

**THE EVOLUTION OF ISLAMIC LAW IN
INDONESIA: A SOCIO-HISTORICAL
PERSPECTIVE ON ITS STRUGGLE FOR
EXISTENCE**

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Received on: 05-01-24

Accepted on: 06-03-24

<https://doi.org/10.57144/hi.v47i1.891>

Abstract

Throughout Indonesia's history, legal battles have been ongoing since the Dutch colonial era, with three distinct legal systems asserting their presence. Among these, Islamic law holds significance within Indonesia's legal framework. This study aims to outline the historical struggle of Islamic law in establishing its place within national legislation. Employing a sociological approach, the research delves into the narrative of Islamic law's struggle, utilizing secondary data and employing narrative analysis to chronologically recount its journey. Findings reveal that Islamic law has deep historical roots in Indonesia, functioning as a living legal tradition since the advent of Islam in the region. Despite being abolished by Dutch colonial rule, Islamic law persisted and continues to influence both written and unwritten aspects of Indonesian law. Post-independence, Indonesia largely adopted the legal policies of its colonial predecessors, further cementing the presence of Islamic law within its legal framework. Today, Islamic law remains recognized within national legislation, serving as a filter for legal materials and contributing to the formation of Indonesian law.

Keywords: *Contribution, Legal Development, Criminal Law, Islamic Criminal Law, National.*

1. Introduction

The legal conflict in Indonesia has persisted from the colonial era under Dutch rule to the present day. The current legal landscape encompasses three main components: customary law, Islamic law, and Western law, which was inherited from the Dutch colonial period. Throughout Indonesia's legal evolution, Islamic law has continuously vied for recognition and influence, asserting itself in both written and unwritten forms across diverse fields and legal contexts.

Islamic law has been present in Indonesia since Islam first arrived in the archipelago. As the local populace embraced Islam, the application of Islamic law became integrated into the fabric of social order. These norms and legal principles served as guiding principles for societal conduct. Through ongoing social interactions, Islamic law gradually became entrenched and evolved into a structured legal system within Indonesian society.¹ Even after the kingdoms in the archipelago turned into Islamic kingdoms, Islamic law was officially applied by the state in various aspects.

The existence of Islamic law experienced a struggle after the arrival of the Dutch who colonized the archipelago. The Dutch not only controlled politically and economically but also enforced the laws they brought. At first, it only applied to the colonizers, and then it was forced to apply to the colonized people. After Indonesia's independence, the legal policy did not change. Legally, independent Indonesia was only a transfer of power from the colonizers to the natives. Customary law, Islamic law, and the law of the Dutch heritage still apply today².

As a result of legal policies that continued the tradition during the colonial period, Islamic law was more a law that lived in a society in various aspects than what was valid as positive law³. How alive Islamic law is can be seen from the many questions that people ask through magazines and newspapers to be answered by a cleric or those who understand Islamic law. Islamic community organizations also publish a collection of fatwas that discuss Islamic law.

Numerous scholarly works have endeavoured to delve into the rich reservoir of Islamic legal theories for comparative analysis with Western legal theories. These explorations involve examining jurisprudence from both Western and Islamic legal traditions. The theoretical contestation in shaping national law hinges on the capacity of these two legal systems to furnish a comprehensive theoretical framework, tailored to the Indonesian context.⁴

The national legal framework encompasses various dimensions. Drawing on Lawrence M. Friedman's perspective from

1975, it can be distilled into three key components: legal substance, legal structure, and legal culture.⁵ The official legal doctrine does not explicitly state that Islamic law serves as both a foundation of national law and an exemplar of positive law. Nonetheless, it is undeniable that Islamic law has significantly contributed to the advancement of national legal principles.⁶

Indonesia has inherited the Continental European legal tradition (civil law), which prioritizes law-making activities over law-enforcing activities. This tradition also subscribes to the notion and doctrine of legal fiction, which assumes that once a legal norm is established, everyone is deemed to be aware of it, supported by the principle of equality before the law.

As Indonesia evolves as a legal state, including its legal development, it becomes imperative to examine the incorporation of Islamic law within Indonesian legislation. The presence of Islamic law in Indonesia enriches the existing legal framework, potentially giving rise to further laws and regulations rooted in Islamic principles.

The implementation of Islamic law in Indonesia hinges on the understanding and awareness of Indonesian Muslims, who serve as advocates for its enforcement, adapting to contemporary conditions and circumstances.⁷

As a nation with a predominantly Muslim population, Indonesia has a rich historical background in the application of Islamic law. The practice of Islamic law varies across different levels of government due to disparities in legal policies. Prior to Dutch colonial rule, Islamic law prevailed among Muslims, bolstered by support from Islamic kingdoms.

The colonial government's approach to Islamic law fluctuated, oscillating between accommodation and confrontation. Following Indonesia's independence, the position of Islamic law strengthened, ensuring every citizen's right to religious freedom and the practice of religious law. From the New Order era to the reformation period, the prominence of Islamic law increased, albeit primarily within the realms of civil and Islamic economic spheres.⁸

Numerous studies, conducted through seminars, workshops, and research endeavours, aim to replace the enduring Western laws inherited from Dutch colonial rule that remain in force to this day.. Western law is often justified not by the nation's culture. Moreover, the values of freedom, capitalism, and hedonism which are very deep and are often justified are not in the national culture. These colonial

legal products shape the character of the community and damage the mentality of the community, eventually shifting the religious and cultural values of the Indonesian people⁹.

2. Literature Review

2.1. Islamic Law Terms

Islamic law can be understood as a set of rules or norms that regulate human behaviour in a society that originates from the teachings of the Islamic religion. Islam itself is a religion that was revealed by Allah Almighty to the Prophet Muhammad (*Ḥaḍrat Muhammad Rasūlullah Khātam un Nabiyyīn Ṣallallahu ‘alaihi wa ‘alā ‘Ālihi wa Aṣḥābihi wa Ṣallam*). Islamic religious teachings come from the Holy Qur’ān and Ḥadīth. Thus, Islamic law also comes from the Holy Qur’ān and Ḥadīth with all their interpretations.

Joseph Scacht defines; “Islamic law as a collection of religious rules, the totality of Allah’s commands, which regulates the behaviour of Muslim life in all its aspects, consisting of laws regarding worship, rituals, political, criminal, civil and legal regulations in general. “The basics of Islamic law were further explained and detailed by the Prophet Muhammad (*Ḥaḍrat Muhammad Rasūlullah Khātam un Nabiyyīn Ṣallallahu ‘alaihi wa ‘alā ‘Ālihi wa Aṣḥābihi wa Ṣallam*). Islamic law is found in the Holy Qur’ān and Ḥadīth/sunnah¹⁰.

Discussing Islamic law from the theoretical perspective of legal science requires limiting the discussion between *Shari’ah* (شريعة), *fiqh* (فقه), and *qānūn* (قانون). There is an opinion that all Islamic teachings found in the Holy Qur’ān and Ḥadīth are Islamic law. This broad understanding of the study of law will be difficult. Islamic *Shari’ah* in a legal context should be limited to the verses of the Holy Qur’ān and Ḥadīth which explicitly contain legal rules in them.

It also needs to be distinguished from the rules of *‘aqīdah* (عقیده) (beliefs) as fundamental norms, or moral rules. Referring to Abdul Wahhab al-Khallaf’s opinion, the legal rules in Islamic law, both in the field of worship and in the field of *mu‘amalah* (معامله) 228 verses of the holy Qur’an, or around 3 percent of the total verses of al-Khallaf. The formulation of legal rules relating to society, such as politics, economics, business, and social matters, is still general¹¹. The areas of law regulated in detail in the verses of the Holy Qur’an are only limited to the areas of marriage and inheritance law. Specifically in the criminal field, various criminal offenses and types of sanctions are also formulated, which are categorized as *ḥudūd* (حدود), *qiṣāṣ-diyat* (قصاص-ديت), and *ta‘zīr* (تعزير).

Islamic religious teachings contain legal aspects that can be referred to the sources of Islamic teachings themselves, namely the Holy Qur'ān and Ḥadīth. Muslims in carrying out their daily lives, both as individuals, family members, and members of society, are aware that there are legal aspects that regulate life that need to be obeyed and carried out¹². How much awareness there is depends on the composition of the size of the Muslim community, how far Islamic teachings are believed by individuals and society, and to what extent the influence of social and political institutions is in paying attention to the implementation of Islamic teachings and its laws in society.

Islamic law is a system that is the rule of Allah Almighty and is revealed to control society, not be controlled by society. Islamic law is seen as far from evolution as a historical phenomenon that is closely related to the progress of society, so that the provisions of Islamic law are permanent, such as the prohibition of gambling, same-sex marriage, drinking and prostitution will forever be *ḥarām* (حرام), even though in one area prostitution is considered a legal profession, gambling considered as one of the country's foreign exchange sources, or drinking alcohol in an area is considered a necessity to get rid of the cold, and same-sex marriage (*homo or lesbi*) is a real phenomenon. It is completely different from law in general which is controlled by society and was born as a historical phenomenon related to the dynamics of society¹³, so the cases above can be prohibited and can also be legal, considering the real conditions of society.

2.2. Development of Islamic Law

As a law that originates from the teachings of the Islamic religion, the development of Islamic law is certainly the development of Prophet (*Ḥadrat Muhammad Rasūlullah Khātām un Nabīyyīn Ṣallallahu 'alaihi wa 'alā 'Ālihi wa Aṣḥābihi wa Ṣallam*), during the time of his companions, the imams of the popular madhhab (مذہب), until now it has spread to various corners of the world. The history of the development of the Islamic religion in a country is different, and the style of Islamic law in each country is also different.

Normatively, Islamic law was initially revealed to answer historical demands. This can be seen in the historical sketch of inheritance law. Before Islam was revealed, Arab society knew an inheritance system based on blood ties, agreements, and the adoption or adoption of children. From the beginning of Islam until the hijrah event, these three basic principles of inheritance were still in effect with several revisions, coupled with the hijrah and the bonds of brotherhood between the *Muhajirīn* and *Anṣār* \ (مہاجرین / انصار). Blood ties, which were originally limited to inheritance only being given to male and adult family members, Islam reformed by giving

equal rights to all heirs, men and women, adults and children, even including babies still in the womb¹⁴.

There are two debatable mainstreams, whether Islamic law is God's blueprint or the result of social engineering when faced with legal problems that arise in society¹⁵. The constitutionalist-literalist circles emphasized contextual understanding to answer contemporary problems which became known as *ahl al-hadīths*. Other groups prioritize contextual understanding, known as the *ahl al-ra'y* (أهل الرأي) school. However, this division is not permanent, because in practice some take a compromise path by synthesizing hadith and *ra'y*¹⁶.

Habits (*'urf*) (عرف) that occur repeatedly in society and are considered good are also adopted as legal norms with the term *al-'āddah al-muhākamah* (العاده المحاكمه). However, the new *'urf* can be accepted after going through strict selection, and it is declared that it does not conflict with the basic ideas of the Holy Qur'ān and sunnah. The rule of *al-'āddah muhākamah*, which is almost unanimously accepted by all schools of law, is a rule used to justify legal practices that are considered positive in society. Because of the intellectual work process, various schools of thought formulators introduced their respective *ijtihād* (اجتهاد) methodologies. These methods are *qiyās* (قياس), *istihsān* (استحسان), *istiṣlah* (*al-maṣlaḥat al-mursalah*) (المصلحة), *sadd al-zāri'ah* (سد الذريعة), and *istishhāb al-aṣl* (استصحاب الأصل)¹⁷.

2.3. Islamic Law in Today's World

Criminal law is one area of Islamic law that has mostly been superseded by contemporary law. The process by which Islamic law was transferred to Western legal paradigms in Islamic countries or those where the predominant population is Muslim began with colonization. During the 18th and 19th centuries, Western nations primarily conquered Islamic nations. Colonial nations were compelled to abide by the laws of their parent nation.

Some Muslim nations, like those in the Middle East, went back to applying Islamic criminal law in public life after gaining independence and the ability to enact their own legal systems. Others, like Brunei, Malaysia, and Indonesia, which inherited English law and Dutch law, are still operating under the colonial legal system. Generally speaking, Islamic nations or nations where the majority population practices Islam can be divided into three broad categories when it comes to applying Islamic law:

First, those nations that customarily follow Islamic law. Saudi Arabia, Yemen, Bahrain, Qatar, the United Arab Emirates, and

Kuwait are the nations that make up this group. As of October 22, 2013, Brunei Darussalam has been operating under Islamic law, as per Case Order Number 83 (3) published in the Royal Gazette of Brunei Darussalam. These nations implement Islamic law according to different or specific madhhab approaches. The legal framework of Islam is based on the Holy Qur'an and Hadith, as well as the opinions of ulama found in collections of fatwas and fiqh literature. In particular, Brunei Darussalam has created a codification of Islamic criminal law called *Qanun Jināyat* (جنایات) which contains *ḥudud*, *qiṣāṣ* and *ta'zīr*. Before the arrival of the British in Brunei Darussalam and making Brunei under their colony, the Sultanate of Brunei already had Islamic legal rules in the form of *Qanun* and Resan which were based on the Holy Qur'ān and Sunnah in the 15th and 16th centuries AD until they were finally replaced by the British Government¹⁸.

Second, nations that apply updated versions of some aspects of Islamic law. Egypt, Sudan, Jordan, Syria, Tunisia, Morocco, Algeria, Lebanon, Iran, Iraq, Libya, Pakistan, Afghanistan, Bangladesh, Malaysia, and Indonesia are the nations that make up this group. These nations first combine several schools of thought (in Egypt, for example, the ḥanafī and Shāfi'ī schools) to revise the Islamic legislation that will be put into effect. Some even combine it with Western law and make use of Western administrative and legal customs. Only in the area of family law does Indonesia apply Islamic law in addition to Western and customary law. Later, it extended to the banking industry in particular.¹⁹

Third, nations where Islamic law is not enforced. This group includes Turkiye and nations where Muslims constitute a minority. In every area, Turkiye has rejected Islamic law and adopted Western law. In actuality, entire Islamic law—which was founded on the fanafī School of thought—was put into place during the Ottoman Caliphate era. The Ottoman Caliphate and Islamic law were abolished as a result of the political revolution led by Musthafa Kamal. French law was heavily imported to supplant Islamic law, beginning with the importation of the criminal, civil, and trade codes. The new law was implemented by creating a secular justice system.²⁰ Turkiye gradually reverted to its Islamic identity when the governmental power structure, which had been dominated by Islamists until recently, shifted. Laws that run counter to Islamic law are beginning to be repealed, such as the one that forbids Muslim women from working in government organizations.²¹

From a sociological perspective, Islamic law's continued existence gives the Islamic community optimism because it serves as a basis for national law. According to research by the Gallup World Poll, up to 79% of Muslims in ten countries where Muslims make up

the majority want Islamic criminal law to be used as a source of legislation; some even want it to be implemented completely. Lebanon, Malaysia, Turkiye, Indonesia, Iran, Morocco, Egypt, Pakistan, Jordan, Bangladesh are the nations under study. There have also been attempts to impose Islamic criminal law locally in the Aceh region, particularly in Indonesia.²²

3. Research Methods

3.1. Types of Research

This kind of study is done at libraries. Research conducted through the examination of secondary data or library materials is known as library research.²³ Because legal documents serve as secondary data, library research is included in this study. Moreover, primary and secondary legal materials are the categories into which secondary data are divided. Binding legal materials, as found in the hierarchy of laws and regulations, are primary legal materials. On the other hand, secondary legal documents are those that offer justifications for primary legal materials, like draft legislation, research findings, and legal experts' scientific publications.²⁴ The reason this study includes primary legal materials is that it cites a number of pertinent laws and regulations. Because it cites multiple books, periodicals, and other writings, secondary legal materials are used.

3.2. Research Approach

This study takes a sociological approach to its methodology. In legal study, the sociological method looks at the law from the perspective of reality.²⁵ Due to its sociological methodology, this study looks at the law from the perspective of cultural reality.

3.3. Data of Research data

The source of data used in this research is secondary data in the form of documents. Secondary data is data obtained indirectly or has been provided by other parties²⁶. The secondary data used is in the form of legal documents that are used as references to discuss the existence of Islamic law in Indonesia.

3.4. Data Collection Technique

Online and offline searches were the method employed in this study to acquire data. Locating library resources for data storage places is the task of an offline literature study. Online writing, on the other hand, involves using the internet to locate library resources in cyberspace. Conventional literature searches involve buying books,

going to scientific events (seminars), and looking through personal journals, library resources, and book collections.²⁷ While online search is done by searching on the internet.

3.5. Data Analysis Method

Narrative analysis is the data analysis technique employed. Analyzing qualitative data by narrating the tale in chronological order is called narrative analysis.²⁸ The history of the dynamics of Islamic law in Indonesia is one of the story aspects in this research, which makes use of narrative analysis. The research's findings offer valuable insights into the application of story analysis since they contain pertinent information about time, place, specifications, experience, and crucial details unrelated to context.

4. Research Results and Discussion

4.3. History of Islamic Law in Indonesia

Islamic law has long existed in Indonesia. If you examine the history of law in Indonesia, it cannot be denied that since centuries ago, Islamic law has become the living law of society. The life of Islamic law can be seen from the many questions that people ask through magazines and newspapers to be answered by a cleric or those who understand Islamic law. Some scholars publish question-and-answer books whose contents are questions and answers to various problems concerning Islamic law. Islamic mass organizations also publish books on fatwa collections that discuss Islamic law. For example, NU has *Al-Aḥkām al-Fuqaha* (الاحكام الفقهاء), and Muhammadiyah has the *Tarjih* (ترجيح) Judgment Association. Ustadz Hassan's book from Persis, Questions, and Answers, was read by many people in neighbouring countries. Other mass Islamic organizations also have Islamic law guidelines.

Unlike most nations in Europe which are relatively homogeneous culturally, from the beginning Indonesia was composed of various unrelated cultures. The disconnection is reflected that they are a sovereign nation and have an independent government. Relations between them are limited to international diplomatic relations. Nusantara is a collection of various nations and countries before finally becoming Indonesia. The system of government in the archipelago is all in the form of a kingdom, stretching from Aceh to Sulawesi, the Southern Philippines, and Ambon. Java had several kingdoms and its legal system.

The political power of Islam can be seen in the respective models of government administration. Islamic Mataram, for example,

implements a triad of positions in state management, namely king, *patih*, and *penghulu* (*qazi*). This pattern is reflected in the development of urban planning which consists of; palaces, squares, and mosques. The title of the King of Mataram is *Hingkang Sinuhun Senopati Hing Ngalogo Sayyidin Panotogomo Kalipatullah* (In the Lord of War Commander for Religious Affairs as Substitute for the Prophet Muhammad)²⁹. This adoption is a development of the theory of Islamic constitutional law written by al-Mawardi in his book *Aḥkām al-Sultāniyah* (أحكام السلطانية) which states that the Imamate (*sulthan*/caliphate) is in charge of continuing prophetic duties in maintaining religion and governing the world³⁰.

The same thing can be found in Sulawesi during the Islamic kingdoms such as the Kingdom of Gowa which was then under the rule of King Tallo I Malingkaang Daeng Manyorari who was given the title *Sultān Abdullah Awwalul Islam*. The King of Goa I Manggarangngi Daeng Manrabia followed King Tallo, then Prime Minister of the Kingdom of Goa, to convert to Islam and was given the title Sultane Alauddin. This Sultane Alauddin later became the ancestor of the kings of Makassar and Bugis³¹.

The legal system adopted follows the form of government adopted. After Hindu rule in Java, generally, the kingdoms in Java adopted the Islamic system (sultanate). Likewise outside Java, developed Islamic kingdoms/sultanates with their Islamic legal system.

According to Daniel S. Lev, until the end of the nineteenth century, the law that was generally applicable in Indonesia was Islamic. There are also many similar opinions with the support of empirical studies³². Lev presents several names such as Raffles, Marsden, and Crawford, all three of whom are British nationals. Boland and Fajron (1983) also describe the Islamization that occurred in Minangkabau and Aceh's history up to 1500³³. Raffles (1978) also conducted a study in Java and concluded that the applicable laws were Islamic law and customary law³⁴.

Based on this fact, subsequent developments gave birth to the *reception in complexu* theory that law follows a religion. Based on this data, several experts concluded that the law in force in the archipelago at that time was Islamic. Islamic law is formally enforced through the judiciary under various names. There is the *Penghulu* Court in Java and Madura, the *Syar'iyah* Court in Sumatra, the *Qazi* Court in the Sultanate of Banjar and Pontianak. Islamic law in all its fields has also been codified in law books.

Just an example; Nuruddin al-Raniri wrote the book *Şirāṭ al-Mustaqīm* (صراط المستقيم) which was used by the people of Aceh and Kalimantan to solve legal problems, and was written according to the Shāfi‘ī school. Furthermore, the book *Şirāṭ al-Mustaqīm* spread to all Islamic kingdoms in the archipelago. Syaikh Muhammad Arsyad al-Banjari, a mufti in Banjarmasin, expanded the discussion of the book *Şirāṭ al-Mustaqīm* and gave it the title *Sabīl al-Muhtadīn* (سبيل المهتدين). The Book of *Sabīl al-Muhtadīn* is used as a guide in resolving disputes among Muslims in the Sultanate of Banjar and surrounding areas. In addition, in Palembang, there is also a book of criminal law called the *Simbur Cahaya* Book, and in Demak there is the *Serat Angger-Agger Suryangalam* and *Serat Suryangalam* which are normative collections of criminal and civil rules.

It is stated in the *Serat Angger-Agger Suryangalam* that the law in force in the Kingdom of Demak is based on Islamic law by adhering to the Holy Qur‘ān and hadith. This is mentioned in the preamble and sometimes reaffirmed elsewhere by a different editor; “*Sang ratu puniko dene anrapaken ukumullah*” “*dosane tan anglakokan sak pakeme aksarane, angowahi sapangandikaning Allah tangala, kang tinimbalaken dawuhing kangjeng Nabi kito Mukammad salalu ngalaihi wasalam*” (This country applies the laws of Allah Almighty, breaking this rule is a violation of the rules by Allah Almighty and the sunnah/hadith of the Prophet (*Ḥaḍrat Muhammad Rasūlullah Khātam un Nabiyyīn Ṣallallahu ‘alaihi wa ‘alā ‘Ālihi wa Aṣḥābihi wa Ṣallam*)³⁵.

The *Serat Angger-Agger Suryangalam* contains provisions of Islamic criminal law originating from the books of *Anwar* and *Iqna*, by the formulation concept of Prince Adipati Ngadilaga (Senopati Jinbun or Raden Fatah) as outlined in the Act by Raden Arya Trenggono (Sulthan Demak III) who at that time still serving as a prosecutor. This law was later referred to as the *Undang-Undang Jawa Suryangalam* (Java Suryangalam Law). The manuscript was written in Latin by Brandes in 1934 and is still in Javanese according to the original.

The preamble to the Java Suryangalam Law states that in the Aripullah Palace, Adilullah Country, King *Titi Jagad* of *Ngatasangin* formed a judicial body by applying God's law. Sultan then delegated the prosecutor to handle and decide legal cases based on Islamic law by the teachings of the Prophet Muhammad (*Ḥaḍrat Muhammad Rasūlullah Khātam un Nabiyyīn Ṣallallahu ‘alaihi wa ‘alā ‘Ālihi wa Aṣḥābihi wa Ṣallam*)³⁶. In the next section, this law regulates judicial institutions by mentioning the rules for litigation in court, duties, conditions, powers, prohibitions for prosecutors and judges, judicial procedures, and protection for suspects or defendants. Witness

requirements, such as transgender women, are not allowed to be witnesses, not relatives and doubtful witnesses, and so on.

It is also stated that a case can be processed in court if it meets 30 provisions, including the presence of qualified witnesses, evidence that can be accounted for, the existence of elements of harm to others, for example destroying/taking other people's goods, killing and injuring others, dispute cases buying and selling that has written evidence as well as witnesses and others. The Javanese Law of Suryangalam or *Serat Angger-Agger Suryangalam*, was subsequently used as a source of law in subsequent Islamic kingdoms in Java, such as Pajang, Jepara, Tuban, Gresik, Ngampel, and Mataram³⁷. In subsequent developments, Mataram split into *Nagayogyakarta Hadiningrat* and *Surakarta Hadiningrat*.

Religious positions are an inseparable part of government positions in general (Ali, 2008). *Qazi* positions are held from the village level to the kingdom. *Qazi* at the village level there is called people, *amil*, *modin*, *kayim* or *lebai* who are always sided by side with the village head. *Qazi* at the sub-district level is called *penghulu naib*, at the district level it is called *penghulu*, and at the royal level, it is called *kanjeng penghulu*, *penghulu ageng*, or *sunan* (equivalent to the Supreme Court). *Qazi* from the district to the royal level functions as a judge, while at the village to sub-district level it is more of a mediator³⁸. During the Demak Kingdom, the position of the head of the ageng was held by Sunan Kalijaga whose real name was Raden Said. Kalijaga is a nickname because he is known as a clean judge so he gets the nickname *Qazi-Dhaka (Kalijaga)*, which comes from Arabic words which mean "clean judge".

The implementation of Islamic law is also carried out by the *penghulu* and *qazi* (judges), who are appointed by the local Islamic community if there is no formal political power to support the implementation of Islamic law. For example in the area around Batavia in the 17th century, the *penghulu* and *qazi* were recognized and appointed by the community, because this area was under the influence of Dutch rule. The people who live around Batavia are immigrants from all over with their variety of languages, cultures, and customary laws. There is also a community of "Moors" i.e. Muslim Arabs and Indians in addition to the Muslim Chinese community. These various tribes who came to Batavia became the forerunners of the Betawi people and generally were Muslim. To get along, they choose to use the Malay language. They built mosques and appointed people who mastered Islamic law to handle various legal events and settle disputes between them. The customary law, which they follow in the village, is difficult to apply in Batavia because the population

is diverse. They choose Islamic law that can unite them in a new community³⁹.

Realizing that Islamic law prevailed in Batavia, the Dutch conducted a study of Islamic law and compiled it. During the colonial period by the Vereenigde Oostindische Compagnie (VOC) or the Dutch East India Company, Islamic law books were compiled as a guide for government officials and judges in resolving cases between Muslims in the landraad (District Court) known as the compendium. For example, in 1747 the Compendium Mogharaer Code was published in Semarang for the Semarang District Court, the Compendium Clootwijk (by B.J.D. Clootwijk) in Sulawesi in 1761 which also contained Islamic criminal law. In addition, there is also the Pepakem Cirebon book which contains a collection of "old Javanese laws", reissued by Hazeu for the Cirebon Sultanate⁴⁰. These books refer to the book *Muharrar* by *al-Rafi'i* (a scholar of the Shāfi'i school who is very influential in Asia).

The use of the compendiums lasted until the 1800s when the VOC handed over power to the Dutch government. Since then, with various efforts made by the Dutch government, the existence of Islamic criminal law has been eliminated. The colonial attitude towards Islamic law began to change, although the changes were implemented slowly, but very systematically. The Dutch colonial government made laws on government policy, court structure, agriculture, and trade in its colonies. This law resulted in changes in almost all areas of life and life of the Dutch East Indies, including the legal field which was very detrimental to Islamic criminal law⁴¹.

According to Harry J. Benda, in the 19th century, many Dutch people both in their country and in the Dutch East Indies hoped to eliminate the influence of Islamic law from the Dutch East Indies⁴². One of the ways taken is Christianization on the initiative of Christiaan Snouck Hurgronje. This hope is based on the assumption of the superiority of Christianity over Islam. In addition, it is based on the assumption that the syncretic nature of Islam in rural Java will make it easier for Muslims to be Christianized when compared to those in other Muslim countries, especially outside Java⁴³. Many Dutch political experts think that the conversion of the population to Christianity will benefit the Netherlands because the indigenous people will feel the close relationship between their religion and the religion of their government. After they convert to Christianity, they will become citizens who are loyal physically and mentally to their government⁴⁴.

The Dutch East Indies government to perpetuate its power began to carry out "conscious legal politics" against Indonesia.

Consciously the colonial government wanted to organize and change the legal life in Indonesia with Dutch law. These politics was driven by the desire to carry out the codification of the law applied in the Dutch East Indies with a campaign that European law was far better than the law that had been applied in Indonesia⁴⁵.

Throughout the 19th century, among jurists and cultural experts in the Dutch East Indies, there was an opinion that Islamic law was applicable in Indonesia. This opinion was expressed, among others, by Salomon Keyzer (1823-1868), a linguist and cultural expert, who wrote extensively on Islamic law in Java and even translated the Holy Qur'ān into Dutch.

Keyzer's opinion on the prevailing Islamic law in the Dutch East Indies was corroborated by Lodewijk Williem Christian van den Berg (1845-1927). According to Berg, the law follows one's religion. If that person embraces Islam, Islamic law applies to him. Because of his opinion, to make it easier for Dutch East Indies government officials to recognize Islamic law prevailing in society, in 1844 Berg wrote the principles of Islamic law according to the Ḥanafī and Shāfi'ī teachings. Because of his opinion, Berg is also called the person who discovered and demonstrated the enactment of Islamic law in Indonesia. Indonesian Muslims have received Islamic law in its entirety and as a unit or *receptio in complexu*. That is, what is accepted by Indonesian Muslims is not only the parts of Islamic law but the whole as a unit, including the criminal field⁴⁶.

The style of Islamic law adopted is the Shāfi'ī madhhab. This is indicated by the books that were used as references in the absorption of Islamic law into the books that were enforced in the Islamic Sultanate. Fiqh books, which were previously used as references, are still studied in Islamic boarding schools today.

4.4. The Existence of Islamic Law in the Struggle of the National Legal System

Islamic law has persisted in Indonesia throughout the country's legal conflict. Islamic law consistently fortifies its position in a variety of domains and legal procedures, both as written and unwritten law. There are four ways in which Islamic law is present in national law:

- a. as an integral part of Indonesian national law;
- b. their independence, strength, and authority are recognized by national law and given status as national law;
- c. as a filter for Indonesian national law materials; and
- d. as a material and element for the formation of national law.

National law incorporates Islamic law. One could argue that Islamic law is a part of the national legal framework. Islamic law, as a subsystem, has significantly aided in raising Indonesians' legal consciousness. Given that Muslims make up the majority of Indonesia's population, this makes sense.⁴⁷

The post-independence Indonesian constitution's treatment of Islamic law can be split into two phases: the first is when Islamic law was accepted as a persuasive source, and the second is when Islamic law was accepted as an authoritative source, or as a source with legally binding authority over Indonesian constitutional law. In the wake of these events, the Indonesian government implemented a legal politics program that, to some extent, granted Muslim wishes. This is seen by the government's adoption of numerous legislation and regulations that establish Islamic law as positive law. For instance, the establishment of the Syar'iyah Court or the affirmation of the status of the Islamic Courts (Religion) occurred in 1957.⁴⁸

The substance of the law in general regulates human actions and behaviour as a whole, both related to God, fellow humans, and the universe. The part of the Islamic law that regulates human relations with God is called the field of ritual worship (worship *mahdhah*). While the part of the Islamic law that regulates human relations with humans, humans with objects, and nature is called *muamalah* (worship of *ghair maghdhah*). The parts of Islamic law as a whole can be grouped into 7 (seven) areas, namely:

- a. laws related to the worship of Allah, such as prayer, fasting, pilgrimage, "zakat", purification from hadats, and so on. This section is called the law of worship;
- b. laws relating to the order of family life, such as in the family, inheritance, obligations of children to their parents, and so on. This section is called family law (*ahwal al-syakhshiyah*);
- c. laws relating to social life in society regarding materials and rights as well as dispute resolution such as sale and purchase agreements, leases, debts, pledges, grants, *waqf*(وقف), *hadiyah* (هدية), and so on. This section can be called the law of *mu'āmalah* (معامله)(in a narrow sense);
- d. laws relating to the life of the state, such as the appointment of the head of state/government, the relationship between the ruler and the people, the rights and obligations of the ruler and the people on a reciprocal basis, the judicial system (*mukhāṣamah*) (مخاصمة) and so on. This section is called *aḥkām al-sulṭāniyah* or *siyasah al-syar'iyah* which includes matters discussed in state administration and governance;

- e. laws relating to criminal matters such as types of criminal acts and criminal threats, criminal liability issues, and so on. This section is called criminal law (*al-jinayah*);
- f. the laws that regulate relations between Islamic countries and other countries, which consist of foreign relations, war and so on. This section is called foreign law (*aḥkām al-daūliyah* or *al-sair*)(احكام الدوليه / سير); and
- g. laws relating to character, propriety, good and bad values, such as strengthening brotherly relations, reconciling people who are in dispute, and so on. This section is called morals or manners (*al-adab*).⁴⁹(الادب)

Some of these areas of Islamic law have now been applied in Indonesia, all of which are in the fields of worship, family, and property. In detail, the areas of Islamic law currently in force in Indonesia are as follows:

No.	Field	Scope	Legal Basis for Applicability
1	Ritual Worship	Prayer, fasting, Hajj, Guarantee of Halal Products	Culturally Applicable
2	Family Law	Marriage, Inheritance	Applicable Through Regulations
3	Philontology	Waqf, Grants, Zakat, Infaq, Shadaqah	Applicable Through Regulations
4	Sharī‘ah Economics	Sharī‘ah Banking, Sharī‘ah Insurance	Applicable Through Regulations

Table 1. Fields of Islamic Law Applicable in Indonesia Currently

The application of some of these fields of Islamic law in Indonesia is through the legitimacy of laws and regulations. The characteristics of Indonesian Islamic law are more dominantly colored by Arab personalities (Arab-oriented) and are more closely related to the traditions of the Shāfi‘ī school. This can be seen from the reference books used by scholars who mostly use the books of Shāfi‘īyah fiqh. This condition is also seen in the formulation of the Compilation of Islamic Law which has a Shāfi‘ī pattern.

Methodologically, the scholars mostly use the books of *usul al-fiqh* (اصول الفقه) written by the scholars of the Shāfi‘ī school. Even though the suggestion of *al-fiqh* from the Shāfi‘ī school, especially what is taught in many traditional pesantren, the discussion has only reached the issue of *qiyās*. Another weakness is that the books are

written in a foreign language (Arabic) with a legal background adopted by the author. Justice seekers may adhere to different legal schools.

This characteristic causes the study of Islamic law to experience a dogmatic and relativistic tendency at the same time. The consequences then lead to stagnation in the field of Islamic legal scholarship, which will give birth to scientific conservatism of Islamic law which can lead to radicalism and anarchism⁵⁰.

The substance or material of Islamic law developed in Indonesia is new to family law (*aḥwāl al-syakhsīyah*) as the marriage law was first published in 1974 (Cammack, Young, & Heaton, 1996)⁵¹. Until now, the competence of the Religious Courts is only authorized to handle cases of marriage, inheritance, wills, grants, *waqf*, *zakat*, *infāq*, *ṣadaqah*, and Islamic economics. Islamic law related to *jināyah* has so far been limited to studies, and even then it has not developed⁵².

The Islamic community also internalizes the practice of Islamic law in the frame of local wisdom as a reality that lives and grows in society. Local wisdom is heavily influenced by Islamic values. During the reformation period, local wisdom was revitalized, to adapt to global developments and global philosophy of life as well as for strengthening national identity. This study also emphasizes the importance of Islamic law in the development of local wisdom, local wisdom must be seen as part of the law that lives in society and has an existence in Indonesia⁵³.

The dynamics of Islamic law in Indonesia is a portrait of the dialectic of Muslims in facing their era. The contribution of Islamic law to the legal development system in Indonesia is quite developed in line with the challenges of increasingly complex legal problems of the times. This new problem has never been found in legal books written by previous *mujtahids* so the scholars reinterpreted it so that Islamic law is more actual and can respond to the times with the development of the benefit of society. This effort is known as the actualization of Islamic law. The Indonesian legal system is plural. Until now several legal systems have their style and structure⁵⁴.

There is a strong tendency that Islamic law is expected to be a source of positive state law, as a form of government accommodation for Muslims on the one hand. Muslims also need direction in the form of the rule of law to maintain their Islamic acknowledgment, both in formal legality and material legality based on the law, as well as the need for transformation of Muslim awareness of Islamic identity⁵⁵. If this tendency is related to the

problem of legal effectiveness, there is hope that by being appointed as state law, Islamic law will have a strong binding force to be obeyed by people who are Muslim. Even though formally, in certain regulatory aspects, Islamic law has not been used as a legal reference in the state.

5. Conclusion

Based on the discussion above, it can be concluded that Islamic law has long existed in Indonesia and has been a living law in society since the arrival of Islam to the archipelago. Islamic law has built public legal awareness. The existence of Islamic law to this day still exists, both written (certain parts) and unwritten, and is part of national law. Islamic law was implemented in the archipelago before it was finally annulled by the Dutch colonialists. After Indonesia's independence, Islamic law was again applied, but only limited to family law such as marriage, inheritance, philanthropy, and recently shari'ah economics. Islamic law has existed throughout the history of legal struggles in Indonesia. Islamic law has always strengthened its existence both as written and unwritten law in various fields and legal practices even though it is very limited. Until now, Islamic law has been part of national law in Indonesia and has contributed a lot to building legal awareness in Indonesian society.

6. Declarations

Acknowledgements

The author would like to thank the Faculty of Law, Universitas Pancasakti Tegal, which has provided funding for this research. All authors contributed to this research according to their respective assignments.

Funding source

This research was funded by the Faculty of Law Universitas PancasaktiTegal.

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