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The Dialectic Between National Law and Sharia: Integrating Islamic Values into Contemporary Public Policy in Indonesia

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ABSTRAK

Indonesia sebagai negara berlandaskan Pancasila terus mengalami dinamika tarik-ulur antara tata hukum nasional warisan kolonial dengan aspirasi penerapan hukum Islam. Penelitian ini bertujuan untuk mengkaji dialektika tersebut, dengan fokus menganalisis mekanisme integrasi nilai-nilai Islam ke dalam kerangka kebijakan publik kontemporer di Indonesia. Menggunakan metode penelitian hukum normatif melalui pendekatan konseptual, historis, dan perundang-undangan (*statute approach*), studi ini menelaah proses transformasi syariah dari ranah privat ke ranah publik. Hasil penelitian menunjukkan bahwa integrasi hukum Islam di era kontemporer telah bergeser dari paradigma formalisasi negara agama menjadi proses "objektivikasi" hukum. Dalam proses ini, nilai-nilai syariah yang bersifat doktrinal ditransformasikan menjadi bahasa kebijakan publik yang rasional, inklusif, dan berorientasi pada *Maqāṣid al-Syarī'ah* (kemaslahatan umum). Transformasi ini terepresentasikan secara nyata dalam berbagai legislasi modern, seperti Undang-Undang Jaminan Produk Halal, Undang-Undang Pengelolaan Zakat, dan regulasi perbankan syariah. Kesimpulan dari penelitian ini menegaskan bahwa syariah dan hukum nasional tidak berada dalam posisi yang diametral. Sebaliknya, syariah berfungsi sebagai sumber materiil yang memperkaya sistem hukum nasional, selama proses integrasinya dilakukan melalui mekanisme diskursus demokratis dan konstitusional demi mewujudkan keadilan sosial bagi seluruh warga negara.

Kata kunci: Dialektika Hukum; Hukum Nasional; Hukum Syariah; Kebijakan Publik Kontemporer; Objektivikasi Hukum.

ABSTRACT

As a state based on Pancasila, Indonesia continuously experiences dynamic tensions between its colonial-inherited national legal system and the aspirations for the implementation of Islamic law. This study aims to examine this dialectic, focusing on analyzing the mechanism of integrating Islamic values into the framework of contemporary public policy in Indonesia. Utilizing a normative legal research method through conceptual, historical, and statutory approaches, this study examines the transformation process of Sharia from the private realm to the public sphere. The results indicate that the integration of Islamic law in the contemporary era has shifted from the paradigm of formalizing a religious state toward a process of legal "objectification". In this process, doctrinal Sharia values are transformed into the language of rational and inclusive public policy oriented towards *Maqāṣid al-Syarī'ah* (public welfare). This transformation is tangibly represented in various modern legislations, such as the Halal Product Assurance Law, the Zakat Management Law, and Islamic Banking regulations. The conclusion of this study affirms that Sharia and national law are not in a diametrical position. Instead, Sharia serves as a material

source that enriches the national legal system, provided its integration process is conducted through democratic and constitutional discourse mechanisms to achieve social justice for all citizens.

Keywords: Legal Dialectics; National Law; Sharia Law; Contemporary Public Policy; Legal Objectification.

Introduction

The Indonesian legal system is characterized by a unique legal pluralism that has shaped its institutional development. As a constitutional state (rechtsstaat) founded upon the principles of Pancasila, Indonesia is neither a secular state that rigidly separates religion from the state nor a theocratic state that exclusively enforces the legal system of a single religion (Mahfud, 2012, pp. 45–46). Within this framework, the relationship between the national legal system—largely influenced by the Continental European civil law tradition inherited from the Dutch colonial period—and Islamic law (Sharīʾah) has continuously evolved through a dynamic process of interaction, negotiation, and adaptation throughout the history of the Republic.

Historically, debates concerning the position of Sharīʿah within the Indonesian constitutional order were frequently trapped in ideological polarization, ranging from the controversy surrounding the Jakarta Charter to the receptie theory, which marginalized the role of Islamic law within the national legal system (Salim, 2008, pp. 88–90). However, in the Reform Era and the contemporary democratic context, the articulation of Islamic political thought has undergone a profound paradigmatic transformation. Demands for the formal establishment of an "Islamic State" have gradually been replaced by a more rational, constitutional, and inclusive strategy that seeks to integrate the substantive values of Sharīʿah into national public policies (Wahyudi & Hasyiah, 2010, p. 112).

This paradigm shift is closely aligned with Kuntowijoyo's theory of objectification (objektivikasi). According to this theory, Islamic values, which were originally doctrinal, internal, and exclusive to the Muslim community, are transformed into objective, rational, and universally acceptable values that can be embraced by all citizens regardless of their religious affiliation (Kuntowijoyo, 2006, pp. 62–63). Consequently, Islamic law is no longer conceived as a body of religious dogma imposed upon society; rather, it is translated into the language of public policy aimed at promoting the public good *(Maqāṣid al-Sharīʾah),* social justice, and the protection of human rights. In the contemporary era, the outcomes of this dialectical and objectification process are clearly reflected in various national legislative products. Islamic law is no longer confined to the private sphere, such as family and inheritance law, but has expanded into the domains of public governance and the national economy. Recent legislative enactments—including Law Number 33 of 2014 on Halal Product Assurance, Law Number 23 of 2011 on Zakat Management, and Law Number

4 of 2023 on the Development and Strengthening of the Financial Sector (P2SK Law)—provide compelling evidence of this substantive integration (Asshiddiqie, 2009, p. 215).

Nevertheless, the incorporation of Islamic values into Indonesia's positive legal system remains contested. Public discourse continues to reveal tensions between secular-nationalist groups, who express concerns over the potential "Islamization" of the legal system, and Islamic groups, who argue that the substantive meaning of Sharīʿah is often diluted when translated into statutory law (Lukito, 2008, pp. 174–175). Against this backdrop, the present study, entitled "The Dialectics of National Law and Sharī'ah: Integrating Islamic Values into Contemporary Public Policy in Indonesia," is both timely and significant. It seeks to examine the dynamics of this legal dialectic and to analyze the constitutional mechanisms through which Islamic values are incorporated into contemporary public policy while remaining consistent with Indonesia's constitutional identity, pluralistic legal order, and democratic principles.

Research Methodology

This study employs a normative legal research approach, which conceptualizes law as a system of norms, principles, doctrines, and legal rules that exist and evolve within the framework of a state's legal order (Soekanto & Mamudji, 2001, pp. 13–14). It is descriptive-analytical in nature, aiming to provide a systematic, comprehensive, and in-depth examination of the dialectical relationship between the national legal system and Islamic law (Sharīʿah), as well as to analyze their integration within the sphere of public policy. To address the research problems, this study adopts three complementary approaches.

First, the historical approach is employed to trace the historical trajectory of the interaction between Islamic law and Indonesia's national legal system, beginning with the debates surrounding the Jakarta Charter, the implementation of the receptie theory during the Dutch colonial period, and extending to the transformation of legal politics in the contemporary reform era. Second, the conceptual approach is utilized to explore the theoretical foundations underlying public policy by examining the concepts of the objectification of Islamic law and the principles of *Maqāṣid al-Sharī'ah*. This approach seeks to uncover the legal and philosophical rationality through which Islamic values have been transformed into universally applicable public policies (Ibrahim, 2006, p. 300). Third, the statute approach is applied through a comprehensive analysis of the Constitution and statutory regulations that represent the legal manifestation of public policy. Particular attention is devoted to legislation reflecting the integration of Islamic values into the national legal system, including the Halal Product Assurance Law, the Zakat Management Law, and various regulations governing the Islamic finance and economic sector. As a normative legal study, this research relies on legal materials rather than empirical data.

The legal materials are classified into three categories. Primary legal materials consist of authoritative and legally binding sources issued by state institutions, including

the 1945 Constitution of the Republic of Indonesia and statutory regulations concerning public policies related to Sharīʿah values, such as Law No. 33 of 2014 on Halal Product Assurance, Law No. 23 of 2011 on Zakat Management, and other relevant legislation. Secondary legal materials comprise scholarly works that provide interpretation and analysis of primary legal sources, including textbooks on constitutional law, Islamic legal politics, sociology of law, peer-reviewed journal articles, and academic documents such as explanatory memoranda and legislative academic papers. Tertiary legal materials include supporting references that facilitate the interpretation of legal terminology and concepts, such as dictionaries, legal dictionaries, and encyclopedias of Islamic law.

The legal materials were collected through library research and document analysis. This process involved identifying, compiling, and systematically organizing statutory provisions, historical legal literature, and the scholarly works of constitutional law experts and Islamic legal scholars in Indonesia (Ali, 2009, p. 106). The collected legal materials were subsequently analyzed using a qualitative normative approach. Conclusions were drawn through deductive legal reasoning, beginning with general theoretical premises, including the theories of legal pluralism and the objectification of Sharīʿah, and proceeding toward specific conclusions concerning the mechanisms through which Islamic values have been integrated into contemporary public policy in Indonesia (Suteki & Taufani, 2018, pp. 213–214).

Results and Discussion

Historical Dialectics: From the *Receptie Theory* to the *Receptie A Contrario Theory*

The relationship between Islamic law and Indonesia's national legal system cannot be separated from a long historical dialectic. During the Dutch colonial period, legal policy was shaped by the Receptie Theory advanced by Christian Snouck Hurgronje, which maintained that Islamic law could only be applied if it had been accepted and recognized by customary law *(adat)* (Lukito, 2008, pp. 45–47). This theory systematically marginalized the position of Sharīʾah by subordinating it to customary law.

Following Indonesia's independence, however, prominent legal scholars initiated both academic and constitutional critiques of this colonial legal doctrine. Hazairin introduced the Receptie Exit Theory, which was subsequently refined by Sayuti Thalib through the *Receptie A Contrario Theory*. This theory reversed the colonial legal logic by asserting that customary law is applicable only insofar as it does not conflict with Islamic law (Ichtijanto, 1991, p. 115). The culmination of this historical dialectic emerged during the Reform Era, when the political orientation of Indonesian Muslims shifted from advocating the formal establishment of an Islamic state toward integrating the substantive values of Islam into a democratic national legal system.

Kuntowijoyo's Objectification Paradigm as a Mechanism for Legal Integration

The transformation of Islamic legal politics in contemporary Indonesia finds its epistemological foundation in Kuntowijoyo's theory of the Objectification of Law. Within a pluralistic society, Islamic law cannot be imposed solely on the basis of theological or dogmatic justification, such as the argument that a rule must be obeyed merely because it constitutes a divine command. Instead, public policy requires objective and universally acceptable rationality (Kuntowijoyo, 2006, pp. 60–61).

Through the process of objectification, the normative principles of Sharīʿah are transformed into positive law without losing their underlying religious values. At the same time, these legal norms become acceptable to non-Muslim citizens because they are justified by their rational public benefits rather than by religious doctrine (Effendy, 1998, p. 210). For example, the Islamic prohibition of *ribā* (usury or interest) is objectified into the principle of economic justice and equitable distribution, while the concept of *zakat* is translated into a public instrument for taxation and poverty alleviation. This process demonstrates that Islamic law possesses considerable adaptability, enabling its normative values to be reformulated into the language of modern public policy while remaining compatible with the principles of a democratic and pluralistic constitutional state.

Manifestations of the Integration of Sharī'ah into Contemporary Public Policy

In the modern era, the objectification of Islamic law has given rise to a range of public policies that integrate the national legal system with *Sharī'ah* values. This integration is particularly evident in two of Indonesia's most strategic public policy instruments.

The first is the Halal Product Assurance Policy (Law No. 33 of 2014). Prior to the enactment of this law, halal certification was administered by civil society through the Indonesian Council of Ulama (Majelis Ulama Indonesia/MUI). With the promulgation of Law No. 33 of 2014, the state assumed this responsibility by establishing the Halal Product Assurance Agency (Badan Penyelenggara Jaminan Produk Halal/BPJPH). Islamic legal principles governing *ḥalāl* food were thereby objectified into a nationwide consumer protection policy. This transformation reflects the state's commitment to safeguarding citizens' constitutional rights to practice their religion and to consume products that are both lawful and safe (Mahfud, 2012: 320).

The second is the Zakat Management Policy (Law No. 23 of 2011). Originally regarded as an act of *ʿibādah maḥḍah* (private religious worship), zakat has been transformed into a public financial institution supervised by the state through the National Zakat Agency (Badan Amil Zakat Nasional/BAZNAS). This legislation integrates Islamic law into the framework of good governance by introducing public accounting and auditing standards for zakat funds, thereby enhancing the realization of the *Maqāṣid al-Sharī'ah*, particularly poverty alleviation (Salim, 2008: 154–155).

The Challenges of Sharī'ah Bureaucratization and Constitutional Democracy

Despite the extensive integration of Islamic values into public policy, this dialectical process has generated a number of significant challenges. Once Islamic law is elevated into state legislation, a phenomenon commonly described as the "bureaucratization of *Sharī'ah*" or the "state school of fiqh" emerges. As a consequence, Islamic law—which is inherently dynamic and characterized by multiple interpretative traditions *(ikhtilāf)*—risks becoming rigid, monolithic, and coercively enforced through the state's legal and penal apparatus (Wahid & Rumadi, 2001: 145–146). Accordingly, the harmonization of national law and Sharīʿah must always be maintained within the framework of constitutional democracy. The Constitutional Court plays a pivotal role as the guardian of the Constitution, ensuring that public policies derived from any religious tradition, including Islam, are non-discriminatory and can be rationally justified in pursuit of the public interest *(maṣlaḥah ʿāmmah)*. The integration of Islamic law should not be directed toward establishing a religious state; rather, it should enrich the values of social justice within the constitutional framework of the Unitary State of the Republic of Indonesia.

The Decentralization of Public Policy and the Controversy over *Sharī'ah*-Inspired Regional Regulations

Beyond its manifestation in national legislation, the dialectic of Islamic law has expanded to the local level following the implementation of regional autonomy in 1999. The decentralization of governmental authority has enabled local governments to formulate public policies based on local wisdom, resulting in the adoption of hundreds of Sharī'ah-inspired Regional Regulations (*Peraturan Daerah* or *Perda*) across numerous regencies and municipalities (Maarif, 2009: 120–121). From a constitutional perspective, the Province of Nanggroe Aceh Darussalam enjoys a *lex specialis* status under Law No. 11 of 2006 on the Government of Aceh, which authorizes the comprehensive implementation of Islamic law—including Islamic criminal law *(jināyah)*—through regional legislation known as Qanun.

Outside Aceh, however, the emergence of Sharī'ah-inspired regional regulations—such as mandatory Islamic dress codes for civil servants and students, restrictions on the circulation of alcoholic beverages, and anti-prostitution measures—has generated intense constitutional and legal debate (Abbas, 2012: 85–87). When examined through the analytical lens of "objectification," many Sharī'ah-inspired regional regulations remain confined to what may be described as a stage of "pseudo-objectification," or even represent a reversion to exclusive legal formalism. Rather than formulating public policies through the universal and rational language of public welfare, some local governments rely on literal interpretations of religious texts that may inadvertently discriminate against minority groups.

This condition demonstrates that the dialectic of Islamic law at the local level continues to exhibit significant anomalies, where the boundaries between religious freedom, public morality, and the protection of citizens' constitutional rights frequently come into tension (Rumadi, 2015: 102).

The Positivization of Islamic Economic Law: The Most Complete Success of Legal Objectification

Unlike Islamic criminal law (*jināyah*) or Sharī'ah-inspired regional regulations, which frequently generate political and constitutional controversy, the integration of Islamic law into the sphere of the macroeconomy (*Siyāsah Māliyyah*) represents the most comprehensive and successful example of legal objectification in Indonesia. In this domain, Sharīʿah values have been seamlessly transformed into public policy without provoking significant sociological resistance from non-Muslim communities.

The culmination of this integration is reflected in the enactment of Law No. 21 of 2008 on Islamic Banking**,** subsequently reinforced through the Omnibus Law**, namely** Law No. 4 of 2023 on Financial Sector Development and Strengthening (P2SK Law)**.** Within this legislative framework, the Islamic prohibition of *ribā* (usury) has been objectified into an equitable profit-and-loss sharing system, while the prohibitions against *maysir* (speculation) and *gharar* (excessive uncertainty) have been translated into mechanisms for financial risk mitigation and consumer protection (Sjahdeini, 2014: 112–113).

The success achieved in this sector demonstrates that when Sharīʿah values engage constructively with the rationality of the modern economy and the demands of the global marketplace, Islamic law is no longer perceived merely as a religious doctrine. Rather, it evolves into a public good that resonates with the constitutional mandate of Article 33 of the 1945 Constitution concerning economic democracy and social justice.

The Role of the Constitutional Court in Dynamizing the Legal Dialectic

Within a pluralistic legal system, tensions between legislation inspired by Sharīʿah and the constitutional rights of citizens are inevitable. It is in this context that the Constitutional Court assumes its dual role as the guardian of the Constitution and as a mediator in the ongoing dialectic between national law and Islamic law.

The Constitutional Court has played a particularly significant role in adjudicating judicial review petitions involving legislation derived from Islamic legal principles. One of its landmark decisions is Constitutional Court Decision No. 46/PUU-VIII/2010**,** concerning the judicial review of the Marriage Law. In this ruling, the Court undertook what may be described as a form of constitutional *ijtihād* by recognizing the civil legal relationship between a child born outside marriage and his or her biological father, provided that such paternity can be established through scientific and technological evidence, including DNA testing (Asshiddiqie, 2009: 234–235).

Initially, the decision generated considerable debate because it was perceived as departing from the classical *fiqh* doctrine governing lineage (*nasab*). Nevertheless, when examined through the framework of the *Maqāṣid al-Sharīʿah*—particularly the principles of *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-nasl* (protection of lineage and children)—the Court's reasoning may instead be understood as harmonizing the substantive values of Islamic justice with contemporary public policy on human rights. The Constitutional Court thereby affirmed that the integration of Sharīʿah into the national legal system must never serve as an instrument for perpetuating structural injustice against vulnerable groups, particularly women and children (Jamil, 2015: 89).

Conclusion

Based on the historical examination, conceptual analysis, and review of statutory regulations presented in the discussion, this study arrives at three principal conclusions.

First, the dialectic between national law and Sharīʿah in Indonesia has evolved beyond the ideological confrontations that characterized earlier periods, such as the debates surrounding the Jakarta Charter and the *receptie* theory. In the contemporary era, the integration of Islamic law has proceeded constitutionally through the mechanism of legal objectification**.** Through this process, Sharīʿah doctrines that were originally private and theological in nature have been transformed into the rational, inclusive, and welfare-oriented language of public policy, guided by the objectives of the *Maqāṣid al-Sharīʿah*. Consequently, these values have become acceptable to all citizens within the constitutional framework of the Pancasila State.

Second, the manifestations of this integration reveal varying degrees of success. The most complete achievements are evident in the fields of macroeconomic governance and social administration, as reflected in the Halal Product Assurance Law, the Zakat Management Law, and the P2SK Law governing the financial sector. These policies have gained broad acceptance because their underlying principles are compatible with the rationality of the global economic system. By contrast, anomalies continue to emerge within decentralized policymaking through Sharīʿah-inspired regional regulations, many of which remain confined to exclusive legal formalism and what may be characterized as "pseudo-objectification." Such regulations have the potential to generate discriminatory practices and undermine national social cohesion.

Third, constitutional democracy remains the indispensable framework for managing this legal dialectic. In this regard, the Constitutional Court performs a pivotal function as both mediator and guardian of the Constitution**.** Its jurisprudence demonstrates that Islamic law may legitimately serve as a substantive source for enriching the national legal system, provided that the legislative process remains subject to democratic constitutional discourse. The Court ensures that the integration of Sharīʿah is not transformed into an instrument for the bureaucratization of religion but rather

functions as a means of realizing substantive justice in harmony with constitutional human rights principles.

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