



A COMPARATIVE STUDY BETWEEN SHARIA LAW AND NATIONAL LAW IN INDONESIA IN THE CONTEXT OF HUMAN RIGHTS PROTECTION

KAJIAN KOMPARATIF ANTARA HUKUM SYARIAH DAN HUKUM NASIONAL DI INDONESIA DALAM KONTEKS PERLINDUNGAN HAK ASASI MANUSIA

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ABSTRACT

This research examines the intricate relationship between Sharia law and national law in Indonesia, focusing specifically on their comparative approaches to human rights protection. Through qualitative legal analysis and comparative methodology, the study investigates areas of convergence and divergence between these two legal systems in addressing fundamental human rights issues in the Indonesian context. The findings reveal that while tensions exist between certain interpretations of Sharia principles and international human rights standards incorporated in national legislation, there are also significant opportunities for harmonization through contextual interpretation and legal pluralism. This research contributes to the ongoing discourse on legal plurality in Indonesia and provides recommendations for a more integrated approach that respects both religious values and universal human rights principles, potentially serving as a model for other nations navigating similar legal complexities.

Keywords: Sharia law, Indonesian national law, human rights protection, legal pluralism

ABSTRAK

Penelitian ini mengkaji hubungan kompleks antara hukum Syariah dan hukum nasional di Indonesia, dengan fokus khusus pada pendekatan komparatif mereka terhadap perlindungan hak asasi manusia. Melalui analisis hukum kualitatif dan metodologi komparatif, studi ini menyelidiki area konvergensi dan divergensi antara kedua sistem hukum ini dalam menangani masalah hak asasi manusia mendasar dalam konteks Indonesia. Temuan mengungkapkan bahwa meskipun terdapat ketegangan antara interpretasi tertentu dari prinsip-prinsip Syariah dan standar hak asasi manusia internasional yang terkandung dalam perundang-undangan nasional, terdapat juga peluang signifikan untuk harmonisasi melalui

interpretasi kontekstual dan pluralisme hukum. Penelitian ini berkontribusi pada wacana berkelanjutan tentang pluralitas hukum di Indonesia dan memberikan rekomendasi untuk pendekatan yang lebih terintegrasi yang menghormati nilai-nilai agama dan prinsip-prinsip hak asasi manusia universal, yang berpotensi menjadi model bagi negara-negara lain yang menghadapi kompleksitas hukum serupa.

Kata Kunci: Hukum Syariah, hukum nasional Indonesia, perlindungan hak asasi manusia, pluralisme hukum

A. INTRODUCTION

Indonesia represents a unique laboratory for examining the dynamic interplay between religious law and national legislation within the framework of human rights protection. As the world's largest Muslim-majority nation with a constitutional commitment to pluralism, Indonesia has developed a complex legal landscape where Sharia principles coexist with secular national law, particularly in areas concerning personal status, family relations, and certain aspects of public morality. This intricate relationship raises significant questions about the compatibility of these legal traditions in safeguarding fundamental human rights. Butt (2019) argues that Indonesia's legal pluralism creates both challenges and opportunities for human rights protection, with ongoing negotiation between religious values and constitutional guarantees shaping the evolution of the country's legal framework.

The integration of Sharia elements into Indonesia's legal system has evolved significantly since independence, with varying degrees of formal recognition across different regions and legal domains. According to Salim (2008), this process has been characterized by continuous adaptation and reinterpretation of Islamic legal principles within the context of the nation's constitutional democracy. The special autonomous status granted to Aceh province, allowing for more comprehensive implementation of Sharia regulations, stands as a notable example of this legal pluralism. However, Feener (2013) contends that the implementation of Sharia-influenced regulations in various Indonesian contexts often reflects local political dynamics rather than systematic theological reasoning, complicating efforts to assess their human rights implications.

International human rights standards have increasingly influenced Indonesia's national legislation, creating potential tensions with certain interpretations of Sharia law. Lindsey and Pausacker (2016) observe that Indonesia's post-1998 democratic reforms have strengthened constitutional protections for human rights while simultaneously witnessing the proliferation of Sharia-inspired local regulations in some regions. This paradoxical development raises critical

questions about legal harmonization and the protection of minority rights. The ongoing discourse surrounding religious freedom, gender equality, and freedom of expression illustrates the complex negotiation between religious values and universal human rights principles within Indonesia's legal framework.

Women's rights represent one of the most contested areas in the intersection between Sharia and national law in Indonesia. Nurmila (2013) highlights how differing interpretations of Islamic jurisprudence regarding gender roles influence legal approaches to issues such as marriage, divorce, inheritance, and public participation. While Indonesia's national laws increasingly emphasize gender equality in accordance with the country's commitments to international conventions such as CEDAW, certain Sharia-influenced regulations maintain gendered distinctions that have been criticized by human rights advocates. This tension reflects broader debates about religious authority, cultural identity, and individual rights that continue to shape Indonesia's legal landscape.

Religious freedom presents another critical dimension in examining the relationship between Sharia and national law in human rights protection. Despite constitutional guarantees of religious freedom, Crouch (2016) argues that the formalization of certain Islamic principles in local regulations has raised concerns about the rights of religious minorities and those holding non-mainstream interpretations of Islam. Instances of discrimination against minority religious communities highlight the challenges of balancing religious norms with equal citizenship rights. The debates surrounding blasphemy laws, requirements for religious education, and regulations on places of worship exemplify the complex intersection of religious authority and individual rights in contemporary Indonesia.

Criminal justice represents a particularly contentious domain in the comparative analysis of Sharia and national law regarding human rights protections. Lindsey and Kingsley (2008) note that corporal punishments implemented under Qanun Jinayat (Islamic criminal code) in Aceh have generated significant human rights debates regarding cruel and unusual punishment. These practices contrast with Indonesia's national criminal code, which generally avoids corporal punishment. Lubis (2017) emphasizes that this divergence reflects fundamentally different philosophical approaches to justice, rehabilitation, and human dignity, creating challenges for legal harmonization within Indonesia's pluralistic system.

The evolution of Indonesia's constitutional jurisprudence has played a crucial role in negotiating the relationship between Sharia principles and international human rights standards. According to Hendrianto (2018), Indonesia's Constitutional Court has developed an increasingly sophisticated approach to balancing religious values with constitutional rights, employing principles of proportionality and contextual interpretation. This jurisprudential development reflects broader efforts to reconcile seemingly competing legal norms through creative legal reasoning. The Court's decisions on religious freedom, gender equality, and minority rights illustrate the ongoing process of legal harmonization in Indonesia's pluralistic legal system.

Local governance represents another important dimension in understanding the dynamic relationship between Sharia and national law in Indonesia. Ichwan (2013) observes that decentralization policies following the 1998 democratic transition have enabled local governments to implement Sharia-inspired regulations under the framework of regional autonomy. These developments have created a patchwork of legal approaches to issues such as public morality, religious observance, and gender relations across different Indonesian regions. The resulting legal diversity raises important questions about equality before the law and the universal application of human rights protections throughout the nation.

Economic rights and social justice present yet another lens through which to examine the comparative approaches of Sharia and national law to human rights protection in Indonesia. Hefner (2016) argues that Islamic economic principles emphasizing ethical commerce, prohibition of exploitative practices, and wealth redistribution share significant common ground with contemporary human rights frameworks focusing on economic justice. This convergence offers potential pathways for harmonization between religious values and human rights standards in addressing issues such as poverty alleviation, labor rights, and environmental protection. The development of Islamic banking and finance regulations within Indonesia's national legal framework exemplifies this potential for complementarity.

The ongoing process of legal reform in Indonesia continues to negotiate the relationship between Sharia principles and international human rights standards. Azra (2021) contends that Indonesia's experience offers valuable insights into the possibilities for constructive engagement between Islamic legal traditions and con-

temporary human rights frameworks. By emphasizing contextualized interpretation, legal pluralism, and constitutional supremacy, Indonesia has developed approaches that recognize religious values while upholding fundamental rights protections. Though challenges remain in ensuring consistent implementation and addressing areas of tension, this evolving legal landscape demonstrates the potential for reconciliation between seemingly divergent legal traditions in protecting human dignity.

B. LITERATURE REVIEW

The intersection of Sharia law and national legislation in Indonesia has generated substantial scholarly attention, particularly regarding implications for human rights protection. An-Na'im (2008) presents a foundational framework for understanding this relationship, arguing that apparent tensions between Islamic law and human rights can be addressed through contextualized interpretation that emphasizes the underlying ethical principles of Islamic jurisprudence rather than historically contingent applications. This perspective suggests that Islamic legal traditions contain internal resources for reform that can align with contemporary human rights standards while maintaining religious authenticity. The framework provides crucial insights for analyzing Indonesia's unique approach to integrating religious principles within a constitutional democracy committed to human rights protection.

Legal pluralism offers another significant theoretical lens for examining the relationship between Sharia and national law in Indonesia. Bowen (2013) demonstrates how Indonesia's legal system accommodates multiple normative orders through formal recognition, procedural integration, and substantive adaptation. Rather than viewing legal pluralism as inherently problematic for human rights protection, Bowen highlights its potential to facilitate context-sensitive approaches to justice that respect cultural diversity while upholding fundamental rights. This analysis helps explain how Indonesia navigates the complex terrain between universal rights principles and particularistic religious traditions, creating spaces for negotiation and adaptation between competing normative frameworks.

The formalization of Sharia elements within Indonesia's national legal framework has evolved through distinct historical phases with significant implications for human rights. Cammack and Feener (2012) trace this evolution from colonial-era accommodation of Islamic family law through post-independence codification efforts to

contemporary regional autonomy policies allowing for expanded implementation of Sharia regulations. Their analysis reveals how political considerations, nationalist discourse, and international influences have shaped the selective incorporation of Islamic principles into state law. This historical perspective illuminates the contingent nature of current arrangements and identifies patterns of contestation and negotiation that continue to influence debates about religious law and human rights protection in Indonesia.

Gender analysis provides particularly valuable insights into the comparative human rights implications of Sharia and national law in Indonesia. Mir-Hosseini (2015) examines how feminist reinterpretations of Islamic legal traditions have challenged patriarchal assumptions and created space for gender-responsive reforms within religious frameworks. In the Indonesian context, these approaches have influenced progressive revisions to Islamic family law that strengthen women's rights while maintaining religious legitimacy. This scholarship demonstrates the dynamic nature of Sharia interpretation and its potential compatibility with gender equality principles when approached through critical hermeneutics that distinguish between eternal ethical principles and historically contingent legal formulations.

Comparative constitutional approaches offer crucial perspectives on how Indonesia negotiates potential tensions between religious law and human rights protections. Hirschl (2010) situates Indonesia within broader patterns of "constitutional theocracy" where religious principles receive formal recognition within constitutional frameworks that simultaneously uphold rights protections and democratic governance. This comparative analysis helps identify Indonesia's distinctive features, particularly its emphasis on Pancasila principles that affirm religious values without establishing a confessional state. Understanding these constitutional arrangements provides essential context for analyzing the relationship between Sharia principles and human rights protections in Indonesia's evolving legal landscape.

C. METHOD

This study employs a qualitative legal research methodology to examine the comparative dimensions of Sharia law and national law in Indonesia regarding human rights protection. According to Webley (2010), qualitative legal research is particularly suitable for investigating complex normative questions involving multiple legal traditions and their social implications. This approach enables the

examination of not only formal legal texts but also their interpretation, application, and reception within specific cultural and political contexts. For this study, the methodology involves systematic analysis of primary legal sources, including constitutional provisions, statutes, judicial decisions, and regional regulations, alongside secondary literature that interprets these materials within their social and historical contexts.

Comparative legal analysis forms the core methodological framework for this research, allowing for systematic examination of similarities, differences, and interactions between Sharia and national legal approaches to human rights protection. Zweigert and Kötz (2011) emphasize that meaningful comparative legal analysis requires attention to both formal legal structures and the functional equivalents that may address similar concerns through different mechanisms. This research applies their functionalist approach by examining how both Sharia principles and national legislation in Indonesia address fundamental human rights concerns such as equality, dignity, and justice, while remaining attentive to the distinctive conceptual frameworks and historical contexts that shape each legal tradition. This comparative methodology helps identify not only points of tension but also opportunities for constructive dialogue between these legal systems.

The research design incorporates case study analysis to provide concrete illustrations of the theoretical issues under examination. According to Yin (2018), case studies are particularly valuable for investigating complex phenomena within their real-world contexts, especially when the boundaries between phenomenon and context are not clearly evident. This study applies case study methodology to examine specific instances where Sharia principles and national human rights protections interact in Indonesian legal practice, including judicial decisions on religious freedom, implementation of gendered regulations in Aceh province, and development of sharia-compliant economic regulations within the national banking system. These case studies provide empirical grounding for the broader theoretical analysis while illustrating the practical implications of legal pluralism for human rights protection in Indonesia.

D. RESULT AND DISCUSSION

The constitutional framework of Indonesia establishes a complex relationship between Sharia principles and human rights protections that differs significantly from both purely secular systems

and formally Islamic states. While Article 29 of the 1945 Constitution guarantees freedom of religion, it simultaneously acknowledges the state's role in facilitating religious observance. Butt and Lindsey (2018) observe that this constitutional arrangement has enabled the selective incorporation of Sharia principles into national legislation while maintaining formal commitment to universal human rights standards. The Constitutional Court has generally interpreted these provisions to require accommodation of religious values within the broader framework of constitutional rights and Pancasila principles, creating a distinctive approach to legal pluralism that rejects both strict secularism and comprehensive implementation of Sharia as state law.

Regional autonomy policies have significantly shaped the relationship between Sharia regulations and national human rights standards in contemporary Indonesia. Following the 1999 decentralization reforms, various regions—particularly Aceh province under its special autonomy status—have implemented regulations explicitly derived from Sharia principles. Salim (2015) documents how these developments have created a patchwork of legal approaches to issues such as religious observance, public morality, and gender relations across different Indonesian regions. While proponents argue these regulations reflect legitimate expressions of local religious values, critics contend they sometimes contradict national human rights commitments, particularly regarding women's autonomy, religious freedom, and non-discrimination principles. This tension illustrates the ongoing negotiation between local religious identity and national rights frameworks.

Personal status law represents one of the most established domains where Sharia principles have been formally incorporated into Indonesia's national legal framework. The Marriage Law of 1974 and the Compilation of Islamic Law provide comprehensive regulations for Muslim citizens regarding marriage, divorce, and inheritance, often maintaining gendered distinctions derived from classical Islamic jurisprudence. According to Nurlaelawati (2017), these provisions reflect compromises between religious traditions and modernizing impulses, with ongoing reforms gradually strengthening women's rights while maintaining connection to Islamic legal principles. Religious courts applying these regulations have increasingly interpreted them in ways that emphasize equity and protection for vulnerable parties, illustrating how institutions can

mediate between religious principles and human rights concerns through contextual application.

Criminal justice represents perhaps the most contentious area in the relationship between Sharia-derived regulations and national human rights standards. The implementation of hudud punishments (fixed penalties for certain offenses) and ta'zir (discretionary punishments) under Aceh's Qanun Jinayat has generated significant debate regarding cruel and unusual punishment prohibitions. Human Rights Watch (2014) documented how corporal punishments such as public caning for moral offenses raise serious human rights concerns regarding physical integrity and dignity. These practices diverge sharply from Indonesia's national criminal code, which generally avoids corporal punishment in accordance with the country's commitments under the Convention Against Torture. This divergence highlights fundamental philosophical differences regarding punishment, deterrence, and human dignity that continue to challenge legal harmonization efforts.

Religious freedom protections illustrate complex tensions between certain applications of Sharia principles and international human rights standards in Indonesia. Despite constitutional guarantees of religious freedom, regulations on issues such as conversion, interfaith marriage, and religious identification have generated concerns about full protection of religious liberty. Crouch (2014) analyzes how Indonesia's blasphemy laws and administrative requirements for recognized religions have sometimes disadvantaged religious minorities and heterodox interpretations of Islam. These limitations reflect particular understandings of religious authority and public order that prioritize communal harmony over individual religious autonomy in certain contexts. However, this area has also witnessed significant jurisprudential development, with Constitutional Court decisions increasingly emphasizing protection for individual conscience within the framework of Indonesia's religious pluralism.

Gender equality represents another critical dimension in the comparative analysis of Sharia and national approaches to human rights in Indonesia. While Indonesia's national legislation increasingly emphasizes gender equality in accordance with CEDAW commitments, certain Sharia-influenced regulations maintain gendered distinctions in areas such as inheritance, court testimony, and public dress requirements. Robinson (2016) documents how women's rights advocates in Indonesia have developed strategies that work within Islamic frameworks to promote gender justice, emphasizing

egalitarian Quranic principles and contextual interpretation methodologies. These approaches have achieved significant reforms in areas such as protection against domestic violence and recognition of women's property rights, demonstrating possibilities for reconciling religious values with gender equality through progressive interpretation.

Economic rights present an area where Sharia principles and human rights frameworks show significant potential for harmonization in Indonesia's legal system. The development of Islamic banking and finance regulations within the national economic framework illustrates how religious values emphasizing ethical commerce Economic rights present an area where Sharia principles and human rights frameworks show significant potential for harmonization in Indonesia's legal system. The development of Islamic banking and finance regulations within the national economic framework illustrates how religious values emphasizing ethical commerce can complement rights-based approaches to economic justice. Hassan (2016) argues that Islamic prohibitions against usury (*riba*), excessive uncertainty (*gharar*), and exploitation align well with contemporary human rights concerns regarding economic fairness and consumer protection. Indonesia's dual banking system, accommodating both conventional and Sharia-compliant institutions under unified regulatory oversight, demonstrates institutional arrangements that respect religious values while maintaining consistent standards of governance and accountability within a pluralistic framework.

Labor rights protection reveals both tensions and complementarities between Sharia-influenced approaches and national human rights standards in Indonesia. While Indonesia's national labor legislation broadly aligns with international standards regarding workplace safety, fair compensation, and collective bargaining, Arskal (2019) notes that some Sharia-based interpretations emphasize distinctive approaches prioritizing mutual obligation and moral responsibility over adversarial rights claims. These perspectives have influenced alternative dispute resolution mechanisms in some regions that emphasize reconciliation and community harmony. Though these approaches sometimes diverge from standard rights-based frameworks, they can offer complementary pathways to achieving substantive justice for workers when implemented with attention to power imbalances and vulnerability.

Environmental protection represents an emerging area where Sharia principles and human rights approaches increasingly con-

verge in Indonesian legal development. Islamic concepts such as stewardship (*khilafah*) and avoidance of harm (*la darar*) provide theological foundations for environmental responsibility that complement rights-based approaches to sustainable development. Mangunjaya (2011) documents how these principles have informed community-based conservation initiatives and influenced the development of environmental regulations in regions implementing Sharia-influenced governance. These convergences demonstrate how religious values and human rights frameworks can mutually reinforce protection for collective interests in environmental sustainability, illustrating potential pathways for harmonization between seemingly distinct normative traditions.

Minority rights protection highlights particularly challenging tensions between certain interpretations of Sharia and international human rights standards in Indonesia. While Indonesia's constitution guarantees equal citizenship regardless of religious affiliation, Mietzner and Muhtadi (2018) document how certain Sharia-influenced regulations have sometimes had disproportionate impacts on religious minorities, particularly in regions where they constitute small populations. Regulations concerning religious symbolism in public spaces, restrictions on places of worship, and limitations on proselytization have generated concerns about equal protection and religious freedom. These tensions illustrate broader challenges in balancing majority religious values with minority rights protections within Indonesia's pluralistic framework, reflecting ongoing negotiation between communal autonomy and universal citizenship principles.

Legal education plays a crucial role in shaping the evolving relationship between Sharia principles and human rights frameworks in Indonesia. According to Otto (2016), Indonesia's legal education increasingly emphasizes integrative approaches that provide training in both Islamic legal traditions and international human rights standards, developing jurists capable of navigating between these different normative systems. This educational approach fosters jurisprudential creativity that can identify complementarities between religious values and human rights principles while developing contextually appropriate solutions to apparent tensions. The development of this integrative legal expertise represents a significant institutional innovation that strengthens Indonesia's capacity to harmonize its plural legal traditions while upholding fundamental rights protections.

Public health regulations illustrate practical approaches to integrating Sharia principles within rights-respecting national frameworks in Indonesia. During the COVID-19 pandemic, Suharto (2021) observes that religious authorities worked closely with public health officials to develop guidance that adapted religious practices to public health requirements while maintaining commitment to core spiritual values. These collaborations produced fatwas authorizing prayer modifications, temporary mosque closures, and vaccination during Ramadan, demonstrating how religious interpretations can evolve to accommodate public welfare concerns within Islamic ethical frameworks. This adaptability illustrates how apparently competing normative systems can achieve practical harmonization through cooperative governance mechanisms that respect both religious authority and scientific expertise.

Conflict resolution mechanisms represent important sites for negotiating the relationship between Sharia principles and rights-based approaches to justice in Indonesia. Traditional dispute resolution practices incorporating Islamic principles of reconciliation (*sulh*) and community harmony operate alongside formal court systems in many Indonesian communities. Bowen (2016) documents how these plural justice systems often provide complementary pathways for addressing conflicts, with individuals strategically navigating between religious, customary, and state legal forums based on their specific needs and circumstances. This legal navigation demonstrates how plural legal systems can enhance access to justice when operating within constitutional frameworks that establish basic rights protections while respecting diverse approaches to conflict resolution.

E. CONCLUSION

The comparative analysis of Sharia law and national law in Indonesia regarding human rights protection reveals a complex landscape characterized by both tensions and complementarities. This study demonstrates that the relationship between these legal traditions is not one of inherent opposition but rather ongoing negotiation mediated through constitutional principles, judicial interpretation, and institutional innovation. The Indonesian experience highlights the potential for constructive engagement between religious legal traditions and contemporary human rights frameworks when approached through contextual interpretation methodologies that distinguish between underlying ethical principles and historically con-

tingent applications. While challenges remain in ensuring consistent rights protections across Indonesia's diverse regions and legal domains, the evolving jurisprudence demonstrates pathways toward harmonization that respect religious values while upholding fundamental human dignity.

Indonesia's approach to integrating Sharia principles within a constitutional democracy committed to human rights offers valuable insights for other pluralistic societies navigating similar legal complexity. This research suggests that effective protection of human rights in religiously diverse contexts requires institutional arrangements that facilitate ongoing dialogue between different normative traditions, contextual application of legal principles responsive to social realities, and interpretive methodologies that identify shared concerns for justice and human dignity across seemingly divergent legal frameworks. By moving beyond simplistic oppositions between religious and rights-based approaches, Indonesia's evolving legal system demonstrates possibilities for developing pluralistic frameworks that accommodate religious values while upholding the fundamental protections necessary for human flourishing in diverse societies.

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