

# The Role and Impact of Local Sharia Regulations in Indonesia's Constitutional Law (a Study of Characteristics Sharia Local Regulations)

Mohamad Hidayat Muhtar  
Universitas Negeri Gorontalo  
Email: [hidayatmuhtar21@ung.ac.id](mailto:hidayatmuhtar21@ung.ac.id)

Nur Mohamad Kasim  
Universitas Negeri Gorontalo  
Email: [nurkasim@ung.ac.id](mailto:nurkasim@ung.ac.id)

Irma Suryani  
IAIN Batusangkar  
Email: [irmasuryani@iainbatusangkar.ac.id](mailto:irmasuryani@iainbatusangkar.ac.id)

## Abstract

Indonesia's constitutional law embodies the ideals of Islamic law, guaranteeing the right to religion and worship in Article 29 of the 1945 Constitution. Local Sharia regulations, known as Sharia Perda, are one manifestation of this ideal. However, Sharia Perda is not without problems, such as discrimination and exclusivity towards non-Muslims and limitations on women's freedom. This research aims to identify the main characteristics of Sharia Perda and discuss its compatibility with constitutional law. The research employs a normative juridical approach, analyzing relevant laws and regulations, and using the legal hermeneutic method to interpret their meaning and philosophy. Sharia Perda has two main characteristics: Sharia compliance and local specificity. However, its implementation has resulted in controversies and conflicts, such as the prohibition of alcohol and criminalization of pre-marital sex. These controversies arise from the tension between Islamic law principles and constitutional law, particularly regarding individual rights and freedoms. This study contributes to the discussion of the compatibility of Islamic law and constitutional law, highlighting the need to address the problems of Sharia Perda, particularly the limitations on women's freedom and discrimination towards non-Muslims.

**Keywords:** *Islamic Law, Constitution, and Sharia Principles*

## Introduction

The constitution is always related to constitutionalism in that the basic foundation is a general agreement or consensus among most people regarding the idealized building of the state. The state organization is needed by citizens of the political community so that their common interests can be protected or promoted through the establishment and use of a mechanism called the state.<sup>1</sup> As a country born in the middle of the XX century (to be precise) on August 17, 1945, Indonesia inherited various state concepts from several countries that had already built a country and its independence.<sup>2</sup>

The 1945 Constitution contains the basic principles of the Pancasila State, and an Islamic perspective has the following meanings: First, Belief in One God as a spiritual foundation reflected in the 1945 Constitution and line with Islamic values. Second, humanity, as the moral and ethical foundation of the nation, which is reflected in Human Rights, views humans as creatures that Allah SWT glorifies. Third, unity is the social foundation of the nation with the spirit of kinship to share and cooperate in goodness and piety to achieve noble goals. Fourth, democracy as a reference for the nation's politics and deliberation to reach consensus as a basic principle in the decision-making process among interested parties and are morally accountable to Allah SWT. Fifth, justice is a common goal in the state that includes all aspects, such as legal and economic justice, and is followed by the goal of people's welfare.<sup>3</sup>

The legal provisions and procedures in M. Natsir's view are interpreted as an understanding that "in a country based on Islam, people from other religions have broad religious freedom; and they will not object if the country applies Islamic law on social matters. The law does not conflict with their religion, because in their religion there is no such regulation".<sup>4</sup>

The Local Regulation must be based on the uniqueness and characteristics of each region, as stated in Article 14 of Law Number 12

---

<sup>1</sup> Cecep Supriadi, 'Relasi Islam Dan Negara: Wacana Keislaman Dan Keindonesiaan', *Jurnal Kalimah*, 13.1 (2015) <<http://dx.doi.org/10.21111/klm.v13i2.285>>. p. 7

<sup>2</sup> Rusli Kustiaman Iskandar, 'Pemilihan Umum Sebagai Implementasi Kedaulatan Rakyat Di Indonesia' (Universitas Islam Indonesia, 2016). p.327

<sup>3</sup> MPR RI, *Empat Pilar Kehidupan Berbangsa Dan Bernegara* (Jakarta: Sekretariat Jendral MPR RI). p.6

<sup>4</sup> Masdar Farid Mas'udi, *Syarah UUD 1945 Perspektif Islam* (Jakarta: PT Pustaka Alvabert, 3rd Edition, 2013). p.5

of 2011 concerning the Formation of Legislation, which states that the content of Provincial Regulations and Regency/City Local Regulations contains material in the context of implementing local autonomy and co-administration tasks as well as accommodating special local conditions or further elaboration of higher legislation. The principle of local specificity is an important factor in the preparation of local regulations because various special circumstances in each region determine real or real autonomy to realize the ideals of democratic and prosperous local community autonomy.<sup>5</sup>

Based on that, from the historical perspective, the existence of regulations based on religion has been recognized and existed since the entry of Islam in Indonesia until the formation of several Islamic kingdoms, which were fully legal based on Islamic law. However, after entering the 20th century and reform, there were many pros and cons in implementing sharia-based regulations.<sup>6</sup>

This phenomenon inevitably raises pros and cons, including in Islamic society itself. The pro group said it was natural for Islamic law to be the legal basis for the life of the nation and state because Muslims are the majority of Indonesia's population. They called on Muslims to return to the Qur'an and al-Sunnah so that the various socio-political problems afflicting the Indonesian nation could be overcome. However, not all Muslim communities agree with the pro groups. However, there are contra groups who certainly do not disagree with Islamic law but only reject the religious understanding of the first group. According to them, what the first group understood as Islamic law was none other than the fiqh developed by early Islamic scholars. The problem is with the variety of fiqh viewpoints in this country. Which group opinion will be used as a reference? Not just forcing the view of one version of Islamic law, it is contrary to the spirit of Islam itself. After all, hasn't Islamic law been internalized into the social system of Indonesian society? According to the contra group, whether or not there are rules with the nuances of Islamic law, the community is already living by

---

<sup>5</sup> Bagir Manan, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum (PSH) Fakultas Hukum UII, 2002). p.13

<sup>6</sup> Understanding the content of a sharia-based regional regulation can be seen in its proper form (text) and requires a special study of the political and sociological elements that gave birth to the sharia-based regulation. Therefore, sharia-based regulations as legal products produced through the political constellation of various parties cannot be separated from the interests that accompany them

the guidance of the Shari'a.<sup>7</sup>

Data from 34 provinces shows that 443 Sharia Local Regulations were adopted between 1998 and 2013 in several districts in relatively small provinces. In other words, 67.7 per cent (300/443) of Sharia Local Regulations are only concentrated in six provinces. Provinces with the highest number of Sharia Local Regulations are West Java (103), West Sumatra (54), South Sulawesi (47), South Kalimantan (38), East Java (32) and Aceh (25).<sup>8</sup> According to the Women's National Commission (*Komnas Perempuan*), in 2016, there were 421 government policies through circular regulations that discriminated against minority groups and women. Meanwhile, 151 sharia regulations contain discriminatory elements.<sup>9</sup>

In its development, 154 local regulations that discriminate against women were issued. Nineteen were issued at the provincial level, while at the district/city level, 134 regulations and one local regulation at the village level. These local regulations were issued in 69 districts/cities in 21 provinces, and more than half of the discriminatory local policies (80 policies) were issued almost simultaneously, namely between 2003 and 2005. West Java, West Sumatra, South Kalimantan, South Sulawesi, Nusa Tenggara West and East Java are the six provinces whose districts most favour issuing discriminatory local policies. From Komnas Perempuan's analysis, 64 of the 154 local policies directly discriminate against women through restrictions on the right to freedom of expression such as how to dress, reducing the right to protection and legal certainty for criminalizing women, and ignoring the right to a decent living and work for humanity. The regulation is considered contrary to the constitution and violates human rights.<sup>10</sup>

Based on this, it can be seen that the problems with sharia regulations are mostly found in regions that do not have special/special

---

<sup>7</sup> Nur Rohim Yunus, 'Penerapan Syariat Islam Terhadap Peraturan Daerah Dalam Sistem Hukum Nasional Indonesia', *Jurnal Fakultas Syariah Dan Hukum UIN Syarif Hidayatullah Jakarta*, 12.2 <<https://doi.org/10.24239/jsi.v12i2.394.253-279>>. p.4

<sup>8</sup> Michael Buehler, *The Politics Of Shari'a Law: Islamist Activist And The State In Democratizing Indonesia* (Cambridge, United Kingdom: Cambridge University Press, 2016). 174

<sup>9</sup> Ign. L. Adhi Bhaskara, 'Kontroversi Perda Syariah: Dinilai Diskriminatif Dan Dipolitisir', *Tirto.Id*, 1 <<https://tirto.id/kontroversi-perda-syariah-dinilai-diskriminatif-dan-dipolitisir-dalS>> [accessed 20 April 2022].

<sup>10</sup> Arman Dhani, 'Perda Yang Menindas Perempuan', *Tirto.Id*, 2016, 1 <<https://tirto.id/perda-yang-menindas-perempuan-bx7s>> [accessed 20 April 2022].

autonomy.<sup>11</sup> Therefore, it is important to understand the characteristics of the application of sharia regulations in autonomous regions in general and regions that have special autonomy. This is solely to avoid disaffection both horizontally and vertically. This study will focus on two main aspects of the problem, namely: How is the concept of sharia regulations in the ideals of Islamic law in the Indonesian constitution, and how is the implementation of the characteristics of sharia regulations in special autonomous regions and autonomous regions, in general.

in supporting the originality of writing. The author outlines the differences between this paper and 2 similar articles. Namely, Muhammad Alim's article argues that Sharia Regional should be in line with the holy Quran and the 1945 Constitution. Cholida Hanum's article discusses the application of Sharia Regional from the perspective of State Administration and *Siyasah Dusturiyyah* and emphasizes the importance of regulations that guarantee the benefits of society. The third article by author's writing examines the characteristics of Sharia Regional and its compatibility with constitutional law, highlighting the tensions between Islamic law principles and individual rights and freedoms.

All three articles acknowledge the presence of Sharia Regional in Indonesia's legal system and discuss its impact on constitutional law. However, they differ in their approach and focus. Muhammad Alim's article emphasizes the importance of aligning Sharia Regional with Islamic principles and constitutional law. Cholida Hanum's article discusses the significance of Sharia Regional in the context of decentralization and highlights the need for regulations that guarantee the benefits of society. The third article provides a more critical perspective on Sharia Regional and examines its compatibility with constitutional law, focusing on its potential negative impact on individual rights and freedoms.

In summary, the three articles contributed to the ongoing discussion of the role and impact of local Sharia regulations in Indonesia's constitutional law. While they differ in their approach and focus, they all highlight the need for regulations that align with Islamic principles, guarantee the benefits of society, and respect individual rights and freedoms.

---

<sup>11</sup> The constitutional basis for the formation of this special and special region itself, namely Article 18B paragraph 1, reads, "The state recognizes and respects regional government units that are special or special in nature, which is regulated by law."

This research is categorized into the type of research is a normative legal it is based on the issues and themes raised as a topic of research. The research approach used is a philosophical and analytics, the research focuses on the view of the rational, analytical, critical and philosophical, and ended with the conclusion that aims to generate new findings as answers from subject matter that has been set. As well as will be analyzed with descriptive analytical method, namely by describing the laws and regulations that apply to the legal theory and practices of law enforcement positively related to the problem.<sup>12</sup>

## Content/ Discussion

### A. The Concept of Sharia-Based Local Regulations in the Constitution of Indonesian Islamic Law

Indonesia is known as a country with the characteristics of a religious society. His religious beliefs are very strong and even greatly affect its adherents' norms, values, culture, and daily behaviour. Our constitution expressly recognizes the thickness of this religiosity. Article 29, paragraph (1), states that the state is based on the one and only God, and paragraph (2) states that the state guarantees the independence of every citizen to embrace their religion and to worship according to their religion and beliefs.

Philosophically Article 29 paragraph (1) is in line with the first verse of Surah Al-Ikhlâs, which means "Say (Muhammad), 'He is Allah, the One and Only One. This letter contains the content of tolerance in faith and worship. Allah SWT said,

"Say: 'O disbelievers, I will not worship what you worship. And you are not worshipers of the God I worship. And I have never been a worshiper of what you worship, and you have never (also) been a worshiper of the Lord I worship. For you is your religion, and for me is my religion.'" (Surah Al-Kafirun).<sup>13</sup> Based on this, it can be said that the 1945 Constitution has high Islamic values related to aqidah (belief) in the life of the nation and state in Indonesia. The Indonesian constitution, which has high historical characteristics and values, implicitly makes religion and the state inseparable.

---

<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, 22

<sup>13</sup> Departemen Agama RI, *Al-Quran Terjemahan* (Bandung: CV Darus Sunnah: Departemen Agama RI, 2015) <<https://quran.com/66>>.

Yusril Ihza explained that about Article 29 of the 1945 Constitution, from the point of view of religious theology, freedom to embrace religion is transcendent (sourced from God), which gives humans the freedom to embrace religions freely without coercion from anyone, in addition to Article 29 strictly regulates freedom to embrace religion, not freedom not to adhere to religion. Ismail Suny stated the relationship between 2 (two) paragraphs in Article 29, namely that "...religions and beliefs that may be granted the right to live in the Republic of Indonesia are religions and beliefs that do not conflict or endanger the state basis of the One Godhead. While understanding atheism explicitly endangers the precepts of the One Godhead, because the notion of not believing in God aims to eliminate belief in God."<sup>14</sup>

The provisions of Article 29 of the 1945 Constitution, which states that the state is based on God Almighty, imply that the state is obliged to make laws and regulations or carry out policies to implement a sense of faith in God Almighty. In addition, as a limitation, an acknowledgement that Islamic law is included as a sub-system of the national law of the Republic of Indonesia. In addition, the state must make laws and regulations prohibiting anyone from harassing religious teachings. The word "hug" according to each religion can also be interpreted in a broader understanding not only as a declaration of religion adopted by a religious adherent in Indonesia but can also be interpreted as being able to carry out the implementation of the law adopted by every religion that exists and is recognized in Indonesia. . With this logic, the provisions of Article 29 paragraph (2) may be one of the entrances for Muslims in an area in Indonesia to be able to apply Islamic law for adherents and adherents of the Islamic religion.

The power of God Almighty is operationally implemented in the concept of popular sovereignty and the rule of law as it should be. With absolute belief in God's omnipotence, every human being is seen as equal. Thus, the people are sovereign in-state activities, not the rulers. The omnipotence of God Almighty is also embodied in the legal principles based on the 1945 Constitution, as the constitution is the highest source of law. Thus, some constellations are closely related to each other, namely the principle of God's Omnipotence, People's Sovereignty or democracy, and the idea of a rule of law or the principle

---

<sup>14</sup> Fatmawati, 'Perlindungan Hak Atas Kebebasan Beragama Dan Beribadah Dalam Negara Hukum Indonesia', *Jurnal Konstitusi*, 8.4 <<https://doi.org/https://doi.org/10.31078/jk%25x>>. 500



of a constitutional state that views law as the determinant in all states activities. Such an understanding is clearly in line with and with the notions that have developed in the theory and practice of the Islamic political tradition as described above.

The provisions in carrying out their respective religions and beliefs contained in the 1945 Constitution refer to the recognition of the existence of one God. Therefore, Indonesian citizens are free to determine their way of living their relationship with God according to their religion or belief while maintaining a balance to create tolerance between adherents of that religion and adherents of that belief.

The philosophy of God Almighty contained in this article can be understood to be identical to monotheism, which is the core of Islamic teachings, with the understanding that Islamic teachings provide tolerance for freedom and the widest opportunity for adherents of other religions to practice the teachings of their respective religions. In addition, the philosophy of monotheism, formulated as the one and only God, was able to cover all legal issues in the humanities, society, and the state. The freedom to embrace a religion or belief will be meaningless if it is not accompanied by the freedom to worship according to the religion or belief held. Syafii Maarif asserted that the attribute “the one and only one shows that the concept of divinity in the 1945 Constitution reflects the teachings of monotheism. This can be strengthened by the assumption that if the majority of the Indonesian people are not Muslims, our country’s basis will certainly not recognize the principle of divinity.”<sup>15</sup>

Integrating the divine spirit and other human values is essential for us to live a human life in this post-modern century. On the one hand, let us say that in the West, the nation’s society that places too much emphasis on the Anthropocentric dimension only considers human values and life by denying the divine dimension; On the other hand, the people of the nation, say, in the Islamic world, which is too theocentric, only wants to consider the divinity dimension by insulting human values and life. The future history and understanding of humankind require a comprehensive and balanced understanding and practice between the two groups of divinity and humanity. Our

---

<sup>15</sup> Rahman Mantu, ‘Islam Dan Konstitusi: Analisis-Komparatif Antara Teks Al-Quran Dengan Pasal 29 UUD 1945’, *Jurnal Ilmiah Al-Syir’ah*, 16.1 (2018) <<http://dx.doi.org/10.30984/jis.v16i1.644>>..3-4



constitution has articulated it precisely.<sup>16</sup>

The state's founders have conceptualized that the Republic of Indonesia is a state based on law.<sup>17</sup> A democratic state (sovereignty of the people) based on the One Godhead and social justice. Part of the Unitary State of the Republic of Indonesia. The state's founding fathers have conceptualized that the Republic of Indonesia is a state based on law, a democratic state (sovereignty of the people), based on the One Godhead, and social justice. The embodiment of Article 29, paragraphs (1) and (2) itself is implemented through sharia regulations.

The authority to form local regulations has, in principle, been regulated by Law no. 12 of 2011 concerning the formation of legislation.<sup>18</sup> The existence of local regulation is part of legal certainty and the elaboration of policies and laws and regulations that are at the mid-level or higher laws. With local regulations, the principle of administering local government is by the spirit of the law, which conceptualizes as a state of law.

From a socio-cultural perspective, Indonesia has a very wide cultural diversity. Indonesia has a diversity of ethnic groups, cultures and religions that gives rise to the motto *Bhinneka Tunggal Ika* that even though we have different ethnic groups, cultures and religions, we are still one as a nation of Indonesia. Diversity of culture, ethnicity and religion certainly affects the region's administration in the principle of local autonomy. In addition, Indonesia is one of the countries with a Muslim majority spread in every region in Indonesia. With the principle of local autonomy, each region has the opportunity to regulate the implementation of local government according to the wishes and beliefs of the community. One of the things that are being debated is related to legal products that contain or contain religious beliefs or values.

---

<sup>16</sup> Mantu. Op Cit. 4

<sup>17</sup> As a state, Indonesia asserts itself as a state of law (Article 1 paragraph (3) of the 1945 Constitution). In every country that adheres to the rule of law, there must be three basic principles, namely the supremacy of law, equality before the law, and law enforcement in a way that does not conflict with the law (due process of law). See, Majelis Permusyawaratan Rakyat Republik Indonesia, *Panduan Pemasyarakatan Undang-undang Dasar Negara Republik Indonesia Tahun 1945: Sesuai dengan Urutan Bab, Pasal, dan Ayat*, Jakarta: Sekretariat Jenderal MPR RI, 2006, 46-48

<sup>18</sup> See Law No. 12 of 2011 concerning the Establishment of Legislation. Chapter III Article 7 Paragraph (1).

They could create a local regulation that limits the use of plastic bags by retailers and encourages the use of reusable bags by customers. This regulation would be adapted to local content and the needs of the community in the region. Before the regulation is created, the community could provide input regarding the provisions in the regulation. For example, they could suggest that the regulation include penalties for retailers who do not comply or incentives for customers who bring their own bags.

However, it's important to note that this local regulation cannot conflict with higher legislation, such as national laws or regulations set by the provincial government. The local government would need to ensure that their regulation is in line with these higher laws and regulations.

#### B. Implementing the Characteristics of Sharia Local Regulations in Special/Autonomous Regions in General.

Some of the contents of Islamic law in a local regulation can be grouped into 5 (five) categories. Among others, firstly related to *al-ahwâl ash-syakshiyah*, which regulates family law, and secondly, economic and financial affairs. The third regulates matters of morality and religious (ritual) practices, the fourth regulate Islamic criminal law (*hudûd, qadzaf and qishâsh*), and the fifth applies Islamic ideology.<sup>19</sup> The author argues that this doctrine can be used as a reference in setting criteria or indicators in preparing sharia-based regulations, which are actualized through Law No. 23 of 2014. With higher laws. This is a logical consequence so that the resulting sharia regulations will remain within the corridors of the Indonesian legal system and minimize conflicts with sharia regulations.

The birth of a local regulation containing Islamic law<sup>20</sup> It is part of the principles of constitutional democracy adopted by the

---

<sup>19</sup> Ahmad Mudhar Libbi and et all, 'Analisis Peraturan Daerah Perspektif Syariah Islam Di Indonesia Ditinjau Dari Konsep Hak Asasi Manusia', *Artikel Ilmiah Hasil Penelitian Mahasiswa Fakultas Hukum Universitas Jember*, 1.1 p.3 (2013).

<sup>20</sup> As a logical consequence of the nation-state, where Islam is not the basis of the state, but Islam is equal to other religions and has a proper place in the constitution that the Unitary State of the Republic of Indonesia is neither a secular state nor a religious state, Islamic law cannot be legally enforceable. Formally/directly become the sole authoritative source for national law. However, in its contestation with Western and customary law, Islamic law can be a material and persuasive source for national law. See, Muchith A Karim, *Pelaksanaan Hukum Waris Di Kalangan Umat Islam Indonesia*, p.59 (Jakarta: Badan Litbang Kemenag, 2010).

Indonesian state. The constitution and democratic principles in the concept of *rechtsstaat* and the rule of law guarantee and recognize the implementation of local regulations whose material content is derived from religious values or Islamic law. In practice, everyone is obliged to respect the rights of the community and local government in the context of orderly life in society, nation and state.

One thing that is a phenomenon in nature, the excessive spirit of local autonomy has had an impact on several regions based on strong Islam starting to demand the implementation of Islamic sharia in an operational manner, such as the Special Region of Aceh, South Sulawesi, Gorontalo, Riau, Cianjur Regency, and Tasikmalaya Regency. The embodiment of sharia-based legislation that has developed in Indonesia is not only in the form of laws and regulations described in Article 7 of Law Number 12 of 2011 concerning the Establishment of Legislations related to types and hierarchies. The laws and regulations also have the types of regulations in which the authority of state institutions is stated in the law. The laws and regulations established by state institutions, such as the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law. So it can be said that the beginning of the formation of sharia-based legislation in Indonesia was first in 1974.<sup>21</sup>

The embodiment of sharia-based legislation is not only the influence of the entry of Islam, considering that the formation of laws and regulations is also an encouragement for participation from the community. Based on Article 96 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislations, "the public has the right to provide input orally and/or in writing in the formation of laws and regulations".

The embodiment of sharia-based legislation is one of the implementations of the nation's ideals contained in Pancasila, which recognizes the value of Islamic sharia in the first precepts providing the constitutionality basis for the implementation of sharia-based legislation. Considering the concept of constitutionality described in the previous explanation, the measurement of the formation of sharia-based legislation can be judged from the suitability of the formation of laws and regulations with the 1945 Constitution of the Republic of Indonesia.

---

<sup>21</sup> Itang, 'Kebijakan Pemerintah Tentang Lembaga Keuangan Syariah Era Reformasi', *Jurnal Hukum Islam*, XIV.2 <10.15408/ajis.v14i2.1280>.

The content material in sharia-based legislation is all content material in the context of meeting the needs of Muslims or implementing Islamic sharia values.<sup>22</sup> The content of sharia-based laws and regulations has similarities with national laws and regulations, which in their content must meet the principles of good laws and regulations and have a clear foundation. By taking into account higher laws and regulations or laws and regulations that have been formed so that there is no overlap between laws and regulations.

Based on the explanation above, not all statutory regulations are based on the same as sharia laws or sharia-based regulations, the content of which contains criminal provisions. One of the sharia-based laws and regulations, such sharia regulations, in which there are criminal provisions, for example, regulations related to the *jinayat* law in Aceh.<sup>23</sup> Adoption of the formation of the content of sharia-based local regulations derived from Islamic religious law sourced from the Qur'an. This is because the formation of sharia-based legislation in Indonesia is mostly contained in the form of sharia-based regulations. Therefore, the formation of sharia-based regulations mostly regulates issues related to the Islamic religion or prohibitions against actions prohibited in Islam.

Indeed, it still takes time to assess whether or not the local regulations are effective in providing positive effects and solutions for people's lives. Some researchers found interesting facts. There are social and political determinants behind the development of local sharia regulations at the local level in Indonesia. Most studies show that Islamic groups are the main supporters of the implementation of sharia in the public arena through laws or other forms of regulation. In addition, supporters of sharia local regulations in certain areas come from a cultural movement expressing local religious identity.

From this perspective, Islamic groups have influenced local political leaders, legislatures and various other political actors to implement sharia in their area as a way to recognize their cultural identity. Some researchers see that the political elite has played an important role in adopting sharia as the basis for local regulations.

---

<sup>22</sup> See, Article 14 of Law Number 12 of 2011 concerning the Establishment of Legislation

<sup>23</sup> Nur Chanifah Saraswati and Encik Muhammad Fauzan, 'Konstitusionalitas Peraturan Perundang-Undangan Berbasis Syariah Di Indonesia', *Simposium Hukum Indonesia*, 1.1 (2019) , p.12 <<https://journal.trunojoyo.ac.id/shi/article/view/6360>>.

In each case, elites have manipulated religious sentiment to serve their political interests. This helps explain the recent stagnation in introducing new sharia local regulations. In many cases, politicians who initially supported the introduction of sharia lost interest as soon as politics began to wane.<sup>24</sup>

Similarly, other researchers found that, first, the presence of local regulations was generally motivated by elite interests. Secondly, the implementation of sharia tends to be a means of imaging historical romanticism that wants to be returned to the present. Third, regulations related to sharia are more designed to regulate the people, not the leaders. Fourth, non-Muslims, women, and certain ethnicities are the most vulnerable parties as victims of the implementation of the Sharia regulation.<sup>25</sup> However, this fact reflects that the dynamics of Islamic law in Indonesia in the future will continue and will still be coloured by demands and resistance between various elements of this country's society.

For this reason, the actual material content of sharia-based regulations developed in Indonesia is about the relationship between humans and God, explaining how humans as God's creatures can obey the commands and prohibitions explained through Islamic law sources.<sup>26</sup> The measurement of positive law in Indonesia that is nationally recognized by the state, namely the establishment of sharia-based laws and regulations contained in state and local news sheets,

---

<sup>24</sup> Jamhari Makruf and Iim Halimatusa'diyah, 'Shari'a and Regional Governance in Indonesia: A Study of Four Provinces', *Australian Journal of Asian Law*, XV.1 (2014) p.6 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2459826](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2459826)>.

<sup>25</sup> Wasisto Raharjo Jati, 'Permasalahan Implementasi Perda Syariah Dalam Otonomi Daerah', *Manahij*, VII.2, p.7 <<https://doi.org/10.24090/mnh.v7i2.571>>.

<sup>26</sup> The revision of the old view that seeks to isolate religion from the political discussion is now being challenged by many postmodernists. It is interesting to observe the current revival of religion which is also followed in parallel with the spread of post-modern ideas that criticize the old views of modernity which are very anti-religious. The idea of revising the views of Marx, Hegel, Engel, Nietzsche, or other purportedly anti-religious philosophers. Now it is happening on a large scale. The postmodernist generation, previously Marxist, is now the sharpest critic of anti-religious misinterpretations. Among Muslims themselves, until now, there are three schools of thought regarding the relationship between Islam and the state administration. First, Islam is a complete religion. In it, there is a constitutional or political system. Secondly, an Islamic state or political system that must be imitated is the system implemented by the Prophet Muhammad and the four Al Khalifa al Rashidin. Third, in Islam, there is no constitutional system. There is a set of ethical values for country life. See Munawir Sjadzali, *Islam Dan Tata Negara: Ajaran, Sejarah Dan Pemikiran*, p.1-2 (Jakarta: UI Press, 5th Edition, 1993).

should regulate human-human relations.<sup>27</sup>

Contemporary developments in the emergence of sharia-based laws and regulations, both at the central and local levels in Indonesia, have the potential to create political, social and legal problems. Politically, the rise of laws and regulations that contain sharia in Indonesia, it is feared that it will repeat the tension of the past relationship between religion and the state, namely the failure to include Islamic law in the national constitution, which in the end will threaten the integrity of the Unitary State of the Republic of Indonesia with the ideology of Pancasila.<sup>28</sup> Suppose it is concluded that the problems related to the implementation of sharia-based laws and regulations in Indonesia, in this case, it can be said that there are more likely to be sharia-based conflicts. The content of sharia-based local regulations is not by the standards for applying Indonesian national law or cannot be in line with the designation of positive law.

As an illustration, Arskal Salim and Azyumardi Azra noted that there were at least three forms of response to the formalization of sharia regulations in Indonesia: first, from within the government, which allowed the integration of Islamic law into the national legal system, but only in a limited area; secondly, the rejection of non-Muslims and a small number of Muslims towards the implementation of shari'a (Islamic law) in any legal matter because it would undermine the principle of equality of law; third, from certain Muslim groups who are trying harder to distribute more elements of Islamic law to be legalized in the national legal system.<sup>29</sup>

---

<sup>27</sup> Hayatun Naimah, 'Sinkronisasi Muatan Peraturan Daerah Berbasis Syariah', *Jurnal Hukum*, 1.1 (2019), p.508 <file:///C:/Users/User/Downloads/6360-15283-1-SM.pdf>.

<sup>28</sup> Abdul Hadi, 'Study Analisis Keabsahan Perda Syariah Dalam Perspektif Teori Hirarki Norma Hukum', *Jurnal Ummul Qura*, IV.2 (2014), p.5 <<http://ejournal.kopertais4.or.id/pantura/index.php/qura/article/view/2033>>.

<sup>29</sup> Arskal Salim and Azyumardi Azra, 'The State and Shari'a in the Persective of Indonesian Legal Politics, Singapore: ISEAS', *Shari'a and Politics in Modern Indonesia*, 1.1 (2003), 33.

In this regard, based on the principle of autonomy<sup>30</sup> internal right self-determination, namely the right of the region to decide its destiny and to manage the affairs internally in its region, the region has the authority to regulate its household affairs, including the authority to form its local regulations. Moreover, Article 18B of the Constitution, which guarantees the recognition of local specialities, becomes the constitutional basis for implementing special autonomy.

Looking at the essence of the meaning of the first precepts of Pancasila stems from the belief that the universe and everything in it, as a harmoniously interwoven whole, was created by God Almighty, including humans by God. A man comes from God, and the ultimate goal of life is to return to his source. Therefore, being pious and serving God is a human obligation. Humans are obliged to carry out every command of God Almighty. In the view of Islam, the obligation of a citizen as a Muslim is his responsibility to obey Islamic law, as well as non-Muslims who are obliged to respect it. Therefore, he must obey the rights and obligations of each individually, and the government is obliged to enforce these rules so that Islamic law, which is the desire of all people, can run as expected.

A difficult condition for the codification of the law adopted by the Indonesian legal system. However, the aspiration to integrate Islamic law into national law is still faced with several problems, both in theory and practice. In the first area, among others, Muslims still understand and interpret Islamic law in various ways. While in the second area, there are still pros and cons among the internal community and externally with adherents of other religions. Apart from these two areas, some parties view that the legislative steps of Islamic law are full of political content, only narrowing the space and benefits of Islamic law itself and leading to the goldenization of Islamic law. Some

---

<sup>30</sup> The context of self-government in the discussion of local autonomy is necessarily placed in the correct corridor. This is due to the implementation of policies. Local autonomy is closely related to the paradigm of the government system adopted country. Is the state system in the form of a unitary state? (unitary state) or federal state (federal state). The choice of country system form greatly affects the implementation of regional autonomy policies. Besides concerning the state government system, another crucial aspect that is important to be discussed in discussing the true meaning of the notion of regional autonomy is that regional autonomy to go to self-government cannot be interpreted as absolute independence or freedom in exercising their rights and functions of autonomy according to their own will without considering the national interest as a whole, it will disintegrate the nation and the destruction of the state. See, I Wayan Arthanaya, 'Otonomi Dalam Penyelenggaraan Pemerintahan Daerah', *Kertha Wicaksana*, 17.2 (2011), 2.



consider that state intervention in religious law is an effort of power, based on its interests, to determine the nature and content of Islamic law to be enforced.<sup>31</sup>

Apart from several problems above, it can be said that Indonesian Muslims are quite free to carry out the teachings of Islamic law in the civil field without being obliged by the state. Meanwhile, in the field of public law, it is subject to national laws that are unified (apply equally to all citizens even though they have different religions). In the realm of public law, such as constitutional law, administrative law, criminal law, environmental law, and others, certain religious laws do not apply. Such an inclusive view is a consequence of Indonesia's choice regarding the relationship between state and religion, woven into what we call the Pancasila state. The Pancasila state is neither a religious state nor a secular state. The Pancasila legal system ensures a foundation for legal services to the Indonesian people, destined to live in pluralism from the start.

The most important goal of the dimension of social piety in Islam is that people organizationally try to uphold and implement what is right and prevent and destroy evil (*al amr bi al-ma'rf wa al-nahy `an al-munkar*). From this point of view, the application of Islamic law can be said to be a concretization of the first precepts of Pancasila, namely, carrying out God's commands with full obedience.<sup>32</sup> Implementing the first precepts of Pancasila while still paying attention to other principles in Pancasila, such as the spirit of harmony, the principle of propriety, and the principle of harmony.

Application of sharia regulations, Thus, it is necessary to maintain the harmony of the national legal system based on Pancasila and the 1945 Constitution.<sup>33</sup> This means that the implementation of Islamic

---

<sup>31</sup> Mahsun Fuad, *Hukum Islam Indonesia: Dari Nalar Partisipatoris Hingga Emansipatoris*, p.4 (Yogyakarta: LKiS, 2005).

<sup>32</sup> Efrinaldi, 'Perda Syariah Dalam Perspektif Politik Islam Dan Religiusitas Umat Di Indonesia', *Jurnal Madania*, XVIII.2 (2014), p.7 <<http://dx.doi.org/10.29300/madania.v18i2.14>>.

<sup>33</sup> Islamic law is a law that applies and is integrated with reality, even though the law has not yet become an official formal settlement (government is like the current positive law. However, the de facto reality of the application of Islamic law is parallel to the awareness of Muslims in everyday life in solving problems). Various social conflicts exist. This process can also be done through transformation. Namely, a dynamic process that leads to the formation of new characters and appearances on a problem thought transformation is the emergence of a new form of an idea due to the dynamics of time and society. See Umar Syihab, *Hukum Islam Dan Transformasi Pemikiran*, p.45 (Semarang: Dina

law in Aceh and local regulations with sharia nuances in other regions must be within the framework of the Unitary State of the Republic of Indonesia. The formation of sharia regulations, both materially and formally, still refers to national laws and regulations. Thus, the sharia regulation has a position in the national legal system. In forming the sharia regulations, national legislation must always be considered. Applying the principles in Islamic law can be applied eclectically, in the sense that values must be sorted out that do not conflict with the 1945 Constitution and other laws. Applying sharia regulations should not cause irregularities in the national legal system, which is far from the objectives of national law, so it impacts the disintegration of the Republic of Indonesia.

Sharia local regulations must also be in accordance with justice, where the purpose of making laws is to advance people's happiness. All actions which tend to produce and maintain the happiness of society are just. One of the people's happiness here is public peace, public order, and inter-community harmony.

Article 7 paragraph (1) of Law no. 12 of 2011 concerning the Formation of Legislations explained the types and hierarchies of laws and regulations consisting of 1945 Constitution of the Republic of Indonesia, Decree of the People's Consultative Assembly, Laws/Government, Regulations in Lieu of Laws, Government Regulations, Presidential Decree, Provincial Regulations, and Regency/City Local Regulations.

The acceptability of state laws and regulations to the existence of sharia law requires a certain format or legal form that is mutually agreed upon. Local regulations are regulations to implement the above legal rules and accommodate the special conditions of the region concerned. Referring to the principle of *lex superior derogat lex infiriore*, hierarchically, laws and regulations at a lower level must not conflict with regulations at a higher level.<sup>34</sup>

### C. Characteristics of Sharia Local Regulations in Special Autonomous Regions

As a unitary state with various local colours, it also gives rise to the right to special autonomy for certain regions. Special autonomy means that part of the state's territory is given the authority to regulate

---

Utama, 1st Edition, 2014).

<sup>34</sup> Ija Suntana, *Politik Hukum Islam*, p.68 (Bandung: CV Pustaka Setia, 2014).

its affairs in several respects through laws without being followed by the formation of a new state building. In line with this view, special autonomy can be interpreted as the autonomy obtained by a self-governing region that is different from other regions in a country as an acknowledgement of partial independence from the influence of the central government, which is determined through the level of autonomy in an entity in the political decision-making process.<sup>35</sup>

Recognition of special and special regions implies that there are special and special regions in certain respects compared to other regions. The specifics and privileges of certain regions are based on history and origin rights according to the 1945 Constitution of the Republic of Indonesia with authority to regulate and administer special and special powers,<sup>36</sup> such as Papua<sup>37</sup>, Aceh<sup>38</sup>, Special Region of Yogyakarta.<sup>39</sup>

One example of a special autonomous region that implements sharia regulations is the Province of Nanggroe Aceh Darussalam, which has special autonomy with the enactment of Law no. 18 of 2001 concerning Special Autonomy for the Province of Nanggroe Aceh Darussalam (NAD). This special autonomy complements Law no. 44 of 1999 concerning the Privileges of the NAD Province, which lists four main features for Aceh; (1) privileges in carrying out religious life in the form of implementing Islamic law for its adherents; (2) privileges in providing education; (3) privileges in carrying out traditional life; and (4) the privilege of placing the role of the ulama in determining policy. Based on the two main laws concerning Aceh, the Aceh legislative authority has drawn up various qanuns as their derivative rules.<sup>40</sup> UU no. 11 of 2006 concerning the Government of Aceh shows that the

<sup>35</sup> Lukman Hakim, *Filosofi Kewenangan Organ Lembaga Daerah: Perspektif Teori Otonomi & Penyelenggaraan Pemerintah Negara Hukum Dan Kesatuan*, p.78 (Malang: Setara Press, 2012).

<sup>36</sup> Baharudin, 'Desain Daerah Khusus/ Istimewa Dalam Sistem Negara Kesatuan Republik Indonesia Menurut Konstitusi', *Masalah - Masalah Hukum*, 45.2, p.68 (2016) <10.14710/mmh.45.2.2016.85-92>.

<sup>37</sup> Pemerintah RI, *UU Nomor 35 Tahun 2008 Tanggal 25 Juli 2008, Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 Tentang Perubahan Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua* (Indonesia, 2008).

<sup>38</sup> Pemerintah RI, *UU No. 11 Tahun 2006 Tentang Pemerintahan Aceh* (Indonesia, 2006).

<sup>39</sup> Pemerintah RI, *Undang-Undang Nomor 13 Tahun 2012 Tentang Daerah Istimewa Yogyakarta (DIY)* (Indonesia, 2012).

<sup>40</sup> Ali Geno Berutu, 'Penerapan Syariat Islam Aceh Dalam Lintas Sejarah', *Jurnal Hukum*, 13.2 (2016), p.182 <<https://e-journal.metrouniv.ac.id/index.php/istinbath/article/view/290>>.

authority of the Aceh government is increasing in running the wheels of government, especially in realizing Indonesian laws that were not realized before. The field of sharia can be seen in Chapter XVII Articles 128-137, which gives the Aceh Government the authority to implement sharia in various aspects (including *jinayat*).<sup>41</sup>

The implementation of sharia regulations in Aceh itself is rooted in the culture of the Acehnese, which can be seen from the factors that influence the culture itself. The teachings of Islam have influenced Acehnese culture for hundreds of years. This influence has entered into all aspects of the life of the Acehnese people, ranging from war tactics, art, community relations, education and teaching to other social lives.<sup>42</sup>

The provincial government of Aceh has several instruments to codify Islamic Shari'a regulations formally. These legal instruments consist of *qanuns* that address specific issues surrounding implementing Islamic law.<sup>43</sup> By the mandate of Law no. 18/2001, the Aceh government can make Aceh *qanuns* that are *lex specialis* (laws that apply specifically) in the context of implementing special autonomy rights.

The constitutional enforcement of Islamic law in the field of *jinayah* was officially enforced in Aceh in 2002, with the issuance of *Qanun* No. 10/2002 on Islamic Sharia Courts, *Qanun* No. 12 of 2003 concerning the Prohibition of Alcoholic Drinks and the like, *Qanun* No. 13 of 2003 concerning *Maisir* (immorality), and *Qanun* No. 14 of 2003 concerning Seclusion, *Qanun* No. 7/2004 concerning *Zakat* Management, *Qanun* No. 10/2007 concerning *Baitul Mal*.<sup>44</sup> As a product of local legislation following the enactment of Aceh's Special Autonomy, these *qanuns* are protected by law, namely Law Number 44 of 1999 concerning the Implementation of the Privileges of Aceh

---

<sup>41</sup> The word *jināyat* is the plural form of the word *jināyat*: action) which means sin, wrongdoing or evil. The word *jināyat* is the root word, and the verb is *Jana* which means to sin/do evil. The person who commits a crime is called *Jani* if the perpetrator is a man, while for women, it is called *Jāniyah*. In general, contemporary *Jinayat* is known as Islamic criminal law. See, Fachri Fachrudin, 'Prinsip-Prinsip Syari'at Pada Bidang Jināyat', *AL Mashlahah: Jurnal Hukum Dan Pranata Sosial Islam*, 6.2 (2018), p.134 <<https://doi.org/http://dx.doi.org/10.30868/am.v6i02.304>>.

<sup>42</sup> Compare, Rusdi Sufi and Agus Budi Wibowo, *Budaya Masyarakat Aceh*, p.38-39 (Banda Aceh: Badan Perpustakaan Provinsi Nanggroe Aceh Darussalam, 2004).

<sup>43</sup> Dede Hendra MR and Topo Santoso, 'The Existence of Application of Lashing Sentences to the Violators of Qanun Islamic Shari'a in Aceh Province', 54 (Universitas Indonesia, 2012) <<https://lib.ui.ac.id/detail.jsp?id=20298610>>.

<sup>44</sup> Chairul Fahmi, 'Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)', *Jurnal TSAQAFAH*, 8.2 (2012), p.298 <10.21111/tsaqafah.v8i2.27>.

Articles 3 and 4, Law Number 18 of 2001 concerning Special Autonomy for Aceh and Law Number 11 2006 concerning Governance of Aceh chapters 17-18. In Law no. 44/1999, Article 12 explains that laws and regulations contrary to and not by the law are declared invalid.

Even though it is aligned with or categorized as local regulation, *qanuns* in Aceh have their place because they are directly based on Law no. 11/2006. Article 269 paragraph (2) of Law no. 11/2006 states, "Legislations under laws that are directly related to special autonomy for the Aceh Province and districts/cities, are adapted to this Law." This means that all regulations under the law, such as Government Regulations, Presidential Decree, and ministerial regulations (*permen*), must first be adjusted to Law 11/2006. Suppose there are Government Regulations, Presidential Regulations, or Regulations that conflict with the *qanun*. In that case, the *qanun* can not immediately be cancelled. However, first must be seen the suitability of the Government Regulations, Presidential Decree, or Regulation with Law no. 11/2006, which became the mother of the *qanun*.

If it is seen in the explanation above that in special autonomous regions with all the specificities of authority to place sharia regulations, they are in such a strong position. Even laws and all regulations issued by the government that have implications for the Aceh region cannot immediately abolish Aceh's sharia regulations or cancel these regulations. The characteristics of sharia regulations in Aceh have their peculiarities, based on Law no. 11/2006, which applies *lex specialist*. It can be seen that the criminal law applied in Aceh is based on Islamic law. For example, caning, stoning, etc. Based on this, it can be said that the implementation of sharia regulations in the special autonomous region of Aceh has stronger legitimacy.

#### D. Characteristics of Sharia Local Regulations in Autonomous Regions in General

Like local regulations for special autonomy, the tendency of non-special autonomous regions also has the authority to make sharia-based local regulations. This is explained earlier that many non-special autonomous regions have made sharia regulations, such as Gorontalo, Bulukumba, Tangerang, South Sumatra, Tasikmalaya and several other areas.

Tangerang is one of the regions that implement sharia regulations through the Tangerang City Regulation Number 8 Series E of 2005

concerning the Prohibition of Prostitution. In principle, this Sharia regulation prohibits all forms of prostitution in the city of Tangerang. The provisions of article 4 paragraph (1) stipulate that:

“Anyone whose attitude or behavior is suspicious, giving rise to an assumption that he/she is a prostitute is prohibited from being on public roads, in the fields, in inns, hotels, dormitories, resident/rented houses, coffee shops, places of entertainment, buildings or spectacles, on street corners, or in street alleys, or in other places in the Region”.

In connection with the above provisions, it can be seen that any act or attitude that meets the above elements can be indicated as an act of prostitution as a violation of the law. Tangerang City Regulation No. 8 Series E of 2005 concerning the Prohibition of Prostitution, there are criminal provisions as a form of sanctions for violations of this Local Regulation. The criminal provisions are contained in Article 9 paragraph (1) as follows: “Threatened with imprisonment for a maximum of 3 (three) months or a maximum fine of 15,000,000, - (fifteen million rupiah)”. In addition to criminal provisions, in this Local Regulation, there are also provisions, such as those contained in Article 3 and Articles (1) and (2) of this regulation on the Prohibition of Prostitution. Provisions for anyone who violates Article 3 and Article 4 paragraphs (1) and (2), the Tangerang City Government will take action and control as regulated in Article 5 paragraphs (1) and (2) and Article 6. Tangerang City Regulation No. 8 Series E of 2005 concerning the Prohibition of Prostitution is binding on all persons residing in Tangerang, whether residents of Tangerang or not, and whether carried out individually or together.

Furthermore, there is the Bulukumba local regulation which issued several sharia regulations, including Local Regulation Number 2 of 2003 concerning Management of Professional *Zakat, Infaq and Shadaqah*, Local Regulation Number 3 of 2002 concerning the Prohibition, Supervision, Control and Sales of Alcoholic Beverages, Local Regulation Number 5 of 2003, concerning Dress Muslim and Muslimah.

Various aspects influence the establishment of a sharia regulation in Bulukumba. First, the historical aspect that was influenced by the emergence of the spread of Islam in Bulukumba. Islamization in Bulukumba, carried out by *Dato Sri Tiro*, made Bulukumba an area of Islamic symbols, so that religious philosophy gave the nuances of morality to the government system. Second, the local political aspect

relates to the struggle for power. A politician who wants to nominate as local head or an incumbent who wants to be re-elected in the next period. Implementing religious regulations has become a bidding tool to attract public sympathy. Third, the socio-religious movement, emergence of this movement aims to enforce Islamic law in South Sulawesi, especially Bulukumba district. Understanding the existence of religious regulations in Bulukumba is influenced by the alliance of mass organizations and political organizations in South Sulawesi. The Islamic organizations that triggered the religious regulations were the initiation of the Nahdatul Ulama (NU) and Muhammadiyah groups. As well as the political struggle of the Islamic Shari'ah Enforcement Committee (KPPSI).<sup>45</sup>

According to Andi Patabai Pabokori, this regulation aims to implement Islamic teachings to Muslims and not to apply sharia, establish an Islamic state, or create a sharia-based constitution. In the early 1990s, Bulukumba was considered unsafe because of crimes such as drinking, gambling, drugs, and theft. Deviant behaviour between groups of citizens, such as acts of violence that often take victims, is very common.<sup>46</sup>

Based on the explanation above, the characteristics of sharia regulations in autonomous regions are generally different from those in special autonomous regions. The resulting sharia regulations only regulate aspects of morality such as prostitution, alcohol, etc. In addition, although sharia regulations in autonomous regions contain sanctions, their implementation will not be more effective because they will still be related to higher laws, such as criminal law. Meregions, there is an independent crime in special autonomous regional law, namely Islamic criminal law.

As explained earlier, the content of Islamic law in a local regulation can be grouped into 5 (five) categories, including those related to *al-ahwâl ash-syakhshiyah*, which regulates family law. Secondly regulates economic and financial affairs, and third regulates matters of morality and practice. rituals) The fourth regulate Islamic criminal law (*hudûd, qadzaf and qishâsh*), and the fifth applies Islamic

---

<sup>45</sup>Dewi Setyarini, 'Perda Syariat Islam Dan Kepentingan Yang Terbengkalai', *Jurnal Perempuan*, 3.6 (2008), p.163 <[https://catalogue.paramadina.ac.id/index.php?p=show\\_detail&id=8640&keywords=>](https://catalogue.paramadina.ac.id/index.php?p=show_detail&id=8640&keywords=>).

<sup>46</sup>Kamil and Bamualim, *Shari'a and Human Rights: The Impacts of Local Regulations to the Civil Freedom, the Rights of Women and Non-Muslim*, p.283 (Jakarta: CSRC, 2007).



ideology.<sup>47</sup>

Departing from the above argument, the author argues that it is necessary to accommodate the standardization of sharia regulations in Law No. 23 of 2014. This is intended so that the making of sharia regulations remains within the legal corridor and minimizes interference with higher laws. However, this standardization must be applied in two categories: regions with special autonomy and autonomous regions. Special autonomous regions can apply the intended five categories. This is a consequence that special autonomous regions have a special main law to accommodate sharia regulations where sharia regulations are produced from Islamic law in terms of prohibitions and sanctions. As for autonomous regions, the author argues that only two categories can be applied, namely *al-ahwâl ash-syakhshiyah*, which regulates family law and matters of morality and religious (ritual) practice. The author argues that these two things are a logical consequence because every local regulation on an autonomous region has a parent, namely Law 23 of 2014, which is clear about the division of affairs and authorities of the central and local governments.

This argument is based on several things. Namely, the Autonomous Region does not regulate sharia regulations on economic and financial affairs. What is meant in this argument is that regions cannot issue sharia regulations relating to finance, for example, zakat. The reason is that the regulation of zakat has been explicitly regulated by Law Number 23 of 2011 concerning *Zakat Management (Zakat Law)*. The author argues that the management of zakat, which is centralized, will cause legal ambiguity both from the norm and its implementation because, regarding zakat, the regulation and management of zakat must be unified to the central government.

Autonomous Regions Do not Regulate Islamic Criminal Law. This is a logical consequence that criminal law has been regulated in the Criminal Code (KUHP). Therefore, the existence of sharia local regulations that apply Islamic criminal law does not only cause conflict with the Criminal Code<sup>48</sup>, but it creates ambiguity in the application

---

<sup>47</sup> Libbi and et all. *Loc. cit*, p. 3

<sup>48</sup> Special autonomous regions can only carry out Islamic criminal law. This is because the application of Islamic law has been accompanied by changes in law enforcement apparatus to adjust the application of Islamic law. For example, *Qanun* No. 7 of 2013 concerning the *Jinayat* Procedural Law clearly stated in Articles 6-9 that "The National Police are authorized together with Civil Servant Investigators (*PPNS*) to carry out investigative actions and investigations against everyone who lives in Aceh (Muslims and non-Muslims)

of the law by law enforcers. Third, it is clear that our ideological agreement is Pancasila. This is a logical consequence of religious tolerance in Indonesia. Although in some of the explanations above, there is an inseparable relationship between the 1945 Constitution and Islam, the Autonomous Region, in the ideological aspect, is still based on Pancasila. This is to avoid national disintegration and conflict both horizontally and vertically

## Conclusion

The research aims to identify the main characteristics of Sharia Perda and discuss its compatibility with constitutional law in Indonesia. The study finds that Sharia Perda embodies Sharia compliance and local specificity, but its implementation has resulted in controversies and conflicts. The tension arises from the limitations on individual rights and freedoms, particularly for women, and discrimination towards non-Muslims. The research concludes that addressing these problems is crucial in ensuring the compatibility of Islamic law and constitutional law in Indonesia.

Meanwhile, for autonomous regions in general, the sharia regulations produced are not purely sourced from Islamic law because they still use positive law in the application of sanctions (*KUHP*). Therefore, sharia regulations in Indonesia must follow the laws and regulations in Indonesia, meaning that every sharia regulation implemented in Indonesia cannot conflict with higher regulations or overlap with other regulations. In addition, the formation of sharia regulations must be regulated in Law No. 23 of 2014 concerning Local Government by applying categories that can be regulated by sharia regulations, especially for autonomous regions in general.

## References

- Ali Geno Berutu, 'Penerapan Syariat Islam Aceh Dalam Lintas Sejarah', *Jurnal Hukum*, 13.2 (2016), p.182 <<https://e-journal.metrouniv.ac.id/index.php/istinbath/article/view/290>>
- Arthanaya, I Wayan, 'Otonomi Dalam Penyelenggaraan Pemerintahan

---

who indicated to have violated sharia qanuns in Aceh. In addition to receiving reports from the public regarding the presence of fingers, police investigators are also authorized to make arrests, prohibitions from leaving places, searches and confiscations

- Daerah', *Kertha Wicaksana*, 17.2 (2011), p.2
- Baharudin, 'Desain Daerah Khusus/ Istimewa Dalam Sistem Negara Kesatuan Republik Indonesia Menurut Konstitusi', *Masalah - Masalah Hukum*, 45.2 (2016) <10.14710/mmh.45.2.2016.85-92>
- Bhaskara, Ign. L. Adhi, 'Kontroversi Perda Syariah: Dinilai Diskriminatif Dan Dipolitisir', *Tirto.Id*, p. 1 <<https://tirto.id/kontroversi-perda-syariah-dinilai-diskriminatif-dan-dipolitisir-dalS>> [accessed 20 April 2022]
- Buehler, Michael, *The Politics Of Shari'a Law: Islamist Activist And The State In Democratizing Indonesia* (Cambridge, United Kingdom: Cambridge University Press, 2016)
- Dhani, Arman, 'Perda Yang Menindas Perempuan', *Tirto.Id*, 2016, p. 1 <<https://tirto.id/perda-yang-menindas-perempuan-bx7s>> [accessed 20 April 2022]
- Efrinaldi, 'Perda Syariah Dalam Perspektif Politik Islam Dan Religiusitas Umat Di Indonesia', *Jurnal Madania*, XVIII.2 (2014), p.7 <<http://dx.doi.org/10.29300/madania.v18i2.14>>
- Fachrudin, Fachri, 'Prinsip-Prinsip Syari'at Pada Bidang Jināyat', *AL Mashlahah: Jurnal Hukum Dan Pranata Sosial Islam*, 6.2 (2018), p.134 <<https://doi.org/http://dx.doi.org/10.30868/am.v6i02.304>>
- Fahmi, Chairul, 'Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)', *Jurnal TSAQAFAH*, 8.2 (2012), p.298 <10. 21111/tsaqafah.v8i2.27>
- Fatmawati, 'Perlindungan Hak Atas Kebebasan Beragama Dan Beribadah Dalam Negara Hukum Indonesia', *Jurnal Konstitusi*, 8.4 <<https://doi.org/https://doi.org/10.31078/jk%25x>>
- Fuad, Mahsun, *Hukum Islam Indonesia: Dari Nalar Partisipatoris Hingga Emansipatoris* (Yogyakarta: LKiS, 2005)
- Hadi, Abdul, 'Study Analisis Keabsahan Perda Syariat Dalam Perspektif Teori Hirarki Norma Hukum', *Jurnal Ummul Qura*, IV.2 (2014), p.5 <<http://ejournal.kopertais4.or.id/pantura/index.php/qura/article/view/2033>>
- Hakim, Lukman, *Filosofi Kewenangan Organ Lembaga Daerah: Perspektif Teori Otonomi & Penyelenggaraan Pemerintah Negara Hukum Dan Kesatuan* (Malang: Setara Press, 2012)
- Iskandar, Rusli Kustiaman, 'Pemilihan Umum Sebagai Implementasi Kedaulatan Rakyat Di Indonesia' (Universitas Islam Indonesia, 2016)

- Itang, 'Kebijakan Pemerintah Tentang Lembaga Keuangan Syariah Era Reformasi', *Jurnal Hukum Islam*, XIV.2 <10.15408/ajis.v14i2.1280>
- Jati, Wasisto Raharjo, 'Permasalahan Implementasi Perda Syariah Dalam Otonomi Daerah', *Manahij*, VII.2, p.7 <<https://doi.org/10.24090/mnh.v7i2.571>>
- Kamil, and Bamualim, *Shari'a and Human Rights: The Impacts of Local Regulations to the Civil Freedom, the Rights of Women and Non-Muslim* (Jakarta: CSRC, 2007)
- Karim, Muchith A, *Pelaksanaan Hukum Waris Di Kalangan Umat Islam Indonesia* (Jakarta: Badan Litbang Kemenag, 2010)
- Libbi, Ahmad Mudhar, and et all, 'Analisis Peraturan Daerah Perspektif Syariah Islam Di Indonesia Ditinjau Dari Konsep Hak Asasi Manusia', *Artikel Ilmiah Hasil Penelitian Mahasiswa Fakultas Hukum Universitas Jember*, 1.1 (2013)
- Makruf, Jamhari, and Iim Halimatusa'diyah, 'Shari'a and Regional Governance in Indonesia: A Study of Four Provinces', *Australian Journal of Asian Law*, XV.1 (2014) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2459826](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2459826)>
- Manan, Bagir, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum (PSH) Fakultas Hukum UII, 2002)
- Mantu, Rahman, 'Islam Dan Konstitusi: Analisis-Komparatif Antara Teks Al-Quran Dengan Pasal 29 UUD 1945', *Jurnal Ilmiah Al-Syir'ah*, 16.1 (2018) <<http://dx.doi.org/10.30984/jis.v16i1.644>>
- Mas'udi, Masdar Farid, *Syarah UUD 1945 Perspektif Islam* (Jakarta: PT Pustaka Alvabert, 3rd Edition, 2013)
- MR, Dede Hendra, and Topo Santoso, 'The Existence of Application of Lashing Sentences to the Violators of Qanum Islamic Shari'a in Aceh Province' (Universitas Indonesia, 2012) <<https://lib.ui.ac.id/detail.jsp?id=20298610>>
- Naïmah, Hayatun, 'Sinkronisasi Muatan Peraturan Daerah Berbasis Syariah', *Jurnal Hukum*, 1.1 (2019), 508 <<file:///C:/Users/User/Downloads/6360-15283-1-SM.pdf>>
- RI, Departemen Agama, *Al-Quran Terjemahan* (Bandung: CV Darus Sunnah: Departemen Agama RI, 2015) <<https://quran.com/66>>
- RI, MPR, *Empat Pilar Kehidupan Berbangsa Dan Bernegara* (Jakarta: Sekretariat Jendral MPR RI)
- RI, Pemerintah, *Undang-Undang Nomor 13 Tahun 2012 Tentang Daerah Istimewa Yogyakarta (DIY)* (Indonesia, 2012)

- — —, *UU No. 11 Tahun 2006 Tentang Pemerintahan Aceh* (Indonesia, 2006)
- — —, *UU No. 23 Tahun 2014 Tentang Pemerintahan Daerah* (Indonesia, 2014)
- — —, *UU Nomor 35 Tahun 2008 Tanggal 25 Juli 2008, Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 Tentang Perubahan Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua* (Indonesia, 2008)
- Salim, Arskal, and Azyumardi Azra, 'The State and Shari'a in the Persective of Indonesian Legal Politics, Singapore: ISEAS', *Shari'a and Politics in Modern Indonesia*, 1.1 (2003), p.33
- Saraswati, Nur Chanifah, and Encik Muhammad Fauzan, 'Konstitusionalitas Peraturan Perundang-Undangan Berbasis Syariah Di Indonesia', *Simposium Hukum Indonesia*, 1.1 (2019) <<https://journal.trunojoyo.ac.id/shi/article/view/6360>>
- Setyarini, Dewi, 'Perda Syariat Islam Dan Kepentingan Yang Terbengkalai', *Jurnal Perempuan*, 3.6 (2008), p.163 <[https://catalogue.paramadina.ac.id/index.php?p=show\\_detail&id=8640&keywords=>](https://catalogue.paramadina.ac.id/index.php?p=show_detail&id=8640&keywords=>)
- Sjadzali, Munawir, *Islam Dan Tata Negara: Ajaran, Sejarah Dan Pemikiran* (Jakarta: UI Press, 5th Edition, 1993)
- Sufi, Rusdi, and Agus Budi Wibowo, *Budaya Masyarakat Aceh* (Banda Aceh: Badan Perpustakaan Provinsi Nanggroe Aceh Darussalam, 2004)
- Suntana, Ija, *Politik Hukum Islam* (Bandung: CV Pustaka Setia, 2014)
- Supriadi, Cecep, 'Relasi Islam Dan Negara: Wacana Keislaman Dan Keindonesiaan', *Jurnal Kalimah*, 13.1 (2015) <<http://dx.doi.org/10.21111/klm.v13i2.285>>
- Syihab, Umar, *Hukum Islam Dan Transformasi Pemikiran* (Semarang: Dina Utama, 1st Edition, 2014)
- Yunus, Nur Rohim, 'Penerapan Syariat Islam Terhadap Peraturan Daerah Dalam Sistem Hukum Nasional Indonesia', *Jurnal Fakultas Syariah Dan Hukum UIN Syarif Hidayatullah Jakarta*, 12.2 <<https://doi.org/10.24239/jsi.v12i2.394.253-279>>