

## THE EXISTENCE AND DEVELOPMENT OF ISLAMIC LAW INSTITUTIONS IN INDONESIA

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### ABSTRACT

This study discusses the existence and development of Islamic legal institutions in Indonesia from historical, sociological, and juridical perspectives. Islamic law in the archipelago has been present since the early days of Islamization and has functioned in the areas of marriage, inheritance, and muamalah, although during the colonial period its role was narrowed through the theory of *receptie*. After independence, Islamic law gained formal legitimacy with the establishment of the Religious Court and was strengthened through various regulations, such as the Religious Court Law, the Compilation of Islamic Law, and legislation on zakat, waqf, and sharia economics. The research method used was qualitative with a historical-sociological approach, through literature review and descriptive-analytical analysis. The results of the study show that the process of integrating Islamic law into positive law took place gradually, from social norms to state law, and now has strong formal legitimacy in the national legal system. However, challenges in the form of legal dualism, social plurality, and harmonization with international law remain fundamental issues. Therefore, synergy between scholars, academics, and policymakers is needed to strengthen the position of Islamic law so that it remains relevant, applicable, and contributes to national legal development.

**Keywords :** *Islamic Law, Institutions, Legal Integration, Indonesia*

### ABSTRACT

This research discusses the existence and development of Islamic law institutions in Indonesia from historical, sociological, and juridical perspectives. Islamic law in the archipelago has been present since the early days of Islamization and functions in the fields of marriage, inheritance, and muamalah, although during the colonial period its role was narrowed through the theory of *receptie*. After independence, Islamic law gained formal legitimacy with the presence of the Religious Courts and was strengthened through various regulations, such as the Religious Justice Law, the Compilation of Islamic Law, as well as zakat, waqf, and sharia economics legislation. The research method used is qualitative with a historical-sociological approach, through literature review and descriptive-analytical analysis. The results of the study show that the process of integrating Islamic law into positive law took place gradually, from social norms to state law, until now it has a strong formal legitimacy in the national legal system. However, the challenges of legal dualism, plurality of society, and harmonization with international law are still fundamental problems. Therefore, synergy between scholars, academics, and policymakers is needed to strengthen the position of Islamic law so that it remains relevant, applicable, and contributes to the development of national law.

**Keywords:** *Islamic Law, Institutional, Legal Integration, Indonesia*

## INTRODUCTION

The existence of Islamic law in Indonesia has long and strong historical roots. Since the early days of the entry of Islam into the archipelago, Islamic law has interacted with local legal traditions and customary law. In the period of the Islamic kingdom, the application of Islamic law was mainly seen in the aspects of religious justice, marriage, inheritance, and muamalah. Although its arrival was gradual and through cultural channels, Islamic law slowly became a normative and social reference that shaped the life system of the Muslim community in Indonesia. Thus, Islamic law is not only religious, but also a social and cultural instrument that regulates social life.<sup>1</sup>

The development of Islamic law institutions increasingly found its momentum during the colonial period. The Dutch East Indies government, although initially recognized the existence of Islamic law through the theory of *receptie in complexu*, then shifted the role of Islamic law through the theory of *receptie* which limited its application only if it was in accordance with customary law. Nevertheless, religious justice institutions persisted, albeit in a limited scope. This reality shows that despite colonialism's efforts to suppress, Islamic law still has a life force in Muslim society and continues to develop as part of religious identity.<sup>2</sup>

After Indonesia's independence, the existence of Islamic law was revitalized through the establishment of formal institutions recognized by the state. Religious courts have received constitutional legitimacy as one of the implementers of judicial power, especially in the fields of marriage, inheritance, wills, grants, zakat, waqf, and sharia economics. The presence of Law Number 7 of 1989 concerning Religious Justice, which was later strengthened by Law Number 3 of 2006 and Law Number 50 of 2009, affirms the position of religious courts as an independent legal institution. This marks a new chapter in the development of Islamic law institutions that are not only cultural, but also acquire structural legitimacy in the national legal system.<sup>3</sup>

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<sup>1</sup> Dahlia Haliah Ma'u, "The Existence of Islamic Law in Indonesia (Analysis of the Contribution and Renewal of Islamic Law Pre and Post Independence of the Republic of Indonesia)," *Al-Syir'ab Scientific Journal* 15, no. 1 (2018), <https://doi.org/10.30984/as.v15i1.471>.

<sup>2</sup> Achmad Irwan Hamzani dan Soesi Idayanti, "THE EVOLUTION OF ISLAMIC LAW IN INDONESIA: A SOCIO-HISTORICAL PERSPECTIVE ON ITS STRUGGLE FOR EXISTENCE," *Hamdard Islamicus* 47, no. 1 (2024), <https://doi.org/10.57144/hi.v47i1.891>.

<sup>3</sup> Sirman Dahwal and Dimas Dwi Arso, "A STUDY OF ISLAMIC LEGAL THEORIES RELATED TO AND SUPPORTING THE EXISTENCE OF RELIGIOUS COURTS IN INDONESIA," *AL IMARAH : JOURNAL OF ISLAMIC GOVERNMENT AND POLITICS* 8, no. 1 (2024): 117, <https://doi.org/10.29300/imr.v8i1.3466>.

In addition to religious courts, other institutions related to Islamic law are also growing rapidly, such as the National Amil Zakat Agency (BAZNAS), the Indonesian Waqf Agency (BWI), and Islamic financial institutions. This institutional growth shows that Islamic law in Indonesia is not only limited to the judicial aspect, but also extends to the socio-economic sector. The strengthening of these institutions further emphasizes the role of Islamic law in supporting national development, both in spiritual and material dimensions, as well as strengthening Islamic identity in the national framework.<sup>4</sup>

Thus, the existence and development of Islamic legal institutions in Indonesia reflects the dynamics between tradition, colonialism, and legal modernization. From traditional institutions to formal recognition in the country's legal system, Islamic law continues to adapt to the changing times without losing its normative substance. The increasingly solid position of Islamic law in the country's institutional structure suggests that it has become an integral part of the national legal system. Therefore, research on the existence and institutional development of Islamic law in Indonesia is important to understand the process of integrating religious law in the context of a pluralistic nation-state.<sup>5</sup>

## RESEARCH METHODS

This research uses a qualitative method with a historical sociological approach. The historical approach is used to trace the process of institutional development of Islamic law from the pre-colonial, colonial, to contemporary periods, while the sociological approach is used to analyze the interaction of Islamic law institutions with society and its relationship with the national legal system. The data sources used include primary data in the form of laws and regulations related to Islamic law in Indonesia and secondary data in the form of academic literature, journals, and relevant research documents. The data collection technique is carried out through literature study by examining legal documents, books, and previous research results. Data analysis was carried out in a descriptive-analytical manner by classifying data based on historical periods, describing the form of institutional existence of Islamic law, and analyzing factors that affect its development within the framework of legal pluralism in Indonesia.

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<sup>4</sup> Abu Rokhmad, "Institutions and Contributions to Islamic Law in Indonesia's Legal System," *Walisono Law Review (Walrev)* 3, no. 1 (2021): 21–44, <https://doi.org/10.21580/walrev.2021.3.1.7282>.

<sup>5</sup> Siti Rohmah dan Azka Rasyad Alfatdi, "From Living Law to National Law: Theoretical Reconstruction of Applying Islamic Law in Indonesia," *Peradaban Journal of Law and Society* 1, no. 1 (2022), <https://doi.org/10.59001/pjls.v1i1.19>.

## DISCUSSION

### The Existence and Legitimacy of Islamic Law in the National Legal System

The existence of Islamic legal institutions in Indonesia is a hail from the long history of interaction between Islamic teachings, society, and the state. During the Islamic kingdoms, Islamic law was practiced in a practical manner in social life, especially in the fields of marriage, inheritance, and muamalah. However, in the Dutch colonial era, the existence of Islamic law was limited through *tori receptie* which allowed Islamic law to apply only to the extent accepted by customary law. After independence, the paradigm underwent a shift, marked by the official recognition of the Religious Courts as part of the national judicial system. This emphasizes that Islamic law is not just a socio-religious norm, but also has a formal position in the institutional structure of the state.<sup>6</sup>

The institutional legitimacy of Islamic law is getting stronger through various regulations. Law No. 7 of 1989 concerning Religious Justice (later updated with Law No. 3 of 2006 and Law No. 50 of 2009) affirms the authority of this institution in resolving cases in the fields of marriage, inheritance, grants, *waqf*, *zakat*, *infaq*, *shadaqah*, and sharia economics. In addition, the Compilation of Islamic Law (KHI) stipulated through Presidential Instruction No. 1 of 1991 provides a written legal basis that serves as a reference for judges of the Religious Court. The presence of institutions such as the National Zakat Agency (BAZNAS) and the National Sharia Council (DSN-MUI) also expands the scope of the implementation of Islamic law in the socio-economic field. Thus, the institutional existence of Islamic law is not only recognized, but also gains constitutional and juridical legitimacy in the Indonesian national legal system, although it must still coexist with customary law and positive state law in the context of legal pluralism.<sup>7</sup>

The development of Islamic law institutions in Indonesia cannot be separated from the dynamics of colonial history to reform. During the Dutch colonial period, the position of Islamic law was narrowed due to the theory of *receptie* introduced by Snouck Hurgronje. This theory emphasizes that Islamic law is only valid if it is in accordance with or accepted by customary law. Consequently, Islamic legal institutions do not have strong institutional

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<sup>6</sup> Fauziati Fauziati dan Syahrizal Abbas, "History and Patterns of Islamic Law Taqin in Indonesia," *Abdurrauf Journal of Islamic Studies (ARJIS)* 3, no. 1 (2024): 68–79, <https://doi.org/10.58824/arjis.v3i1.103>.

<sup>7</sup> Nursalam Nursalam et al., "Religious Justice in Indonesia After Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989," *AHKAM* 3, no. 2 (2024): 503–16, <https://doi.org/10.58578/ahkam.v3i2.3030>.

legitimacy, although the practice of Islamic law continues in society, especially in family and inheritance matters. Entering the independence period, the direction of legal policy began to shift. The debate on the basis of the state at the beginning of independence had put forward the position of Islamic law, but political compromise resulted in Pancasila as a consensus. However, Islamic law still gains rang with the recognition of the existence of the Religious Court. This position was further strengthened by the birth of Law Number 7 of 1989 concerning Religious Courts, which provided a juridical legal basis for the institution. During the Bar Order, the legitimacy of Islamic law was marked by the birth of the Compilation of Islamic Law (KHI) in 1991. The KHI became the codification of Islamic law that applies in Indonesia, especially in the fields of marriage, inheritance, and waqf, However, the New Order regime tended to tightly control Islamic political expression so that recognition of the institution of Islamic law remained limited to the private sphere.<sup>8</sup>

The reform era brought significant changes. Legal reform opens up a wider range for the strengthening of Islamic legal institutions. The revision of the Religious Courts Law (Law No. 3 of 2006 and Law No. 50 of 2009) expands the authority of the Religious Courts, including in the settlement of sharia economic disputes. In addition, the birth of the Zakat Law (1999, updated 2011) and the development of Islamic financial institutions mark the institutionalization of Islamic law in the social and economic fields. Thus, from the colonial period to the reform, the institutional dynamics of Islamic law in Indonesia showed an ebby pattern influenced by political factors, but gradually gained an increasingly strong formal legitimacy in the national legal system.<sup>9</sup>

### **Integration of Islamic Law into Positive Law**

The integration of Islamic law into positive law in Indonesia is a long process that takes place gradually, in line with the dynamics of politics and national law. In the beginning, Islamic law was present as a social norm practiced by the Muslim community, especially in the fields of family, inheritance, and muamalah. However, during the Dutch colonial period, Islamic law was narrowed through *tori receptie* which subordinated its applicability to customary law. This causes Islamic law not to gain an equal position with Western law,

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<sup>8</sup> Suci Ramadhan, "ISLAMIC LAW, POLITICS AND LEGISLATION: DEVELOPMENT OF ISLAMIC LAW REFORM IN POLITICAL LEGISLATION OF INDONESIA," *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020): 63–76, <https://doi.org/10.37876/adhki.v2i1.35>.

<sup>9</sup> Nurjamil Nurjamil, "The Existence and Development of Compilation of Sharia Economic Law (KHES) and Its Urgency in Resolving Sharia Economic Law Disputes in Indonesia," *Ipsa Jure* 1, no. 3 (2024): 15–27, <https://doi.org/10.62872/42056d19>.

although sociologically it is still carried out by society. After independence, the integration of Islamic law began to find its way through institutional recognition. The establishment of the Religious Courts is an important step because it places Islamic law in the structure of the national judiciary, This process continued with the birth of Law Number 7 of 1989 concerning Religious Courts, which juridically strengthened the authority of this institution. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law further strengthens the position of Islamic law by providing official codification as a guideline for judges.<sup>10</sup>

The reform era accelerated the process of integrating Islamic law in the realm of positive law. The revision of the religious justice law (Law No. 3 of 2006 and Law No. 50 of 2009) expands the authority of the judiciary in resolving sharia economic disputes. In addition, the ratification of the Zakat Law, the Waqf Law, and Islamic banking and finance regulations affirm that Islamic law is not only recognized in the family sphere, but also integrated into positive laws in the socio-economic field. Thus, the integration of Islamic law in the national legal system shows an evolutionary pattern: from social norms to state law, from limited recognition to formal legitimacy, to the present day an important part of the construction of Indonesian national law.

The history of the development of Islamic law in Indonesia cannot be separated from the history of the development of Islam itself. Islamic law is an important, if not the most important, part of Islam. Islamic law is a representation of Islamic thought, the most distinctive manifestation of the Islamic view of life and the essence of Islam itself.<sup>11</sup> Islamic law, from the perspective of legal theory, must be distinguished between Islamic law and Islamic law. Islamic law among Islamic legal experts differ in their opinions in defining or formulating Islamic law.<sup>12</sup> Islamic law is a representation of Islamic thought, the most distinctive manifestation of the Islamic view of life and the essence of Islam itself. Islamic law entered Indonesia at the same time as the entry of Islam in Indonesia.<sup>13</sup>

Islamic law as a complete and universal legal system needs to be comprehensively understood by all mankind, because mistakes in understanding Islamic law will have an

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<sup>10</sup> Achmad Irwan Hamzani and Soesi Idayanti, "THE EVOLUTION OF ISLAMIC LAW IN INDONESIA."

<sup>11</sup> Ma'u, "The Existence of Islamic Law in Indonesia (Analysis of the Contribution and Renewal of Islamic Law Pre and Post Independence of the Republic of Indonesia)."

<sup>12</sup> Sri Hariati, The Existence And Binding Force Of The Compilation Of Islamic Law As The Basis For Religious Court Decisions In Indonesia, *Journal of Legal Compilation Volume 10, No. 1, June 2025*, t.t.

<sup>13</sup> Umar Shofi, Rina Septiani, The Existence and Application of Islamic Law in Indonesian Positive Law *Journal of Social and Technology (Sostech) Volume 2, Number 8, August 2022*.

impact on the further distance of the law from humans, or the detachment of the function of the legal system in society.<sup>14</sup> In the development and formation of Islamic law in Indonesia, then a theory of existence reappeared that explained that Islamic law exists in National law.<sup>15</sup> In the formation of Islamic law in Indonesia through two paths, namely the Legislation Path, namely national legislation and non-legislation, which is outside the legislation. Thus, the existence of Islamic law in the reform era does not only occur at the structural level but also at the cultural level, therefore the transformation of Islamic law in addition to the legislative path in the form of legislation, more strategically the non-legislation path outside the legislation, namely culturally.<sup>16</sup>

The existence of Islamic Law in the Indonesian national legal system has strong historical and juridical roots. Although Indonesia is not an Islamic country, the existence of Islamic Law is recognized and respected within the framework of the state of law based on Pancasila and the 1945 Constitution. Constitutionally, the legal basis for integrating Islamic values in the national legal system can be traced through the Decree of the People's Consultative Assembly No. IV/MPR/1999 on GBHN which emphasizes that the development of national law must be sourced from religious values, including Islamic values.<sup>17</sup>

In the institutional field, Islamic Law has gained legitimacy through the existence of Religious Courts, which are part of the national judicial system. Religious Courts have absolute authority to adjudicate civil cases for Muslims, especially in terms of marriage, inheritance, grants, waqf, zakat, and sharia economics. This court is in an integrated judicial system under the Supreme Court.<sup>18</sup> However, the integration of Islamic Law in the national legal system is not completely without obstacles. The main challenge is the existence of legal dualism between religious law and national law, especially in cases involving non-Muslim parties. which takes place naturally or through socio-religious institutions. The majority of Muslims in Indonesia have long practiced the teachings of sharia for generations, both in

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<sup>14</sup> Rahmat Rosyadi, Rais Ahmad, *Formalization of Islamic Sharia in the Perspective of Indonesian Legal System*, Ghalia Indo-Nesia, Bogor, Print I. 2006. Pg. 9 .

<sup>15</sup> Lutfi Rahmatullah, The Existence of Islamic Law in the Midst of Indonesia's Cultural Diversity, *Jurnal al-Manahij*, vol. 10, no. 1, 2016.

<sup>16</sup> Ichtijanto, "The Prospect of Religious Justice as State Justice in the Political System of Law in Indonesia", in Amrullah Ahmad, *The Dimension of Islamic Law in the National Legal System*, Gema Insani Press, Jakarta, 1996, 182-183.

<sup>17</sup> Tomi Saladin, "The Position of Islamic Law in the National Legal System in Indonesia," *Inclusive: Journal of Sharia and Legal Research Studies* 4, no. 2 (2021): 157–172.

<sup>18</sup> Asep Saepullah, "The Authority of Religious Courts in Sharia Economic Matters," *Court: Journal of Islamic Law Studies* 1, no. 2 (2020): abstract & pp. 1–2.

religious practice, muamalah, and family law, long before the law was formally instituted by the state.

The biggest challenge is to create harmonization between the norms of Islamic Law with the principles of national and international law, especially in maintaining justice, tolerance, and human rights in a pluralistic society. In addition to juridical and institutional integration, the existence of Islamic Law also shows a significant form of sociological integration in the practice of Indonesian people's lives. Sociological integration refers to the acceptance, adaptation, and internalization of Islamic Law values in the social, cultural, and moral order of society,<sup>19</sup>

From several points of thought that underlie the birth of the Compilation of Islamic Law as mentioned above, it can be understood that the formulation of the Compilation of Islamic Law is intended as an effort to reform Islamic law in Indonesia for the realization of the certainty of Islamic law and so that Islamic law is relevant to the development of the times in the context of Indonesia, because the fiqh books compiled by Islamic legal experts several centuries ago which became the reference of judges in the Religious Court are believed to be cannot guarantee the realization of the above two things, because, as already mentioned, the books of Fiqh are in the form of descriptions containing the opinions of Islamic jurists with all their differences, and in general they were compiled at a time when Islamic law was experiencing stagnation due to the weak spirit of *ijtihad* among Muslims. Likewise, the science that had a great influence on the lives of the people at that time was not as advanced as it is now, so the relevance of these fiqh books to contemporary life still needs to be questioned.

The above theories of the enactment of Islamic law have an effect on the political thinking of national law which provides a more open space for the implementation of Islamic law as a positive law in Indonesia. This is marked by the promulgation of Law Number 14 of 1970 concerning the Provisions of the Principal Provisions of Judicial Power. Article 10 paragraph (1) of this Law states that the judiciary is divided into four environments, namely the general court, the religious court, the military court, and the state administrative court.<sup>20</sup> Furthermore, Islamic laws have officially become positive laws (*lex positiva/ius constitutum*) since the promulgation of Law No. 1 of 1974 concerning Marriage, which was later

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<sup>19</sup> Abdul Manan, *Islamic Law Reform in Indonesia*, (PT. RajaGrafindo Persada, Jakarta, 2006). p. 2.

<sup>20</sup> Law Number 14 of 1970 was subsequently amended by Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning the Provisions of the Principal Provisions of Judicial Power.

elaborated by Government Regulation No. 9 of 1975. This law applies to all Indonesian people of various religions but the nuances of Islam are very thick, so it is not surprising that in the process of legislation there is a political struggle marked by tug-of-war between groups that are pro and con to the formulation of articles that are considered crucial and controversial as the influence of the spirit of de-Islamization of Islamic law on the one hand, and its formalization on the other. In the next development, Law Number 7 of 1989 concerning Religious Courts was promulgated.<sup>21</sup>

Efforts to strengthen the position of the Religious Court have long been pioneered by the Ministry of Religion (now called the Ministry of Religion). The preparation of the Draft Law on Religious Justice has been started since 1961, but concretely it was only carried out in 1971 based on Presidential Instruction Number 15 of 1970 concerning Procedures for Preparing Draft Laws and Draft Government Regulations. After going through a long discussion, the Law on Religious Justice could only be promulgated on December 29, 1989. In order to be able to exercise the authority of the above jurisdiction, the Religious Court requires a material legal tool in the form of written law that guarantees uniformity of legal decisions.<sup>22</sup>

In the next development, in line with the demands of reform and regional autonomy, the legal politics played by the Reform Order government increasingly opens up opportunities for Islamic law legislation both at the national and regional levels which will certainly further strengthen the existence of Islamic law in Indonesia. Thus, Islamic law, in addition to existing as a legislative provision, also exists in the form of norms that regulate the behavior of Indonesian Muslims in daily life, both individual and social, as well as a form of practicing Islamic religious teachings that are believed to be true.

## CONCLUSION

The existence and development of Islamic law institutions in Indonesia shows a long journey full of dynamics, starting from the pre-colonial and colonial periods, to the reform and contemporary eras. During the Islamic kingdom, Islamic law was practiced socially and culturally, especially in the fields of family, inheritance, and muamalah. However, the colonial

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<sup>21</sup> Law. No. 7 of 1989 was subsequently amended by Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts and amended again by Law No. 50 of 2009 concerning Religious Courts.

<sup>22</sup> These books are: Al-Bajuri, Fath al Mu'in, Syarqowi 'ala al-Tahrir, Qalyubi/Mahalli, Fath al-Wahhab with its Syarah, Tuhfah, Targhib al-Musytaq, Qawanin Syar'iyah li al-Sayyid Uthman ibn Yahya, Qawanin Syar'iyah li al-Sayyid Shadaqah Dahlan, Syamsuri fi al-Faraidl, Bughyah al-Mustarsyidin, al-Fiqh Ala al.

period brought narrowing through the theory *of receptie* that limited its applicability. After independence, the direction of legal policy changed with the constitutional recognition of religious courts and the birth of important regulations such as the Religious Justice Law, the Compilation of Islamic Law, as well as laws in the fields of zakat, waqf, and sharia economics. The process of integrating Islamic law into positive law in Indonesia is evolving: from social norms to state law, from limited recognition to formal legitimacy. The reform era accelerated the institutional strengthening of Islamic law through the expansion of the authority of the religious courts and institutionalization in the socio-economic sector. This proves that Islamic law is not just a religious norm, but has become an integral part of the national legal system. Nevertheless, challenges remain, especially related to legal dualism, societal pluralism, and the need for harmonization with national and international legal principles. Therefore, collaborative efforts between scholars, academics, and policymakers are needed to maintain the relevance of Islamic law so that it remains adaptive to the times. Thus, Islamic law can continue to contribute to building a national legal system that is fair, inclusive, and in accordance with the values of Pancasila.

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