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The Existence of Islamic Law and Customary Law in the Indonesian National Legal System

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Abstract: *This research examines the existence of Islamic Law and Customary Law in Indonesia's national legal system which reflects legal pluralism in a country with high cultural and religious diversity. The purpose of the research is to explore the role and integration of Islamic Law and Customary Law within the national legal framework, particularly in the context of the application of sharia principles and the recognition of customary law communities. This research utilizes a qualitative descriptive method with analysis of documents, legal literature, and relevant legislation, as well as a historical approach to understand theories of legal acceptance such as Receptie and Receptie in Complexu. The results of the analysis show that Islamic Law has gained significant legitimacy, especially through the Compilation of Islamic Law (KHI) which regulates family law and inheritance. Meanwhile, Customary Law is also recognized in Article 18B of the 1945 Constitution as an important part of the national legal system, although its implementation faces modernization challenges. This research finds that the interaction between these two legal systems produces not only challenges but also opportunities to build a national law that is adaptive and responsive to the needs of society. Thenovelty of this research lies in the comprehensive analysis of the dynamics of harmonization of Islamic Law and Customary Law amidst the social and political complexities in Indonesia. This research emphasizes the importance of an inclusive and contextual approach in building a just and sustainable legal system, which accommodates local religious and cultural values.*

Keyword*: : Islamic law, Receptie, Customary Law*

A. Pendahuluan

The existence of Islamic Law and Customary Law in Indonesia's national legal system is a complex and multifaceted topic. Indonesia, as a country with cultural and religious diversity, integrates various legal systems, including Islamic Law and Customary Law, into the national legal framework. This creates a unique dynamic in law enforcement and the administration of justice. Islamic law in Indonesia has gained stronger recognition in the national legal order,[1] especially after

[1] A I Hamzani and S Idayanti, "THE EVOLUTION OF ISLAMIC LAW IN INDONESIA: A SOCIO-HISTORICAL PERSPECTIVE ON ITS STRUGGLE FOR EXISTENCE," *Hamdard Islamicus* 47, no. 1 (2024): 101–21, https://doi.org/10.57144/hi.v47i1.891.

constitutional changes and the enactment of various laws that support the application of sharia principles.

For example, the existence of the Compilation of Islamic Law (KHI) which regulates aspects of family law and inheritance shows that Islamic law has been recognized as part of positive law in Indonesia.[2] In addition, theories such as receptie and receptie in complexu explain how Islamic law is integrated into the national legal system, taking into account the social and cultural context of Indonesian society.[3] On the other hand, Customary Law also has a significant position in the national legal system. Article 18B of the 1945 Constitution recognizes and respects the existence of customary law communities and their traditional rights.[4] Customary Law, which is unwritten and develops in accordance with community norms, makes an important contribution to law enforcement in various regions in Indonesia. The existence of various Customary Laws reflects the legal pluralism that exists in Indonesia, where each community group has a unique legal system that is in accordance with their local values.[5]

The integration between Islamic Law and Customary Law in Indonesia's national legal system creates not only challenges, but also opportunities to build laws that are more responsive to the needs of society. In this context, it is important to understand that Indonesian national law

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[2] Muhammad Tabran et al., "Bentuk Eksistensi Hukum Islam Dalam Tatanan Peraturan Perundang-Undangan Di Indonesia," *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam* 4, no. 1 (2023): 90–96, https://doi.org/10.55623/au.v4i1.169; Ajub Ishak, "Posisi Hukum Islam Dalam Hukum Nasional Di Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 4, no. 1 (2017): 57, https://doi.org/10.24252/al-qadau.v4i1.5753.

[3] Ayu Atika Dewi, "Peradilan Agama Dalam Lintasan Sejarah Kajian Pengaruh Teori Pemberlakuan Hukum Islam Terhadap Peradilan Islam Indonesia," *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum Dan Keadilan* 12, no. 1 (2021): 12–30, https://doi.org/10.32493/jdmhkdmhk.v12i1.10204; Umar Shofi and Rina Septiani, "Eksistensi Dan Penerapan Hukum Islam Dalam Hukum Positif Indonesia," *Jurnal Sosial Teknologi* 2, no. 8 (2022): 660–69, https://doi.org/10.36418/jurnalsostech.v2i8.391.

[4] R B B Perangin-Angin, R Nababan, and P G Siahaan, "Protection of Traditional Knowledge as Constitutional Rights in Indonesia," *Jurnal Konstitusi* 17, no. 1 (2020): 178–96, https://doi.org/10.31078/jk1718; I G Yusa, "Identification And Analysis Of The Rights Of Indigenous Peoples In The Study Of Constitutional Law (A Study of Balinese Traditional Community)," *Constitutional Review* 2, no. 1 (2016): 1–28, https://doi.org/10.31078/consrev211; A Mayastuti, J Wiwoho, and H Purwadi, "The Guarantees for the Fulfillment of the Constitutional Rights of Customary Law Community in Indonesia," *Res Militaris* 12, no. 2 (2022): 3336–41, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85141211070&partnerID=40&md5=9c3646954acb50e40cdd19ba77c34924.

[5] Andri Yanto and Faidatul Hikmah, "Akomodasi Hukum Yang Hidup Dalam Kitab Undang-Undang Hukum Pidana Nasional Menurut Perspektif Asas Legalitas," *Recht Studiosum Law Review* 2, no. 2 (2023): 81–91, https://doi.org/10.32734/rslr.v2i2.14162; Takwim Azami, "Dinamika Perkembangan Dan Tantangan Implementasi Hukum Adat Di Indonesia," *Qistie* 15, no. 1 (2022): 42, https://doi.org/10.31942/jqi.v15i1.6487.

is the result of the accumulation of religious, cultural, and customary values that have existed and developed in society. Therefore, revitalization and harmonization between Islamic Law and Customary Law are very important to achieve justice and community welfare.[6]

Thus, the existence of Islamic Law and Customary Law in the Indonesian national legal system reflects the diversity and complexity of Indonesian society. Fair and effective law enforcement requires a deep understanding of these two legal systems and the interaction between them.

B. Method

This research uses a qualitative approach with a type of *library research* and social history of law in Indonesia.[7] This approach aims to understand the existence of Islamic Law and Customary Law in the context of the national legal system through literature review and historical studies. As a desk research, data is obtained from primary and secondary sources, including laws and regulations such as the 1945 Constitution and the Compilation of Islamic Law, historical documents, books, journal articles, and relevant official reports. This research also utilizes key theories in legal history such as *Receptie*, *Receptie in Complexu*, and *Receptio a Contrario* to understand the dynamics of the acceptance of Islamic Law and Customary Law in the Indonesian legal system.[8]

The social history of law approach is used to analyze the interaction of law with the social, cultural, and political context of Indonesian society. With this approach, the research does not only study the normative aspects of law but also examines how the law is applied and responded to in society, including the influence of legal pluralism on the formation of the national legal system.

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[6] Moh. Mahfud MD, "Islam, Lingkungan Budaya, Dan Hukum Dalam Perspektif Ketatanegaraan Indonesia," *KARSA: Jurnal Sosial Dan Budaya Keislaman* 24, no. 1 (2016): 1, https://doi.org/10.19105/karsa.v24i1.992; "Revitalisasi Hukum Islam Sebagai Sumber Hukum Dalam Pembangunan Sistem Hukum Di Indonesia," *Jurnal Media Hukum* 11, no. 2 (2023): 64–73, https://doi.org/10.59414/jmh.v11i2.563.

[7] M Siroj and I Marzuki, "Transformation and Future Challenges of Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 93–116, https://doi.org/10.29240/jhi.v8i1.6618.

[8] W S Robinson, "Doubts about Receptivity," *Psyche* 12, no. 5 (2006): 1–7, https://www.scopus.com/inward/record.uri?eid=2-s2.0-33846294721&partnerID=40&md5=d4e87ebfb6386e7994186d5ac5f499a1; L Sevgi, "Reciprocity: Some Remarks from a Field Point of View," *IEEE Antennas and Propagation Magazine* 52, no. 2 (2010): 205–10, https://doi.org/10.1109/MAP.2010.5525635; J Malmivuo, "Application of the Principle of Reciprocity to Impedance Tomography and Other Problems in Bioelectromagnetism," in *BEC 2010 - 2010 12th Biennial Baltic Electronics Conference, Proceedings of the 12th Biennial Baltic Electronics Conference* (Department of Biomedical Engineering, Tampere University of Technology, 33101 Tampere, P.O.Box 692, Finland, 2010), 61–64, https://doi.org/10.1109/BEC.2010.5630918.

Data were analyzed using content analysis and historical analysis techniques. Content analysis was used to identify key themes, patterns and relationships in legal documents and related literature. This analysis helped to understand how Islamic and customary legal values were integrated within the national legal framework. Historical analysis was conducted to trace the evolution and transformation of Islamic law and customary law in the trajectory of Indonesian legal history. Through this analysis, the research reveals the role of social, political and cultural changes in influencing the acceptance of both legal systems.

C. Results

1. Terminology of Islamic Law and Customary

Islamic law, or sharia, is a legal system derived from the teachings of the Islamic religion, which includes norms and rules governing various aspects of Muslim life. This law not only regulates worship, but also includes muamalah (social and economic interaction), morals, and other aspects that are relevant in daily life. Islamic law serves as a moral and ethical guide for Muslims, as well as providing a legal framework that regulates relations between individuals and society. According to Ishak, Islamic Law is universal and applies to all Muslims wherever they are, regardless of nationality.[9]

The primary sources of Islamic Law consist of two main components: Qur'an and Sunnah. The Qur'an is the holy book of Muslims which is considered a direct revelation from God, containing instructions and rules governing various aspects of life.[10] The Sunnah, on the other hand, is the practices and teachings of the Prophet Muhammad that serve as examples for Muslims. In addition, there are also other sources such as ijma' (consensus of scholars) and qiyas (analogy)

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[9] Ishak, "Posisi Hukum Islam Dalam Hukum Nasional Di Indonesia."

[10] T Mahmood, "LAW IN THE QUR'ĀN-A DRAFT CODE," in *Islamic Legal Theory: Volume 1*, vol. 1 (Law Centre II, Delhi University, Department of Law, Indian Institute of Islamic Studies, New Delhi, India: Taylor and Francis, 2017), 127–58, https://doi.org/10.4324/9781315251721-15; M.A.B.A. Sulaiman, M W Hisam, and S Sanyal, "Ethical Business Practices in Islam," *Purushartha* 6, no. 2 (2013): 14–25, https://www.scopus.com/inward/record.uri?eid=2-s2.0-84940324392&partnerID=40&md5=c841e1e8d5f263f80d9ffa6768df6ec6; A Osman, "The Qurʾan and the Hadith as Sources of Islamic Law," in *Routledge Handbook of Islamic Law* (Department of Humanities, Qatar University, Qatar: Taylor and Francis, 2019), 127–40, https://doi.org/10.4324/9781315753881-8.

which are used to determine the law in situations that are not explicitly regulated in the Qur'an and Sunnah.[11]

Islamic law covers various aspects of life, including worship, muamalah, family law, and criminal law. In the context of family law, for example, Islamic Law regulates marriage, divorce, and inheritance, which are regulated in the Compilation of Islamic Law (KHI) in Indonesia. KHI serves as a guideline for Muslims in carrying out their daily lives in accordance with the principles of sharia.[12] In addition, Islamic Law also provides guidance in economic aspects, such as the principles of justice and balance in business transactions, which are expected to prevent harmful practices.[13] The breadth of the scope of Islamic law encompasses a wide range of topics, including the law of marriage, divorce, and inheritance.

The broad scope of Islamic law covers all aspects of the lives of its people, therefore, an introduction to Islamic law needs to be done by introducing the principles of Islamic law itself. The principles of Islamic law are a fundamental foundation in the regulation of social, economic and political life for Muslims. In the context of Indonesia, which has the largest Muslim population in the world, the application of these principles is particularly relevant and important. Islamic law serves not only as a moral and ethical guide, but also as a legal framework that regulates various aspects of people's lives.

One of the key principles in Islamic law is justice (al-'adl), which forms the basis for all social interactions and economic transactions. This principle demands that every legal action and decision must reflect justice for all parties involved. In the economic context, this principle of justice is seen in the application of Islamic law in the Islamic banking sector, where transactions must be free from usury (interest) and *gharar* (uncertainty).[14] This shows that Islamic law seeks to

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[11] Wahyudi Umar, Rasmuddin, and Andi Hikmawanti, "Pembagian Harta Bersama Dalam Perspektif Hukum Islam: Implementasi Moral Justice Dan Social Justice," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 5, no. 1 (2023): 11–17, https://doi.org/10.47435/al-ahkam.v5i1.1724.

[12] Jarnawi Muhammad Nur, Azhari Azhari, and Adzanmi Urka, "Implementasi Prinsip Yakin Pada Rukun Iman Dalam Konseling Islam," *Irsyad : Jurnal Bimbingan, Penyuluhan, Konseling, Dan Psikoterapi Islam* 8, no. 3 (2020): 255–70, https://doi.org/10.15575/irsyad.v8i3.2049.

[13] Ari Purwadi, "Prinsip Moral Pada Pengaturan Perikatan Alam," *Mimbar Keadilan* 13, no. 2 (2020): 141–51, https://doi.org/10.30996/mk.v13i2.3296.

[14] Muhammad Ramadhan, "Politik Hukum Perbankan Syariah Di Indonesia," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 40, no. 2 (2016), https://doi.org/10.30821/miqot.v40i2.298.

create a fair and sustainable economic system, in accordance with the objectives of maqasid al-shariah, which is to achieve the benefit of the people.[15] In addition, the principles of Islamic law also include the principles of fairness (*al-'adl*).

In addition, the principles of Islamic law also include the protection of individual rights, including the rights of women and children. In this context, Islamic law pays particular attention to issues such as inheritance and the rights of children, including children born out of wedlock. For example, in the Syafi'i school of thought, there are provisions governing the inheritance rights of such children, although their status is often the subject of debate in society.[16] The application of these principles in Indonesian national law demonstrates that Islamic law serves as a source of values that enriches the existing legal system, while still respecting the diversity of cultures and customs that exist in society.[17]

The principles of Islamic law also emphasize the importance of deliberation (*shura*) in decision-making. In the legislative context, this is reflected in the law-making process that involves various stakeholders, including ulama and civil society. This process aims to ensure that the resulting law is not only in accordance with sharia, but also relevant to the needs and aspirations of the community (Supardin, 2018).[18]

Thus, Islamic law in Indonesia is not only normative, but also adaptive to the social and cultural changes that occur. In conclusion, the principles of Islamic law play an important role in shaping the legal system in Indonesia. By emphasizing justice, protection of individual rights, and deliberation, Islamic law serves not only as a moral guideline, but also as a legal framework that can be integrated with the national legal system to achieve the goals of social justice and community welfare.

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[15] Sabil Mokodenseho et al., "Analysis of the Influence of Fiqh and Maqasid Al-Syariah in the Formation of Islamic Legal Policy in Indonesia," *West Science Islamic Studies* 2, no. 01 (2024): 30–37, https://doi.org/10.58812/wsiss.v2i01.590.

[16] Nurkholis Ulwi, Masnun Masnun, and Muhammad Harfin Zuhdi, "Inheritance Rights of Children Born Out of Wedlock: Analysis from the Perspective of Shafi'i School of Jurisprudence and the Civil Law Code (Children of Zina) with an Educational Approach," *Jurnal Ilmiah Profesi Pendidikan* 9, no. 2 (2024): 1263–69, https://doi.org/10.29303/jipp.v9i2.2253.

[17] Suprijati Sarib, Syarifuddin, and Sabil Mokodenseho, "Comparison Between Islamic Law and Positive Law in a Judicial Context," *West Science Islamic Studies* 1, no. 01 (2023): 34–41, https://doi.org/10.58812/wsiss.v1i01.284.

[18] Supardin Supardin, "Produk Pemikiran Hukum Islam Di Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 4, no. 2 (2018): 223, https://doi.org/10.24252/al-qadau.v4i2.5695.

Furthermore, customary law in Indonesia is a legal system that grows and develops in society based on custom and tradition. As unwritten law, customary law reflects the values and norms held by the local community. This law serves to regulate social interactions, resolve disputes, and maintain order in the community. In this context, customary law shares similar goals with positive law, namely to achieve justice and social control.[19] One of the main characteristics of customary law is its dynamic nature. Customary law is not static, but continues to adapt to the social and cultural changes that occur in society. This makes customary law a reflection of the needs and realities of community life. For example, in the Dayak community, customary law regulates various aspects of life, including natural resource management and dispute resolution, which reflects sacred local values.[20]

Recognition of customary law has also been regulated in Indonesian legislation. Article 18B of the 1945 Constitution recognizes the existence of customary law communities and their traditional rights. This shows that customary law has an important position in the national legal system and serves to protect the cultural identity of the community.[21] However, despite formal recognition, the implementation of customary law often faces challenges, especially in the context of modernization and globalization. Customary law also plays a role in regulating individual rights, including in terms of inheritance. In many communities, customary law regulates the division of inheritance in different ways compared to positive law. For example, in some tribes, the division of inheritance can be influenced by existing gender norms, which often results in unequal rights.[22]

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[19] Laurensius Arliman, "Hukum Adat Di Indonesia Dalam Pandangan Para Ahli Dan Konsep Pemberlakuannya Di Indonesia," *Jurnal Selat* 5, no. 2 (2018): 177–90, https://doi.org/10.31629/selat.v5i2.320; Amrita Ajeng Safitri et al., "Eksistensi Hukum Adat Dalam Tata Hukum Indonesia," *Rechtenstudent* 3, no. 2 (2022): 214–30, https://doi.org/10.35719/rch.v3i2.124.

[20] Lidya Imelda Rachmat, "Sistem Hukum Adat Dayak Mualang Butang Dalam Kajian Aspek Hukum Dan Budaya," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 11 (2023): 1017–23, https://doi.org/10.58812/jhhws.v2i11.734; Jeane Neltje Saly et al., "Urgensi Sanksi Pidana Adat Dalam Pelanggaran Tindak Pidana Di Suku Dayak Guna Pemeliharaan Budaya Lokal Persfektif Keadilan Sosial," *JERUMI: Journal of Education Religion Humanities and Multidiciplinary* 1, no. 2 (2023): 137–41, https://doi.org/10.57235/jerumi.v1i2.1253.

[21] Safitri et al., "Eksistensi Hukum Adat Dalam Tata Hukum Indonesia"; Faharudin, "Analisis Interaksi Kedaulatan Masyarakat Adat Di Indonesia," *LAWYER: Jurnal Hukum* 1, no. 1 (2023): 1–6, https://doi.org/10.58738/lawyer.v1i1.133.

[22] Fajar Sugianto, Vincensia Esti Purnama Sari, and Graceyana Jennifer, "Ketimpangan Hak Berbasis Gender Dalam Hukum Waris Adat Suku Lamaholot," *DiH: Jurnal Ilmu Hukum* 17, no. 2 (2021): 152–66,

It is therefore important to understand how customary law interacts with positive law in the context of inheritance and individual rights.

In practice, customary law often serves as an alternative to dispute resolution. Communities prefer to resolve their problems through deliberation and consensus, rather than through formal legal channels. This approach not only reflects local values, but also strengthens solidarity and cohesion within the community. However, challenges arise when customary law is not recognized by the formal legal system, which can lead to conflicts between the two legal systems. Harmonization between customary law and Islamic law is also an important issue in the legal context in Indonesia. In some areas, the practice of customary law and Islamic law can be complementary, but in other cases, they can conflict. Research shows that proper understanding and a thoughtful approach are needed to maintain justice and sustainability in societies that have both legal systems.[23]

Customary law in Indonesia is an integral part of the national legal system that reflects the diverse cultures and traditions of the people. Recognition of customary law and efforts to harmonize it with positive law are key to achieving justice and community welfare. By understanding and appreciating these two legal systems, it is hoped that people can live in harmony and respect each other.[24]

2. Characteristics of Islamic Law in Indonesia

The author identifies the products of Islamic law in Indonesia,[25] there are three characteristics of Indonesian Islamic law. *First*, "Arab personality" (*Arab oriented*), that the characteristics of Indonesian Islamic law are very dominantly colored by "*Arab* personality" (*Arab*

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https://doi.org/10.30996/dih.v17i2.4854; Jawahir Thontowi, "Pengaturan Masyarakat Hukum Adat Dan Implementasi Perlindungan Hak-Hak Tradisionalnya," *Pandecta: Research Law Journal* 10, no. 1 (2015), https://doi.org/10.15294/pandecta.v10i1.4190.

[23] Muhammad Ali Fauzi, Heppi Septiani, and Zainatus Sholehah, "Harmonisasi Hukum Adat Dengan Hukum Islam," *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 07 (2023): 2483–89, https://doi.org/10.59141/comserva.v3i07.993; Azami, "Dinamika Perkembangan Dan Tantangan Implementasi Hukum Adat Di Indonesia."

[24] Arliman, "Hukum Adat Di Indonesia Dalam Pandangan Para Ahli Dan Konsep Pemberlakuannya Di Indonesia"; Rachmat, "Sistem Hukum Adat Dayak Mualang Butang Dalam Kajian Aspek Hukum Dan Budaya."

[25] Selain KHI, produk hukum Islam Indonesia lainnya adalah UU No. 1/1974 tentang Perkawinan, UU No. 7/ 1989 tentang Peradilan, UU Perbankan Syariah (Muamalah) No. 10/1998, UU Pengelolaan Zakat No. 38/1999 dan UU Penyelenggaraan Ibadah Haji No. 17/1999.

oriented) and more attached to the tradition of the Syâfi'i school of thought. This can be seen from the use of most fiqh books from the Shafi'i school.[26] This condition is not much different at the present time, such as when Indonesian scholars formulated the Compilation of Islamic Law (authorized by Presidential Instruction Number 1 of 1991).[27]

Of the 38 books studied by seven State Islamic Institutes (LAIN) throughout Indonesia as reference material for the formation of the Compilation of Islamic Law, most of them are Syâfi'i madhhab. The 38 books are: *al-Bajurî, Fath al-Mu'în, Syarqâwî 'ala al-Tahrîr, Mughnî al-Muhtâj, Nihâyah al-Muhtâj, al-Syarqâwî, I'ânah al-Thâlibîn, Tuhfah, Targi al-Musytâq, Bulghah al-Sâlik, Syamsurî fî al-Fard'îd, al-Mudâwanah, Qalyubi / Mahalli, Fath al-Wahhâb and its Sharah, Bidâyah al-Mujtahid, al-'Umm, Bughyah al-Mustarsyidîn, al-'Aqîdah wa al-Syarî'ah, al-Muhallâ, al-Wajîz, Fath al-Qadîr, alFiqh 'ala al-Madzâhib al-Arba'ah, Fiqh al-Sunnah, Kasyf al-Ghinâ, Majmu'at alFatâwa al-Kubrâ li Ibn Taymiyyah, Qawânîn al-Syarî'ah li al-Sayyid 'Uthmân ibn Yahyâ, al-Mughnî, al-Hidâyah Syarh ai-Bidâyah, Qawânîn al-Syarî'ah li al-Sayyid Sadaqah Dahlan, Nawâb al-Jalîl, Syarah Ibn Âbidîn, ai-Muwaththa, Hashiyah al-Dasukî, Badai' al-Sanaî, Tabyîn al-Haqâ'iq, al-Fatâwâ aiHindiyah, Fath al-Qadîr, and al-Nihâyah.*[28]

In addition to being fixated on the Shafi'i madhhab fiqh books, methodologically, most of the ushul al-fiqh books studied are still Shafi'i madhhab as well. In fact, it is known that the books of ushul al-fiqh written within the Shafi'i school of thought - especially those taught in Islamic boarding schools - most of the discussions only reach the discussion of qiyas, apart from the Qur'an, hadith, and consensus. That means, the students are invited to think that talk about ijtihad can only be justified when done in the frame of qiyas, so Imam al-Shafi'i said that ijtihad is qiyas itself. The opinion of al-Shafi'i was criticized by his own followers, Imam al-Ghazâli who said: *man*

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[26] Marzuki Wahid dan Rumadi, Fiqh Mazhab Negara: Kritik atas Politik Hukum Islam di Indonesia, (Yogyakarta: LKiS, 2001), h. 128; Abdul Hadi Muthohhar, Pengaruh Mazhab Syafi'i di Asia Tenggara: Fiqih dalam Peraturan Perundangundangan tentang Perkawinan di Indonesia, Brunei dan Malaysia, (Semarang: Aneka Ilmu, 2003).

[27] F Sugianto and S Suhartono, "The Existence of President Instruction of the Republic of Indonesia Number 1 the Year 1991 on the Wide Spread of Compilation of Islamic Law in Indonesian Legal System," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 13, no. 2 (2018): 291–309, https://doi.org/10.19105/al-lhkam.v13i2.1727; T D Wirastri and S C van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32, https://doi.org/10.15408/ajis.v24i2.38424.

[28] Departemen Agama Republik Indonesia, *Instruksi Presiden RI. Nomor I Tahun 1991*, *Kompilasi Hukum Islam*, (Jakarta: Ditbinbapera Departemen Agama RI, 2001), h. 153-154

*qâla anna al-qiyâs wa al-ijtihâd lafdzâni faqad khata' (*who says that qiyas and ijtihad are two words, then he has made a mistake).

The consequence of this kind of emphasis is to subordinate all realities to the texts (nash), or in other words, deciding the law on a new problem must first find a link to the existing text. Only then is the illat equation sought. This method, besides being very complicated, also seems rigid. Therefore Hasbi Ash-Shiddieqy said that qiyas within the limits of al-Syafi'i sometimes cannot meet the needs. Based on this, Imam Syaukani believes that the intellectual atmosphere of Indonesian Islamic law seems to be still Syafi'iyyah minded, both in terms of its dependence on the products of Islamic legal thought and methodological issues. In fact, according to Hasbi Ash-Shiddieqy, the products of Islamic legal thought of past scholars which later found their formulation in the books of fiqh were built on the basis of Middle Eastern 'urf which in some cases was not in accordance with the sense of legal awareness of the Indonesian people institutionalized in customary law. For this reason, there are certain parts of Islamic law that do not receive a warm welcome from the Indonesian people because they are considered less in accordance with Indonesian personality.[29]

Second, emphasizing on private law. When viewed from the material aspect of the substance (scope) of Islamic law developed in Indonesia, it seems more focused on private law or family law (*ahwâl al-syakhshiyyah*), such as marriage, divorce, and waqf, as covered in the Compilation of Islamic Law. Until now, the Religious Courts are only authorized to handle conflicts related to the above cases. Meanwhile, Islamic law relating to criminal matters (*fiqh al-jinâ'î al-Islâmî*) has not been positively applied. However, there is encouraging information, that although formally it cannot be applied, but substantially the material contained in the draft of the new Criminal Code adopts a lot of Islamic criminal law material.

Another good news regarding the implementation of Islamic criminal law comes from the Province of Nanggroe Aceh Darussalam through its Syar'iyah Court.[30] Based on the mandate and

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[29] Muhammad Hasbi Ash-Shiddieqy, *Syari'at Islam Menjawab Tantangan Zaman*, (Jakarta: Bulan Bintang, 1966), h. 41-42; Nourouzzaman Shiddiqi, Fiqh Indonesia: Penggagas dan Gagasannya, h. 231

[30] Nashihul Abror, "Eksistensi Dan Kewenangan Mahkamah Syar'iyah Dalam Mengadili Tindak Jinayah Di Provinsi Nanggroe Aceh Darussalam," *Al-Jinayah Jurnal Hukum Pidana Islam* 6, no. 1 (2020): 229–56, https://doi.org/10.15642/aj.2020.6.1.229-256.

Qanun No. 10 of 2002 which is a follow-up to Law No. 44 of 1999 concerning the Implementation of the Specialty of the Special Province of Aceh.[31] This Syar'iyah Court will later handle civil and criminal cases. The problem now is, what kind of criminal law will be applied in the NAD Province? Will the judges simply apply the formulations of Islamic criminal law found in the fiqh books? Or, will a new formulation of Islamic criminal law be drafted, which is in accordance with the situation and conditions in Aceh? All of these questions are still unanswered because until now the Acehnese scholars are still discussing it intensely.[32]

Perhaps, the presence of Islamic Banks is one of the most proud phenomena of the existence of Islamic law in the field of muamalah (*fiqh almu'âmalah*). At this time the existence of banks that use sharia principles has proven to be quite capable of existing and obtaining considerable profits and proven not to experience significant shocks when Indonesia was hit by the monetary crisis in 1997. Bank Muamalat Indonesia as the only bank that uses sharia principles in its operations at that time was able to survive, when other bank institutions suffered losses and were liquidated. In this framework, the existence of Islamic banks must be understood as a financial institution that offers a solution to the management of healthier financial institutions, and - this should not be forgotten - is able to create economic equality in society.[33]

3. Customary Law, Islamic Law and National Law: A Legal Formation

In the development of law in Indonesia, at least interpret the facts of the basic social entities in it, namely that Indonesian society has a society with the largest statistics of adherents of Islam,

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[31] Abror.

[32] "The Jinâyat Qânûn of Aceh in the Perspective of Indonesian Legal Stat," *Ahkam: Jurnal Ilmu Syariah* 16, no. 2 (2016): 151–62, https://doi.org/10.15408/ajis.v16i2.4445; M M Marpaung and H Susetyo, "Canning: Syariah Law Versus Human Rights in Aceh, Indonesia," in *Challenges of Law and Governance in Indonesia in the Disruptive Era II* (Faculty of Law, Universitas Indonesia, Depok, Indonesia: Nova Science Publishers, Inc., 2021), 117–28, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85132463886&partnerID=40&md5=9750fed613451881df8c25f85874e1c7; "Taqnīn Method of Qānūn Jināyah and Problems of Its Implementation in Aceh, Indonesia," *Journal of Islamic Law* 3, no. 2 (2022): 193–211, https://doi.org/10.24260/jil.v3i2.817.

[33] Berdirinya Bank Syariah adalah sebagai bentuk jawaban konkrit terhadap posisi syubhat dan bunga bank (*interest*) yang diberlakukan di bank-bank non-syariah. Tetapi perlu dipahami bahwa keberadaan bank syariah ini bukan semata-mata karena alasan ideologis-normatif, tetapi sebenarnya sangat bersifat pragmatis-empiris. Ini yang kerap kali dilalaikan. Bandingkan dengan Timur Kuran, *Politik Identitas Ekonomi Islam (The Genesis of Islamic Economics: A Chapter in the Politics of Muslim Identity),* diterjemahkan oleh Muhaimin Syamsuddin dan Social Research, Vol. 64, Summer 1997, h. 301-338, dalam Gerbang, Vol. 02, Oktober-Desember, 1999

that Indonesian society has a different structure between one another with the strength of their respective identities, and that Indonesian society is bound in a formal union, namely a citizen. In this sense, the identity of Indonesian society is threefold: as a Muslim, as an indigenous community, and as a citizen. Each of these identities is subject to legal consequences.

As a Muslim, it becomes an obligation for him to carry out the shari'a contained therein, and as an indigenous community, this identity is attached to him, and then compliance with national regulations becomes a form of legal compliance. These three legal bases are at least binding and influence each other, especially in daily life.

Discussing the enactment of Islamic law in Indonesia, Ismail Suny divides it into two stages, namely the Dutch East Indies period and the Republic of Indonesia period. During the Dutch East Indies period, Islamic law was placed in two states in two periods, namely the period of full acceptance of Islamic law (*Receptie In Complexu*), and the period of acceptance of Islamic law by customary law (*Receptie*). Meanwhile, the Republic of Indonesia also placed Islamic law in two states in two periods, namely the period of acceptance of Islamic law as a persuasive source (*Persuasive-Source*) and the period of acceptance of Islamic law as an*authoritative* source (*Authoritative-Source*).

Receptio In Compluxe

Receptio in compluxe means "full acceptance" or perfect acceptance".[34] The period of full acceptance of Islamic law (*Receptio in complexu*) is a period where Islamic law is fully enforced by Muslims as a guide in religious life. Before the Dutch came to Indonesia, religious life. Before the Dutch came to Indonesia, Islamic law had also established many religious judicial institutions with various names.[35] These religious judicial institutions were established in the middle of the kingdom or sultanate in order to assist in the settlement of problems related to Islamic law, where at that time Islamic marriage law and inheritance law had become a living and applicable law in Indonesia.

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[34] Zuria Ulfi Simanjuntak, "Tinjauan Hukum Islam Terhadap Tradisi Kerjanjahat (Kenduri Kematian) Pada Masyarakat Muslim Suku Pakpak Sidikalang, Dairi," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 10, no. 02 SE-Articles (October 16, 2022): 623–48, https://doi.org/10.30868/am.v10i02.3092.

[35] Sukran Hadi, "SEJARAH PANJANG HUKUM ISLAM: : Studi Politik Hukum Islam Pada Masa Belanda," *MAQOSID: JURNAL STUDI KEISLAMAN DAN HUKUM EKONOMI SYARIAH* 9, no. 01 SE-Articles (October 15, 2021): 72–82, https://doi.org/10.37216/maqosid.v9i01.495.

Therefore, it is not surprising that the Religious Courts have been able to permanently and steadily resolve cases of marriage and inheritance of Muslims.[36]

Although the Dutch began to control part of the archipelago in Indonesia, Islamic law (Marriage Law and Inheritance Law) continued and was recognized by the Dutch, even by the Dutch made various collections of laws as guidelines for officials in solving the legal problems of the indigenous people. So it is not surprising that they continue to recognize and implement Islamic marriage law and inheritance law through the regulation "*Resulitie Der Indersche Regeering*", dated May 25, 1970, which is a collection of rules on Islamic marriage law and inheritance law by the Dutch court, known as Compedium Freijher. It is thus evident that the position of Islamic law at that time was very strong and lasted approximately from 1602 to 1800.[37]

In the 19th century there was a movement among many Dutch people who tried to eliminate the influence of Islamic law, through, among other things, Christianization.[38] Because if it succeeded in attracting many indigenous people to convert to Christianity, it would greatly benefit the position of the Dutch East Indies government. Assuming that those who had embraced Christianity would become citizens who were loyal and obedient to the Dutch Colonial government. As for after the Dutch East Indies government actually controlled the archipelago, Islamic law began to shift. Gradually the position of Islamic law began to weaken. Then in 1882 religious courts were formed in places where there were district courts, namely the Religious Courts competent to resolve cases among Muslims concerning Islamic marriage law and inheritance law. Thus, Islamic law received official recognition and confirmation from the Dutch government since the establishment of the religious court in 1882.[39]

Whereas in the research conducted by Lodewijk Willen Christiaan Van Den Breg (1845-1927) who lived in Indonesia concluded that the Indonesian people in essence have fully accepted

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[36] Fitra Mulyawan and Dora Tiara, "Karakteristik Hukum Islam Pada Zaman Penjajahan Belanda Dan Jepang," *UNES Law Review* 3, no. 2 (2020): 113–25, https://doi.org/10.31933/unesrev.v3i2.151.

[37] Kumedi Ja'far, "Teori-Teori Pemberlakuan Hukum Islam Di Indonesia," *Asas* 4, no. 2 (2012): 2.

[38] Mohamad Rana, "Pengaruh Teori Receptie Dalam Perkembangan Hukum Islam Di Indonesia," *Mahkamah : Jurnal Kajian Hukum Islam* 3, no. 1 (2018): 17, https://doi.org/10.24235/mahkamah.v3i1.2745.

[39] Andi Akram, "Sejarah Peradilan Agama Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 2, no. 1 (2008): 103–14, https://doi.org/10.24090/mnh.v2i1.3699.

Islamic law as a law that they realize, for Muslims full application of Islamic law, because they have embraced Islam even though in practice there are deviations. Therefore, the theory known as "*Theorie Receptie In Complexu*" emerged.

Receptie

The period of acceptance of Islamic law by customary law, known as the Receptie theory, is a period in which new Islamic law is enacted if desired or accepted by customary law. So it can be said that this theory opposes the theory that has prevailed before, namely the *Receptie In Complexu* theory. This theory was proposed by Christian Snouck Hurgranje (1857-1936). Namely the advisor to the Dutch East Indies government in Islamic Affairs and not and Bumi Putera.[40]

According to Snouck, Islamic law can be applied if it has become part of customary law. For Snouck, the attitude of the Dutch East Indies government before accepting the *Receptie In Compexu* theory stemmed from its ignorance of the situation of the indigenous people, especially the Muslim community. He argued that the attitude towards Muslims had been detrimental to the Dutch government itself, besides that Snock hoped that the situation so that the indigenous people in general the colonized people should not be strong in holding Islam, because in general people who are strong in holding Islam (Islamic Law) are not easily influenced by western civilization.

As an advisor to the Dutch East Indies government, Snouck gave advice that was famously called the "*Islam Policy*". He formulated his advice to the Dutch government in taking care of Muslims in Indonesia by trying to attract indigenous people to be closer to European culture and the Dutch East Indies government.[41] This advice intends that matters concerning Muslim worship must be given full freedom, with the hope that in the field of society the Dutch East Indies government must respect the customs and habits of the people that apply, by encouraging them to approach the Dutch East Indies government. Meanwhile, in the constitutional field, the Dutch East Indies government must not provide opportunities, and must prevent things that can help the Pan Islamism movement.

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[40] Zaelani Zaelani, "HUKUM ISLAM DI INDONESIA PADA MASA PENJAJAHAN BELANDA: KEBIJAKAN PEMERINTAHAN KOLONIAL, TEORI RECEPTIE IN COMPLEXU, TEORI RECEPTIE DAN TEORI TECEPTIO A CONTRARIO ATAU TEORI RECEPTIO EXIT," *KOMUNIKE: Jurnal Komunikasi Penyiaran Islam* 11, no. 1 SE-Articles (June 30, 2020): 128–63, https://doi.org/10.20414/jurkom.v11i1.2279.

[41] Agus Moh. Najib, "Pemberlakuan Hukum Islam Di Indonesia," *Asy Syir'ah* Vol.37, no. 6 (2003): 735–40.

Then this reception theory by Snouck was given a legal basis in the Dutch East Indies Constitution which replaced the RR called *Wet Op De Staat Snrichting Van Nederlands Indie*, abbreviated as *Indische Staat Regeering* (IS) which was promulgated in 1929.[42] further stated in article 134 paragraph 2, which reads "In the event of a civil case between fellow Muslims, it shall be settled by a Muslim religious judge if their customary law so requires and as far as it is not determined otherwise by an ordinance". But in reality, this policy of the Dutch government actually wanted to undermine and *hinder* the implementation of Islamic law, among other things; They did not include *hudud* and *qisas* punishments in the field of criminal law, Islamic teachings concerning marriage and inheritance law began to be narrowed and so on.[43]

The role of Islamic law in the legal system of the Republic of Indonesia began to be good again, namely at the time of the formation of the Indonesian Independence Preparation Efforts Investigation Board (BPUPKI), where Islamic leaders fought for the re-enactment of Islamic law with the power of Islamic law itself without any connection with customary law. Committee nine of BPUPKI succeeded in coming up with a formulation for the Preambule of the Constitution which was later called the "Jakarta Charter" on June 22, 1945. It contains the foundations of the state philosophy which, among others, is based on "Belief in God with the obligation to carry out Islamic law for its adherents.[44]

In consideration of realizing the unity of the Indonesian nation and avoiding discrimination of applicable laws, this formulation was finally changed on August 18, 1945, the day after the Proclamation of Indonesian Independence. The change reads "Belief in One God", this formulation by Moh. Hatta explained that although the sound is different, the content has not changed, the soul of the Jakarta Charter still remains even though it is not clearly stated.[45]

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[42] Al Ikhlas et al., "Teori-Teori Hubungan Hukum Agama Dengan Hukum Negara," *Jurnal Kawakib* 3, no. 1 (2022): 32–39, https://doi.org/10.24036/kwkib.v3i1.44.

[43] Nurul Hakim, "Konflik Antara Al-'Urf (Hukum Adat) Dan Hukum Islam Di Indonesia," *Jurnal EduTech* 3, no. 2 (2017): 54–63; Muhammad Yusuf, "Eksistensi Hukum Jinayat Dalam Masyarakat Nusantara," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 1 (2021): 41, https://doi.org/10.22373/legitimasi.v10i1.10516.

[44] A K Ja'far, "Mendudukkan Peran Hukum Islam Dalam Pembangunan Hukum Nasional Di Indonesia (Suatu Tinjauan Ketatanegaraan)," *Masalah-Masalah Hukum* 4, no. Query date: 2022-05-28 11:15:02 (2011): 332–37, https://ejournal.undip.ac.id/index.php/mmh/article/view/13071/0.

[45] M N Harisudin, "The Taqnin of Indonesian Islamic Law Dynamic," *Journal of Indonesian Islam* 9, no. 1 (2015): 79–100, https://doi.org/10.15642/JIIS.2015.9.1.79-100.

With the Proclamation of Independence on August 17, 1945 and the enactment of the 1945 Constitution, this reception theory has lost its legal basis. Hazairin argued that after Indonesia's independence and the 1945 Constitution as the basis of the state, then even though the transitional rules state that the old law is still valid, as long as its spirit does not conflict with the 1945 Constitution, all Dutch government laws and regulations based on the reception theory are no longer valid because their spirit is contrary to the 1945 Constitution.

Receptio A Contrario

Receptio A Contrario theory is the opposite of receptie theory. This theory is regarded by Hazairin and Sayuti Talib as a breaker of the receptie theory. It is said to be a breaker, because this theory expresses an opinion that is completely opposite to Christian Hurgronje's receptie theory. In this theory, it is customary law that is under Islamic law and must be in line with Islamic law, so that customary law can only apply if it has been legalized by Islamic law. Sayuti Talib stated that in marriage and inheritance law for Muslims, Islamic law applies. This is in accordance with his beliefs, legal ideals, and moral ideals, namely this theory suggests that customary law can apply to Muslims when it does not conflict with Islamic law. Thus it is clear that the Receptio A Contrario theory is the opposite of the Receptie theory.[46]

With the placement of the Jakarta Charter in the Presidential Decree dated July 05, 1959, the Jakarta Charter or the acceptance of Islamic law has become an Authoritative-Source (Authoritative Source) in Indonesian constitutional law, no longer just a mere persuasive source. Furthermore, Prof. Mahadi argues that the words "Obligation to carry out Islamic law for its adherents" have two aspects. First, the individual aspect, namely that every Muslim is obliged to carry out Islamic law. Second, the state aspect has two aspects, namely the active and passive aspects. The passive aspect implies that the state or government should allow Muslims to implement Islamic sharia, as long as it can be harmonized with Pancasila, especially not disturbing security and order in religious life. While the active aspect means that it requires the state or government to be active, move and act in the form of; providing facilities, providing assistance, making the necessary regulations and others for the sake of Muslims in carrying out Islamic law.

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[46] Siti Rohmah, "Rekonstruksi Teoritis Penyerapan Hukum Islam," *Jurnal Ilmu Hukum* 1, no. 1 (2010): 1–20, http://eprints.polsri.ac.id/5441/2/jurnal dewi poltek darussalam juli 2018 %28Teori Eksistensi%29.pdf.

As is known, the Jakarta Charter was originally the preamble of the Draft 1945 Constitution made by BPUPKI. Then in the preamble of the Presidential Decree, it is stipulated, "That we are convinced that the Jakarta Charter of June 22, 1945 animates the 1945 Constitution and is a series of unity in the constitution. Likewise, the conciderations and explanations of laws and regulations are an integral part of a law and regulation.

In the Presidential Decree of July 05, 1959, in addition to stipulating the Jakarta Charter in the preamble, the dictum also stipulates "Determination of the 1945 Constitution to apply again". Therefore, the President of the Republic of Indonesia believes that the Jakarta Charter animates the 1945 Constitution and is a series of unity in the constitution. While the meaning of the word "Menjiwai" negatively means that no legislation can be made in the state of Indonesia that contradicts Islamic law for its adherents. And positively means that the adherents of Islam are obliged to carry out Islamic sharia. For this reason, a law must be made that will enforce Islamic law in national law.

D. Conclusion

From the theory expressed above, it can be seen that there are several patterns of legal interaction that occur in Indonesia. In the researcher's analysis, the enactment of law in Indonesia is closely related to the elements behind it, not only from the aspect of religion or custom, other elements that become the background of legal formation are also often influenced by politics.

Islamic law has the power and legal position in Indonesia because it has a very universal community so it is not possible to ignore this value as a basis for the formation of legislation, besides that, the religious community to which customary law is also related provides diverse accommodations. The application of customary law and Islamic law in certain communities appears to have different patterns, there is no standard provision or clash between the two.

There is no concrete and universal relevance of all the theories mentioned above, all of them have their own series that may be true in the context of certain communities while in other communities appear with different faces. The *Receptio In Compluxe* theory, for example, appears to apply to the Minang community in the private law of inheritance despite the slogan adat bersandi sara', while the Tapanuli community makes the basis of Islamic values as a standard which is then assimilated in the form of adat settlement.

This is how Islamic law and customary law coexist in different situations and conditions and then produce unique legal formulations. There is no elimination of each other, there is an adjustment or even amalgamation. In conclusion, between customary law, Islamic law and national law, all three accommodate each other but in a complex display.

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