



## OPPORTUNITIES AND CHALLENGES OF ISLAMIC LAW IN INDONESIA'S NATIONAL LEGAL SYSTEM FROM CONSTITUTIONAL PERSPECTIVE



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### Abstract

This research aims to analyse the opportunities and challenges of applying Islamic law from a legal perspective in Indonesia. The background to this study is based on the fact that Islamic law has played a significant historical and normative role in the formation of the legal system in Indonesia. However, in practice, there are complex dynamics involved in integrating the principles of Islamic law into the pluralistic national legal framework. The results of the study indicate that there is significant potential for Islamic law to contribute to the strengthening of morality and justice within the national legal system. This potential is reinforced by the presence of Islamic law within the Indonesian legal system through regulations such as the Compilation of Islamic Law and the recognition of Sharia Courts in certain regions. This research employs a qualitative empirical legal approach that analyzes legal phenomena occurring in society. Data were obtained through a review of the literature on regulations, legal doctrines, judicial decisions, and previous research relevant to this topic. The conclusion is that Islamic law has great potential to contribute to Indonesia's national legal system. One of the key opportunities lies in public acceptance of the principles of Islamic law, particularly in private law areas such as marriage, inheritance and Islamic finance. Regulations such as the Compilation of Islamic Law and the existence of institutions such as the Sharia Court in Aceh serve as concrete examples that Islamic law can be applied within the national legal framework with strong normative support

### Abstrak

Penelitian ini bertujuan untuk menganalisis peluang dan tantangan penerapan hukum Islam dari perspektif hukum di Indonesia. Latar belakang penelitian ini didasarkan pada fakta bahwa hukum Islam telah memainkan peran historis dan normatif yang signifikan dalam pembentukan sistem hukum di Indonesia. Namun, dalam praktiknya, terdapat dinamika yang kompleks dalam mengintegrasikan prinsip-prinsip hukum Islam ke dalam kerangka hukum nasional yang pluralistik. Hasil penelitian menunjukkan bahwa terdapat potensi yang signifikan bagi hukum Islam untuk berkontribusi dalam memperkuat moralitas dan keadilan di dalam sistem hukum nasional. Potensi ini diperkuat oleh kehadiran hukum Islam dalam sistem hukum Indonesia melalui peraturan seperti Kitab Undang-Undang Syariah dan pengakuan terhadap Pengadilan Syariah di beberapa daerah. Penelitian ini menggunakan pendekatan kualitatif melalui pendekatan hukum empiris yang menganalisis fenomena hukum yang terjadi di masyarakat. Data diperoleh melalui tinjauan literatur mengenai peraturan, doktrin hukum, putusan pengadilan, dan penelitian sebelumnya yang relevan dengan topik ini. Kesimpulannya adalah bahwa hukum Islam memiliki potensi besar untuk berkontribusi pada sistem hukum nasional Indonesia. Salah satu peluang utama terletak pada penerimaan publik terhadap prinsip-prinsip hukum Islam, khususnya di bidang hukum perdata seperti perkawinan, warisan, dan keuangan Islam. Peraturan seperti Kitab Undang-Undang Syariah dan keberadaan lembaga seperti Pengadilan Syariah di Aceh menjadi contoh konkret bahwa hukum Islam dapat



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*diterapkan dalam kerangka hukum nasional dengan dukungan normatif yang kuat.*

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## INTRDUCTION

Islamic law has been an integral part of the development of human civilisation, particularly within Muslim societies that adopt the values of Sharia as a guide to life. In the context of countries with a Muslim majority, such as Indonesia, Islamic law holds a significant position both historically and normatively. Islamic law functions not only as a set of religious rules, but also as a system with the flexibility to be adapted within various modern legal systems (Nasution 2021). This is reflected in various regulations in Indonesia that incorporate Islamic law into the national legal framework, such as in the areas of marriage, waqf and Islamic finance. Islamic law has become deeply rooted in the fabric of life in the Indonesian archipelago. Islamic teachings not only shape the spiritual identity of individuals, but also fundamentally influence the social order, economic system, and even the architecture of the customary legal system across various regions. This historical influence is not merely a faded entry in the pages of history; it is a strong foundation that shapes the Indonesian people's perspective on justice, morality, and social order, which in turn inherently influences the development of law in subsequent eras (Wicaksono dan Mahipal 2025).

However, the integration of Islamic law into the national legal system faces various challenges. One of the main challenges is the pluralism of Indonesian society, which comprises a diverse range of religions, cultures and value systems. This pluralism often gives rise to conflicts between the principles of Islamic law and those of secular positive law (Suryadi 2020). For example, the application of Islamic inheritance law is often a source of debate among families of different faiths. This highlights the importance of harmonising the principles of Islamic law with national law to ensure justice for all parties. Furthermore, another challenge lies in the differing interpretations of the fundamental concepts of Islamic law themselves. In a case study on the application of Sharia law in Aceh, it was found that the diversity of views among religious scholars led to differences in the implementation of Sharia regulations in the region (Rahmat 2022). This highlights the importance of a deep understanding and a moderate approach in translating the values of Islamic law into a practical legal framework that is acceptable to the wider public. Consequently, the integration of Islamic law into the national legal system is also influenced by the secular framework of positive law. In some cases, national regulations often conflict with the principles of Islamic law, such as in the case of conventional interest – based banking. This challenge requires a dialogical approach between Islamic law and positive law so that the two can complement one another without mutual recrimination (Anshari 2023).

In this context, strengthening moderate, Islam – based legal education is one relevant solution. This education aims not only to enhance understanding of Islamic law but also to promote harmonious integration with national law. A moderate approach can foster the creation of a legal system that is more inclusive,

just, and relevant to the needs of modern society. Thus, this study focuses on the opportunities and challenges of Islamic law from a national legal perspective, to provide practical recommendations for the development of the legal system in Indonesia

## **METHODS**

This research employs a legal–empirical approach using a qualitative–descriptive method to examine legal phenomena occurring in society, which are then compared with the opinions of legal experts (doctrine) in both positive law and Islamic law, as well as sources from national legislation recognized within the Indonesian legal system. The qualitative approach was chosen because it is capable of producing descriptive and analytical data, thereby revealing Islamic legal phenomena from normative, sociological, and philosophical perspectives (Creswell 2014). The primary focus of this approach is to explore how Islamic law is integrated into the national legal system, as well as to identify the obstacles and potential in its application. The data sources were obtained through a literature review, including legal literature, legislation such as the Marriage Act, the Religious Courts Act, the Zakat and Waqf Act, fatwas from the Indonesian Ulema Council (MUI), and relevant religious court rulings. The data was analysed using content analysis and legal interpretation to understand the structure and relevance of Islamic legal norms within the constitutional and social framework of Indonesian society, and to uncover patterns of the integration of Islamic law into the national legal system in greater depth (Amiruddin dan Asikin 2016)

## **RESULT AND DISCUSSION**

### **Legal Basis for the Application of Islamic Law**

The legal basis for the application of Islamic law in Indonesia includes, firstly: Article 29(1) and (2) of the Constitution of the Republic of Indonesia, which states that the State is based on belief in the One and Only God and guarantees the freedom of every citizen to profess a religion and to worship according to their religion; secondly: Article 2(1) of Law No. 1 of 1974 on Marriage, which states that a marriage is deemed valid if conducted in accordance with the laws of the respective religion and belief; third: Law No. 3 of 2006 amending the Law on Religious Courts, which expands the jurisdiction of the Religious Courts to include Islamic economics; and fourth: as provided for in Law No. 11 of 2006 on the Government of Aceh, which grants special authority to the Special Region of Aceh to implement Islamic Sharia law.

### **The Role of Islamic Law in the National Legal System**

The existence of Islamic law within Indonesia's national legal system has strong historical and legal roots. Although Indonesia is not an Islamic state, the existence of Islamic law is recognised and respected within the framework of the rule of law based on Pancasila and the 1945 Constitution. Constitutionally, the legal basis for

integrating Islamic values into the national legal system can be traced through MPR Decree No. IV/MPR/1999 on the State Development Guidelines (GBHN), which affirms that the development of national law must be rooted in religious values, including Islamic values. This indicates that, politically and normatively, national law must not conflict with the religious teachings embraced by the majority of the Indonesian people (Saladin 2021). The following table outlines the scope for the implementation of Islamic law within the national legal system

**Table 1.** Prospects for the Implementation of Islamic Law within the National Legal System

No.	Aspects	Opportunities
1	Constitution and Ideology	The 1945 Constitution and Pancasila guarantee the freedom to practise religious law
2	Social Needs	Growing public demand for sharia – based institutions and services
3	Islamic Finance	Regulatory and market support for the Islamic finance and banking system
4	Religious Courts	Expanding jurisdiction through legal reforms
5	Integrative Model	The legal pluralism approach allows for gradual and flexible development

Source: Article by Muhammad Ibnu Adha, 2025

Based on the table above, it can be concluded that there is considerable scope for Islamic law within the national legal system. The question that then arises is how Islamic law should position itself so as not to appear exclusive and inflexible in matters relating to muamalah.

On this basis, the prospects for the implementation of Islamic law within Indonesia's national legal system remain wide open, thanks to the existence of a strong ideological and legal foundation. These prospects include, amongst others:

1. Institutional Recognition

In the institutional sphere, Islamic law derives its legitimacy from the existence of the Religious Courts, which form part of the national judicial system. The Religious Courts have exclusive jurisdiction to hear civil cases involving Muslims, particularly in matters of marriage, inheritance, wills, gifts, waqf, zakat, infak, sadaqah and Islamic finance. This court operates within an integrated judicial system under the Supreme Court (Saepullah 2016).

2. The Development of Islamic Finance

The development of the Islamic economy in Indonesia has been significant since Law No. 21 of 2008 on State Islamic Securities (SBSN) was enacted as the legal framework. As of December 2024, Islamic banking assets stood at Rp902.4 trillion, representing an 11.7% year – on – year increase. This indicates that market confidence in the Islamic financial system is growing. Law No. 21 of 2008 has provided a strong legal foundation for the development of Islamic banking in Indonesia, driving the growth of the national Islamic banking industry. With its

impressive progress, Islamic banking in Indonesia has been able to improve the welfare of the community across various sectors, including healthcare, education, food security and the local economy (Fitriyansyah 2024).

### 3. Halal Product Certification

The Halal Product Assurance scheme is regulated by Law No. 33 of 2014 and Law No. 6 of 2023. The Halal Product Assurance Agency (BPJPH) is responsible for administering the Halal Product Assurance (JPH) scheme in Indonesia. All products imported into, distributed within, and traded in Indonesia are required to hold a halal certificate. The certification process involves the submission of an application by the business operator to the BPJPH, which then engages a Halal Inspection Body (LPH) to carry out inspections and tests to verify the halal status of the product. The introduction of these regulations has opened up opportunities for Islamic law to be incorporated into commercial law and consumer protection (UU 2014).

### 4. Aceh Special Autonomy

Aceh Qanun No. 6 of 2014 on Criminal Law is the only Islamic criminal law regulation that is formally in force in Indonesia. It serves as a legal laboratory for assessing the effectiveness of Sharia within the modern legal system (Pasal.id 2014)

### 5. Growing Legal Awareness Among the Public

Research conducted by Bank Indonesia in 2023 revealed that Islamic financial literacy had risen to 28.01%, up from 20.1% in 2021. This increased awareness has led to disputes concerning waqf, inheritance and muamalah being resolved in accordance with Sharia principles. Essentially, the legal awareness that has emerged is also inseparable from the implementation of the values of religious moderation. This is because religious moderation is understood as a balanced religious attitude between one's own religious experience (exclusive) and respect for the religious practices of others of different faiths (inclusive). Balance in religious practice will certainly prevent individuals from adopting excessive or extreme, fanatical, and revolutionary attitudes in their religious practice (Sutrisno 2019).

Thus, Islamic law may evolve provided it does not conflict with the principles of justice, humanity and Indonesian identity. This serves as the legal basis for the application of Islamic law as part of a pluralistic national legal system, provided it continues to uphold the spirit of national unity and is not exclusive.

## **The Challenges of Islamic Law from a Legal Perspective**

It cannot be denied that, although Indonesia is the country with the largest Muslim population, this does not automatically mean that Islamic law can be applied in Indonesia. As a multicultural and multi-religious nation, Indonesia is characterised by a diverse social reality. In this context, the formal application of Islamic law must be carried out whilst taking into account the principles of tolerance and the protection of the rights of non-Muslim citizens. Consequently, any attempt to formalise Islamic law is often perceived as a threat to the principle of equality of citizens before the law (Fatimah 2013). This view has subsequently

given rise to resistance to the strengthening of Islamic law, particularly where it is perceived as potentially blurring the line between religious norms and state norms.

One of the main challenges facing the Muslim community is the development of information and communication technology. With the advent of social media and digital platforms, the dissemination of information has become faster and more widespread. This naturally requires Muslim scholars and religious leaders to engage in *ijtihad* that is more responsive to new issues, such as human rights, digital ethics, and privacy. Islamic law risks becoming irrelevant to the times without proper and appropriate *ijtihad* (Manik, et al. 2024). Some of the other challenges facing Islamic law from a legal perspective include:

#### 1. Pluralism of legal systems

Indonesia's pluralistic legal system comprises three legal systems: customary law, Islamic law and statutory law. These legal systems interact with one another and reflect the cultural and historical diversity of the Indonesian nation. Although statutory law is officially recognised, customary law and Islamic law continue to exert a significant influence on social and legal life in Indonesia. Legal pluralism is also recognised in a historical context, in which the Dutch East Indies government had made adjustments to these various legal systems (Yanti dan Irwansyah 2023).

#### 2. Limitations on Jurisdiction and Codification

The Religious Courts in Indonesia have limitations in terms of their jurisdiction and codification of powers. These powers are restricted to Islamic civil law and apply only to Muslims. This means that the Religious Courts cannot handle cases that do not relate to Islamic law or do not involve Muslims. These limitations also reflect inequality within the existing legal system, where Islamic law does not hold an equal status with other state laws (Harahab dan Omara 2010)

#### 3. Human Rights and Gender Equality

As is the case in Islam, the principles applied in justice are in fact closely linked to the teachings brought by Islam, namely the doctrine of *tawhid*, which applies universally. The doctrine of *tawhid* is a teaching which affirms that God is One, the Absolute, the Transcendent, the Sovereign of all sovereigns, whilst all else is merely His creation; and that, in the sight of God, all things are equal in status, whether male or female, and all things proceed in accordance with God's will. This is as Allah states in the Qur'an: "O mankind, indeed We have created you from a single male and female. Then We made you into nations and tribes so that you may know one another. Verily, the most honourable of you in the sight of Allah is the one who is most righteous. Verily, Allah is All – Knowing and All – Aware" (QS. Al – Hujurat [49]: 13). Based on this verse, it can be understood that in truth both women and men are essentially equal; both have their own respective duties and responsibilities, but what distinguishes them and what is most honourable of the two in the sight of God is piety As in the religion of Islam, the principles applied in justice are in fact closely bound to the teachings brought by Islam, namely the doctrine of *tawhid* which applies (Syah 2023).

#### 4. Overlapping Jurisdictions

The resolution of Sharia economic disputes has, in fact, already been addressed by the Religious Courts Act. Although prior to the amendment of this Act, cases in the field of Islamic economics were more often resolved through non – litigation channels, or what is commonly known as out – of – court channels, in accordance with the recommendations of the National Sharia Council , which at that time delegated authority to the Indonesian Muamalat Arbitration Board (BAMUI), established by the MUI in 1993 and later renamed Basyarnas, which has a legal basis in Law No. 30 of 1999 on Arbitration Bodies and Alternative Dispute Resolution to resolve disputes. The problem is that those involved in Islamic finance cannot wait for definitive rules to be established. In the business world, disputes must be resolved in accordance with whatever rules are in place to ensure certainty; however, this does not mean that the approach of the Civil Code (KUHPerdata) can simply be applied to cases of Islamic finance. Parties involved in Sharia economic disputes prefer to resolve such disputes by referring to national legal regulations, such as the Civil Code, to ensure legal certainty; consequently, the Sharia principle of prohibiting usury in all activities becomes intertwined with legal concepts that recognise the existence of interest (usury) in every business transaction (Jalil 2013).

#### 5. The quality of law enforcement personnel

Human resources play a key role in transforming the national legal system. The quality, integrity and capacity of law enforcement officials—ranging from judges and prosecutors to police officers and lawyers—will be decisive in determining the quality of legal outcomes and their implementation on the ground. High – calibre, resilient human resources who are physically and mentally fit will have a positive impact—not only on enhancing the nation's competitiveness and self – reliance, but also on strengthening national development (Pribadi, Siburian dan Saragih 2025).

As a solution, this study highlights the importance of moderate, Islam – based legal education. Such education serves not only to enhance understanding of Islamic law, but also to foster the creation of a more inclusive national legal framework. Furthermore, interfaith and intercultural dialogue is also necessary to foster legal harmony within Indonesia's pluralistic society (Zed 2018).

### **Future Strategic Initiatives**

The strengthening of Islamic law in Indonesia cannot be separated from the framework of the Pancasila – based constitutional state. This means that every effort must follow constitutional, democratic and gradual channels (Mahmud 2010). The strengthening referred to here does not mean the comprehensive formalisation of Sharia law, but rather the incorporation of Islamic legal values and norms into the national legal system so as to provide concrete benefits for justice, legal certainty and the public interest (Asshiddiqie 2016).

The seven most realistic strategic measures for strengthening Islamic law are as follows: Firstly: strengthening codification and legislation, specifically by elevating the Compilation of Islamic Law to the status of the Islamic Civil Code.

Similarly, contemporary muamalah jurisprudence—such as productive waqf, sukuk and Sharia – compliant fintech—must be enacted into law without delay; Secondly: the integration of the curriculum and human resources within the law enforcement sector, whereby law faculties must include a course on Sharia Economic Law in their curriculum; Third: the expansion and optimisation of the authority of religious courts, through the revision of Law No. 3 of 2006 so that Religious Courts have exclusive jurisdiction over all Sharia contracts, in line with Law No. 30 of 1999 on arbitration; Fourth: Contextual Ijtihad and Maqashid al – Shari'ah, whereby Islamic organisations, the Indonesian Ulema Council (MUI) and university academics develop a new methodology of ijtihad based on the Maqashid al – Shari'ah approach; Fifth: The digitalisation of Sharia legal services, with the acceleration of e – court and e – litigation across all Religious Courts; Sixth: Strengthening the Sharia economic ecosystem, through legislation mandating Sharia financial institutions in all regions, tax incentives for regional sukuk and productive waqf, and the requirement for halal products to be included in the government's e – catalogue; Seventh: Public literacy and advocacy: by incorporating basic muamalah fiqh material into Civic Education and Economics subjects at senior secondary school level. All these efforts must adhere to the principles of gradualism (tadarruj) and balance (tawazun). Islamic law is strengthened through demonstrating its benefits, not through identity politics. If Sharia is proven to provide solutions to poverty, disputes and economic issues, then public and state acceptance will automatically increase

## CONCLUSION

Islamic law has great potential in Indonesia. This is reinforced by constitutional support, institutional backing and the needs of society. The challenges lie in legal pluralism, jurisdictional limitations, human rights issues and human resources. Therefore, a solution can be found through a middle ground, namely selective codification and contextual ijtihad, so that Islamic law remains in step with the times (shalih likulli zaman wa makan) whilst also aligning with the Pancasila – based rule of law.

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## AUTHOR CONTRIBUTIONS STATEMENT

Muh. Arifin conceived and designed the study, developed the research framework, and drafted the manuscript. Zulfikar Putra collected and analyzed the data, contributed to the interpretation of findings, and revised the manuscript critically for important intellectual content. Karman supervised the research process, validated the results, and reviewed the final version of the manuscript. All authors

have read and approved the final manuscript and agree to be accountable for all aspects of the work.

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