

The Social and Philosophical Values of the Positivization of Islamic and Customary Law in Indonesia

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Abstract

The complexity of the positivization of Islamic and customary law in Indonesia's national legal system is not merely normative. However, it is also significantly influenced by social, political, and ideological factors. Although Islamic and customary law have considerable potential to contribute to the development of the national legal system, their integration often fluctuates depending on the prevailing political-legal configuration. This inconsistency underscores the importance of a socio-philosophical approach to understanding how moral values, cultural norms, and socio-political interests shape a national legal system that is both just and contextually relevant. This article explores the socio-philosophical dynamics of positivizing Islamic and customary law within Indonesia's national legal framework. Employing a qualitative approach and literature-based research method, this study focuses on three main issues: first, the position of Islamic and customary law in the development of national law; second, the process of their positivization; and third, a socio-philosophical analysis of that process. The socio-philosophical approach examines how moral values, cultural traditions, and socio-political interests influence legal positivization. The study finds that Islamic and customary laws interact constructively in developing the national legal system. However, the positivization process remains fluid and contingent on the prevailing political and legal climate. Furthermore, the socio-philosophical perspective reveals that incorporating Islamic and customary law reflects the nation's social structure, divine values and cultural identity. This approach is essential for understanding legal development holistically, ensuring that national law is not only formally just but also socially and culturally relevant.

Keywords: *Customary Law, Islamic Law, National Law, Legal Positivization, Socio-Philosophical Approach.*

Abstrak

Kompleksitas proses positivisasi hukum Islam dan hukum adat ke dalam sistem hukum nasional tidak hanya bersifat normatif tetapi juga sangat dipengaruhi oleh dinamika sosial, politik, dan ideologis. Meskipun hukum Islam dan hukum adat memiliki potensi besar untuk berkontribusi dalam pembangunan hukum nasional, proses integrasinya acapkali mengalami pasang surut tergantung pada konfigurasi politik hukum yang sedang berlaku. Ketidakkonsistenan ini menunjukkan pentingnya pendekatan sosio-filosofis untuk memahami bagaimana nilai moral, budaya, dan kepentingan

sosial-politik membentuk hukum nasional yang adil dan kontekstual. Artikel ini bertujuan untuk membahas dinamika sosio-filosofis dalam proses positivisasi hukum Islam dan hukum adat ke dalam sistem hukum nasional di Indonesia. Dengan menggunakan pendekatan kualitatif dan metode studi pustaka, artikel ini membahas tiga fokus penelitian, yaitu pertama, kedudukan hukum Islam dan hukum adat dalam sistem pembangunan hukum nasional, kedua, proses positivisasi hukum Islam dan hukum adat, dan ketiga, telaah sosio-filosofis atas proses tersebut. Pendekatan sosio-filosofis digunakan untuk mengetahui bagaimana nilai-nilai moral, budaya, dan kepentingan sosial politik dalam membentuk praktik positivisasi hukum. Artikel ini menemukan bahwa hukum Islam, dan hukum adat berinteraksi secara kontributif terhadap pembagunan sistem hukum nasional. Adapun proses positivisasi hukum Islam dan hukum adat bersifat fluktuatif yang bergantung pada kondisi politik hukum yang terjadi saat itu. Lebih lanjut, pendekatan sosio-filosofis mengarahkan pada pemahaman bahwa proses pembentukan hukum Islam dan hukum adat merefleksikan struktur sosial, nilai ilahiyah, dan jati diri bangsa. Pendekatan ini menjadi kunci untuk memahami dinamika secara holistik, memastikan bahwa hukum nasional tidak saja adil secara formal, tapi juga relevan secara sosial budaya.

Kata kunci: *Hukum Adat, Hukum Islam, Hukum Nasional, Positivisasi Hukum, Telaah Sosio-Filosofis*

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Introduction

The position of Islamic and customary law in forming Indonesia's national legal system is a fundamental issue that reflects the tension between cultural-religious identity and the demands of a modern legal framework.¹ Globally, the debate surrounding the integration of Islamic law into national legal systems varies widely,

¹ Abdullahi Ahmed An-Na'im, *Islam and the Secular State Negotiating the Future of Shari'a* (Cambridge: Harvard University Press, 2008), 84 Lihat juga; Grendhard Djaga Mesa and Mardian Putra Frans, "Konflik Antara Hukum Adat Dan Hukum Nasional: Kasus Kawin Tangkap Di Sumba," *UNES Law Review* 6, no. 3 (2024): 8307, <https://doi.org/10.31933/unesrev.v6i2>; Masykuri Abdillah, "Sharia and Politics in the Context of Globalization and Society 5.0," *Ahkam: Jurnal Ilmu Syariah* 22, no. 2 (2022): 263–86, <https://doi.org/10.15408/ajis.v22i2.28959>.

ranging from states such as Saudi Arabia and Iran that formally implement Islamic law,² to Tunisia and Turkey, which adopt secular legal systems.³ Tensions between Sharia values and international human rights principles, particularly on issues such as gender equality and religious freedom, have become critical points in global legal discourse.⁴ In the Indonesian context, academic discourse on the relationship between Islamic law, customary law, and the national legal system has been long-standing. On the one hand, some segments of society view Islamic law as a representation of justice and morality;⁵ On the other hand, Indonesia's national legal system is inherently pluralistic, consisting of Islamic law, customary law, and colonial Dutch legal heritage, which often overlap.⁶ Although Indonesia is home to the largest Muslim population in the world, it does not adopt Islam as a state religion, instead accommodating religious values within the framework of Pancasila as the state's ideology.⁷ Within this context, the positivization of Islamic and customary law—defined as the transformation of *fiqh* norms and customary practices into state law—represents a complex process marked by dynamic interactions and multifaceted social impacts.

The significance of this study lies in its critical examination of how Islamic and customary law are positioned and transformed within Indonesia's national legal system, framed by legal pluralism and democratic constitutionalism.⁸ As the nation with the world's largest Muslim population, Indonesia provides a unique case for exploring the intersection of religious and cultural normative frameworks within a secular state model grounded in Pancasila.⁹ The positivization process, namely, the formalization of *fiqh*

² Akbar Idil, "Khilafah Islamiyah: Antara Konsep Dan Realitas Kenegaraan (Republik Islam Iran Dan Kerajaan Islam Arab Saudi)," *Journal of Government and Civil Society* 1, no. 1 (2017): 95, <https://doi.org/10.31000/jgcs.v1i1.265>.

³ An-Na'im, *Islam and the Secular State Negotiating the Future of Shari'a*.

⁴ Syarifuddin Syarifuddin et al., "Hak Asasi Manusia Dalam Perspektif Islam: Kajian Terhadap Prinsip-Prinsip HAM Dalam Al-Qur'an," *Indonesian Research Journal on Education* 4, no. 2 (2024): 997, <https://doi.org/10.31004/irje.v4i2.819>.

⁵ Sumardi Efendi, "Prinsip Keadilan Dalam Proses Penyelesaian Sengketa Hukum Islam," *Constitutio: Jurnal Riset Hukum Kenegaraan Dan Politik* 1, no. 2 (2022): 87–96, <https://doi.org/10.47498/constitutio.v1i2.3427>.

⁶ Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (2021): 1–36, <https://doi.org/10.35673/ajmpi.v6i1.1129>.

⁷ An-Na'im, *Islam and the Secular State Negotiating the Future of Shari'a*.

⁸ An-Na'im.

⁹ Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton: Princeton University Press, 2000), 45; Benny Afwadzi et al., "Religious Moderation of Islamic University Students in Indonesia: Reception of Religious Texts," *HTS Teologiese Studies / Theological Studies* 80, no. 1 (2024): 1–9, <https://doi.org/10.4102/hts.v80i1.9369>; Nur Ali et al., "Interreligious Literacy Learning

and customary norms into state law, is not merely legalistic but reflects broader socio-political negotiations and philosophical reconstructions of justice, legal authority, and legitimacy.¹⁰ This research is essential for understanding how national law in a postcolonial, multicultural society can internalize diverse normative systems without negating the cultural or religious identity. Thus, a socio-philosophical approach is crucial to ensure that legal integration does not result in normative domination or epistemic injustice but contributes to inclusive legal reform that reflects Indonesia's multicultural and multi-religious reality.

Previous studies have mostly employed monodisciplinary approaches, focusing on the normative or historical aspects of the positivization of Islamic and customary law in Indonesia. Ali Sodikin, for instance, highlights the challenges and prospects of Islamic law integration,¹¹ Meanwhile, Muhammad Sulthon proposes qiyas and ijtihad to address social change.¹² Ariel Lois et al. and Veisa Najwa Tionika et al. explore the tension between customary and national law, particularly regarding regulation and implementation.¹³ However, few studies have thoroughly examined the philosophical meanings and social dynamics underlying this process. This study fills this gap by employing an interdisciplinary socio-philosophical framework to explore the interaction between Islamic, customary, and national law in pursuing legal justice.

Based on the background mentioned above, this study focuses on three main research objectives. First, it describes Islamic, customary, and national laws and analyzes the position of Islamic and customary laws in developing Indonesia's national legal system. This foundational discussion provides conceptual clarity regarding the terminology used in this study. Second, it investigates the positivization of Islamic and

as a Counter-Radicalization Method: A New Trend among Institutions of Islamic Higher Education in Indonesia," *Islam and Christian-Muslim Relations* 32, no. 4 (2021): 383–405, <https://doi.org/10.1080/09596410.2021.1996978>.

¹⁰ Irwansyah, *Positivisasi Hukum Islam Di Indonesia, Sustainability (Switzerland)*, vol. 11 (Medan: Enam Media, 2022), 76.

¹¹ Ali Sodiqin, "Positififikasi Hukum Islam Di Indonesia: Prospek Dan Problematikanya," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 1, no. 2 (2012), <https://doi.org/10.14421/sh.v1i2.1922>.

¹² Muhammad Sulthon, "Hukum Islam Dan Perubahan Sosial (Studi Epistemologi Hukum Islam Dalam Menjawab Tantangan Zaman)," *Jurnal Ilmiah Universitas Batanghari Jambi* 19, no. 1 (2019): 27, <https://doi.org/10.33087/jiubj.v19i1.548>.

¹³ Ariel Lois, Febrian Halomoan, and Taufiqurrohman Syahuri, "Konfigurasi Politik Hukum Adat Di Indonesia: Studi Sejarah, Regulasi, Dan Implementasi" 1, no. 6 (2024): 292–300; Veisa Najwa Tionika, Rizka Ayu Mardiana, and Najwa Mufidah Hasibuan, "Integrasi Konsep Hukum Adat Dalam Kerangka Pembangunan Hukum Nasional Indonesia," *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 9 (2023): 21–30, <https://doi.org/10.3783/causa.v1i1.571>.

customary law into national law—not merely at the normative level but also in terms of the socio-political processes involved. In this section, Islamic and customary laws are discussed in separate subsections. Third, it provides a socio-philosophical analysis of the positivization process, using this approach to generate a more comprehensive understanding of its social and philosophical dimensions embedded within it.

Method

This study employs a qualitative approach through library research with a descriptive-analytical orientation to explore the topic. The primary focus is to analyze legal documents, academic literature, and secondary data relevant to the positivization of Islamic and customary law within Indonesia's national legal system. This research adopts an interdisciplinary socio-philosophical approach, combining perspectives from legal studies, sociology of law, and legal philosophy to examine the social, political, and philosophical values underlying the transformation of religious and customary norms into state law. The research subjects include legal documents such as Law No. 7 of 1989, Presidential Instruction No. 1 of 1991, judicial decisions, and the works of prominent legal scholars such as Hasbi Ash-Shiddieqy and Hazairin.

The research procedure consisted of four stages: (1) collection of primary and secondary sources, (2) data classification, (3) content analysis using a socio-philosophical framework, and (4) critical interpretation. The research instrument is a document analysis guide based on three main focuses: the status of Islamic and customary law, the process of positivization, and a socio-philosophical analysis. Data were collected through a literature review using documentation techniques. In contrast, data analysis applied content and interpretative analysis methods to explore meaning, power relations, and social dynamics within the pluralistic construction of national law in this study, the author's findings are the author's own. Artificial intelligence (AI) was only used as a tool to assist in the translation into English.

Results and Discussion

Islamic Law, Customary Law, and Their Role in the Development of the National Legal System

Legal pluralism in Indonesia is a living, continuously evolving social reality. This is reflected in the three major legal systems that coexist and function within

society: Islamic, customary, and national law.¹⁴ Islamic law originates from the normative sources of Islam, namely the Qur'an, Hadith, consensus (*ijma'*), and analogy (*qiyas*). Customary law grows out of the social norms of local communities, while the state develops national law through formal institutions based on the 1945 Constitution and statutory regulations.¹⁵ Despite their differing origins and operational mechanisms, each legal system serves the same fundamental purpose: to regulate society within the frameworks of order, security, and justice. While Islamic law seeks to uphold public benefit (*maṣlaḥah*), customary law aims to preserve cultural traditions that have developed over time, and the national law strives to establish legal certainty. All three systems are society-oriented and serve as frameworks that govern individual relationships or relationships between individuals and their communities. Therefore, harmonizing or integrating these three systems should not merely be a formal-legal endeavor; instead, it should aim to realize a social order that aligns with the values and aspirations of Indonesia's plural society.¹⁶

Islamic law, often called *fiqh*, is built on normative values derived from divine revelation and developed through *ijtihād*. It possesses two essential characteristics: *al-tsabāt* (permanence) and *al-taṭawwur* (dynamic). *Al-tsabāt* implies unchangeable rules, particularly those concerning ritual worship (*ibādah maḥḍah*). In contrast, *al-taṭawwur* refers to dynamic rules that can change in response to evolving social conditions, especially in the realm of *mu'āmalah* (social transactions). The laws of *mu'āmalah* are based on the principle of permissibility (*ibahah*); as long as these practices do not conflict with Islamic teachings and are not explicitly regulated otherwise, they are considered lawful. Criminal law, civil law, and political, economic, and social matters all fall under the purview of *mu'āmalah*.¹⁷ In the context of a modern nation-state, the *al-taṭawwur* character is highly relevant, as it allows Islamic law to be reformed in response to contemporary challenges without disregarding its foundational principles.

Moreover, Islamic law upholds the principles of public benefit (*maṣlaḥah*) and justice (*ādālah*). *Maslahah* is considered an ideal goal in this world and hereafter.

¹⁴ Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum."

¹⁵ B. Ter Haar and terj. K. Wantjik Saleh, *Asas-Asas Dan Susunan Hukum Adat* (Jakarta: Pradnya Paramita, 1985), 6.

¹⁶ M. Atho Mudzhar, *Islam Dan Hukum Nasional Di Indonesia* (Jakarta: INIS, 1990), 45–46.

¹⁷ Sulthon, "Hukum Islam Dan Perubahan Sosial (Studi Epistemologi Hukum Islam Dalam Menjawab Tantangan Zaman)."

Every rule and provision in Islamic law aims to protect the five essential elements: religion, life, intellect, lineage, and property.¹⁸ The Qur'an, as the primary source of Islamic law, emphasizes justice as a key component of social life to ensure the rights and welfare of individuals in their interactions with others.¹⁹

Meanwhile, customary law, or *adatrecht*, first introduced by Snouck Hurgronje, refers to a living body of unwritten customary norms that carry binding sanctions. According to Soekanto, customary law is composed of repeatedly practiced traditions that are not codified but live within society in the form of morality, habit, and conventions with legal consequences or sanctions. Cornelis Van Vollenhoven positioned customary law as equal to other legal systems in jurisprudence. As cited by Dedi Sumanto, customary law is defined as behavioral rules applied to indigenous peoples and foreign Easterners, which in practice entail sanctions for violations (thus considered "law") and are uncoded (thus considered "custom").²⁰ F.D. Holleman identifies four principal characteristics of customary law in Indonesia that distinguish it from other legal systems: (1) magical-religious, which reflects the belief that supernatural forces and sacred values influence life; (2) communal, which emphasizes that individuals are inseparable from their community, highlighting principles of solidarity, cooperation, and social harmony; (3) concrete, meaning that legal relationships are tangible and directly observable, such as in a sale transaction where physical transfer of an object takes place; and (4) cash-based, in which every legal act is performed and completed immediately.²¹ In addition to these features, customary law exhibits unique characteristics, such as being traditional, dynamic, open, simple, and resolved through deliberation and consensus.²²

In contrast, national law is a compilation of legal rules primarily consisting of norms and regulations that bind society within the framework of the state. *Pancasila*, as the philosophical foundation of the nation, is regarded as the *grundnorm*—the fundamental norm that serves as the source of all laws in Indonesia. With the enactment

¹⁸ Amiruddin Aminullah, "Urgensi Maslahat Dalam Pengembangan Hukum Islam," *Dirasat Islamiyah: Jurnal Kajian Keislaman* 2, no. 2 (2021): 72, <https://doi.org/10.5281/zenodo.5313875>.

¹⁹ Budi Rahmat Hakim et al., "Reactualization of Maslahat and Social Justice Principles in the Contextualization of Fiqh Zakat," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 111, <https://doi.org/10.18592/sjhp.v24i1.12909>.

²⁰ Dedi Sumanto, "Hukum Adat Di Indonesia Perspektif Sosiologi Dan Antropologi Hukum Islam," *JURIS (Jurnal Ilmiah Syariah)* 17, no. 2 (2018): 182, <https://doi.org/10.1234/juris.v17i2.1163>.

²¹ Marhaeni Ria Siombo, "Asas-Asas Hukum Adat," n.d., 13–14.

²² Siombo, "Asas-Asas Hukum Adat."

and ratification of the 1945 Constitution, which enshrines *Pancasila* as the state ideology, all legal developments (*rechtbeoefening*) in Indonesia must be grounded in the values articulated within *Pancasila*.²³ As a *grundnorm*, *Pancasila* has implicitly become the foundation of Indonesia's entire system of positive law, influencing the character of various legal products. Dani Pinangsang, citing the views of Philippe Nonet and Philip Selznick, identifies three characteristics of law: repressive law, which places law as subordinate to political and economic forces; autonomous law, which positions law as an independent institution on par with politics and economics; and responsive law, which views law as both a mediator and initiator of public needs and interests.²⁴

The Indonesian national legal system incorporates elements of European, Islamic, and customary laws. Both civil and criminal legal systems in Indonesia have adopted the Continental European legal tradition, particularly Dutch law, owing to the country's history as a former colony of the Netherlands Indies (*Nederlandsch-Indie*). Given that most of the Indonesian population adheres to Islam, Islamic law and sharia have played a significant role in shaping the legal system, especially in matters related to marriage, family law, and inheritance. Meanwhile, applying customary law preserves local traditions and norms that have been developed and passed down through generations.²⁵

During the colonial era, the Dutch East Indies government recognized the existence of Islamic law through the legal policy known as *receptio in complexu*, which stated that Islamic law applied only insofar as it had been accepted as part of customary law.²⁶ In the post-independence period, Indonesia adopted a modern national legal system based on the civil law tradition inherited from the Dutch colonial administration.²⁷ Nevertheless, the state continues to recognize Islamic and customary law as legitimate sources of law, especially in specific sectors such as family law, inheritance, and particular areas of civil law that pertain to Muslim communities.²⁸ The establishment of religious courts and the enactment of legislation reflecting Islamic and

²³ Dani Pinangsang, "Falsafah Pancasila Sebagai Norma Dasar (Grundnorm) Dalam Rangka Pengembangan Sistem Hukum Nasional," *Jurnal Hukum Unsrat* 20, no. 3 (2012): 1.

²⁴ Pinangsang, "Falsafah Pancasila Sebagai Norma Dasar (Grundnorm) Dalam Rangka Pengembangan Sistem Hukum Nasional."

²⁵ Pinangsang.

²⁶ Van Vollenhoven, *The Adat Law of Indonesia* (The Hague: Martinus Nijhoff, 1918).

²⁷ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Liberty, 2003), 73–75.

²⁸ Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2003), 31–34.

customary law values in society provide concrete evidence of the national legal system's recognition of these plural legal sources.²⁹ Therefore, the post-independence national legal system does not neglect the legacy of legal pluralism. Instead, it strives to construct a national legal system that is inclusive and responsive to the diversity of Indonesia's legal sources.

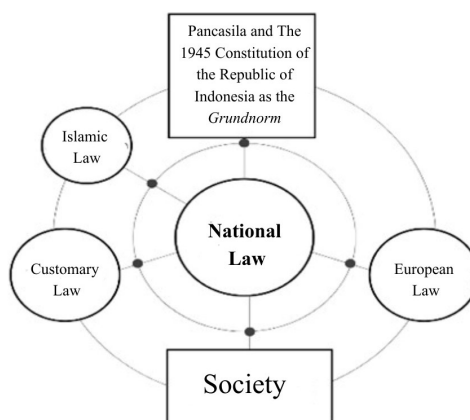
According to M. Noor Harisuddin, Islamic law should be seen as a force that supports and strengthens the existence of the Unitary State of the Republic of Indonesia and the values enshrined in Pancasila, rather than as a threat or adversary. Therefore, Islamic law is not in opposition but rather complementary, contributing to the refinement of the national legal system. The awareness of the importance of maintaining national unity, as reflected in Pancasila values, has served as a common foundation among Indonesian Islamic scholars in striving for the harmonization of Islamic law and positive law.³⁰ A similar view is expressed by Suud Sarim Karimullah, who builds on Kamsi's idea of the "Indonesianization" of Islamic law, emphasizing the necessity of codifying and legitimizing Islamic law through formal state instruments so that it may be recognized as part of Indonesia's positive legal system. The main goal of Indonesianization is to create an inclusive, tolerant, and pluralistic national legal system guided by the principle of pluralism with differentiation in unification—meaning that legal diversity is recognized and unified within the framework of national law without erasing the identity of each system.³¹

²⁹ "Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama, Diubah Dengan UU No. 3 Tahun 2006 Dan UU No. 50 Tahun 2009,," n.d.

³⁰ M. Noor Harisudin, "The Formulation of Fiqh Nusantara in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021): 48, <https://doi.org/10.18326/ijtihad.v21i1.39-57>.

³¹ Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022): 213, <https://doi.org/10.21093/mj.v21i2.4800>.

Figure 1: The Position of Islamic Law, Customary Law, and European Law in the Development of Indonesia's National Legal System



Source: data processed by the authors

The three legal systems are presented as sources of law that offer distinct, yet complementary, historical and normative contributions. European law, particularly the civil law tradition inherited from Dutch colonialism, serves as the primary foundation for the structure of Indonesia's national legal system, especially in the civil and criminal law domains. Islamic and customary laws are vital in sectors closely tied to societal identity, such as family law, inheritance, and community-based dispute resolution. This figure underscores that the Indonesian national legal system has been shaped through a pluralistic integration process that accommodates all three legal traditions. The ultimate objective is to construct a legal system that is inclusive, responsive, and contextually grounded in *Pancasila* values and the sociocultural realities of Indonesia's diverse society.

The Process of the Positivization of Islamic Law

Historically, Indonesia's legal system has adopted the civil law tradition inherited from Dutch colonialism, which ruled the archipelago for over 350 years. Consequently, Dutch legal norms were applied in Indonesia under the principle of concordance (*asas konkordansi*), which stipulated that European residents in the Dutch East Indies were subject to the civil law in force in the Netherlands.³² However, the

³² Zaka Firma Aditya and Rizkisyabana Yulistyaputri, "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di

codified civil law system—rigid and static—has encountered significant challenges in responding to the dynamic and flexible realities of Indonesian society. One crucial problem is the phenomenon of the legal gap, referring to the disconnect between the deeply rooted sociocultural values in Indonesian society and the normative content of statutory law. This gap has proven challenging to bridge and remains a continuing consequence of legal developments.³³ As unwritten but living sources of law, Islamic and customary (*adat*) law are seen as potential solutions to this gap, functioning as living laws within local communities.

To trace the history of Islamic law's application in Indonesia, it is important to understand how it gradually integrated into the national legal system. During the VOC (Dutch East India Company) era, Islamic law was recognized through the application of the *receptie in complexu* theory, which mandated the application of Islamic law in its entirety to Muslims.³⁴ However, this theory was later replaced by the *receptive* theory, which posited that Islamic law was only valid if it had been accepted as customary law by the local population. Under Japanese occupation, the status of Islamic law remained largely unchanged. A turning point came with the introduction of the *receptie exit* theory by Hazairin, which rejected Snouck Hurgronje's earlier theory and advocated for the reimplementation of Islamic law based on the legal ideals and aspirations of Indonesia's Muslim majority. This theory has significantly influenced subsequent efforts to incorporate Islamic law into national legislation. An extension of this approach emerged in the *receptie a contrario* theory, which held that Muslims should adhere to Islamic law. Simultaneously, customary law could only be applied when it did not contradict Islamic teachings.³⁵

The positivization of Islamic law in Indonesia has fluctuated depending on the prevailing legal and political policies. A prominent example is the codification of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), a systematic effort to formalize Islamic family law within the national law framework. This initiative was driven by the need to harmonize the diverse practices of Islamic law in religious courts,

Indonesia,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 41, <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

³³ Aditya and Yulistiyaputri, “Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia.”

³⁴ Kasman Bakry, “Teori Keberlakuan Hukum Islam Di Indonesia,” *Nukhbatul Ulum* 1 (2013): 3.

³⁵ Bakry, “Teori Keberlakuan Hukum Islam Di Indonesia.”

which previously lacked a standard legal reference. Key figures such as Hasbi Ash-Shiddieqy and Hazairin promoted the concept of a *national madhhab* (school of thought) as the basis for a contextual Islamic legal reform suited to Indonesian realities. Bustanul Arifin, as Chair of the Religious Chamber of the Supreme Court, played a central role by submitting the draft of the KHI to the government. Political momentum—driven by efforts to reinforce Pancasila and a legitimacy crisis within the regime—accelerated the issuance of the KHI through the Presidential Instruction No. 1 of 1991. The codification process involved adapting classical Islamic legal principles to local values and contemporary issues, such as gender equality. Nonetheless, it drew criticism due to its inconsistent methodology, particularly the selective use of *maṣlaḥah mursalah* and *ijtihād*, which were not always aligned with the authoritative texts. The result was a hybrid legal instrument reflecting the tensions between modernization, tradition, and the socio-religious realities of Indonesia.³⁶

There are two primary forms of Islamic law positivization in the development of national law. First, Islamic law may be excluded from the national legal system because of Indonesia's pluralistic societal structure. Second, Islamic law can be incorporated into positive law through the legislative process, particularly in domains such as *'ubūdiyyah* (religious worship), *mu'āmalah* (social transactions), and other private spheres.³⁷

In the domain of *'ubūdiyyah*, Law No. 13 of 2008 concerning the Implementation of the Hajj stipulates in Article 8(2) that the government is responsible for the formulation and execution of Hajj policies at the national level. Zakat (almsgiving) regulations also demonstrate the positivization of Islamic law into national law. The first formal regulation on zakat came as a Circular Letter from the Ministry of Religious Affairs No. A/VII/17367 of 1951, which followed Dutch ordinances and positioned the state as a supervisory body without involvement in zakat collection or distribution. In 1991, a Joint Decree by the Minister of Home Affairs and the Minister of Religious Affairs (No. 29 and 47 of 1991) was issued concerning the management of zakat, *infaq*, and *ṣadaqah*. This was followed by Ministerial Instruction No. 7 of 1998 on the development of Zakat institutions. The current legal framework is governed by

³⁶ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* ((Amsterdam: Amsterdam University Press, 2010), 217–24.

³⁷ M. Shohibul Itmam, *Positivisasi Hukum Islam Di Indonesia*, ed. Harir Muzakki (Ponorogo: STAIN Po Press, n.d.), 156.

Law No. 23 of 2011, which revised Law No. 38, 1998. In addition to zakat and hajj, Law No. 41 of 2004 on Waqf stipulates in Article 28(2) that the Indonesian Waqf Board may collaborate with government institutions, civil society organizations, experts, international bodies, and other relevant parties, as needed.³⁸

In the domain of *mu'āmalah*, Law No. 21 of 2008 on Sharia Banking regulates the principles of Islamic finance, emphasizing economic democracy and prudential principles in banking operations. Law No. 1 of 1974 on Marriage explicitly accommodates religious principles in the private sphere. Article 2 of the law establishes religion as a legal prerequisite for a valid marriage, thereby adopting a religious marriage system in the country. Consequently, Indonesian Muslims are obliged to adhere to Islamic legal principles when entering marital unions. The codification of Islamic family law further supports this through the Compilation of Islamic Law, which includes provisions on marriage, inheritance, and waqf.³⁹ In contrast, the domain of *jināyah* (Islamic criminal law) remains a subject of public discourse and has yet to be formally codified; it is currently classified within legal scholarship as *ius constituendum*—an aspired law that has not yet been enacted.⁴⁰

Socio-Philosophical Examination of the Positivization of Islamic Law

1. Islamic Law as a Reflection of Social Structure

The concept of law as a reflection of social structure is a central approach within the sociology of law, which views law not as an independent entity but as a mirror of the values, norms, and social forces that shape society.⁴¹ From this perspective, law is a product of social interaction that reflects the community's interests, power dynamics, and cultural identity. In other words, the law is shaped by and reflects a society's social structure. Satjipto Rahardjo argues that the intersection between law and society should be valued as a form of legal wisdom in the context of legal development rooted in the Indonesian Constitution. Such convergence provides a foundation for creating a holistic, comprehensive, and integrated legal system. Thus, the sociology of law acknowledges

³⁸ Aditya and Yulistyaputri, "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia."

³⁹ Aditya and Yulistyaputri.

⁴⁰ Nita Triana, "Progresifitas Hakim Dalam Dinamika Positivisasi Hukum Islam Di Indonesia," *Al-Manahij* 5, no. 2 (2011): 259.

⁴¹ Satjipto Rahardjo, *Sosiologi Hukum*, ed. Ufran, 1st ed. (Yogyakarta: Genta Publishing, 2010), 19–20.

that law emerges from social analysis and interaction.⁴² Given the complexity and depth of these interactions, it is essential to understand the various social dimensions involved in the positivization of Islamic law into national law from an academic standpoint and Indonesia's rich tradition of pluralism and tolerance. The interaction between Islamic law and Indonesian society illustrates how Islamic values have been translated and contextualized in local conditions.⁴³ The convergence of law and society should be considered a form of legal wisdom in Indonesia, indicating that the law must not be alien to the people. In this regard, legal development must be inclusive, absorbing local values, such as customary law and social practices. National legal development should not rely solely on the formalism of statutory law but also integrate the social dimension of law.

Indonesia's legal system has provided a firm foundation for the development of religious law through Pancasila and the 1945 Constitution. According to Mochtar Kusumaatmadja, the first principle of Pancasila—Belief in the One and Only God—contains a national mandate that laws must not contradict religious teachings. The guarantee of freedom of religion and worship is enshrined in Article 29 of the 1945 Constitution, reflecting the state's recognition of religion and its commitment to accommodating religion-based laws and their implementation in legal institutions.⁴⁴ Based on this foundation, the positivization of Islamic law can be understood as the integration of Islamic legal values into Indonesia's national legal system, which is built upon Pancasila and the Constitution, thereby contributing to the democratic and identity-based development of national law.⁴⁵

Despite ongoing debates surrounding its application, Islamic law positively contributes to the national legal framework. Scholars such as Muhammad Sabir and Nazaruddin assert that Islamic law aims to protect and uphold human dignity. It plays a vital role in national law and shares the same objectives as the broader legal system.

⁴² Rahardjo, *Sosiologi Hukum*.

⁴³ Syabbul Bachri, Roibin Roibin, and Ramadhita Ramadhita, "Sociological Dimensions of the Application of Islamic Inheritance in Indonesia," *Justicia Islamica* 21, no. 1 (2024): 65, <https://doi.org/10.21154/justicia.v21i1.8707>.

⁴⁴ Masruhan, "Positivisasi Hukum Islam Di IndoneSia Era Reformasi," *Islamica* 6, no. 1 (2011): 124, <https://doi.org/10.15642/islamica.2011.6.1.119-133>.

⁴⁵ Itmam, *Positivisasi Hukum Islam Di Indonesia*.

Although disagreements persist regarding its formal status, Islamic law, like national law, regulates social life and prevents harm to individuals and society.⁴⁶

2. Divine Values, Public Welfare (*maṣlaḥah*), and Justice

The process of positivizing Islamic law into national law encompasses legal-formal dimensions and a transcendental aspect grounded in the divine values held by the majority of Indonesian society. In the Indonesian context, the recognition of Islamic law—such as through the Compilation of Islamic Law (*KHI*) and Law No. 1 of 1974 on Marriage—illustrates how religious norms have been adopted by the state in national legal development without undermining Pancasila, especially its first principle.⁴⁷ These theistic values are reflected in legal provisions concerning marriage, inheritance, and waqf, where national law accommodates Sharia regulations as a form of respect for the religious beliefs of the Muslim population. According to Kamali, the positivization of Islamic law must preserve the spirit of *maqāṣid al-sharī'ah*, particularly protecting religion as the moral foundation of law.⁴⁸

The value of *maṣlaḥah* (public interest or welfare) serves as a guiding principle for adapting Islamic law into national law. After all, law is designed to ensure safety, order, and prosperity within society, including Indonesia's pluralistic context. For instance, the implementation of Law No. 23 of 2011 on zakat management fulfills religious obligations and functions as a social welfare instrument aligned with national development goals. In his work, *Maqasid al-Shariah as Philosophy of Islamic Law*, Jasser Auda emphasizes the integration of Islamic law with modern legal concepts, such as national law, to preserve the essence of *maṣlaḥah* in addressing contemporary societal needs.⁴⁹

Aligned with the aforementioned principles, justice must also be a core substance in the positivization of Islamic law, as mandated by religious teachings such as Qur'an 5:8, and echoed in Article 28D of the 1945 Constitution, which guarantees the protection of human rights and equal treatment under the law. Justice is also integral to

⁴⁶ Muhammad Sabir and Nazaruddin Nazaruddin, "Manifestation of Sharia Regional Regulations in Managing Social Morality," *Juris: Jurnal Ilmiah Syariah* 20, no. 2 (2021): 189–99, <https://doi.org/10.31958/juris.v20i2.3276>.

⁴⁷ Mahrus Ali, "Fondasi Ilmu Hukum Berketuhanan: Analisis Filosofis Terhadap Ontologi, Epistemologi, Dan Aksiologi," *Pandecta Jurnal Penelitian Ilmu Hukum* 11, no. 2 (2016), <https://doi.org/10.15294/pandecta.v11i2.7844>.

⁴⁸ Mohammad Hashim Kamali, *Maqasid Al-Shariah Made Simple* (London: IIIT, 2019).

⁴⁹ Jaser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), 1.

Indonesia's judicial principles, as stated in the Judiciary Law (Law No. 4/2004), Article 4(1): "*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa* (For the sake of justice based on the One Almighty God)", and Article 28(1): "*Hakim wajib menggali, mengikuti, dan memahami nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat* (Judges must explore, follow, and understand the legal values and sense of justice that exist within society)."⁵⁰ This principle of justice is evident, for example, in the reform of inheritance law under the Compilation of Islamic Law, particularly Article 183, which affirms that a female heir is entitled to half the share of a male heir, yet also opens a discursive space to explore equitable approaches within families based on their unique conditions and needs.

From a philosophical standpoint, these three values—divinity, public welfare, and justice—serve not merely as abstract normative ideals but as ethical foundations guiding the development of national law based on Islamic principles. The process of positivization thus reflects a collective awareness that law must not be divorced from society's social realities and shared beliefs.

The Positivization of Customary Law

The positivization of customary law is vital within the pluralistic framework of Indonesia's national legal system. Indonesia's vast cultural and traditional diversity has made customary law a reference point for regulating community life. Despite the challenges posed by modernization and the dominance of positive law, customary law continues to evolve and remain relevant.

The colonial government began to codify customary law in the early 20th century. This effort aimed to ensure legal certainty and facilitate the application of customary law within the colonial legal framework. Article 131, Paragraph 6 of the *Indische Staatsregeling (IS)* declared that "the law of the Indonesian people is the positive law for the Indonesian people," thereby officially recognizing customary law as the indigenous legal system of Indonesia, equal in status to European law. This article served as the legal basis for customary law and legitimized it as a living law in Indonesian society.⁵¹

⁵⁰ Triana, "Progresifitas Hakim Dalam Dinamika Positivisasi Hukum Islam Di Indonesia."

⁵¹ Lois, Halomoan, and Syahuri, "Konfigurasi Politik Hukum Adat Di Indonesia: Studi Sejarah, Regulasi, Dan Implementasi."

After Indonesia's independence, recognition of unwritten law was outlined in the General Explanation of the 1945 Constitution, Point 1, which states: "*Undang Undang Dasar ialah hukum dasar yang tertulis, sedang di sampingnya Undang-undang Dasar itu berlakunya juga hukum dasar yang tidak tertulis, ialah aturan-aturan dasar yang timbul dan terpelihara dalam praktik penyelenggaraan negara meskipun tidak tertulis* (The Constitution is the written fundamental law, while alongside it there are also unwritten fundamental laws, namely basic rules that arise and are maintained in the practice of state administration even though they are not written down)." Further recognition was provided in the amended Article 18B Paragraph (2) of the 1945 Constitution, which states: "The state recognizes and respects customary law communities and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, regulated by law." According to this article, only living customary law, where its content and community scope are identifiable, is acknowledged. Firma Aditya notes that this article leans toward favoring written law over unwritten traditions, implying that recognition of living customary law must be codified through legislation and aligned with the Unitary Republic of Indonesia (NKRI) principles. This stance was further reinforced by Constitutional Court Decision No. 31/PUU-V/2007, which established four constitutional criteria for recognizing customary law communities under Article 18B Paragraph (2) of the 1945 Constitution: (1) the community must still be alive; (2) in line with societal development; (3) in accordance with the principles of NKRI; and (4) governed by statutory regulations. If these criteria are not met, the customary community does not have legal standing in the Constitutional Court.⁵²

In the Indonesian legal system, customary law is one of the primary legal sources, alongside Islamic and European-derived law, for developing national law. Many statutory provisions incorporate customary law's values, norms, and practices as part of an effort to build a legal system rooted in national identity. For example, Law No. 5 of 1960 on Basic Agrarian Principles (UUPA) explicitly acknowledges customary land rights (*hak ulayat*) in Article 3, which states: "*Pelaksanaan hak ulayat dan hak-hak serupa dari masyarakat-masyarakat hukum adat, sepanjang menurut kenyataannya masih ada, harus sedemikian rupa, sehingga sesuai dengan kepentingan nasional dan*

⁵² Aditya and Yulistyaputri, "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia."

Negara, yang berdasarkan atas persatuan bangsa (The exercise of customary rights and similar rights of customary law communities, insofar as they still exist, must be such that they are in accordance with the national and State interests, which are based on national unity)” This article clearly affirms the legitimacy of *hak ulayat* (customary rights) as long as it remains relevant and does not conflict with national interests.

Other laws, such as Law No. 32 of 2009 on Environmental Protection and Management and Law No. 41 of 1999 on Forestry, also recognize customary communities and their local wisdom in preserving and managing forests and the environment. Law No. 6 of 2014 on Villages grants authority to village institutions to resolve customary disputes through deliberation, which is often more effective than formal legal mechanisms are. Additionally, Law No. 5 of 2017 on the Advancement of Culture acknowledges and protects customary law traditions and values as part of Indonesia's intangible cultural heritage.

Socio-Philosophical Reflection on the Positivization of Customary Law

Customary law manifests the collective identity of the Indonesian people. It functions normatively and socio-philosophically. A socio-philosophical approach leads to the understanding that law is not merely a set of formal rules but a product of social reality and an expression of a community's moral and cultural values. In the Indonesian context, customary law operates alongside religious and state law, forming legal pluralism that mirrors the nation's social and historical diversity. Through positivization, customary law is transformed from unwritten norms into formal components of a national legal system.

Customary law has long been integrated into the social structure of Indigenous communities, being deeply rooted in communal and restorative values and harmony with human-nature relationships. When customary law is transformed into legislation, such as the Village Law or Agrarian Law, the state formally acknowledges local principles as sources of legitimacy for national law. This reinforces the notion that the law should be community-oriented (*lex loci*). According to Dangur Konradus, customary law is not a relic of the past to be discarded but a valid source of guidance for shaping a fair and locally grounded, national legal system.⁵³ Local wisdom is

⁵³ Dangur Konradus, “Kearifan Lokal Terbonsai Arus Globalisasi: Kajian Terhadap Eksistensi Masyarakat Hukum Adat,” *Masalah-Masalah Hukum* 47, no. 1 (2018): 81–88, <https://doi.org/10.14710/mmh.47.1.2018.81-88>.

constructed through norms, values, and practices that are socially accepted by communities. The depth of local wisdom often determines the accurate measure of an individual's dignity within their society.⁵⁴

Thus, the positivization of customary law can reflect Indonesia's national identity, which is rooted in tradition, communal values, and respect for the community itself. In the modern era, customary law remains relevant as a component of national identity and in the pursuit of socially just legal development in Indonesia. It is not merely a cultural artifact but a source of inspiration for constructing an inclusive, humanistic national legal system aligned with the noble values of the Indonesian people.

Conclusion

This study presents three key findings on the socio-philosophical process of positivizing Islamic and customary law in national law. First, Islamic and customary law are highly contributory in shaping Indonesia's plural legal system. Second, the positivization process is complex and multidimensional, influenced by political and legal shifts. Third, the socio-philosophical analysis of this process emphasizes Indonesia's social structure and incorporates the divine values, public welfare, and justice promoted by Islamic law while ensuring alignment with the foundational norms of the state. These findings suggest that legal pluralism in Indonesia is a logical consequence of the nation's sociocultural diversity. However, enforcing plural legal norms often leads to conflicts of interest among Islamic norms, customary law, and national policy. Therefore, harmonization and dialogue between living law and formal national law must be continuously pursued, carefully considering public interest while not neglecting national priorities.

In light of these findings, one of the most urgent implications for contemporary legal issues in Indonesia is the need to harmonize Islamic and customary laws within the national legal framework. Harmonization is essential for resolving societal conflicts and policy dilemmas, particularly in agrarian disputes, family law, and customary conflicts. A socio-philosophical approach that considers the Indonesian social structure can guide the formulation of more inclusive and equitable legal policies. Such an approach would

⁵⁴ Mohammad Takdir, Roibin Roibin, and Umi Sumbulah, "Religion, Local Wisdom, and Power of The Madurese Society: Islamic Perspective and Social Theory," *El Harakah: Jurnal Budaya Islam* 26, no. 1 (2024): 10, <https://doi.org/10.18860/eh.v26i1.25398>.

minimize legal dualism and strengthen the integration of divine values, public benefit (*maṣlahah*), and justice without undermining the foundational principles of the state.

Bibliography

Abdillah, Masykuri. "Sharia and Politics in the Context of Globalization and Society 5.0." *Ahkam: Jurnal Ilmu Syariah* 22, no. 2 (2022): 263–86. <https://doi.org/10.15408/ajis.v22i2.28959>.

Aditya, Zaka Firma, and Rizkisyabana Yulistyaputri. "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 37–54. <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

Afwadzi, Benny, Umi Sumbulah, Nur Ali, and Saifuddin Z. Qudsy. "Religious Moderation of Islamic University Students in Indonesia: Reception of Religious Texts." *HTS Teologiese Studies / Theological Studies* 80, no. 1 (2024): 1–9. <https://doi.org/10.4102/hts.v80i1.9369>.

Ali, Mahrus. "Fondasi Ilmu Hukum Berketuhanan: Analisis Filosofis Terhadap Ontologi, Epistemologi, Dan Aksiologi." *Pandecta Jurnal Penelitian Ilmu Hukum* 11, no. 2 (2016). <https://doi.org/10.15294/pandecta.v11i2.7844>.

Ali, Nur, Benny Afwadzi, Irwan Abdullah, and Muhammad Islahul Mukmin. "Interreligious Literacy Learning as a Counter-Radicalization Method: A New Trend among Institutions of Islamic Higher Education in Indonesia." *Islam and Christian-Muslim Relations* 32, no. 4 (2021): 383–405. <https://doi.org/10.1080/09596410.2021.1996978>.

Aminullah, Amiruddin. "Urgensi Maslahat Dalam Pengembangan Hukum Islam." *Dirasat Islamiah: Jurnal Kajian Keislaman* 2, no. 2 (2021): 67–88. <https://doi.org/10.5281/zenodo.5313875>.

An-Na'im, Abdullahi Ahmed. *Islam and the Secular State Negotiating the Future of Shari'a*. Cambridge: Harvard University Press, 2008.

Auda, Jaser. *Maqasid Al-Shariah as Philosophy of Islamic Law*. London: IIIT, 2008.

Bachri, Syabbul, Roibin Roibin, and Ramadhita Ramadhita. "Sociological Dimensions of the Application of Islamic Inheritance in Indonesia." *Justicia Islamica* 21, no. 1

- (2024): 63–86. <https://doi.org/10.21154/justicia.v21i1.8707>.
- Bakry, Kasman. “Teori Keberlakuan Hukum Islam Di Indonesia.” *Nukhbatul Ulum* 1 (2013): 1–16.
- Disantara, Fradhana Putra. “Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum.” *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (2021): 1–36. <https://doi.org/10.35673/ajmpi.v6i1.1129>.
- Djaga Mesa, Grendhard, and Mardian Putra Frans. “Konflik Antara Hukum Adat Dan Hukum Nasional: Kasus Kawin Tangkap Di Sumba.” *UNES Law Review* 6, no. 3 (2024): 8307–14. <https://doi.org/10.31933/unesrev.v6i2>.
- Efendi, Sumardi. “Prinsip Keadilan Dalam Proses Penyelesaian Sengketa Hukum Islam.” *Constitutio: Jurnal Riset Hukum Kenegaraan Dan Politik* 1, no. 2 (2022): 87–96. <https://doi.org/10.47498/constitutio.v1i2.3427>.
- Haar, B. Ter, and terj. K. Wantjik Saleh. *Asas-Asas Dan Susunan Hukum Adat*. Jakarta: Pradnya Paramita, 1985.
- Hakim, Budi Rahmat, Muhammad Nafi, Hidayatullah, and Herlinawati. “Reactualization of Maslahat and Social Justice Principles in the Contextualization of Fiqh Zakat.” *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 102–18. <https://doi.org/10.18592/sjhp.v24i1.12909>.
- Harisudin, M. Noor. “The Formulation of Fiqh Nusantara in Indonesia.” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021): 39–57. <https://doi.org/10.18326/ijtihad.v21i1.39-57>.
- Hefner, Robert W. *Civil Islam: Muslims and Democratization in Indonesia*. (Princeton: Princeton University Press, 2000.
- Idil, Akbar. “Khilafah Islamiyah: Antara Konsep Dan Realitas Kenegaraan (Republik Islam Iran Dan Kerajaan Islam Arab Saudi).” *Journal of Government and Civil Society* 1, no. 1 (2017): 95–109. <https://doi.org/10.31000/jgcs.v1i1.265>.
- Irwansyah. *Positivisasi Hukum Islam Di Indonesia. Sustainability (Switzerland)*. Vol. 11. Medan: Enam Media, 2022.
- Itmam, M. Shohibul. *Positivisasi Hukum Islam Di Indonesia*. Edited by Harir Muzakki. Ponorogo: STAIN Po Press, n.d.
- Kamali, Mohammad Hashim. *Maqasid Al-Shariah Made Simple*. London: IIIT, 2019.
- Karimullah, Suud Sarim. “Pursuing Legal Harmony: Indonesianization of Islamic Law

- Concept and Its Impact on National Law.” *Mazahib Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022): 213–44. <https://doi.org/10.21093/mj.v21i2.4800>.
- Konradus, Danggur. “Kearifan Lokal Terbonsai Arus Globalisasi: Kajian Terhadap Eksistensi Masyarakat Hukum Adat.” *Masalah-Masalah Hukum* 47, no. 1 (2018): 81–88. <https://doi.org/10.14710/mmh.47.1.2018.81-88>.
- Lois, Ariel, Febrian Halomoan, and Taufiqurrohman Syahuri. “Konfigurasi Politik Hukum Adat Di Indonesia: Studi Sejarah, Regulasi, Dan Implementasi” 1, no. 6 (2024): 292–300.
- Masruhan. “Positivisasi Hukum Islam Di IndoneSia Era Reformasi.” *Islamica* 6, no. 1 (2011): 119–33. <https://doi.org/10.15642/islamica.2011.6.1.119-133>.
- Mertokusumo, Sudikno. *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, 2003.
- Mudzhar, M. Atho. *Islam Dan Hukum Nasional Di Indonesia*. Jakarta: INIS, 1990.
- Nurlaelawati, Euis. *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*. (Amsterdam: Amsterdam University Press, 2010).
- Pinasang, Dani. “Falsafah Pancasila Sebagai Norma Dasar (Grundnorm) Dalam Rangka Pengembangan Sistem Hukum Nasional.” *Jurnal Hukum Unsrat* 20, no. 3 (2012): 1–10.
- Rahardjo, Satjipto. *Sosiologi Hukum*. Edited by Ufran. 1st ed. Yogyakarta: Genta Publishing, 2010.
- Rofiq, Ahmad. *Hukum Islam Di Indonesia*. Jakarta: Raja Grafindo Persada, 2003.
- Sabir, Muhammad, and Nazaruddin Nazaruddin. “Manifestation of Sharia Regional Regulations in Managing Social Morality.” *Juris: Jurnal Ilmiah Syariah* 20, no. 2 (2021): 189–99. <https://doi.org/10.31958/juris.v20i2.3276>.
- Siombo, Marhaeni Ria. “Asas-Asas Hukum Adat,” n.d.
- Sodiqin, Ali. “Positifisasi Hukum Islam Di Indonesia: Prospek Dan Problematikanya.” *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 1, no. 2 (2012). <https://doi.org/10.14421/sh.v1i2.1922>.
- Sulthon, Muhammad. “Hukum Islam Dan Perubahan Sosial (Studi Epistemologi Hukum Islam Dalam Menjawab Tantangan Zaman).” *Jurnal Ilmiah Universitas Batanghari Jambi* 19, no. 1 (2019): 27. <https://doi.org/10.33087/jiubj.v19i1.548>.

- Sumanto, Dedi. "Hukum Adat Di Indonesia Perspektif Sosiologi Dan Antropologi Hukum Islam." *JURIS (Jurnal Ilmiah Syariah)* 17, no. 2 (2018). <https://doi.org/10.1234/juris.v17i2.1163>.
- Syarifuddin, Syarifuddin, Haidi Hajar Widagdo, Ahmad Aziz Masyhadi, Zainol Hasan, and Aat Ruchiat Nugraha. "Hak Asasi Manusia Dalam Perspektif Islam: Kajian Terhadap Prinsip-Prinsip HAM Dalam Al-Qur'an." *Indonesian Research Journal on Education* 4, no. 2 (2024): 994–99. <https://doi.org/10.31004/irje.v4i2.819>.
- Takdir, Mohammad, Roibin Roibin, and Umi Sumbulah. "Religion, Local Wisdom, and Power of The Madurese Society: Islamic Perspective and Social Theory." *El Harakah: Jurnal Budaya Islam* 26, no. 1 (2024): 113–38. <https://doi.org/10.18860/eh.v26i1.25398>.
- Tionika, Veisa Najwa, Rizka Ayu Mardiana, and Najwa Mufidah Hasibuan. "Integrasi Konsep Hukum Adat Dalam Kerangka Pembangunan Hukum Nasional Indonesia." *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 9 (2023): 21–30. <https://doi.org/10.3783/causa.v1i1.571>.
- Triana, Nita. "Progresifitas Hakim Dalam Dinamika Positivisasi Hukum Islam Di Indonesia." *Al-Manahij* 5, no. 2 (2011): 255–68.
- "Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama, Diubah Dengan UU No. 3 Tahun 2006 Dan UU No. 50 Tahun 2009.," n.d.
- Vollenhoven, Van. *The Adat Law of Indonesia*. The Hague: Martinus Nijhoff, 1918.