



Islamic Legal Politics in Post-Reformation Indonesia: Sharia Legislation, Decentralization, and Democratic Dynamics

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Abstract

The 1998 Reformism expanded democratic and decentralized spaces, yet scholarly engagement with sharia legislation often remains confined to normative or formal frameworks, leaving its intersections with electoral competition, identity politics, and shifting power configurations insufficiently examined. This study explores the development of Islamic legal politics in post-reform Indonesia, with particular attention to the dynamics of sharia legislation within a constitutional democracy. Employing a normative legal approach enriched by historical and conceptual perspectives, it analyzes secondary legal materials to assess implications for democracy, constitutionalism, and human rights. Findings reveal that post-reform sharia legislation is shaped by complex interactions among political elites' electoral strategies, the mobilization of religious identity, and decentralized structures that facilitate symbolic regulation at the local level. While national laws on waqf, zakat, and sharia banking address substantive socio-economic needs, local morality regulations—such as dress codes or alcohol restrictions—frequently serve symbolic and populist functions. This study contributes a contextual and integrative framework for understanding Islamic legal politics, underscoring the importance of inclusive paradigms attentive to social plurality, constitutional principles, and gender justice in Indonesia's multicultural society.

Keywords: Islamic Law, Islamic Legal Politics, Post-Reformation, Sharia Legislation

Abstrak

Reformasi 1998 memperluas ruang demokrasi dan desentralisasi, namun kajian akademik terhadap legislasi syariah seringkali tetap terbatas pada kerangka normatif atau formal, sehingga interaksinya dengan kompetisi elektoral, politik identitas, dan pergeseran konfigurasi kekuasaan kurang ditelaah. Penelitian ini mengeksplorasi perkembangan politik hukum Islam di Indonesia pasca-reformasi, dengan perhatian khusus pada dinamika legislasi syariah dalam kerangka demokrasi konstitusional. Menggunakan pendekatan hukum normatif yang diperkaya dengan perspektif historis dan konseptual, penelitian ini menganalisis bahan hukum sekunder untuk menilai implikasinya terhadap demokrasi, konstitusionalisme, dan hak asasi manusia. Hasil penelitian menunjukkan bahwa legislasi syariah pasca-reformasi dibentuk oleh interaksi kompleks antara strategi elektoral elite politik, mobilisasi identitas agama, dan struktur desentralisasi yang memfasilitasi regulasi



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simbolis di tingkat lokal. Sementara undang-undang nasional mengenai wakaf, zakat, dan perbankan syariah memenuhi kebutuhan sosio-ekonomi substantif, peraturan moral lokal seperti ketentuan berpakaian atau larangan alkohol yang seringkali berfungsi secara simbolis dan populis. Penelitian ini menyumbangkan kerangka konseptual dan kontekstual untuk memahami politik hukum Islam, menekankan pentingnya paradigma inklusif yang sensitif terhadap pluralitas sosial, prinsip konstitusional, dan keadilan gender dalam masyarakat multikultural Indonesia.

Kata kunci: Hukum Islam, Politik Hukum Islam, Pasca-Reformasi, Legislasi Syariah

Introduction

The political reform that unfolded in Indonesia in 1998 constituted a pivotal juncture in the nation's democratic trajectory, marking a profound transformation in the consolidation of the rule of law and the expansion of socio-political openness. This watershed moment ushered in fundamental changes, most notably the institutionalization of freedom of expression, the strengthening of governmental decentralization, and the broadening of civic participation in shaping state policy.¹ Within this new democratic landscape, legislative processes became increasingly responsive to societal demands, thereby opening avenues for the articulation of diverse normative frameworks, including those informed by Islamic law.² Within this context, the dynamics of Islamic legal politics have undergone a significant transformation, particularly in relation to the aspirations of segments of the Muslim community to integrate sharia values into the framework of the national legal system.³

The phenomenon of emerging sharia-inspired regional regulations (*Peraturan Daerah/PERDA*) across various parts of Indonesia in the post-reformation era reflects a notable shift in the relationship between religion and the state.⁴ The aspirations of Muslim communities to position Islamic law as one of the sources of positive law have become increasingly evident at both local and national political levels.⁵ Yet, Indonesia remains a democratic state founded upon *Pancasila* and the 1945 Constitution, which guarantee pluralism, freedom of religion, and equality of all citizens before the law.⁶ Within this framework, a critical question arises: to what extent Islamic legal politics develop within a pluralistic democratic state, and do sharia legislation genuinely coexist with the principles of constitutional democracy?

¹ Muhazir Muhazir, "Islamic Law Politics in The Contemporary Era (Revealing the Struggle for The Positivization of Islamic Law in Indonesia)," *Al Hurriyah : Jurnal Hukum Islam* 6, no. 1 (2021): 12, <https://doi.org/10.30983/alhurriyah.v6i1.3956>.

² Bahtiar Effendy, *Islam dan Negara: Transformasi Pemikiran dan Praktik Politik Islam di Indonesia* (Jakarta: Paramadina, 1998), 101.

³ Tim Lindsey, *Indonesia: Law and Society*, 2 ed. (London, The Federation Press, 2008), 59.

⁴ M. Amin Abdullah, *Islam Sebagai Ilmu: Epistemologi, Metodologi, dan Etika* (Yogyakarta: SUKA Press, 2006), 234.

⁵ Syahrizal Abbas, "Kedudukan Hukum Islam Dalam Sistem Hukum Nasional Di Indonesia," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 8, no. 1 (2013): 1-30.

⁶ A. H. Asari Taufiqurrohman et al., "The Role of Islamic Law, Constitution, and Culture in Democracy in the UAE and Indonesia," *AHKAM: Jurnal Ilmu Syariah* 24, no. 1 (2024): 83-100, <https://doi.org/10.15408/ajis.v24i1.33155>.

In its fundamental sense, Islamic legal politics refers to the processes and strategies through which Islamic law is formalized within the national legal system, whether through state legislation or via political and institutional mechanisms.⁷ In the Indonesian post-reformation context, Islamic legal politics has evolved beyond the realm of academic discourse to become a contested arena among diverse actors, including Islamist groups, nationalist factions, and segments of civil society, each advancing distinct vision regarding the role of religion within the state.⁸

The post-reformation political transformation has opened wide avenues for Islamic political groups to advocate for the incorporation of sharia values across various sectors of public life, including through legislative channels.⁹ The growing influence of Islamic-based political parties, i.e., *Partai Keadilan Sejahtera* (PKS), *Partai Persatuan Pembangunan* (PPP), and *Partai Bulan Bintang* (PBB), illustrated how religious identity politics has found renewed space within Indonesia's democratic multiparty system. Leveraging their political strength, these parties have sought to advance legal policies that embody Islamic values, both at the national and regional levels, thereby reshaping the contours of legal and political discourse in contemporary Indonesia.¹⁰

The most tangible manifestation of Islamic legal politics in the post-reformation era is the enactment of sharia-inspired regional regulations (Peraturan Daerah/Perda) in several districts and municipalities, including Aceh, Padang, Cianjur, Bulukumba, and Bima. The implementation of these regulations encompasses provisions such as the mandatory wearing of the hijab for Muslim women, prohibitions on alcohol consumption, curfews for adolescents, and restrictions on interactions between members of the opposite sex. This phenomenon has been comprehensively mapped by Michael Buehler, who documented at least 422 sharia-inspired regulations enacted in Indonesia between 1999 and 2013, the majority of which address issues of public morality and religious identity.¹¹ These findings resonate with reports from The Asia Foundation, which highlight that many of these regulations emerged not solely as expressions of religious aspirations, but also as electoral strategies and instruments of political legitimacy for local elites in the era of decentralization.¹² Scholars such as Tim Lindsey and Wahiduddin Adams further emphasize that numerous regulations risk conflicting with principles of human rights, gender equality, and constitutional legality, as they are not fully aligned with the framework of the 1945 Constitution or the foundational principles of a democratic rule-of-law state.¹³

⁷ Mahfud MD, *Politik Hukum di Indonesia* (Jakarta: Rajawali Pers, 2020), 128.

⁸ Khamami Zada, "Sharia and Islamic State in Indonesia Constitutional Democracy: An Aceh Experience," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 1-18, <https://doi.org/10.18326/ijtihad.v23i1.1-18>.

⁹ Endang Turmudi dan Riza Sihbudi, *Islam dan Radikalisme di Indonesia* (Jakarta: LIPI Press, 2005), 89.

¹⁰ Ahmad Nurozi, "Comparative Study of the Process of Islamic Law Legislation in Indonesia with Malaysia and Its Implementation into Legislation Regulations," *Jurnal Hukum Islam* 20, no. 1 (2022): 125-54, <https://doi.org/10.28918/jhi.v20i1.5906>.

¹¹ Michael Buehler, *The Politics of Shari'a Law: Islamist Activists and the State in Democratizing Indonesia*, 1 ed. (Cambridge: Cambridge University Press, 2016), 4-6. <https://doi.org/10.1017/CBO9781316417843>.

¹² The Asia Foundation, *Islamic Law and Regional Autonomy in Indonesia* (Jakarta: The Asia Foundation, 2005). 30

¹³ Tim Lindsey, *Indonesia: Law and Society*. 59

Within Indonesia's legal system, Islamic law occupies a distinct position, particularly in the domains of family law and the sharia-based economy. Its recognition and application are institutionalized through the Religious Courts, as stipulated in Law No. 7 of 1989 on Religious Judicature, later amended by Law No. 3 of 2006 and Law No. 50 of 2009. The strengthening of sharia economic frameworks is further reflected in the enactment of the Law on Sharia Banking (Law No. 21 of 2008) and the Law on Halal Product Assurance (Law No. 33 of 2014).¹⁴ However, when Islamic law began to expand into the sphere of public law through sharia-inspired regional regulations, new debates emerged concerning the limits of religious intervention within a pluralistic democratic state.¹⁵

From a theoretical perspective, Islamic legal politics in the post-reformation era can be examined through two principal approaches. The first is the normative-ideological approach, which views the implementation of Islamic law as a *shar'i* obligation and an essential component of the identity of Indonesia's Muslim majority.¹⁶ The second is the constitutional-democratic approach, which asserts that all forms of legislation, including those derived from religious sources, must remain subject to the principles of constitutionalism, democracy, and human rights.¹⁷ In political practice, these two approaches frequently stand in opposition, often engaging in a dynamic contestation that shapes and influences the trajectory of national legal policy.

It is important to note that post-reformation efforts to legislate sharia do not always reflect the collective will of the Muslim community, but are often influenced by short-term political interests such as image-building, religious populism, or electoral strategies of political parties. In several cases, sharia-inspired regulations have not been grounded in the objective needs of society, but rather function as symbolic expressions of religious identity employed to garner public sympathy. These dynamic raises serious concerns for the development of a national legal system that is rational, just, and inclusive.¹⁸ Moreover, issues of implementation and effectiveness have also come under scrutiny. A number of enacted regulations lack clear mechanisms for oversight and enforcement, and in some instances even conflict with higher-level laws.¹⁹ In this regard, the existence of such regulations tends to be more symbolic than substantive, prompting critical questions about the urgency and rationality of these policies within the framework of systematic legal development consistent with the principles of a democratic rule-of-law state.

This article seeks to critically examine the transformation of Islamic legal politics in post-reformation Indonesia, with particular emphasis on sharia legislation at both local and national levels. The primary focus is directed toward analyzing the motives, processes, actors, and impacts of sharia-based policies within the framework of a democratic state.

¹⁴ Alex Kusmardani et al., "The Development of Ideas on The Reform and Transformation of Islamic Family Law into Legislation in Islamic Countries," *Jurnal Syntax Imperatif: Jurnal Ilmu Sosial Dan Pendidikan* 4, no. 5 (2023): 644–62, <https://doi.org/10.36418/syntax-imperatif.v4i5.296>.

¹⁵ R. William Liddle, "The Islamic Turn in Indonesia: A Political Explanation," *The Journal of Asian Studies* 55, no. 3 (1996): 613–34, <https://doi.org/10.2307/2646448>.

¹⁶ Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: ISEAS, 2007), 142.

¹⁷ Wahiduddin Adams, "Problematika Hukum dalam Legislasi Syariat di Indonesia," *Jurnal Legislasi Indonesia* 10, no. 2 (2013), 14.

¹⁸ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Konstitusi Press, 2005), 97.

¹⁹ Luthfi Assyaukanie, *Islam and the Secular State in Indonesia* (Singapore: ISEAS Publishing, 2009), 89.

Employing a legal-political approach, the study aims to illuminate the dynamics of Islamic law formalization while simultaneously assessing the extent to which sharia legislation aligns with the principles of constitutionalism, legal pluralism, and the rights of citizens.

To date, a number of studies have examined specific aspects of the relationship between Islamic law and the state in Indonesia; however, they have not comprehensively explained the causal linkages between electoral politics, religious identity, decentralization, and sharia legislation, as analyzed in this article. For instance, the study *Transforming Islamic Law in Indonesia from a Legal Political Perspective* outlines the trajectory of Islamic law transformation within the framework of national policy, yet it does not explore in depth the role of local politics as a key variable in shaping sharia legislation.²⁰ Similarly, the work *Sharia and Islamic State in Indonesia Constitutional Democracy: An Aceh Experience* positions Aceh as a model for sharia implementation, but it does not address the diverse political motives, decentralization contexts, and electoral strategies present in other regions.²¹ Meanwhile, the study *Relasi Islam, Negara, dan Pancasila dalam Perspektif Tata Hukum Indonesia* emphasizes the philosophical relationship between Islam and the state without examining the practical realities of sharia-based legislation at the local level.²²

The next studies, such as *Analysis of Islamic Law Accommodation in National Law during the Era of Democratic Transition Government 2001–2004*, have primarily focused on the accommodation of Islamic law within a specific period of political transition, rather than on the long-term development of sharia legislation across different regimes.²³ Works such as *Shariah and the Politics of Pluralism in Indonesia* and *Islamic Revivalism in Indonesia* highlight the resurgence of Islamic identity in the public sphere and debates surrounding the nation-state, yet they do not elaborate on the direct relationship between electoral politics, identity symbolism, and regulatory outcomes at the regional level.²⁴ Meanwhile, *The Islamic Legal System in Indonesia* provides a macro-level overview of the Islamic legal system but does not offer an in-depth analysis of the political processes underpinning sharia legislation in the post-decentralization era.²⁵

In comparison with previous studies, this research offers novelty in two principal dimensions. First, it integrates an analysis of national Islamic legal politics with the dynamics of local politics resulting from decentralization, thereby providing a more comprehensive account of the motives and processes underlying sharia legislation. Second, it advances a new argument that post-reformation sharia legislation is the product of interaction among

²⁰ Ahmad Yani and Megawati Barthos, "Transforming Islamic Law in Indonesia from a Legal Political Perspective," *Al-Ahkam* 30, no. 2 (2020), <https://doi.org/10.21580/ahkam.2020.30.2.6333>.

²¹ Khamami Zada, "Sharia and Islamic State in Indonesia Constitutional Democracy: An Aceh Experience," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 1–18, <https://doi.org/10.18326/ijtihad.v23i1.1-18>.

²² Hamdan Zoelva, "Relasi Islam, Negara, Dan Pancasila Dalam Perspektif Tata Hukum Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 4, no. 2 (2012), <https://doi.org/10.18860/j-fsh.v4i2.2980>.

²³ Ilda Hayati and Busman Edyar, "Analysis of Islamic Law Accommodation in National Law during the Era of Democratic Transition Government 2001–2004," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023), <https://doi.org/10.29240/jhi.v8i1.5657>.

²⁴ Ratno Lukito, "Shariah and the Politics of Pluralism in Indonesia," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 4, no. 1 (2019), <https://doi.org/10.22373/petita.v4i1.8>.

²⁵ Mark E. Cammack and R. Michael Feener, "The Islamic Legal System in Indonesia," *Washington International Law Journal* 21, no. 1 (2012).

three key variables: electoral political competition, the symbolic construction of religious identity, and the decentralized space that enables local elites to build political legitimacy. This analytical synthesis has not been explicitly addressed in earlier studies.²⁶

This study makes an important scholarly contribution to the discourse on Islamic law in Indonesia. First, it expands the discussion of Islamic legal politics by adding an analytical dimension that examines how political power interacts with religious identity in the production of sharia-based regulations. Second, it enriches the literature on decentralization by demonstrating that regional autonomy affects not only administrative aspects but also ideological contestation and the formulation of religion-based legal norms. Third, the findings provide a conceptual foundation for developing a more inclusive and contextual paradigm of Islamic legal politics, one that aligns with the principles of constitutional democracy and the pluralism of Indonesian society.

Consequently, the present article is directed toward addressing several key problems related to the dynamics of sharia legislation in post-reformation Indonesia. It first traces the development of Islamic legal politics following the collapse of the New Order, particularly with regard to the emergence of new political spaces for the formalization of religious values. Within this trajectory, the study also investigates the motives and backgrounds behind the rise of sharia-inspired regional regulations across different areas, whether rooted in the religious aspirations of communities or driven by electoral strategies and the political legitimacy of local elites. Subsequently, the article analyzes the relationship between sharia legislation and the principles of democracy, constitutionalism, and human rights, including the extent to which such policies are consistent with, or potentially in conflict with, the framework of national law. Finally, the study evaluates whether sharia legislation that has developed during the reform era represents the substantive needs of society or is better understood as political symbolism arising from power competition at both local and national levels.

This study constitutes normative legal research analyzed through the lens of Islamic legal politics, employing both historical and conceptual approaches. The choice of these approaches is grounded in the character of post-reformation sharia legislation, which cannot be understood merely as a normative legal product but rather as the outcome of interactions among Islamic legal values, political interests, and power structures within a democratic system. The Islamic legal-political approach is utilized to examine the direction, orientation, and rationality of sharia legislation, while the historical approach traces the socio-political dynamics and constitutional changes in the post-reformation era that created space for the formalization of sharia at both national and regional levels. The conceptual approach, in turn, is applied to formulate and evaluate key concepts such as constitutional democracy, legal pluralism, and the protection of human rights, serving as an evaluative framework for the study.²⁷

²⁶ Rizal Al Hamid et al., "Political Conflict between Islamic Law and National Law in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025): 48–62, <https://doi.org/10.65586/insani.v1i1.4>.

²⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2010), 14–18.

The research data consist of secondary legal materials, including national and regional legislation containing Islamic sharia norms enacted in the post-reformation period, as well as relevant scholarly literature and expert opinions. The analysis is conducted in a descriptive-analytical and critical manner, interpreting legal norms and evaluating the implications of sharia legislation for the principles of democracy, constitutionalism, and the protection of human rights within Indonesia's legal system.²⁸

Operationally, this research was conducted in several stages. First, the researcher identified and collected sharia-based legal documents from various regions along with related regulations at the national level. Second, these documents were categorized according to the type of regulation, political context, and period of enactment. Third, content analysis was employed to trace recurring themes within the texts of regulations and legislative records, such as public morality, religious identity, or electoral interests.²⁹ Fourth, critical analysis was applied to assess how political motives and social contexts influenced the formulation of these regulations, as well as whether the resulting policies were consistent with the principles of constitutionalism, democracy, and legal pluralism.³⁰ Thus, this research method does not merely rest on theoretical exposition but is practically employed to connect legal texts with political contexts, thereby producing a comprehensive understanding of how sharia legislation is generated, which actors are involved, and what normative and socio-political consequences it entails within the framework of Indonesia's post-reformation democratic state.

Islamic Law during the Old and New Order: From Depoliticization to Aspirational Openness

As Indonesia entered the 1960s, the nation stood at a crossroads between political instability and the urgent need for economic reform. The transitional period leading to the New Order revealed how the state reconfigured its relationship with Islamic groups. Under President Soekarno, issues of Islamic law were largely marginalized within the national political agenda, as the government's primary focus was directed toward shaping an anti-imperialistic political orientation and strengthening Indonesia's position in the international arena. However, this strategy ultimately exacerbated economic conditions, leaving a significant burden for the era of New Order to address.³¹

Soeharto, the President of the New Order era, sought to learn from these failures. He established a regime grounded in political stability as the prerequisite for economic development—an orientation that Riswandha Imawan aptly described as a “dual obsession”: political stability as the foundation for economic growth.³² To achieve such stability, depoliticization became the central strategy. The state curtailed the political space of Islam by banning Masyumi, rejecting the formation of new Islamic parties, and merging existing

²⁸ The Asia Foundation, *Islamic Law and Regional Autonomy in Indonesia*, 22-27.

²⁹ Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology*, ed. oleh 2 (Thousand Oak, Sage Publications, 2004), 31-35.

³⁰ Zada, “Sharia and Islamic State in Indonesia Constitutional Democracy,” 2023.

³¹ Riswandha Imawan, *Depolitisasi Politik Orde Baru* (Jakarta: LP3ES, 1998), 41-45.

³² Riswandha Imawan, *Depolitisasi Politik Orde Baru*, 27-33.

Islamic parties into the United Development Party (PPP). The *asas tunggal Pancasila* policy functioned as an ideological instrument to restrict religiously based political expression.³³

Actually, the framework of *political domination*, as explained by Mahfud MD, the state exercised control over law primarily to preserve its power rather than to respond to societal needs.³⁴ This was evident in the limited production of Islamic legal instruments. Over more than three decades, only two major laws were enacted, the Marriage Law (1974) and the Religious Courts Law (1989) alongside the Compilation of Islamic Law (1991), which was issued merely as a Presidential Instruction without strong normative legitimacy. M.B. Hooker observed that during this period Islamic law was reduced to an administrative instrument, rather than functioning as a legal system organically rooted in society.³⁵ Yet this political repression carried significant consequences. When the regime collapsed in 1998, long-suppressed Islamic political aspirations resurfaced. The Reformasi era not only opened democratic space but also dismantled the centralized structures that had hindered the institutionalization of Islamic law. This marked the starting point of a profound transformation in Indonesia's Islamic legal politics.

Islamic Law in the Habibie Era: Accommodation and Rehabilitation of Sharia Legislative Space

The leadership transition from Soeharto to B.J. Habibie in May 1998 marked a profound restructuring of Indonesia's modern political landscape. Habibie emerged as a figure markedly different from his predecessor. As a Muslim technocrat with a strong intellectual foundation and close ties to ICMI, he recognized that reconciliation between the state and the Muslim community was an urgent necessity after decades of political repression under the era of New Order.³⁶ Habibie's early policies, including media liberalization, the release of political prisoners, and the deregulation of social organizations, created a new political atmosphere in which religious expression was no longer perceived as a threat to the state. Consequently, his leadership opened channels of dialogue between the state and the Muslim community that had previously been tightly closed.

In the context of Islamic legal politics, the Habibie era represented a critical turning point, as it laid a new foundation for a more accommodative relationship between religion and the state. One of the most visible manifestations was the surge in Muslim political participation through the emergence of dozens of new political parties. Unlike the era of New Order period, when the *Partai Persatuan Pembangunan* (PPP) served as the sole channel for Islamic politics, nearly fifteen Islam-based parties contested the 1999 general election.³⁷ This phenomenon illustrates that the reform era not only granted political freedom but also reopened the red carpet for Islamic political expression within a constitutional framework.

³³ Riswandha Imawan, *Depolitisasi Politik Orde Baru*, 50-55.

³⁴ Mahfud MD, *Politik Hukum di Indonesia*, 56-60.

³⁵ M.B. Hooker, *Indonesian Islam, Social Change Through Contemporary Fatawa* (Honolulu: University of Hawai Press, 2003), 12-17.

³⁶ Edward Aspinall, *Indonesia: Reformasi dan Perubahan Sosial* (Jakarta: LP3ES, 2005), 45-50.

³⁷ Moch. Nur Ichwan, "Towards a Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy," *Journal of Indonesian Islam* 3, no. 1 (2013): 60-104, <https://doi.org/10.1355/9789814414579-007>.

Such openness simultaneously signified the state's rehabilitation of long-suppressed religious aspirations.

Concrete steps taken by the state to accommodate Islamic law during the Habibie era was projected in the enactment of several substantive regulations addressing the needs of the Muslim community. The Zakat Management Law (1999), the Hajj Administration Law (1999), and the amendment of the Religious Courts Law through the Judicial Authority Law (1999) serve as clear indicators that the state had begun to regard Islamic law as an integral component of the national legal system requiring reinforcement.³⁸ It is therefore unsurprising that Mahfud MD characterized this period as the birth of responsive law, a type of law formulated in response to societal dynamics, rather than merely functioning as an instrument of state power as in the New Order era.³⁹

Politically, Habibie's approach reflected a more relational and dialogical character. Islamic law was no longer perceived as a threat to state ideology but rather as part of the legal pluralism that could operate within a democratic framework. Within the theoretical lens of legal pluralism, Habibie's policies demonstrated an awareness that national law must be capable of accommodating the diverse aspirations of society, including those of Muslims who constitute the majority of Indonesia's population.⁴⁰ In this way, the Habibie's administration era was a transitional phase toward a more open and adaptive model of religion-state relations. Although his presidency was brief, Habibie's influence on the development of Islamic legal politics cannot be overlooked. He opened channels of dialogue, expanded the political space for Muslims, and laid the normative foundation for a more systematic development of sharia regulations under subsequent administrations. Thus, Habibie may be regarded as an early architect of the reconstruction of state-Islam relations in the reform era.⁴¹

Abdurrahman Wahid Era: Substantive Islam vs. Sharia Formalism

The leadership of Abdurrahman Wahid, widely known as Gus Dur, introduced a markedly different trajectory in the field of Islamic legal politics. Although elected with the support of the central axis, which was dominated by Islamic parties, Gus Dur deliberately chose a course that rejected the formalization of sharia as part of state law. This position was rooted in his intellectual framework, which regarded Islam primarily as a source of social ethics and moral spirituality rather than as a system of state legislation.⁴² For Gus Dur, Indonesia was a nation-state founded upon pluralism; thus, the formalization of a particular religion would foster exclusivism and threaten social harmony.

During his presidency, Gus Dur implemented numerous policies that strengthened civil rights and dismantled historical discrimination, particularly against the Chinese-Indonesian community. Presidential Decree No. 6 of 2000, which revoked restrictions on Chinese culture and religion, marked a major milestone in the history of civil rights in Indonesia.⁴³ This policy was not merely a symbol of tolerance but also demonstrated that

³⁸ Tim Lindsey, *Indonesia: Law and Society*, 301-305.

³⁹ Mahfud MD, *Politik Hukum di Indonesia*, 101-102.

⁴⁰ Hooker, *Indonesian Islam, Social Change Through Contemporary Fatawa*, 10-14.

⁴¹ Hooker, *Indonesian Islam, Social Change Through Contemporary Fatawa*, 15-18.

⁴² Abdurrahman Wahid, *Islamku, Islam Anda, Islam Kita* (Jakarta: The Wahid Institute, 2006), 22-25.

⁴³ Leo Suryadinata, *Etnis Tionghoa dan Politik Indonesia* (Jakarta: LP3ES, 2002), 112-120.

Gus Dur prioritized substantive Islamic values, such as justice and equality, over the formalization of sharia. He also sought to annul the MPRS decree banning communism as part of a broader agenda of national reconciliation, although this effort was ultimately unsuccessful.

Gus Dur's rejection of sharia formalization reflected his understanding that sharia is not identical with state regulation. As noted by Nadirsyah Hosen, Gus Dur regarded Islamic law as a set of values rather than as legalistic commands to be imposed by the state.⁴⁴ From this perspective, he firmly maintained that the state must not serve as a political instrument for any particular religious group. This view aligns with the concept of civil religion, which respects the moral values of religion without transforming it into the formal ideology of the state. Although often accused of being unsympathetic to Islam, Gus Dur's policies in fact reinforced universal Islamic values. He improved social relations, opened spaces for interreligious dialogue, and defended minority rights as part of the principle of justice at the core of Islamic teaching. Thus, Gus Dur did not reject Islam itself, but rather opposed the instrumentalization of Islam as a tool of political legitimacy. This position rendered his presidency a pivotal chapter in the narrative of Islam-state relations in Indonesia.

In the context of Islamic legal politics, Gus Dur's era demonstrated that the strengthening of Islamic values need not always be realized through sharia legislation. Islamic law could function substantively through inclusive policies and the advancement of human rights. From this perspective, Gus Dur succeeded in broadening the meaning of Islamic law beyond mere legal formalism toward social ethics and public morality.⁴⁵

Megawati Era: Autonomy and Aceh's Consolidation

Eventually, when Megawati Soekarnoputri assumed the presidency in 2001 following the impeachment of Gus Dur, Indonesia was entering a phase of democratic consolidation. The political climate was relatively stable, yet there remained limited space for the expansion of sharia-based legislation at the national level. Megawati did not place Islamic legal politics at the center of her administration's agenda, a stance reflected in the minimal production of Islamic-oriented legislation during her tenure. Nevertheless, this does not imply that significant developments were absent.⁴⁶

One of the most monumental policies of the Megawati era was the enactment of Law No. 18 of 2001 on Special Autonomy for the Province of Nanggroe Aceh Darussalam. This policy affirmed Aceh's authority to formally implement Islamic law, including through the establishment of the *Mahkamah Syar'iyyah* (Sharia Courts) and the drafting of *Qanun Syariat*.⁴⁷ Within the framework of jurisdictional differentiation theory, this policy reflected the state's recognition of legal diversity as a hallmark of a plural nation that nonetheless preserves national unity. The state provided Aceh with the space to organize its legal system in

⁴⁴ Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia*, 115-118.

⁴⁵ Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia*, 120-125.

⁴⁶ Siti Musdah Mulia, *Politik Hukum Islam di Indonesia* (Jakarta: Gramedia, 2008), 66-70.

⁴⁷ Tim Lindsey, *Indonesia: Law and Society*, 211-214.

accordance with its socio-historical characteristics without altering the structure of the national legal framework.⁴⁸

In addition, Megawati enacted Law No. 20 of 2003 on the National Education System, which strengthened the guarantee of religious rights by mandating that every educational institution provide religious instruction in accordance with the faith of its students. This provision represented the state's recognition of the religious rights of society within the educational sector as part of constitutional guarantees.⁴⁹ Beyond this, however, there were few other policies directly related to Islamic law. Megawati's focus was directed more toward economic recovery, political reconciliation, and addressing the impacts of the multidimensional crisis.

From the perspective of Islamic legal politics, Megawati's administration represented a minimalist phase in which the state prioritized maintaining stability over advancing the formalization of sharia. Such policy choices were interpreted as a pragmatic political strategy aimed at avoiding polarization amid the fragile early stages of democratization. The absence of sharia legislation initiatives did not signify a rejection of Islam, but rather reflected political caution in balancing the aspirations of the majority with the nation's plural character. Nevertheless, the special autonomy policy for Aceh had long-term implications for the development of Islamic law. It provided the legal foundation for a more comprehensive implementation of sharia in Aceh during subsequent periods. Thus, although no significant national-level reconstruction was evident, the Megawati era made an important contribution to the framework of local Islamic law, which later became a crucial precedent for the dynamics of Islamic law in Indonesia.⁵⁰

Susilo Bambang Yudhoyono Era: National Consolidation and Regional Expansion

The administration of Susilo Bambang Yudhoyono (SBY) represented one of the most dynamic phases in the development of Islamic legal politics in Indonesia. Unlike previous eras that tended to be minimalist or focused primarily on substantive values, SBY combined two strategies: strengthening national legislation based on Islamic principles while simultaneously embracing local political aspirations within the framework of regional autonomy. This dual approach created a unique synergy between the idealism of sharia and the pragmatism of politics. At the national level, SBY enacted several landmark laws that reinforced the infrastructure of Islamic law. The Waqf Law (2004), the Sharia Banking Law (2008), the Zakat Management Law (2011), and the Halal Product Assurance Law (2014) serve as explicit examples of the integration of Islamic values into the national legal system. These regulations were not merely political products but rather responses to the socio-economic needs of modern Muslim society.⁵¹ Furthermore, the revisions to the Religious Courts Law in 2006 and 2009 expanded the jurisdiction of these institutions, establishing them as a vital pillar within the national judicial system.

⁴⁸ Mohd Din and Al Yasa' Abubakar, "The Position of the Qanun Jinayat as a Forum for the Implementation of Sharia in Aceh in the Indonesian Constitution," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 689, <https://doi.org/10.22373/sjhk.v5i2.10881>.

⁴⁹ Zulkifli Hasan, "Legal Pluralism in Indonesian Education Law," *Indonesia and the Malay World* 39, no. 114 (2011): 94–177.

⁵⁰ Tim Lindsey, *Indonesia: Law and Society*, 216–219.

⁵¹ Peneliti Balitbang Kemenag, *Politik Hukum Islam Era Reformasi* (Jakarta: Kemenag RI, 2016), 38–44.

In Aceh, the implementation of Islamic law became increasingly concrete through the enactment of the *Qanun Jinayat* and the *Qanun on Criminal Procedure*, making Aceh the only province in Indonesia with a sharia-based criminal justice system formally recognized by the state. For many other regions, Aceh functioned as a symbolic model of the potential application of sharia within the framework of national law, albeit limited to the context of special autonomy. The existence of these *qanun* illustrates how Islamic law can be formally institutionalized within the state legal system through specific political and constitutional mechanisms.

Meanwhile, decentralization as regulated by the Regional Governance Law created broad opportunities for local leaders to issue regional regulations with sharia nuances, which in turn triggered a proliferation of morality-based regulations across various regions. Buehler notes that at least 422 sharia-related PERDA (regional regulations) were enacted between 1999 and 2013, with more than half focusing on moral norms such as dress codes, alcohol prohibition, and restrictions on interactions between the sexes. Many of these regulations emerged during Susilo Bambang Yudhoyono's administration, when religious symbols were frequently employed by local leaders as electoral strategies. This phenomenon highlights two tendencies in the SBY era: the substantive integration of Islamic law at the national level and the strengthening of Islamic political symbolism at the local level. Together, these tendencies underscore that the development of Islamic law in Indonesia unfolded not only through the establishment of formal norms but also through democratic political dynamics that were often populist in nature.

Sharia Legislation, Identity, and Democratic Governance in Post-Reform Indonesia

The motives behind sharia legislation in post-reform Indonesia reveal a complex and multidimensional pattern. At the most basic level, many sharia regulations emerged from the religious identity impulses of Muslim communities. The presence of sharia-inspired regional regulations in various areas is often perceived as an effort to assert majority identity in the public sphere, particularly in regions where Islam serves as the dominant cultural marker.⁵² Bahtiar Effendy describes this phenomenon as "Islam as political identity," namely when religion is employed as a symbol to legitimize public values and morality.⁵³

However, identity-based motives did not stand alone. In many cases, sharia issues were commodified by local elites to garner support during election seasons. Within the framework of religious populism theory, sharia legislation was employed to mobilize religious sentiment and to signal the moral alignment of prospective regional leaders.⁵⁴ Buehler's study indicates that more than 60% of sharia-inspired regional regulations across Indonesia were issued in the lead-up to local elections. This explains why such policies tended to focus more on public morality than on structural solutions to socio-economic problems.⁵⁵

⁵² Andree Feillard, dan Remy Madinier, *The End of Innocence? Indonesian Islam and the Temptation of Radicalism* (Singapore: NUS Press, 2011), 90-98.

⁵³ Bahtiar Effendy, *Islam dan Negara: Transformasi Pemikiran dan Praktik Politik Islam di Indonesia*, 121-130.

⁵⁴ Vedi R. Hadiz, *Islamic Populism in Indonesia and the Middle East* (Cambridge: Cambridge University Press, 2016), 34-40.

⁵⁵ Buehler, *The Politics of Shari'a Law*, 92-96.

The decentralized political structure further reinforced this tendency. With broad authority to issue regional regulations (*perda*), local leaders possessed political incentives to employ religious issues as instruments of legitimacy.⁵⁶ Lindsey and Hooker observe that regional autonomy generated the phenomenon of “legal localization”—where regions not only adapted national norms but also created local religious norms that exerted wide-ranging impacts on public life.⁵⁷

These motives intertwined with the social contexts of each region, producing highly diverse variations of sharia-based policies. Some regions issued sharia regulations due to pressure from religious scholars, while others did so for electoral purposes. Identity, power, and political structures converged to shape policies that, on the one hand, reflected societal aspirations, yet on the other hand could function as problematic instruments of social control. Thus, sharia legislation is the product of interactions among identity dynamics, electoral strategies, and structural incentives. Understanding these motives is crucial for assessing the extent to which sharia-based policies genuinely reflect the substantive needs of society or merely serve as political symbols.

The presence of sharia legislation within Indonesia’s legal framework poses serious challenges to three fundamental principles of the modern state: democracy, constitutionalism, and the protection of human rights.⁵⁸ On the one hand, sharia-inspired regional regulations emerged through democratic mechanisms—deliberated by local parliaments (*DPRD*), approved by regional leaders, and often supported by segments of the Muslim community. Yet such majoritarian democracy does not automatically guarantee adherence to constitutional principles and human rights.⁵⁹ Lindsey emphasizes that Indonesia is not a religious state, and therefore religion-based legislation must not conflict with the principles of equality before the law and non-discrimination.⁶⁰ In this context, several sharia regulations have been deemed problematic for restricting freedom of movement, imposing dress codes, and even enabling state control over women’s bodies through mandatory hijab rules and curfews. The National Commission on Violence Against Women (*Komnas Perempuan*) has documented hundreds of morality regulations that are discriminatory toward women and gender minorities.⁶¹

The tension between sharia legislation and national legal norms became increasingly evident when various morality regulations were subjected to judicial review by the Supreme Court. A significant number of these regulations were annulled on the grounds that they conflicted with higher-level laws or exceeded the authority of local governments. This fact underscores that constitutionalism remains the primary corridor within Indonesia’s legal

⁵⁶ Arskal Salim, “‘Shari ‘a from Below’ in Aceh (1930s–1960s): Islamic Identity and the Right to Self-Determination with Comparative Reference to the Moro Islamic Liberation Front (MILF),” *Indonesia and the Malay World* 32, no. 92 (2004): 80–99.

⁵⁷ Hooker, *Indonesian Islam, Social Change Through Contemporary Fatawa*, 88–90.

⁵⁸ Arskal Salim, “Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh,” *The Journal of Legal Pluralism and Unofficial Law* 42, no. 61 (2010): 1–29, <https://doi.org/10.1080/07329113.2010.10756640>.

⁵⁹ Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 155–160.

⁶⁰ Tim Lindsey, *Indonesia: Law and Society*, 297–305.

⁶¹ Komnas Perempuan, *Laporan Tahunan Kekerasan terhadap Perempuan di Indonesia 2019* (Jakarta: Komnas Perempuan, 2019), 45–51.

system, one that cannot be penetrated by religious aspirations, no matter how strong the social support behind them.

From a human rights perspective, the central issue lies in the enforcement of sharia regulations, which often takes on a repressive character and is used as an instrument of social control. In several cases, such regulations have generated discrimination and marginalized certain groups, thereby contravening universal human rights principles such as protection against discrimination, respect for privacy, and guarantees of freedom from violence. Within this context, democracy, constitutionalism, and human rights form a highly dynamic arena of negotiation, where sharia legislation occupies a dilemma: born from majority aspirations, yet potentially threatening minority rights and violating national legal order. Consequently, analysis of sharia legislation cannot be conducted solely in a legalistic manner; it must also take into account the broader socio-political dynamics that surround it.

Sharia Legislation: Substantive vs. Symbolic

The trajectory of Islamic law in Indonesia cannot be understood solely through the texts of state-issued regulations, but must also be examined in terms of how the law operates within political and social practice. During the eras of Old Order - New Order periods, recognition of Islamic law was indeed reflected in several important legal products, yet such recognition remained limited and tightly controlled. In practice, Islamic law was more often positioned as an administrative instrument, without being granted space to develop autonomously, in line with the state's strategy of maintaining political stability. The 1998 Reformasi fundamentally altered this situation. The state began to open avenues for religious aspirations to enter the legal and political arena, whether through more responsive legislation under Habibie or through Abdurrahman Wahid's approach, which emphasized substantive Islamic values such as justice, equality, and respect for diversity. This period demonstrates that the role of Islamic law does not always depend on formalization, but also on ethical orientation and the policy objectives of the state.

As Indonesia entered the stage of democratic consolidation, the relationship between Islamic law and the state grew increasingly complex. On the one hand, the state expanded normative recognition of Islamic law through national regulations and the granting of special authority to Aceh. On the other hand, political decentralization created opportunities for the emergence of various sharia-inspired regulations at the local level, which did not always originate from the substantive needs of society.

A comprehensive discourse of post-reform sharia legislation revealed that these policies lie between two spectrums: substantive needs and political symbolism. On one side, national legislation such as the Waqf Law, the Zakat Law, and the Sharia Banking Law addressed the real needs of Muslim society in the context of economic modernization and globalization.⁶² The demand for sharia-compliant financial services, halal consumer protection, and the management of Islamic social funds provided strong justification for the enactment of these laws. On the other side, however, local legislation displayed a different pattern. Morality regulations, covering dress codes, prohibitions on intimate interactions, or restrictions on alcohol, tended to represent identity symbols rather than the substantive

⁶² Arsal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia*, 104-110.

needs of society. This phenomenon was driven by political motives: local elites employed sharia as a tool of legitimacy to reinforce moral image and secure electoral support.⁶³

From the perspective of Islamic legal politics, each historical period demonstrates that the development of Islamic law in Indonesia has been largely determined by the configuration of power and the political orientation of the ruling regime. During the Old Order and New Order, Islamic law was placed in a subordinate position through systematic strategies of depoliticization. The state regarded political Islam as a threat to stability, thereby reducing Islamic law to an administrative instrument with minimal normative force. This approach reflected a legal politics oriented toward state domination, in which lawmaking was not intended to respond to the aspirations of Muslim society but rather to maintain political control. As a result, the aspirations of Islamic law did not disappear but remained latent, awaiting changes in the political structure.

This political symbolism grew stronger as society often associated piety with political leadership. In such circumstances, sharia-inspired regional regulations functioned as indicators that local governments were “religious” and “morally strict,” even though they did not provide solutions to structural problems such as poverty, education, or socio-economic disparity.⁶⁴ Nevertheless, not all sharia legislation was purely symbolic. Some regions employed sharia as a foundation for strengthening the economic welfare of the Muslim community, such as through the development of sharia markets, the management of productive zakat, and microeconomic policies based on sharia principles. However, the number of such initiatives was far fewer compared to morality-based regulations.⁶⁵

From the perspective of the Islamic legal-political system, sharia legislation in Indonesia operates within an order that does not position sharia as an independent source of law, but rather as a normative framework that must negotiate with state structures, political mechanisms, and modern principles of legality. Within this system, the applicability of Islamic law is not determined by religious authority, but by the ability of sharia norms to be translated into constitutionally legitimate legislative processes. When the state formulates regulations concerning zakat, waqf, sharia banking, or halal product assurance, Islamic law functions as a value framework processed through the political and administrative procedures of the state. This pattern demonstrates that Indonesia’s Islamic legal-political system works in an integrative manner, situating sharia as a normative reference adapted to the governance needs of the state and modern society.

However, different dynamics emerge in sharia legislation at the local level. In this context, the Islamic legal-political system often loses its internal consistency because lawmaking processes are driven more by short-term power calculations than by mature normative considerations. Morality regulations enacted without adequate social analysis reveal that sharia is positioned as a symbol of political legitimacy rather than as an instrument for addressing public problems. When Islamic law is reduced to an identity marker or a tool for mobilizing support, the Islamic legal-political system experiences a

⁶³ Vedi R. Hadiz, *Islamic Populism in Indonesia and the Middle East*, 67-71.

⁶⁴ Andree Feillard, dan Remy Madinier, *The End of Innocence? Indonesian Islam and the Temptation of Radicalism*, 100-103.

⁶⁵ Peneliti Balitbang Kemenag, *Politik Hukum Islam Era Reformasi*, 79-84.

narrowing of function, as the values of justice and public welfare—its intended primary orientation—are marginalized by electoral interests.

This condition illustrates that the central issue of sharia legislation does not lie in the mere presence of Islamic norms within the national legal sphere, but in how the legal-political system manages them. As long as sharia norms are processed through mechanisms that ensure legal rationality, consistency with constitutional principles, and orientation toward the public interest, Islamic law play a constructive role within the national legal system. Conversely, when legislative processes proceed without a strong normative framework of control, Islamic law risks losing its substantive legitimacy and instead generating social resistance. The challenge of Islamic legal politics in Indonesia is not about expanding sharia symbols in regulation, but about building a system capable of ensuring that every Islam-based policy truly functions as an instrument of justice, utility, and social order within a pluralistic rule-of-law framework. Accordingly, sharia legislation should be understood as a complex mosaic that combines substantive values, expressions of religious identity, and political symbolism. Interpreting sharia legislation from only one perspective risks producing partial and misleading conclusions. Therefore, analysis of sharia legislation must always be situated within broader social, political, and economic contexts, so as to fully capture the dynamics and complexities of the relationship between religion and the state in Indonesia's democratic practice.

Conclusion

This study affirms that the development of Islamic legal politics in post-reform Indonesia has not followed a linear trajectory, but has instead evolved through dynamic and contextual configurations. Each post-reform regime shaped a distinct orientation in responding to religious aspirations: from the phase of reconciliation and responsive law under Habibie, the emphasis on substantive Islam and rejection of sharia formalization under Abdurrahman Wahid, the strengthening of jurisdictional differentiation through Aceh's special autonomy under Megawati, to the consolidation of national Islamic legislation accompanied by the expansion of local sharia regulations under Susilo Bambang Yudhoyono. These variations demonstrate that Islamic law in Indonesia has developed through ongoing negotiation between religious aspirations, political strategies, and constitutional boundaries within the framework of a democratic state.

The findings of this research also indicate that sharia legislation cannot be understood merely as an expression of religious identity. At the local level, sharia regulations often emerged from the intersection of electoral interests, identity mobilization, and structural incentives generated by political decentralization. This study extends previous scholarship by showing that identity, electoral, and structural motives do not operate in isolation, but rather reinforce one another and shape policy patterns that are frequently symbolic. In this context, sharia legislation occupies an ambivalent position: on the one hand, it gains democratic legitimacy, yet on the other hand, it risks conflicting with constitutional principles and the protection of human rights. Such tension situates Islamic legal politics as a contested arena between majority will and the guarantee of citizens' fundamental rights.

Generally, this research contributes to the enrichment of the literature on Islamic legal politics by highlighting the asymmetry between sharia legislation at the national and local

levels. At the national level, Islamic law has tended to develop substantively and functionally to address the needs of modern Muslim society, whereas at the local level it has more often appeared as political symbolism not always grounded in empirical needs. These findings underscore that the future of religion-state relations in Indonesia depends greatly on the state's ability to maintain a balance between accommodating religious aspirations and upholding democracy and constitutionalism. Accordingly, caution in the formulation of sharia legislation is a crucial prerequisite to ensure that the integration of religious values does not become an instrument of social exclusion, but rather serves as a means of justice and cohesion within a plural society.

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