even when the relationship between religion and the state has been constitutionally regulated, the two remain an inseparable entity, forming a dynamic relationship. (Goldstein, 2010), Islam, in particular, plays a significant role across various sectors, such as social, cultural, economic, and educational fields. The development of religious understanding among the populace not only enriches social dimensions but also shapes perspectives on nationalism and the state. Within this context of cultural diversity, the relationship between religion and the state in Indonesia remains dynamic and mutually supportive, as reflected in legal regulations where both elements often merge within the legal structure and the nation's sociopolitical life.

The importance of the relationship between religious law and the state has been widely discussed by scholars in their research, such as Ali Safaat. According to him, this relationship can be divided into two perspectives: (1) law in the modern perspective is regarded as an instrument of secularization, as it is formulated based on rational and logical considerations rather than religious values, and (2) law serves two functions, namely integrative and transformative. The integrative function positions law as a tool for the government to regulate state life, resolve conflicts, and maintain social order. Meanwhile, the transformative function refers to law as a medium to express legal norms and change the socio-political conditions of society. Overall, it can be concluded that the relationship between law and religious life aims to regulate religious affairs as part of the secularization process, which involves the separation of religion and the state. (Safa'at, 2018)

The relationship between the state and religion can be classified into four models: theocracy, Erastianism, strict separation of religion and the state, and a weak separation between religion and the state. (Wogaman, 2000), Islamic law (Sharia), on the other hand, is more theocratic in nature, as it is believed by the community to originate from divine authority, rather than human-made laws or customary laws. It is not the result of a political process within a state. (Salman, 1987).

In reality, since the arrival of Islam in Indonesia in the 7th century AD, Islamic law has been implemented and developed in various regions of the archipelago, alongside the spread of Islam and the formation of large Muslim communities. For example, numerous written works on Islam and Islamic law were produced by prominent Muslim scholars in Indonesia's past, tailored to meet the legal needs of society. (Laffan, 2011) Among these significant works are the book *Şirāṭ al-Mustaqīm* (a jurisprudence text of the Shafi'i school) by Nurdin Ar-Raniri and *Sabīl al-Muhtadīn* by Muhammad Arsyad al-Banjari. These facts, along with the development of Islam in Indonesia, have strengthened the

demand for the implementation of Islamic law in Indonesia, especially after the New Order era. This is evident from the various efforts to incorporate Islamic law into the national constitution, whether through religious advocates in high-level government assemblies or other avenues (Pedoman Pelaksana Tugas Dan Administrasi Peradilan Agama, 2020.)

In analyzing this social reality, it can be concluded that the politics of law in the formation of a religion-based state legal system aim to implement laws relevant to the Muslim community. Additionally, other objectives include strengthening the economic position of Muslims and protecting the practice of religious life in Indonesia. The scope of Islamic law, as part of the substance of state law, is limited to religious aspects and does not extend to public law, meaning it applies exclusively to adherents of Islam.(Safa'at, 2018)

This study aims to describe the historical and juridical trajectory of Islamic law in Indonesia, analyze its positivization efforts, and examine the challenges arising from secularization within the framework of the national legal system. This research relates to previous studies, such as "The Existence and Dynamics of Religious Courts in Indonesia: Roles, Challenges, and Developments within the National Legal System" by Yusup, Samsuddin, and Bakry. The findings of this study reveal that although Religious Courts, as part of the positivization and integration of Islamic law into national law, have made significant progress, challenges remain regarding integration with the national legal system and modernization. Therefore, the role of Religious Courts in promoting justice for the Muslim community must continue to be strongly synergized with the national legal system.(Yusup et al., 2024)

Other relevant studies include "The Implementation of Islamic Legal Principles in Law Enforcement in Indonesia: Case Studies and Evaluations" by Halim. This research examines how Islamic legal principles are applied within Indonesia's national legal framework and evaluates the challenges and effectiveness of their implementation. Using a qualitative analysis approach involving legal document studies, practical case studies, and expert interviews, this research identifies significant efforts to integrate Islamic law into the national legal system. However, challenges such as interpretative differences, social resistance, and implementation issues remain significant obstacles. Based on this analysis, the researcher recommends enhancing efforts to integrate Islamic legal principles into the state legal system.(Halim, 2024)

Another study by Prasetyo, titled "The Transformation of Islamic Values in Positive Law", concluded that positive law in Indonesia suffers from a lack of spiritual and religious dimensions, as it has been separated from religious elements and is merely regarded as state regulations that prioritize legal certainty rather than moral good or evil. Therefore, a transformation and integration of Islamic values into the national legal system is necessary. This integration is expected to infuse spirituality into the national legal framework, allowing the law to be understood as a form of worship to Allah while simultaneously contributing to the development of Islamic civilization in Indonesia without the need to establish an Islamic state.(Prasetyo, 2020) The difference between this

study and previous research, such as that by Yusup et al., which examined the existence and challenges of Religious Courts within the national legal system, lies in its historical approach and deeper analysis of the positive role of Islamic law at the constitutional level. Furthermore, this research explores the challenges faced in addressing secularization within the Indonesian legal system, while prior studies have primarily focused on the development of Religious Courts as part of the integration of Islamic law into the national legal framework.

This study also differs from Halim's research, which focuses on the integration of Islamic legal principles into the national legal system and evaluates the effectiveness and challenges of their implementation. Unlike Halim's work, this study has a broader scope, emphasizing the dynamics of Islamic legal politics and the process of positivizing Islamic law within the framework of Indonesia's national constitution. It not only assesses the application of Islamic law but also delves into the challenges posed by secularization and the role of Islamic legal politics from historical and juridical perspectives, spanning from the colonial period to the reform era. Furthermore, this study concentrates on efforts to harmonize Islamic law with the national legal system and examines the impact of legal pluralism on the acceptance of Islamic law in Indonesia. Thus, it provides additional insights into the dynamic interplay between Islamic law and national legal politics, which has not been thoroughly explored in Halim's study.

Additionally, this study significantly diverges from Prasetyo's work, titled "The Transformation of Islamic Values in Positive Law." Prasetyo's research focuses on the incorporation of spiritual Islamic values into positive law, highlighting the need to integrate the moral and spiritual dimensions of Islam into positive law. This integration, according to Prasetyo, would infuse the law with a sense of worship to Allah while fostering the development of Islamic civilization, without the necessity of establishing an Islamic state. In contrast, this study places greater emphasis on the political dynamics surrounding the positivization of Islamic law in Indonesia. It explores the political roles and challenges that emerge in harmonizing Islamic law with the pluralistic national legal system. While not exclusively focusing on the spirituality of law, this research also takes into account the historical and juridical contexts that shape the acceptance and evolution of Islamic law in Indonesia, as well as the challenges posed by secularization, which may constrain the scope of Islamic law within the national constitutional framework. Consequently, this study offers a broader and more comprehensive analysis of the politicization and dynamics of Islamic law, which is not extensively addressed in Prasetyo's research.

## **RESEARCH METHOD**

The methodology employed in this study is a qualitative analysis utilizing historical and juridical approaches. It involves examining legal documents, conducting literature reviews, and performing theoretical analyses of the development and dynamics of Islamic legal politics from the colonial period to the reform era. (Basyir, 2019) Additionally, this research investigates the influence of various academic perspectives on Islamic law within Indonesia's national

constitution and the challenges posed by secularization in shaping the societal acceptance of Islamic law.

## **FINDINGS AND DISCUSSION**

### **Analysis of Islamic Legal Politics**

Legal politics evolves from the study of the interrelation between law and politics. Mahfud MD identifies three main principles in this relationship. First, law serves as a controller of politics, meaning it regulates and governs political activities. Second, there are instances where politics becomes a factor influencing the law; in such cases, both the formulation of norms and the enforcement of laws are heavily influenced by political interests, making law a variable dependent on politics. Third, the relationship between politics and law is reciprocal; as the adage states, "Politics without law leads to arbitrariness (anarchy), while law without politics loses its power".(Mahfud, 1999)

From the study of the relationship between law and politics, the concept of "Legal Politics" emerges. Legal Politics refers to legal policies designed or implemented at the national level, encompassing two primary aspects: the development through the creation and reform of laws to meet societal needs, and the enforcement of existing legal regulations, including strengthening the role of legal institutions and enhancing the quality of law enforcers.(Mahfud, 1998) Thus, legal politics concerns how laws should be created and directed within the context of national politics and how they perform their functions.

In Islam, legal politics is known as *al-Siyāṣah al-Syar'īyyah*, which refers to Islamic normative law developed based on human understanding, or in this case, the results of *ijtihad* (independent reasoning) by credible Islamic scholars (*ulama*). This type of law encompasses principles related to the welfare and benefit (*maslahah*) of humanity. Some scholars define Islamic legal politics as the effort of rulers to expand their role in achieving the welfare of the people, provided that such efforts do not contradict or deviate from the core teachings of Islam.(Khallaf et al., 1994) Islam, in its teachings, embodies compassion for all of humanity, including non-Muslims, and practices tolerance in many aspects. This is rooted in Allah's mercy towards His creation, which regards all humans equally without discrimination, even extending kindness to animals.(Ibrāhīm al-Ṭarīqī, 2007) Islam does not prohibit interactions (*muamalah*) with all people, including non-Muslims. The Prophet Muhammad himself engaged in interactions with non-Muslims, conducted transactions with them, accepted gifts from them, consumed food from their slaughter, socialized with them, maintained economic relationships with them, and never forced anyone to embrace Islam.(bin Muḥammad Safar, n.d.)

### **Islamic Legal Thought in Indonesia**

Religious norms in the context of national life and governance cannot be interfered with by the state. Even in secular countries that explicitly separate religion from state affairs in their constitutions, religious issues often intersect with state involvement in various cases. This phenomenon persists as long as

religion remains present in society. The legal system in Indonesia is pluralistic, a result of its historical development. This pluralism stems from the simultaneous application of three legal systems: customary law, Islamic law, and Western law. Consequently, there is a significant opportunity for the application of Islamic law in Indonesia.

There are three main reasons why Islamic law holds a place in Indonesia's constitution and why its application deserves to be advocated: first, a philosophical reason, where Islamic teachings serve as a way of life, a moral foundation, and a legal basis adhered to by the majority of Indonesian Muslims, playing a vital role in forming the basic norms of the nation as reflected in Pancasila; second, a sociological reason, which demonstrates that the historical development of the Muslim community in Indonesia reflects a continuous growth in legal consciousness based on Islamic principles; third, a juridical reason, supported by provisions in the 1945 Constitution, particularly Articles 24, 25, and 29, which provide space for the formal and juridical application of Islamic law. (Tamam, 2018)

Therefore, it is not an exaggeration to state that Islamic law in Indonesia constitutes "living law." Although in certain aspects Islamic law has not yet been formally incorporated as positive law by the state, it remains relevant. The numerous legal questions and issues raised by the public to Islamic scholars (ulama) and Islamic organizations indicate that Islamic law is indeed alive and plays an active role in societal life. (*Hukum Islam Dan Pluralitas Sosial / Said Agil Husin Al-Munawar; Editor: Hasan M. Noer, Musyafa-Ullah | Perpustakaan Universitas Islam Negeri Sultan Syarif Kasim Riau, 2005*)

To realize the application of Islamic law in Indonesia, efforts must be made to actualize Islamic law so that it aligns with the development of national law. This actualization can be achieved through the implementation of Islamic law by drafting regulations applicable to the Muslim community and establishing Islamic law as one of the sources of law in the formulation of national legislation. (WARNOTO, 2007)

In the context of applying Islamic law to society, Ismail Suny divides its history into two phases: the Dutch East Indies period and the period of the Republic of Indonesia before the Reformation era. During the Dutch East Indies period, Islamic law experienced two stages: the period of full acceptance (*Receptie in Complexu*) and the period of Islamic law acceptance under customary law (*Receptie*). Meanwhile, after Indonesia's independence, Islamic law underwent two stages: the period of Islamic law acceptance as a persuasive source and the period of Islamic law acceptance as an authoritative source. (Rachmat Djatnika et al., 1991) The elaboration of the periods of Islamic law acceptance theory is as follows:

The period of full acceptance of Islamic law (*Receptie in Complexu*): refers to the era when Islamic law was comprehensively applied by Indonesian society. The comprehensive implementation of Islamic law was closely related to the history of Islam before the Dutch East Indies period, during which Islamic law was already practiced by the community. During the Dutch East Indies era, the

Receptie in Complexu theory was introduced by L.W.C. van den Berg (1845–1927), a Dutch scholar who was the first to be appointed as an advisor to the government in the field of Eastern literature and Islamic law. His task was to provide colonial officials with an understanding of Islamic teachings directly related to the daily lives of Muslim communities. (Van Den Berg, 1886) Based on his years of experience in Indonesia, he concluded that the application of Islamic law in Indonesia was of significant importance. He then proposed that Minhāj al-Ṭālibīn (along with its French translation) be used as a reference book for judges in religious courts. For the local community, the law was profoundly influenced and determined by their religion, as long as no evidence suggested otherwise. Embracing a religion meant accepting and being bound by the legal rules of that religion. If evidence of exceptions or differing rules existed, it was considered a "deviation" from the entirely accepted religious law. This principle was reflected in the existence of religious courts that had been established since the era of the sultanates. (Van Den Berg, 1886) Islamic law continued to function and was recognized by the Dutch government, particularly in matters of marriage and inheritance law. To support its implementation, the government compiled a special legal framework to serve as a guide for legal officials, making it easier to resolve cases within the indigenous community. Therefore, it is not surprising that the Dutch government recognized and implemented Islamic law in inheritance and marriage cases through the regulation known as "Resolutie Der Indersche Regeering," issued on May 25, 1870. This regulation included a collection of Islamic legal rules related to marriage and inheritance, adopted by Dutch courts and referred to as the "Compendium Freijher." This highlights the strong position of Islamic law during that period. (Rofiq, 1995)

The Receptie theory, proposed by Christian Snouck Hurgronje (1857–1936) : was one of the pioneering studies of Islam as an independent discipline by a Western scholar. Hurgronje is regarded as a trailblazer in Islamic legal studies in Europe, employing a historically based approach. Van Niel describes him as someone with deep knowledge of Indonesia, or the Nusantara region. According to this theory, Islamic law could be applied only if it was agreed upon and accepted by local customary law. This directly contradicted the previous theory of Receptie in Complexu. Hurgronje also argued that the complete acceptance of Islamic law by the Dutch administration reflected their lack of understanding of Indonesian society and Islam. (Hutagalung, 1985)

As a government advisor, Snouck provided recommendations known as the "Islam Policy." He formulated guidelines for the Dutch government in dealing with Muslims in Indonesia, aimed at bringing indigenous communities closer to the colonial government and European culture. The core of his advice was that the government should grant Muslims full freedom to practice their religious worship. In the social sphere, the government was expected to respect local customs and traditions. However, in the political domain, the government should not provide any space and should even prevent anything that could support Islamic movements. (Suminto, 1985) This theory became the legal basis for the Dutch East Indies administration, which was incorporated into the

regulation known as “Wet Op De Staat Snrichting Van Nederlands Indie”, or “Indische StaatRegeering (IS)”, enacted in 1929. One of the provisions in this regulation stipulated that if disputes arose among Muslims, they had to be resolved by judges in Islamic religious courts, provided that local customary law permitted it. However, in practice, the Dutch East Indies government clearly sought to limit the application of Islamic law by narrowing the scope of normative rules contained in Islamic Sharia.(Suny, 1987)

The period of acceptance of Islamic law under the theory of *Receptio a Contrario* : represents a contrasting perspective to the *Receptie* theory proposed by Christian Snouck Hurgronje. *Receptio a Contrario* asserts that customary law may only be applied to Muslims as long as it does not contradict Islamic law. This theory was introduced by Indonesian legal scholars Sayuti Thalib and Hazairin, who opposed the colonial-era concept of *Receptie*, which subordinated Islamic law to customary law. According to *Receptio a Contrario*, customary law must conform to and align with Islamic law, and its application is only valid if it has been recognized by Islamic law. Sayuti Thalib emphasized that in matters of marriage and inheritance among Muslims, Islamic law must take precedence, as it aligns with the norms and beliefs of the Muslim community.(Thalib, 1980) The *Receptio a Contrario* theory emerged in response to the colonial government’s attempts to undermine Islamic law by placing it under the framework of customary law. Sayuti Thalib argued that this approach was inconsistent with the reality of Islamic jurisprudence, which held a central role in guiding the lives of Muslim communities in Indonesia. For instance, in the areas of marriage and inheritance, Islamic law had already been deeply entrenched and widely practiced long before colonial interference. Hazairin, another prominent scholar supporting this theory, elaborated that customary law should be seen as supplementary to Islamic law, rather than as a separate or dominant system. He highlighted that the foundational basis of Islamic law comes from divine revelation (*wahyu*), making it superior to human-made customary practices of *Receptio a Contrario* theory was particularly relevant in the post-independence period, where the integration of Islamic law into the national legal framework became a key focus. Islamic law, rooted in the *Shari’a*, was perceived as essential for maintaining the identity and legal rights of the majority Muslim population in Indonesia. Sayuti Thalib and Hazairin’s perspectives reflected the broader sentiment among Islamic scholars and leaders who sought to ensure that Islamic principles were not marginalized in the development of Indonesia's legal system.(Bowen, 2003) Furthermore, illustrate that this theory was not merely theoretical but had practical implications. For example, in Aceh and other regions with strong Islamic traditions, *Receptio a Contrario* served as the foundation for judicial decisions in religious courts. These courts prioritized the application of Islamic law over customary practices, particularly in disputes involving marriage, divorce, and inheritance, reinforcing the notion that Islamic law should remain central in governing the lives of Muslims. This approach not only upheld the religious values of the Muslim majority but also contributed to the preservation of Indonesia's cultural and legal identity.(Feener, 2013)

## **The Dynamics of Islamic Law in Indonesia**

The dynamics of the relationship between Islam and politics in Indonesia have been evident since the formulation of Pancasila as the State Ideology. As recorded in the history of the Jakarta Charter, after the Jakarta Charter was included in the Presidential Decree, Professor Mahadi stated his view that the phrase "The obligation to implement Islamic Sharia for its adherents" has two dimensions. First, the individual dimension, which emphasizes that every Muslim is obligated to implement Islamic Sharia. Second, the state dimension, which is divided into two sides: the passive side and the active side. The passive side implies that the state or government should provide the freedom for Muslims to practice Islamic Sharia as long as it does not conflict with Pancasila and maintains religious harmony. Meanwhile, the active side requires the state or government to actively play a role, such as by providing facilities, offering assistance, creating necessary regulations, and taking other measures to support the Muslim community in practicing Islamic Sharia. One of the significant debates concerned whether the seven words in the first principle of Pancasila ("The obligation to implement Islamic Sharia for its adherents") should be included or not. In this context, the Minister of Religious Affairs during the New Order era, General Alamsyah Ratu Perwiranegara, remarked that "Pancasila is the greatest gift given by Muslims to the Republic of Indonesia". (Anshari, 1997)

During the New Order era, conflicts between Islam and politics arose when the government implemented modernization policies that encouraged shifts in the mindset, outlook, and socio-cultural dynamics of Indonesian society, leaning toward adopting Western values. For Muslims, this modernization created a dilemma, forcing them to choose between supporting modernization, which was equated with supporting Westernization, or rejecting it, at the risk of losing opportunities for national development. This conflict gave rise to three attitudes among Muslims toward modernization. First, the apologetic attitude, which rejected all values associated with modernization because they were identified with secularization and Western culture. Second, the adaptive attitude, which accepted modernization values that did not contradict Islamic Sharia. Third, the creative attitude, which emphasized a dialogical and intellectual approach to respond to modernization. Among these three approaches, the creative attitude became dominant. Muslims viewed the intellectual approach as more representative in building a modern Islamic society without rigidity. (Rahardjo, 1993)

As the political complexities in advancing political Islam in Indonesia increased, coupled with the diversity of Indonesia's population, which is not entirely Muslim, the unification of the population within the framework of political Islamic mass organizations became difficult. This ultimately led to the emergence of the concept of cultural Islam. This idea was seen as a middle ground for Muslims to remain active in the national political arena. Toward the end of the 1970s, this approach began to show results with opportunities opening for Muslims to participate in Islamic politics during the New Order era. The tension between Islam and the state during the New Order was also caused by

political policies that placed Islam in a marginal position within national politics.(Majid, 2008)

History shows that the relationship between Islam and the state during the New Order era experienced significant dynamics, transitioning from a Confrontational phase to a reciprocal-critical phase, and eventually to a Synergistic phase. During the period from 1966 to 1981, the Confrontational phase reflected a pattern of hegemony between Islam and the New Order government. The state's strong authority influenced political ideology down to the grassroots level, provoking reactive responses from Islamic groups, leading to ideological conflicts that positioned Islam as an opposition force against the government.(Anwar, 1995)

During the phase of reciprocal-critical interactions between 1982 and 1985, Islamic groups began to reassess their views, striving to present an intellectual approach within Indonesia's political landscape. This approach facilitated a mutual understanding of the importance of unity between Muslims and the government. During this period, some Islamic groups began to accept the *asas tunggal* (single ideology) as the foundation for political ideology. However, in the context of the development of Islamic law in Indonesia, the opportunities for Muslims to advocate for their rights were more evident during the previous Confrontational phase. Islamic groups, feeling marginalized, perceived the New Order government as attempting to replace Islamic law.(Saleh, 1996)

Muslim efforts to advocate for their aspirations regarding legal rights were evident in the enactment of Law No. 1/1974, followed by Government Regulation No. 9/1975. Additionally, the government established regulations on *wakaf* (endowments) under Government Regulation No. 28/1977. Muslim efforts in the legislative domain did not stop there; they revisited the issue of religious beliefs and traditional spiritual practices in the 1945 Constitution, advocating for Islam to be formally recognized as the state religion. One of the most important aspirations for Muslims was the ratification of the Religious Court Bill (Rancangan Undang-Undang Peradilan Agama, RUU PA), aimed at regulating the implementation of Islamic courts in Indonesia.(Sukarja, 1997)

In the phase of reciprocal-critical interactions, Muslims began to recognize the importance of strategies through structural-bureaucratic channels within the government system. At this stage, Muslim intellectuals and politicians were encouraged to play direct roles in governance. Through structural-functional approaches, Muslims achieved significant progress, with an increasing number of Islamic figures participating in various levels of government, from central to regional levels, simultaneously strengthening the New Order regime by combining civil, Islamic, and military elements.

In the Synergistic phase (characterized by reduced conflict and harmonization), Islam began to influence almost all aspects of governance and the state. The role of Muslims in national politics became highly significant, marked by the establishment of the *Ikatan Cendekiawan Muslim se-Indonesia* (ICMI, Association of Indonesian Muslim Intellectuals) on December 8, 1990, which was seen as a new step in strengthening political Islam in Indonesia. This

became even more evident with the accommodation of Islamic Sharia interests through Law No. 7/1989, which established Religious Courts as part of the national judicial system under the Judicial Authority Act No. 14/1970, followed by Banking Law No. 10/1998 (replacing Law No. 7/1992), Zakat Law No. 38/1999, and the Compilation of Islamic Law (KHI) through Presidential Instruction No. 1/1991, The overall participation of Muslims in politics reflects a progression from a phase of conflict, to a reciprocal-critical phase, and finally to a Synergistic phase.(Bisri, 1997)

The development of national political supremacy in the context of Islamic law requires the participation of various parties. The relationship between Islamic law and state authority is determined by the legal-political policies implemented. These policies result from political leaders representing diverse social and religious groups. When Islamic politicians have sufficient influence in steering political direction, the opportunity to strengthen the position of Islamic law in the political sphere increases significantly.

The emergence of efforts to positivize Islamic law is a step toward making Islamic law one of the sources for the formulation of legislation, including judges' decisions, customs, and legal doctrines. However, Indonesia, as a pluralistic nation, has various legal sources, making Islamic law not the sole reference. On the other hand, Islamic law holds significant importance given that Islam is the majority religion in Indonesia. Therefore, aligning Islamic law with the pluralistic national legal system is necessary to prevent potential conflicts in the future.

From the New Order era to the present, the development of Islamic law and its transformative process has consistently evolved alongside the political dynamics in Indonesia. During the New Order era, the relationship between Islam and the state passed through three main phases: first, the Confrontational phase, characterized by conflict; second, the reciprocal-critical phase, reflecting efforts to integrate Islam into the state structure; and third, the accommodative phase, which marked the achievement of harmonization between Islam and the state. These three phases created opportunities for the process of Islamization across various social, political, legal, and cultural aspects in Indonesia.

From these phases emerged constitutional articles based on Islamic law that had long been advocated for, including: Law No. 22/1946 on Marriage, Divorce, and Reconciliation Records; Emergency Law No. 11/1957 on the Structure of Civil Authority and Courts; Law No. 14/1970 on Judicial Authority; Law No. 1/1974 on Marriage Law; Law No. 7/1989 on Religious Courts (now Law No. 3/2006); Law No. 7/1992 on Islamic Banking (now Law No. 10/1998); Law No. 17/1999 on the Administration of Hajj; Law No. 38/1999 on the Management of Zakat, Infaq, and Sadaqah; Law No. 4/1999 on Special Autonomy for Nangroe Aceh Darussalam; the 1999 Political Law governing Islamic political parties; and Law No. 41/2004 on Waqf. In addition, various regulations below the level of laws also emerged, such as: Government Regulation No. 1/SD/1946 on the Establishment of the Ministry of Religious Affairs; Government Regulation No. 9/1975 on the Implementation of the Marriage Law; Government Regulation No. 28/1977 on Ownership Land Waqf;

Government Regulation No. 72/1992 regulating Profit-Sharing-Based Banking; Presidential Instruction No. 1/1991 on the Compilation of Islamic Law; and Presidential Instruction No. 4/2000 on Special Autonomy Management in Nangroe Aceh Darussalam” ( The Compilation of Islamic Law is a collection of regulations designed to facilitate the implementation of Islamic law in Indonesia. This initiative was first introduced through Presidential Instruction (Inpres) No. 1 of 1991. The primary objective of compiling this law was to provide a uniform and appropriate legal framework for Muslims in Indonesia, one that aligns with prevailing social values while remaining consistent with the country's existing legal system).(Nurlaelawati, 2010)

The struggle to politicize Islamic law in Indonesia has been a long process, facing numerous obstacles, while also serving as a historic milestone for proponents of Islamization in the future. One of the key milestones was the enactment of Law No. 7/1989 on Religious Courts, which holds special significance as Religious Courts themselves had existed since the colonial period (in the form of the *Mahkamah Syar'iyah*) and continued through the post-independence era. From the Old Order to the New Order, it was only in the late 1980s that Law No. 7/1989 was officially enacted as part of the constitution. A similar achievement occurred with Presidential Instruction No. 1/1991 on the Compilation of Islamic Law, which became the legal foundation for Muslims in resolving civil disputes. With the changing political climate and increasing democratization since the New Order era, significant progress has been observed in the development of Islamic law across various aspects of societal life. Structural and harmonious approaches to the Islamization of social, political, cultural, legal, and economic institutions have further expanded opportunities for the transformation of Islamic law within the national legal system.

## **CONCLUSION**

The development and positivization of Islamic law in Indonesia is a dynamic process that reflects the interplay between the nation's legal, social, and political systems. Despite Indonesia's pluralistic legal framework, which incorporates customary law, Islamic law, and Western law, efforts to establish Islamic law as a significant legal source have continued to evolve in response to the needs of the Muslim majority population. This process underscores the importance of harmonizing Islamic law with the pluralistic national legal system to ensure societal harmony and prevent potential conflicts.

Historically, the relationship between Islam and the state has undergone significant transformations, particularly during the New Order era, which saw three distinct phases: Confrontational, Dialogis-Konstruktif, and accommodative. These phases opened avenues for the gradual integration of Islamic principles into various aspects of Indonesia's legal and political systems. As a result, numerous laws and regulations incorporating Islamic law were enacted, including key milestones such as Law No. 7/1989 on Religious Courts and Presidential Instruction No. 1/1991 on the Compilation of Islamic Law. These developments reflect the success of efforts to institutionalize Islamic law

while maintaining alignment with Indonesia's national legal system.

The Compilation of Islamic Law, introduced through Presidential Instruction No. 1/1991, represents a pivotal step in providing a standardized legal framework for Muslims in Indonesia. It demonstrates how Islamic law can be aligned with prevailing social values and national legal principles, ensuring its relevance and applicability in the contemporary legal system.

Implications, Limitations, And Recommendations. This study contributes to the academic literature on the political dynamics and positivization of Islamic law in Indonesia. It expands the understanding of the relationship between Islamic law and the national legal system through a historical and constitutional approach. By highlighting the process of formalizing Islamic law, this research provides insights into how Islamic law can become an integral part of Indonesia's pluralistic legal system without compromising the values of nationalism and diversity. This analysis can be utilized by policymakers to develop a harmonious legal framework that accommodates the principles of Islamic law while maintaining integration with national law. Furthermore, this study is valuable for academics, legal practitioners, and other stakeholders in understanding the political dynamics involved in the process of positivizing Islamic law. In addition, the research has implications for legal education, particularly in broadening the knowledge and understanding of law students, academics, and practitioners about the importance of the history and political dimensions of Islamic law in shaping national policies. This education could encourage further discussions on the integration of Islamic law within the dynamic and pluralistic framework of national law. However, this study has several limitations that need to be addressed. First, its scope is restricted to a historical and constitutional approach, and it does not include a more in-depth empirical analysis of the implementation of Islamic law in societal and state practices. Second, the data and literature used in this study are primarily sourced from secondary materials available at the time of the research, which may not capture all perspectives or the latest developments related to Islamic law in Indonesia. This may affect the comprehensiveness and depth of the analysis presented. Moreover, the study does not explore in detail a comparative analysis of the positivization process of Islamic law in Indonesia with other countries that have similar experiences, making the findings specific to the Indonesian context.

Future research is recommended to conduct empirical studies on the implementation of Islamic law in Indonesia, particularly in the context of religious courts, the legal education system, and the application of Islamic law in economic regulations such as Islamic banking and zakat management. Such studies could provide both quantitative and qualitative data to evaluate the extent to which Islamic law has been integrated into the national legal system. Future research could also adopt a comparative approach to analyze the formalization process of Islamic law in Indonesia in relation to other countries, such as Malaysia, Pakistan, or Egypt, which have similar experiences.

## REFERENCES

- Anshari, S. (1997). Piagam Jakarta, 22 Juni 1945: Sebuah konsensus nasional tentang dasar negara Republik Indonesia (1945-1959). Gema Insani.
- Anwar, M. S. (1995). Pemikiran dan aksi Islam Indonesia: Sebuah kajian politik tentang cendekiawan Muslim Orde Baru. Paramadina.
- Basyir, A. (2019). Hukum Islam dan Politik di Indonesia. Ghalia Indonesia.
- bin Muḥammad Safar, Ḥasan. (n.d.). Mansyūrah 'Alā Mawāqī' Wizārah al-Auqāf al-Su'udiah. In *Nazarāt Istisrāfiyah Fi Fiqhi al-'Alaqāt al-Insāniyah Baina Muslimin Wa Gairi al-Muslimin*. al-Su'udiah.
- Bowen, J. R. (2003). *Islam, law, and equality in Indonesia: An anthropology of public reasoning*. Cambridge University Press.
- Bisri, C. H. (1997). *Bunga Rampai Peradilan Islam I. Bandung*. Ulul Albab Press.
- Feener, R. M. (2013). *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia*. OUP Oxford.
- Goldstein, N. (2010). *Global Issues: Religion ad the State*. New York: Facts on File, Inc.
- Halim, A. (2024). Implementasi Prinsip-Prinsip Hukum Islam dalam Penegakan Hukum di Indonesia: Studi Kasus dan Evaluasi. *SCHOLASTICA: Jurnal Pendidikan Dan Kebudayaan*, 6(1), 60-68.
- Hukum islam dan pluralitas sosial / Said Agil Husin Al-Munawar ; editor: Hasan M. Noer, Musyafa-Ullah | Perpustakaan Universitas Islam Negeri Sultan Syarif Kasim Riau. (2005). <https://inlislite.uin-suska.ac.id/opac/detail-opac?id=883>
- Hutagalung, M. P. (1985). *Hukum Islam dalam era pembangunan*. Ind. Hill-Company.
- Ibrahīm al-Ṭarīqī, A. (2007). *Al-Ṭarīqī, al-Ta'āmilu Ma'a Gairi al-Muslimīn*. Dār al-Faḍīlah.
- Itmam, S. (2015). *Positivisasi Hukum Islam di Indonesia*. Ponorogo: Stain Po Press.
- Khallaf, A. W., Adnan, Z., & Umayya, F. (1994). *Politik Hukum Islam*. Tiara Wacana Yogya.
- Laffan, M. (2011). *The Makings of Indonesian Islam: Orientalism and the Narration of a Sufi Past*. Princeton University Press.
- Mahfud, M. (1998). *Politik hukum di Indonesia*. Lp3s.
- Mahfud, M. (1999). *Pergulatan politik dan hukum di Indonesia*. Gama Media.
- Majid, N. (2008). *Islam, kemodernan, dan keindonesiaan*. Mizan Pustaka.
- Nurlaelawati, E. (2010). *Modernization, tradition and identity: The Kompilasi Hukum Islam and legal practice in the Indonesian religious courts (Vol. 4)*. Amsterdam University Press
- Prasetyo, Y. (2020). Transformasi Nilai-Nilai Islam dalam Hukum Positif. *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum*, 5(1), 91-106.
- Rahardjo, M. D. (1993). *Intelektual, intelegensia, dan perilaku politik bangsa*. Bandung: Mizan.
- Rachmat Djatnika, Endang Saifuddin, Anshari, & Ismail Suny. (1991). *Hukum Islam di Indonesia: Perkembangan dan pembentukan*. Remaja Rosdakarya.

- Rofiq, A. (1995). *Hukum Islam di Indonesia*. RajaGrafindo Persada.
- Saleh, H. M. (1996). *HMI dan rekayasa asas tunggal Pancasila*. Kelompok Studi Lingkaran.
- Suminto, H. A. (1985). *Politik islam hindia belanda*. Lembaga Penelitian Pendidikan dan Penerangan Ekonomi dan Sosial.
- Safa'at, M. A. (2018). *Dinamika negara dan Islam dalam perkembangan hukum dan politik di Indonesia*. (No Title).  
<https://cir.nii.ac.jp/crid/1130000794357554432>
- Salman, R. O. (1987). *Ikhtisar Filsafat Hukum*. Bandung: Armico.
- Sukarja, A. (1997). Keberlakuan Hukum Islam dalam Tata Hukum Indonesia, dalam Cik Hasan Basri. *Bunga Rampai Peradilan Islam I*, 24–25.
- Suny, I. (1987). Hukum Islam dalam Hukum Nasional. *Jurnal Hukum & Pembangunan*, 17(4), 351–357.
- Tamam, A. B. (2018). Perkembangan Hukum Islam di Indonesia. *Proceedings of Annual Conference for Muslim Scholars, Series 2*, 839–855.  
<https://proceedings.kopertais4.or.id/index.php/ancoms/article/view/185>
- Thalib, S. (1980). *Receptio a contrario: Hubungan hukum adat dengan hukum Islam*. Bina Aksara.
- Van Den Berg, L. W. C. (1886). *Le Ḥadhramout et les colonies arabes dans l'Archipel Indien*. Imprimerie du Gouvernement.
- Wogaman, J. P. (2000). *Christian perspectives on politics*. Westminster John Knox Press.
- WARNOTO, N. (2007). *POLITIK HUKUM ISLAM DI INDONESIA (STUDI KOMPARASI ERA ORDE LAMA, ORDE BARU, DAN REFORMASI)* [PhD Thesis, UIN SUNAN KALIJAGA YOGYAKARTA]. <https://digilib.uin-suka.ac.id/id/eprint/18027/>
- Yusup, A. M., Samsuddin, S., & Bakry, K. (2024). Eksistensi dan Dinamika Peradilan Agama di Indonesia: Peran, Tantangan, dan Perkembangannya dalam Sistem Hukum Nasional: The Existence and Dynamics of Religious Courts in Indonesia: Roles, Challenges, and Developments within the National Legal System. *DIRASAH: Jurnal Kajian Islam*, 1(2), 178–195.