



Research Paper

The Existence of Islamic Sharia Law in Indonesia and Brunei Darussalam

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ABSTRACT

This research aims to analyze the existence of Sharia Law in Indonesia and in Brunei Darussalam, and to analyze the differences and similarities between Sharia Law in Indonesia and in Brunei Darussalam. This research is a normative legal research based on a system of norms. The norm system is concerned with principles, norms, rule of law, and regulations, court decisions, agreements, and doctrines (teachings). This research is focused on the materials used in the study. The materials include library materials or secondary material. Library materials are materials sourced from primary sources and secondary sources. The researcher conducted this study by researching the inventory of related laws and regulations and analyzing these laws and regulations as a normative comparison of the legal system between Indonesia and Brunei Darussalam. The approach used in this dissertation is: Laws and Regulations (Statute Approach); Concept (Conceptual Approach); and Comparison (Comparative approach). The results reached are that the difference in the institutional system between Indonesia and Brunei Darussalam affects the existence of the application of Sharia Law in the two countries. In its development, Sharia Law in Indonesia only applies in the Aceh region; besides Aceh, there is no other region in Indonesia that applies Sharia Law as the main source of law. One of the reasons why Sharia Law can be applied in the Aceh region is because the people living in the Aceh region are homogeneous people with similarities in terms of beliefs. In Brunei Darussalam, Sharia Law is applied nationally, and not only in one region as in Indonesia. Brunei Darussalam enforces Islamic Sharia penalties, making the country the first country in Southeast Asia that fully implements Islamic law. Islamic Sharia enforcement in Brunei includes imprisonment or fines for offences, such as ignoring the performance of Friday prayers and unwed pregnancy. In addition, Islamic criminal law is also applied in the form of cutting hands, flogging, and death penalty by stoning for crimes, like sodomy and adultery. The difference and similarity of Sharia Law in Indonesia and Brunei Darussalam is that Sharia Law in Brunei Darussalam is applied nationally which applies to all Bruneians, both Muslims and non-Muslims. Regarding violation of Sharia Law in Aceh for a Muslim, the authority to try him rests with the Aceh Sharia Court and for non-Muslims, the authority rests with the Civil Court. In Brunei Darussalam, for both Muslims and non-Muslims who violate Sharia rules, the authority to try them rests with the Sharia Courts. Meanwhile, the similarity is on the enforcement of Islamic Sharia Law.

Key Words: Islamic, Sharia, Law, Indonesia, Brunei Darussalam

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I. INTRODUCTION

A legal system is a set of rules that are orderly and systematically drafted and are derived from various views, principles, and theories of experts. Meanwhile, a judiciary is everything related to legal cases. The legal system and judicial system are interconnected with each other¹. The legal system is divided into two. Some countries use the Continental European Legal system² and some others use Anglo Saxon Legal system. Anglo Saxon legal system is also known as Common Law³.

¹Indonesia's Criminal Judicial System: An Introduction, <https://perpustakaan.mahkamahagung.go.id/slims/pusat>, accessed on 27 Juni 2023

²Continental European Law is a legal system characterized by the existence of various legal provisions codified systematically which will be further interpreted by judges in their application. This legal system developed in

The current Indonesian legal system is derived from the traditions of customary law systems, Islamic law, and Western law, which are the three legal systems comprising the main components in the formulation of law in Indonesia.

According to Achmad Ali, Indonesia is one of the countries that practices *mixed systems*, where the legal system of legislation, customary law and Islamic law apply. According to Eric L. Rischard's opinion in the grouping of major legal systems in the world, the Indonesian legal system is based on the *Far East* legal system, namely the complex legal system of Islam as the fundamental basis of society. The *Far East* legal system has characteristics which emphasize harmony and social order, as well as the avoidance of bureaucratic legal processes⁴.

The Islamic Sultanate of Brunei Darussalam was a British protectorate from 1886 to World War II when Japan occupied Brunei. After Japan was defeated, Brunei was again occupied by the British, and in 1959, Brunei had its own government limited by the British constitution, with Britain remaining responsible for defense and foreign policy. In January 1984, Brunei became fully independent under the 1979 Treaty of Amity and Cooperation between the United Kingdom and Brunei Darussalam. Since then, Brunei has become a constitutional monarchy with a ministerial government. The government in Brunei is guided by the constitution and ideology of the state of Melayu Islam Beraja (MIB) or 'Malay Islamic Monarchy', which encapsulates Malay cultural norms, the Islamic religion, and the political framework under the monarchy. Brunei is one of the countries in the world and the only one in Asia whose form of state is an absolute monarchy. The Sultan of Brunei is the head of state and head of government; in other words, the Sultan of Brunei is the king, prime minister, minister of defense, minister of finance, minister of foreign affairs, and minister of trade. The Sultan of Brunei is the "guardian and protector" of Islam. Brunei's legal system is based on the *Common Law System* of the United Kingdom, with the Sharia legal system for Muslims replacing the common law system in areas, such as family and property law⁵.

Both Indonesia and Brunei have their national laws influenced by Islamic law, but the two countries have differences in terms of rule-making or policies that are influenced by Sharia Law. Sharia Law is often misinterpreted as Islamic law. In the Arabic language, the word, "shari'a", means "course" or "way"; Sharia is not a legal system, but a way of living in accordance with the teachings of Islam. In linguistic terms, Sharia Law refers to a source of water, where people who want to drink come to that source of water. Then, the people drank water and filled their buckets with water; some even brought their pets to drink. The Arabs do not call the water source as Sharia Law unless it flows without obstacles and can be seen. In the view of *shar'i* or legal terminology, Sharia Law refers to the entire religion of Islam, where Allah Almighty has chosen anyone who becomes His follower to bring them from darkness to enlightenment. This is what He has determined for them and explained to them about the commandments and prohibitions - *halal* and *haram*⁶.

In its historical perspective, Islamic law was originally a dynamic and creative force. This can be seen from the emergence of a number of legal schools (mahzab) that are responsive and have their own characteristics. A country has a legal system to regulate the lives of its citizens. Country A and Country B may have the same laws, but their application may differ. For example, Indonesia and Brunei Darusaalam are both

mainland European countries and is often referred to as "Civil Law" which originally originated from the codification of law applied in the Roman Empire during the reign of Emperor Justinian in the Sixth century BC. The Civil Law system has three characteristics, among others are the existence of codification, judges are not bound to the president so that laws become the main source of law, and the judicial system is inquisitorial, Dedi Soemardi, *Pengantar Hukum Indonesia*, Jakarta, Indhillco, 1997, pg. 73

³The Anglo Saxon Legal System is a legal system based on jurisprudence. This legal system tends to prioritize customary law, a law that runs dynamically in line with the dynamics of society. Formed through a judicial institution with a jurisprudence system, it is considered better, so that the law is always in line with the sense of justice and the benefits are directly felt by the community. This legal system is applied in Ireland, the United Kingdom, Australia, New Zealand, South Africa, Canada, and the United States. In addition to the country, some countries also implemented the Anglo Saxon system along with customary law and religious law, such as Pakistan, India, and Nigeria, <https://www.kompas.com/skola/read/2019/12/29/200000469/sistem-hukum-anglo-saxon-perbedaannya-dengan-sistem-eropa-kontinental?page=all>, accessed on 28 June 2022

⁴Nasarudin Umar, *Konsep Hukum Modern: Suatu Perspektif Keindonesiaan*, Integrasi Sistem Hukum Agama dan Sistem Hukum Nasional, Walisongo, Volume 22, Number 1, May 2014, pg.158

⁵Robin Gardner, MLS, *The University of Melbourne, Southeast Asian Legal Research Guide: Introduction to Brunei Darussalam & Its Legal System*, <https://unimelb.libguides.com/c.php?g=402982&p=4622754>, accessed on 27 July 2023

⁶ Muhammad Alashari, *Everything You Need To Know About Sharia Law/Islamic Law*, August 2019, https://www.researchgate.net/publication/335320513_Everything_You_Need_to_Know_About_Sharialslamic_Law, accessed on 27 July 2023

influenced by Islamic Law/Sharia; however, these two countries have differences in terms of the influence of Islamic Law/Sharia. In Brunei Darussalam, Sharia Law is part of its national legal system; while in Indonesia, Sharia Law is not part of the national legal system, whereby this law only applies in some regions in Indonesia, like Aceh. Many scholars have concluded that the certainty of Sharia Law is unknown. Religious judgments of Islam can result in various points of view. Jurists have argued that nothing can be recognized as the only one until the *thefiqh* law is codified into the Constitution. "Sharia Muslim thought" is understood as Islamic jurisprudence (*fiqh*), which is a collection of rules, and is shown as a judgment handed down directly by God's command⁷.

II. THE EXISTENCE OF ISLAMIC SHARIA LAW IN INDONESIA AND BRUNEI DARUSSALAM

A. THE EXISTENCE OF ISLAMIC SHARIA LAW IN INDONESIA

Sharia holds the strongest position to justify the formalization of religion in the context of Islam, which must be understood as surrender, submission, and obedience to religious teachings, freedom from oppression, and protection of the weak (*mustadh'af*), has been regarded to be reduced to a rigid Shariah framework. Thus, the ideological awakening of Islamic perspectives at the national and global levels has led to efforts and demands for the implementation of Sharia or Islamic law as a whole (*kaffah*). Sharia became a means to limit the state of religion, so that under certain circumstances, Sharia became a stand-alone religion. There are at least three schools of interpretation of Islamic Sharia, namely:

- 1) Formalization of Islamic law - groups that struggle for Sharia to be used as an ideology in the nation and state, because it has the effect of stating the need for an Islamic state or formal state law;
- 2) Delegitimization of Sharia - this school prefers to understand Sharia materially, that Sharia is not regulated by the state because it becomes rigid. Sharia has been implemented in everyone's daily life, so there is no need to formalize the country's laws; and
- 3) The group which wants to choose the middle way, i.e., not recognizing secularization and Islam.

Thereafter, it is evident that the application of Islamic Sharia has gone through prolonged debate between the three ideas above through historical sketches of the nation and state⁸.

The application of Islamic Sharia actually existed in the past. Based on historical evidence, all countries that adhere to Islam actually implement Islamic Sharia. The number of followers of Islam and the existence of Islamic historical sites are parameters for the application of Islamic law in the country. If Sharia is alive and developing as a living law in that country, then it is recognized and applied there. On the other hand, if there is no trace of the implementation of Islamic Sharia in a country, its absence is a strong indication that Islamic Sharia is not growing or developing in that country⁹.

In Indonesia, the application of Islamic law to positive law is not only the desired law (*IusConstituendum*), but to special matters, the substance has become *IusConstitutum* or the current law, such as, Marriage Law, Hajj Law, and Waqf Law¹⁰. Indonesia is a state of law; hence, the wishes and conditions for the implementation of Islamic law cannot always be implemented because Indonesia, from the beginning, was built on the foundation of the spirit of nationality based on principles, divinity, humanity, justice, unity, and the principle of equality of every citizen before the law. Therefore, the application of Islamic law always faces obstacles if there are discriminatory elements or legal regulations that eliminate the guarantee and protection of citizens' rights by the constitution. It is based on the Indonesian Constitution which aims to protect all Indonesian people, i.e., every citizen must be treated equally before the law. Therefore, it is necessary to study how Islamic law can be applied in a nation state, like Indonesia as a Muslim-majority country.

The application of Sharia and Islamic law in Indonesia has a constitutional basis stated in the Preamble of the 1945 NRI Constitution, that the Indonesian state is based on Pancasila, and also considers Islamic Sharia for residents who adhere to Islam. However, despite the constitutional foundation, the application of Sharia in

⁷Thorsten Koch, MA. Islamic Law: Ordained Shari'ah Principles & Man-Made Code, University of Wales Trinity Saint David, June 30, 2017, pg.2, accessed on 27 July 2023, https://www.researchgate.net/publication/318044038_Islamic_Law_Ordained_Shari'ah_Principles_v_Man-Made_Code_UWTSD_2017

⁸ Al Faruq, M, Penerapan Syari'ah Islam dalam Negara Bangsa di Indonesia, Jurnal El-Faqih, Volume 4, Number 2, October 2018

⁹Panji Putra Pratama, Ismail Munir, Alimni, Penerapan Syariah dan Hukum Islam di Indonesia, JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah, 8(3), 2023. Hlm. 1992-2001 P-ISSN: 2964-7231, E-ISSN: 2614-3658 DOI: <https://doi.org/10.24815/jimps.v8i3.25495>, accessed on 28 March 2024

¹⁰ Kenedi, J, Penerapan Syariat Islam Dalam Lintasan Sejarah dan Hukum Positif di Indonesia. Nuansa: Jurnal Studi Islam dan Kemasyarakatan, 10(1), 2017

Indonesia is limited and largely governed by positive national law. In Indonesia, the generally accepted legal system is a national legal system based on positive law derived from Pancasila and the 1945 NRI Constitution. This legal system covers all aspects of Indonesian people's lives, including criminal law, civil law, constitutional law, and administrative law.

The application of Sharia in Indonesia is more visible in several fields, such as marriage, inheritance, and Islamic financial institutions. For example, in the field of marriage, Indonesian citizens, who adhere to Islam, can apply for marriage at the Office of Religious Affairs (KUA) which follows Islamic law. In addition, there is also the Supreme Court which has a religious court institution to try cases related to Islamic law. However, it is important to note that the implementation of Sharia in Indonesia is not in line with the existing legal system as a whole. Indonesia is the country with the largest Muslim population in the world, namun tetap menganut prinsip negara hukum dengan pengakuan terhadap keragaman agama dan keyakinan. Therefore, national law still prioritizes the principles of justice, equality, and protection of human rights for all its citizens, regardless of religion.

In addition, the application of Sharia law can vary in each province or region in Indonesia. Some regions implement Sharia law on a broader scale, such as Aceh, which has special autonomy in implementing Sharia law. The application of Sharia and Islamic law in Indonesia also continues to be a debate and a complex issue. There are a number of groups and individuals who support wider application, while others argue that it should remain in accordance with the principle of the rule of law and not conflict with human rights. In the context of the implementation of Sharia and Islamic law in Indonesia, it is important to understand that it involves different interpretations and implementations, depending on the social, political, and cultural contexts of the Indonesian society¹¹.

1. Nationalism

Nationalism proceeded from the construction of a political elite that formed the nation-state, rather than a collection of local communities¹². Nevertheless, nationalism of the nation state itself as a national identity is intrinsically linked to the construction of various forms of multicultural communication as a form of diversity. For example, the concept of "nation" is defined as an *imagined community*, and "national identity" is defined as a construction incorporated through cultural symbols and rituals in relation to territorial and administrative categorization¹³. Territorial and administrative construction can be seen from the implementation of Law No. 32 of 2004 concerning Regional Government, where some of the authority (power) owned by the central government has been transformed to regional governments. So, as long as nationalism in the regional perspective is not given space of freedom, and is placed in a reasonable position as an important element in the construction of the "nationalism" of the nation-state, then, during that time, "ethnonationalism" will grow into a pebble that weakens the meaning of nationalism as a national identity.

The nation-state is the idea of a state created for an entire nation or for everyone, based on mutual agreement that leads to open contractual and commercial relations between contracting parties. The term, country: *stato* (English), *staat* (Dutch and German) or *etat* (French), defines a state as a superior organization of people who want to unite, occupy a territory, and have a sovereign government. This definition includes the basic values inherent in a sovereign state: a society (nation), a territory, and a sovereign government. These three factors must be supported by other factors, such as the existence of a constitution and international recognition; they are called declarative elements¹⁴.

The nation-state is a modern concept of the state that is closely related to nationalism. As referred to above, it is said that a state has fulfilled the requirements of the modern state by fulfilling at least the basic conditions as the capital of a nation before becoming a nation state, in addition to territorial and population factors. The second condition is the existence of territorial boundaries, the rule of law, and recognition of other states. The spread of Islam to various parts of the world has given the pattern and variety of Islam that has developed in Arabia with its own characteristics and uniqueness. This is understandable because any religion, including Islam, cannot be separated from the reality that exists in it. Islam is not a religion born in a cultural vacuum. A dynamic and continuous dialogue between Islam and reality is necessary. This modern Muslim politician is very adamant in struggling for Islam as the basis of the state and proposing the concept of the state.

In the history of Islamic civilization in the world, there are many different figures and thoughts about Islam and the teachings brought by Prophet Muhammad (pbuh). The discourse that always stands out and is never-ending, is the discourse about Islam. The term, 'Islamic State', is very often heard especially in the

¹¹ Penerapan Syariah dan Hukum Islam di Indonesia, *Op.Cit.*, p.1

¹² Barrett, S, A Theory of Full International Cooperation . Journal of Theoretical Politics 11 (4) Sage Publications, 519-541, 1999, p. 87

¹³ Chris Barker, Cultural Studies: Teori dan Praktek. Yogyakarta: Bentang, 2005, p.205

¹⁴ Mahfud M.D. M, Dasar dan Struktur Kenegaraan, Jakarta: PT. Rineka Cipta, 2001.

development of Indonesian history, namely the rebellion of S.M. Kartosuwiryo in West Java, which then developed in Aceh, Central Java, South Kalimantan, and South Sulawesi. Kartosuwiryo proclaimed the Islamic State of Indonesia with him as Emir (leader). However, the movements regarded betraying can also be destroyed by the government through a notorious operation, called Leg Fence Operation¹⁵.

2. The Journey of Sharia and Islamic Law in Indonesia

Islamic Sharia in Indonesia has a very long history; in fact, the application of Islamic Sharia may have been born earlier than modern law in Europe. The development of the implementation of Islamic Sharia in Indonesia can be described in four stages, namely: the Islamic Sultanate period, the pre-independence period, the old order and the new order periods, and the reform period until now. One of the regions that implemented Islamic Sharia in the sultanate was West Sumatra. This is evidenced by the existing postulate strongly reflected in Islamic teachings, "The basis of taxes is syar'as, syar'as is the book of Allah". Islamic law was used to resolve events that occurred in society during the time of the Islamic Sultanate. Islamic law became positive law with widespread practice under the rule of the Islamic Sultanate. The Sultanates of SamuderaPasai, Demak, Kutai, Ternate, and Tidore, and the Sultans of Srivijaya and Majapahit at the end of their reign, are irrefutable evidence that Islamic Sharia was enforced with varying degrees of compliance in each sultanate. Moreover, the desire to participate in the government bureaucracy has been so strong since independence in 1945, which only few of Muslims, who take part as decision makers or participate in it.

During Sukarno's order, not only political rights were represented, but also economic rights that did not have a proper place, like the Chinese. The discourse of the Islamic State and the formalization of Islamic law have always been a hot issue. Few Indonesian Muslims discuss and champion the idea of an Islamic state and the formalization of Islamic law. This puts political Islamists in relation to the state.

In Indonesia, various efforts have been taken to realize an Islamic state and formalize Islamic law through several means, such as the legislative process of drafting local regulations, and using rebellious and violent means. In other words, efforts have been made both constitutionally and unconstitutionally¹⁶. The implementation of Islamic law in Indonesia is highly dependent on the legal politics of the authorities in determining its characteristics and patterns.

Legal politics is a statement of the will of the ruler of the state regarding the laws in force in his territory, and about the direction of legal development that is built. The struggle to formalize Islamic law through constitutional channels in Indonesia has been partly successful. For example, various laws and regulations that have been issued, including Law No. 1 of 1974 concerning Marriage, Law No. 7 of 1989 concerning Religious Courts, Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI), Law No. 13 of 2008 concerning the Implementation of Hajj, Law No. 23 of 2011 concerning Zakat Management, Law No. 10 of 1998 concerning Banking, and Law No. 11 of 2006 concerning the Government of Aceh.

The implementation of Sharia in Indonesia has long been aspired by Muslims, but to realize that ideal is not something easy. The cancellation of the seven words in the Jakarta Charter is clear evidence of how difficult it is for Sharia to be enforced in the midst of a majority Muslim population. It is strongly suspected that the cancellation was the effect of the political games of the elites who did not want the enactment of Sharia Law at that time.

Islamic law in Indonesia, especially the rule of Indonesian law, does not yet fully contain Islamic law. However, the country's lawmakers are trying to incorporate positive law into Islamic law to create synergy in its application. For example, theft is punishable by chopping off hands in Islamic law, while the penal code does not recognize it. However, imprisonment is common. Because Islamic law recognizes an alternative punishment other than chopping off hands, namely imprisonment. Therefore, imprisonment also contains Islamic values and elements. Likewise, in other cases, such as murder, drunkenness, gambling, and adultery. Therefore, combining positive law with Islamic law is very important. However, the reconciliation of positive law and Islamic law in Indonesia has not been fully accepted by some Muslims, evidenced by the growing movement back to Islamic Sharia and Khilafah, such as the re-implementation of the Jakarta Charter, Hizbut-Tahrir, DI/TII, and so on. Such phenomena, however, are a response to secularism in addition to a response to a crisis of leadership among Muslims, not only to oppose the West in its democratic system, but rather to fight against everything that is perceived as a cause of frustration and oppression, both internal and external.

Initially, Islamic law was in an unwritten form, in the sense that the rules were not included in the existing laws and regulations such that there were no sanctions given by the ruler. But even so, because Islamic

¹⁵ Ma'arif, A. S, *Islam dan Pancasila Sebagai Dasar Negara: Studi tentang Perdebatan dalam Konstituante*, Jakarta: LP3ES, 2006.

¹⁶ Sitompul, A, *Efforts to Establish an Islamic State and the Implementation of Islamic Sharia in Indonesia*, Jakarta: Misaka Galiza, 2008.

law is considered the true law by its adherents, it is obeyed by the Islamic community, especially among the leaders and scholars. The rules that constitute Islamic law are spread in various books of jurisprudence thought by scholars, some of which are widely used as references in Indonesia, such as the book of Muharrar by arRafi'i, the book of MinhajutThalibin by anNawawi, and the book andTuhfah by Ibn Hajar¹⁷.

In the early days of the arrival of Islam, if there were disputes, including marriage problems among Muslims, then this matter would be handed over to people who were considered experts in Islamic religious science. Later, at the time when the Islamic kingdom had emerged in this archipelago, Islamic religious experts in charge of resolving such disputes were formally appointed by the king or sultan. Islamic Law still exists, although it does not apply completely; it can be noted both culturally and sociologically that Islamic Law has never died, but existed in the lives of Muslims since colonialism by both Dutch colonialism and post-independence until now¹⁸.

There are several factors that can be additional values in the implementation of Islamic Sharia, including:

a. The institutionalization of Islam, which is a principle that allows Muslims to appear in the Religious Court as a specialty of their status. Based on this principle, Muslims can settle civil cases by applying Islamic Sharia. The Islamic factor which is the main reason for the principle of personality is attached to two categories, namely to the personality of the party who is allowed to litigate in the Religious Court and to the subject matter in dispute (Abdullah, 1994)¹⁹.

b. Sharia/Islamic Law Sharia/Islamic Law is accepted as national law because it is an authoritative source as well as a source that every Muslim must believe and accept (*persuasive source*)²⁰.

c. Benefits to be realized by Islamic Sharia - according to Imam Ash-Shatibi (may Allah grant mercy on him), it can be seen from two points of view, as follows:²¹

1) Maqashid Asy-Syar'i (The purpose of Allah Almighty) - contains four aspects, namely: a) The initial purpose of the Shari'a, giving the benefit to humans in the world and the Hereafter; b) Sharia as something that must be understood; c) Sharia as a taxative law that must be carried out; and d) The purpose of Shari'a is to bring manusai under the auspices of the law.

2) Maqashid Al-Mukallaf (The purpose of Mukallaf) - benefit as the substance of alMaqashid asy Shari'ah, can be realized if the five main elements can be realized and maintained: (1) religion; (2) soul; (3) heredity; (4) reason; and (5) property

Implementing Islamic Sharia initiatives to its followers is nothing new in Indonesia. Since the entry of Islam in the country at the end of the first or early second century of the Hijri, Sharia has been a guideline of life for Indonesian Muslims. Islamic Sharia, as a legal system that requires state power, was then applied in Islamic kingdoms located in various corners of the archipelago. Later, there was a view of tribal life with the same meaning, and the expression can differ that "Fire is related to Sharia" and Sharia is related to the Book of Allah. Adat is the prevailing custom, Sharia is Sharia, and the Book of Allah is the Qur'an as explained by the Sunnah of the Prophet (pbuh). Therefore, Islamic law has a strong foundation in the life of the people and state of Indonesia. Indonesian legal policy expert, Daniel Lev (an American of Jewish descent), said that long before the arrival of the Dutch colonizers, Indonesian Islamic law had been incorporated.

Sharia and positive law in Indonesia

Pancasila is the basis for the formation of the Indonesian state and in the constitution or Basic Law, it is stated that Indonesia is neither a religious state nor a secular state (a country that is neutral in religious matters and does not support religious people or non-religious people)²².

Indonesia is not a religious state because religious law is not the main law in the Indonesian legal system. However, Indonesia is also not a secular state because the state still participates in matters related to religious values. The legal concept of Pancasila is legal values that are not separated from elements related to God and Human Rights (HAM).

¹⁷ Penerapan Syariah dan Hukum Islam di Indonesia, *Op.Cit.*

¹⁸ Ali, M. D, Hukum Islam: Pengantar Tata Hukum dan Tata Hukum Islam diIndonesia, Cetakan Kesepuluh, Jakarta: Raja Grafindo Persada, 2002.

¹⁹ Abdullah, A. G, Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia, Jakarta: Gema Insani Press, 2002).

²⁰ Sunny, I., Kedudukan Hukum Islam dalam Sistem Ketatanegaraan Indonesia", dalam Amrullah Ahmad dkk Mardani, Hukum Islam; Pengantar Ilmu Hukum Islam di Indonesia, Yogyakarta: Pustaka Pelajar, 2015.

²¹ Asy-Syatibi, al-Muwafakat Fie Ushul asy-Syariat, (al-Qohiroh: Dar al-Hadis, 1427 H/ 2006 M) , 2/261-266, Tahun 2006.

²²MohdarYanluar, *Prospective Islamic Law in Indonesia*, Journal of Humanity, Lecturer STAIN Ambon, Indonesia, Volume 3, Nomor 1, Februari 2015, pp. 14-15 - Wikipedia Indonesia,

The Indonesian legal system consists of three legal systems, namely the customary law system, western law (*civil law*), and Islamic law. Islamic law is one of the three sources of national law, such as Sharia Banking, laws governing stocks or investments, zakat, and Sharia Law. First²³, the Indonesian state is based on Pancasila which recognizes the greatness of God as the first precept. This approach is influenced by the existence of Kingdoms in Indonesia; and Second, the NRI Constitution of 1945 guarantees the freedom to practice their religion. The second approach was instilled by the colonial government.

After the collapse of the regime of President Suharto in May 1998, followed by the granting of an autonomous position to Aceh with special authority in the social, legal, and life fields of crocodiles. The Unitary State Government System of the Republic of Indonesia, according to the NRI Constitution of 1945, recognizes and respects local government units that are particular or special. The constitutional journey of the Republic of Indonesia places Aceh as a special regional government unit, related to the distinctive character of the history of the struggle of the Acehnese people who have high resilience and fighting power. The life of the Acehnese people is thus articulated in a modern perspective in democratic and responsible state and governance.

The occurrence of natural disasters, earthquakes, and tsunamis in Aceh has fostered solidarity of the nation's potential to rebuild the people and region of Aceh. Similarly, there has been a strong awareness from the Government and the Free Aceh Movement (GAM) to resolve conflicts peacefully, comprehensively, sustainably, and with permanent dignity within the framework of the Unitary State of the Republic of Indonesia. Such is an absolute.

The dynamic aspirations of the Acehnese people are not only in customary, cultural, social, and political life, but also in providing guarantees of legal certainty in all matters because the basis of religious Acehnese life has nurtured an attitude, high fighting power, and a strong Islamic culture. This is the main consideration for the implementation of privileges for the Aceh Special Region Province with Law No. 44 of 1999. The establishment of the Sabang Area with Law No. 37 of 2000 is one of the series of efforts to improve the welfare of the Acehnese people, and become a driver of economic growth and development in the Aceh region as well as capital for accelerating the development of other regions²⁴.

The *Memorandum of Understanding* between the Government and the Free Aceh Movement signed on 15 August 2005 marks a new glimpse into the history of the journey of Aceh Province and the lives of its people towards a state of peace, justice, prosperity, and dignity. It should be understood that the Memorandum of Understanding is a form of dignified reconciliation towards sustainable social, economic, and political development in Aceh. The ideal anatomy in the above framework provides philosophical, juridical, and sociological considerations for the establishment of the law for the Government of Aceh.

In the course of the implementation of the privileges of the Aceh Special Region Province, it was seen to be lacking in providing life in justice or justice in life. Such conditions have not been able to end the upheaval of society in the Special Region of Aceh which has been manifested in various forms of reaction. The response of the Government and the House of Representatives gave birth to one of the political solutions for solving the Aceh problem in the form of Law No. 18 of 2001 which regulates the implementation of special autonomy for the Aceh Special Region Province or Nanggroe Aceh Darussalam Province. In its implementation, the law is also inadequate in accommodating the aspirations and interests of economic development and political justice. This led to the birth of the Law on the Government of Aceh with the principle of the widest autonomy. Granting the widest autonomy in the political field to the people of Aceh and managing local government in accordance with the principles of *good governance*, namely transparent, accountable, professional, efficient, and effective governance, are intended for the greatest prosperity of the people in Aceh. In implementing the widest autonomy, the people of Aceh have a role, both in formulating, determining, implementing, and evaluating local government policies²⁵.

The Law on the Government of Aceh expressly stipulates that the Government of Aceh is an inseparable part of the Unitary State of the Republic of Indonesia and the widest autonomy order applied in Aceh based on this Law is a subsystem of the national government system. Thus, the widest autonomy is basically not just a right, but more than that, it is a constitutional obligation to be utilized as much as possible for the welfare in Aceh. Therefore, the regulation in the *qanun* which is widely mandated in the Government of Aceh is a concrete manifestation of the implementation of these constitutional obligations in the government of Aceh and districts/cities, and is a dignified reference to managing government affairs independently as part of the sovereign territory of the Unitary State of the Republic of Indonesia. The broad authority given to the

²³Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*, Exploring Muslim Contexts, Edinburgh University Press In Association With The Aga Khan University (International) in The United Kingdom Institute for The Study of Muslim Civilisations, 2015, pp. 2-9

²⁴General Explanation of Law Number 11 of 2006 concerning the Government of Aceh

²⁵*Ibid.*

Government of Aceh and district/city governments as stipulated in this Law is a manifestation of the trust of the House of Representatives and the Government to accelerate the realization of just welfare and prosperity in Aceh. The existence of provisions in the Government of Aceh regarding the need for norms, standards, procedures, and affairs of a national strategic nature under the authority of the Government, is not intended to reduce the authority of the Government of Aceh and district/city governments, but is a form of guidance, facilitation, determination, and implementation of government affairs of a national nature. The central and regional financial balance arrangements are reflected through the granting of authority to utilize existing funding sources. Cooperation in natural resource management in the Aceh region is followed by transparent and accountable management of financial resources in the context of planning, implementation, and supervision. Furthermore, the economic growth of the Acehnese people, infrastructure development, job creation, poverty alleviation, progress in the quality of education, and the use of special autonomy funds, are an inseparable part of national economic growth.

Such an order of life is embodied in the motto of *Bhinneka Tunggal Ika*. This resilience and high struggling power come from a view of life based on Islamic Shari'a which gave birth to a strong Islamic culture, so that Aceh has become one of the capital areas for the struggle to seize and maintain the independence of the Unitary State of the Republic of Indonesia based on Pancasila and the NRI Constitution of 1945. Kehidupandemikian, menghendakiadanyaimplementasi formal penegakansyari'at Islam. Itulah yang menjadibagiandariatarbelakangterbentuknyaMahkamahSyar'iyah yang menjadi salah satubagiandarianatomikeistimewaan Aceh. Penegakansyari'at Islam dilakukandenganasapersonalitaskeIslamanterhadapsetiap orang yang berada di Aceh tanpamembedakankewarganegaraan, kedudukan, dan status dalamwilayahsesuaidenganbatas-batasdaerahProvinsi Aceh²⁶.

The years 2002 and 2003 saw the establishment of institutions related to rules and penalties within the scope ratified by the Aceh provincial Parliament, known as *Qanun*. Sharia Law wasofficially implemented in the Aceh region with the establishment of MahkamahSyar'iyah (*adistinctive court*) to examine perpetrators who violate the Islamic Penal Law. The chairman of the Ulema Consultative Assembly (MPU) announced that Muslims who violate the Islamic rules stipulated in the *qanun* will be sanctioned with flogging/caning punishment. In early 2004, the Shar'iyah Court tried several perpetrators, but at the time of the tsunami in Aceh, none of them was sentenced. Six months after the tsunami, the caning law was carried out in public. The earthquake and tsunami were considered by the people of Aceh as a test and a form of punishment from God²⁷.

Qanun is Sharia (Islamic) Law applied in the Aceh region, in the Laws and Regulations system in Indonesia which is seen in terms of regulating the position of *Qanun* or the position of *Qanun* regulated in the hierarchy of Laws and Regulations²⁸. The Hierarchy of Laws and Regulations is defined as a series of principles or concepts that must be considered or held to guarantee the Laws and Regulations which are a unified system, both in the Laws and Regulations themselves, and with the legal system, in general. In other words, laws and regulations are based on the principle that lower laws and regulations must not conflict with higher laws and regulations²⁹. In Law No. 12 of 2011, *jo*. Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, Article 7 paragraph (1) states that the type and hierarchy of laws and regulations consist of:

- a) The 1945 Constitution of the Republic of Indonesia;
- b) Decrees of the People's Consultative Assembly;
- c) Government Laws/Regulations in lieu of Law;
- d) Government Regulations;
- e) Presidential Regulations;
- f) Provincial Regulations; and
- g) District/City Regulations.

²⁶*Ibid.*

²⁷Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*, Exploring Muslim Contexts, *Ibid.*

²⁸See Explanation of Article 7 Paragraph (1) Letters (f) and (g), Law No. 12 of 2011 *jo*. Law No. 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations

²⁹See Explanation of Article 7 Paragraph (2), Law No. 12 of 2011 *jo*. Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations

Referring to the statement of the Article, there is no word *Qanun*, but in the general explanation of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations Article 7 paragraphs (1) Letters (f) and (g), it is stated that:

Letter (f): "Included in the Provincial Regional Regulations are *Qanun* applicable in Aceh Province and Special Regional Regulations (Perdasus) and Provincial Regional Regulations (Perdasi) applicable in Papua Province and West Papua Province."

Letter (g): "Included in the District/ity Regulation is *Qanun* which applies in the Regency/City in Aceh province."

Based on the explanation of the article above, *Qanun* is recognized by law and equated with other regional regulations. This explanation has a basis why *Qanun* can be included with other Regional Regulations, namely contained in Article 8 paragraphs (1) and (2) which read³⁰:

Paragraph (1): "Types of laws and regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, Agencies, Institutions, or Commissions at the same level established by Law or the Government by order of the Law of the Regional People's Representative Council Provinces, Governors, People's Representative Councils of Regency/City Regions, Regents/Mayors, Village Heads or equivalent".

Paragraph (2): "Laws and regulations as referred to in paragraph (1) are recognized as having a binding legal position to the extent ordered by higher laws or established by authority".

The words "regulations stipulated by the House of Representatives" are stated in Article 8 paragraph (1) above, that *Qanun* is a product of provisions issued by the Aceh People's Representative Council, in accordance with Article 23 paragraph (1) of Law Number 11 of 2006 concerning the Government of Aceh, namely:

"The Aceh People's Representative Council has the task and authority to form the Aceh *Qanun* which is discussed with the Governor for mutual approval".

Of these two articles, *Qanun* is a product of provisions of the Aceh People's Representative Council which has legal force sourced from Article 8 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

The existence of Sharia Law (Islam) in Indonesia can be seen through the establishment of two Islamic streams that have become institutions, namely Muhammadiyah and the Indonesian Ulema Council (MUI). Muhammadiyah was founded in Kauman Village, Yogyakarta on 8 Dzulhijah 1330 Hijri or on 8 November 1912 by Muhammad Darwis, later known as K.H. Ahmad Dahlan. This organization submitted its ratification on 20 December 1912 by sending the Muhammadiyah Statute (the first Muhammadiyah Articles of Association in 1912), ratified by the Dutch Governor-General on 22 August 1914³¹. MUI is a non-governmental organization that accommodates Islamic scholars, *zu'ama* (leaders), and scholars in Indonesia to guide, foster, and protect Muslims throughout Indonesia, established on 7 Rajab 1395 Hijri or on 26 July 1975 in Jakarta, Indonesia. These two Islamic institutions greatly influence the government in Indonesia, the most common of which is the determination of prohibitions and permissibility for Muslim communities in Indonesia, especially MUI, by which most Muslim communities in Indonesia are guided by. Ma'ruf Amin, former chairman of MUI now also serves as Vice President of the Republic of Indonesia³².

³⁰Lihat Pasal 8 Ayat (1) dan (2), UU No. 12 Tahun 2011 *jo.* UU No. 13 Tahun 2022 tentang Perubahan Kedua atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

³¹Muhammadiyah.or.id, *Sejarah Muhammadiyah*, (<https://muhammadiyah.or.id/sejarah-muhammadiyah/>)-Serafica Gischa, *Sejarah Singkat Berdirinya Muhammadiyah*, Kompas.com, (<https://www.kompas.com/skola/read/2020/07/17/164408569/sejarah-singkat-berdirinyamuhammadiyah?page=all>), accessed on 28 March 2024

³²Mui.or.id, *Sejarah MUI*, (<https://mui.or.id/sejarah-mui/>) – Wikipedia Indonesia, *Majelis Ulama Indonesia*, (https://id.wikipedia.org/wiki/Majelis_Ulama_Indonesia), accessed on 28 March 2024

B. THE EXISTENCE OF ISLAMIC SHARIA LAW IN BRUNEI DARUSSALAM

The existence of Islam in Brunei Darussalam has similarities with Indonesia; these similarities can be seen from the economic system based on Islam and Islamic Education. Compared to Indonesia and Malaysia, which are also influenced by Islamic teachings, Brunei Darussalam follows more conservative Islamic rules compared to its neighbors and has implemented laws motivated by strict religious teachings, such as alcohol prohibition³³. Before the existence of a mixed legal system, Brunei Darussalam had a legal system based on the British Law system (*Common Law*) because Brunei was one of the countries in the world that had been a British colony until 1984. Since its independence in 1984, Brunei Darussalam is the only Islamic country in Southeast Asia to apply a legal system that regulates various aspects of law, while Sharia Courts are limited to family cases, such as marriage problems³⁴.

This legal system underwent changes after Sultan Hassanal Bolkiah announced the implementation of Islamic Sharia Law in which Islamic Law replaced the English Law (*Common Law*) that had been in force before. According to Abdul Latif, 20 years before the issuance of the *Sharia Penal Code Order (SPCO)* in 2013, the Sultan had announced plans to introduce the Islamic Penal Code. On 15 July 1996, Sultan Hassanal Bolkiah discussed the divine obligation to carry out Criminal Law. He also appointed a working group of Sharia specialists to investigate the issue, among them a scholar from Pakistan. Increased attention to the Islamic Penal Code coincided with the change of the king's religious advisors. In 1994, the Sultan appointed Mahmud Saedon Othman, a prominent academic trained by Al-Azhar, as a specialized expert on Islamic Law³⁵.

From the aspect of Sharia Law, Brunei Darussalam has become the first country in the Southeast Asian region to adopt Sharia Law. The Sultan first announced plans for the implementation of Sharia Islam in the mid-1990s, when several committees were tasked with drafting the law. The effort was initially opposed by some powerful people in Brunei's government and royal family, but was eventually approved. The Sultan and Prime Minister first promulgated the *Sharia Penal Code Order (SPOC)* in October 2013, but it was officially announced to the entire Brunei community on 1 May 2014³⁶.

After the promulgation of the Sharia Penal Code in Brunei Darussalam's legal system, there were marked differences in matters of crime, punishment, and those related to religion. The application of Sharia Law in Brunei is conflicting because the population of Brunei Darussalam consists of several religions, of which 15% are non-Muslim Chinese³⁷. The non-Muslim community comprising one-third of the population has also felt the consequences of applying Sharia Law to certain crimes, such as robbery and adultery. The new law also restricts non-Muslims' religious rights and freedom. Non-Muslims living in Brunei Darussalam feel pressure from Sharia law because of the prohibition of holidays other than Islamic holidays in public places, evangelism by non-Muslims is illegal, and religious gatherings for non-Muslims are restricted. Non-Muslims in Brunei Darussalam are prohibited from using 19 Islamic words:³⁸ 1) *Azan*; 2) *Baitullah*; 3) *Al-Quran*; 4) *Allah*; 5) *Fatwa*; 6) *Firman Allah*; 7) *Hadits*; 8) *Haji*; 9) *Hukum Syariah*; 10) *Ilahi*; 11) *Ka'bah*; 12) *Kalimah Al-Syhadah*; 13) *Kiblat*; 14) *Masjid*; 15) *Imam*; 16) *Mufti*; 17) *Mu'min*; 18) *Sholat*; and 19) *Wali*. There are penalties for printing, disseminating, importing, broadcasting, and distributing publications that contradict the teachings of Islam.

In response to Sultan Hassanal Bolkiah's new law, International *Amnesty* said Sharia law would bring the country back to the dark ages³⁹. *Amnesty's deputy regional director*, Rupert Abbott, said in a statement after Brunei's Sharia law was announced, that the law could undermine the country's international human rights commitments and should be lifted immediately. Most of the new Islamic codes will apply to Muslims and non-

³³AyuTifani Khairul Putri, *Construction of Brunei Darussalam's Islamic Regime through the Implementation of Islamic Sharia*, University of Muhammadiyah Malang, 2019, pp. 29-30

³⁴Council of ASEAN Chief Justice, *Overview of Brunei Legal System*, (<https://cacj-ajp.org/web/brunei/overview>)-Index Mundi, *Brunei Legal System*, (https://www.indexmundi.com/brunei/legal_system.html), di akses pada tanggal 28 Maret 2024

³⁵AyuTifani Khairul Putri, *Konstruksi Rezim Islam Brunei Darussalam*, *Ibid*, hlm. 30-31

³⁶Arshiyah Khullar, *Brunei Adopts Sharia Law Amid International Outcry*, CNN, (<https://edition.cnn.com/2014/05/01/world/asia/brunei-sharia-law/index.html>), di akses pada tanggal 28 Maret 2024

³⁷Daily Mail Reporter, *Sultan of Brunei Hits Back at Foreign Criticism of Looming Implementation of Sharia Law that Will Introduce Amputations and Stonings as Punishments*, (<https://www.dailymail.co.uk/news/article-2574637/Brunei-sultan-urges-country-support-Islamiclaw.html>), accessed on 28 March 2024

³⁸AyuTifani Khairul Putri, *Konstruksi Rezim Islam Brunei Darussalam*, *Ibid*, hlm. 35-36

³⁹BBC Indonesia, *Sharia in Brunei Darussalam*, (https://www.bbc.com/indonesia/forum/2014/05/140502_forum_shariah), accessed on 28 March 2024

Muslims alike, affecting people from both Christian and Buddhist communities. About 70% of people in Brunei are Malay Muslims, while the rest are Chinese, or of other ethnic descent. Condemnation also came from the United Nations (UN) - the UN deeply regretted the existence of new laws related to Islamic Sharia. In this regard, the UN appealed to the Sultan to postpone the implementation of Islamic Sharia Law again so that the UN could consider whether or not the regulation was feasible. It is known that punishments, such as stoning or cutting off hands, violate human rights. Rupert Colville, spokesman for the UN Human Rights Commission, told *Opposing Views*: "We are deeply concerned about the changes in Brunei Darussalam's sentences, which will take effect later this month to regulate the death penalty"¹⁸.

In its development, Sharia Law in Indonesia only applies in the Aceh region; besides Aceh, there is no other region in Indonesia that applies Sharia Law as the main source of law. One of the reasons why Sharia Law can be applied in the Aceh region is because the people living in the Aceh region are homogeneous people with similarities in terms of beliefs. Sharia law also applies to non-Muslims living in Aceh or people coming to Aceh, for example, women are required to wear hijab for Muslims and headgear for non-Muslims. In Brunei Darussalam, Sharia Law is applied nationally, not only in one region. Both Indonesia and Brunei Darussalam have received criticism for the implementation of Sharia Law in their territories, especially Western societies who consider it a violation of human rights (HAM).

III. SIMILARITIES AND DIFFERENCES IN THE APPLICATION OF ISLAMIC SHARIA LAW IN INDONESIA AND BRUNEI DARUSSALAM

1. SIMILARITIES

Indonesia and Brunei Darussalam are two countries that have a Muslim population as the majority in their countries. Sharia law in Indonesia itself applies in Aceh province based on the Regional Regulation of Aceh Province known as *qanun*, which is a legal product of laws and regulations that have binding force for all government administrators and Acehese people who are Muslim and non-Muslim. For non-Muslims, the same laws apply except those relating to their religious teachings and beliefs. This is one of the peculiarities of Aceh Province which is given special authority and autonomy in the administration of the government in Aceh. After the enactment of the special law, the Aceh government issued various *qanun* related to law, education, economy, judicial, political, social, cultural laws, and other *qanun* that are still in the process of legislation⁴⁰.

Given that the format of the Indonesian state is a legal state that has a diversity of religions, tribes, and customs that must receive legal protection from the state as mentioned in Article 1 paragraph (3) of the NRI Constitution of 1945 Third Amendment, the State of Indonesia is a state of law. This provision confirms that the Indonesian state is a country that is guided by legal principles called the state of law. The principle of the rule of law is one of the main legal principles in Indonesia's positive legal system. In general, the rule of law is one of the general legal principles in the legal hierarchy contained in the country's legal system⁴¹. The development of *qanun* as a regional regulation of Aceh Province with Sharia nuances after the enactment of the Law on Aceh privileges, is growing according to needs and interests. *Qanun* can be positioned parallel to the Law (in the formal sense) or to the Provincial and District/City Regional Regulations. Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, indirectly mentions *qanun* in the hierarchy and system of laws and regulations.

The implementation of religious life manifested in the form of the implementation of Islamic Sharia is carried out thoroughly. This means that all dimensions of people's lives are regulated by Sharia law. These arrangements include political, legal, economic, educational, health, socio-cultural, and other dimensions. Therefore, the laws imposed in the provinces of Aceh and Brunei Darussalam are laws that originate from religious teachings, namely Islamic Sharia. The question arises whether in the unitary State of the Republic of Indonesia, it is permissible for a community to implement its religious laws⁴². The role played by the state in the context of implementing Islamic Sharia in Aceh, departs from the provisions of the 1945 Constitution which recognizes the existence of particular or special regional governments. Brunei Darussalam applies Sharia Law as stated in its laws and regulations to carry out Islamic teachings and Aceh Province is given privileges, one of which is to implement legal rules based on Islamic Sharia. The people of Aceh and Brunei have similarities as religious societies and are adherent to the teachings of Islamic Sharia in carrying out daily activities. Religious norms for the people of Aceh and Brunei are references to measure whether or not an act is in accordance with

⁴⁰Andi Muhammad Asrun, *Mempertanyakan Legalitas Qanun Aceh: Sesuaikan Dengan Sistem Peraturan Perundang-Undangan*, Kanun Jurnal Ilmu Hukum, Volume 21, Number 2, Agustus 2019, p. 274

⁴¹*Ibid*, p. 275

⁴²Syahrizal, *Dimensi Pemikiran Hukum Dalam Implementasi Syariat Islam di Aceh*, Dinas Syariat Islam, 2007, hlm. 9-Dikutip Dalam Kamarusdiana, *Qanun Jinayat Dalam Perspektif Negara Hukum Indonesia*, Ahkam, Volume. XVI, Nomor 2, July 2016, p 155

Islamic Sharia. Every Muslim believes that living according to Islamic Sharia will bring a happy life in the Hereafter; thus, the implementation of Islamic Sharia through formal rules determined by the State, contributes to strengthening the norms and characteristics of Acehese and Brunei society that are adherent to Islamic teachings⁴³.

The people of Aceh are very submissive to the teachings of Islam and they obey and pay attention to the fatwas of the Ulama, because Ulama is the heir of the Prophet (pbuh). The internalization of Islamic teachings has given birth to Acehese culture which is reflected in traditional life based on the musings of the scholars, then practiced, developed, and preserved, and then concluded to be "*AdatbakPoteomeureuhom, hukombak Shia Kuala, QanunbakPutroPhang, Reusambak admiral*" which means "Customary law in the hands of the government and Shari'a law is in the hands of Ulama"⁴⁴. *Qanun* Number 6 of 2014 concerning *Jinayat* Law provides for the prohibition of acts which include:⁴⁵

- 1) *Khamar (liquor)*;
- 2) *Maisir* (gambling), *Khalwat* (Hidden acts between two people of different gender who are not mahram);
- 3) *Ikhtilath* (making out between two people of different gender who are not husband and wife);
- 4) Adultery, Sexual Abuse, and Rape;
- 5) *Qadzaf* (accuse a person of adultery without being able to present at least four witnesses);
- 6) *Liwath* (homosexual); and
- 7) *Musahaqah* (lesbian).

The *Qanun* of Aceh Number 8 of 2014 concerning the Principles of Islamic Sharia, regulates all aspects of community life and all apparatus in Aceh, including: *aqidah*, *syari'ah* and *akhlaq* (Article 2 Paragraph 1). The implementation of Islamic Sharia includes: Ibadah, *Ahwatal-syakhshiyah*(family law), *Muamalah*(civil law), *Jinayat* (criminal law), *Qadha'* (judicial); f) *Tarbiyah*(education), and Defense of Islam (Article 2 Paragraph 2).

The implementation of Islamic Sharia in the area of morals (akhlak) includes: *syi'ar* and *da'wah* (Article 2 Paragraph 3). Of the two *qanuns* issued above, in stages of legislation, there are several things that deserve attention. In the second paragraph of the *Qanun*, it is stated that:⁴⁶

"The Qur'an and Al-Hadith are the main basis of Islam which brings mercy to all nature and has become the belief and life guide of the Acehese people".

2. DIFFERENCES

One of the ways for the implementation of Islamic Sharia in the process of creating a social system in Brunei Darussalam, is by establishing modern institutions in accordance with Islamic demands which are divided into several fields, including the fields of education, culture, economics, and law. In the field of education, the use of Malay and English has the same emphasis in basic education. The difference is that the emphasis on English is balanced with the teaching of MIB, such as Islamic religious teachings which are the core moral teaching program in schools⁴⁷.

Sharia law applies to all people living in Aceh, whether Muslim or non-Muslim, but the authority of sanctioning Muslims is by the Sharia Courts and non-Muslims is by the Civil Courts. Meanwhile, Brunei, in October 2013, announced the nationalization of Islamic Sharia law which is enforced nationally meaning that it applies to Muslim and non-Muslim communities living in Brunei⁴⁸.

Aceh enacted earlier the Sharia Law in its territory with Law Number 44 of 1999 and Law Number 18 of 2001. Brunei enacted the Sharia Penal Code of 2013, the *first phase* of which began on that date with the implementation of *ta'zir* (a sentence imposed at the discretion of a judge because it is not contained in the *Qur'an* and *Hadith* or a general offense). Violation of the prohibition or *hudud* is punishable by amputation, stone throwing, death penalty, flogging, retaliation (*qisas*) and *diyat* for the crime of murder. In the first phase, there are 55 rules applied to violations with imprisonment or fines for women who become pregnant out of wedlock, penalties for disrespecting people who fast in Ramadan intentionally, penalties for people who

⁴³Kamarusdiana, *Qanun Jinayat Dalam Perspektif Negara Hukum Indonesia*, Ahkam, Volume. XVI, Nomor 2, Juli 2016, p 155

⁴⁴Ahyar Ari Gayo, *Aspek Hukum Pelaksanaan Qanun Jinayat di Provinsi Aceh*, Jurnal Penelitian Hukum, Nomor 740, April 2016, p. 133

⁴⁵Ahyar Ari Gayo, *Aspek Hukum Pelaksanaan Qanun Jinayat di Provinsi Aceh*, *Ibid*, pp. 133-134

⁴⁶Ahyar Ari Gayo, *Aspek Hukum Pelaksanaan Qanun Jinayat di Provinsi Aceh*, *Ibid*, p. 134

⁴⁷Arini Firdausiyah, *Penerapan Hukum Syariah Di Brunei Darussalam*, Digital Repository Universitas Jember, 2017, pp. 20-21

⁴⁸Eka Yudha Saputra, *Brunei Darussalam Mulai Terapkan Hukum Syariah Rajam dan Cambuk*, (<https://dunia.tempo.co/read/1192075/brunei-darussalam-mulai-terapkan-hukum-syariah-rajam-dan-cambuk/full&view=ok>), accessed on 28 March 2024

celebrate holidays other than Islamic holidays in public places, and penalties for Muslim men who leave Friday prayers and propagate other religions without permission other than Islam⁴⁹.

The *second stage* of the implementation of Islamic Sharia was 12 months after the first stage; in this second stage, the Sharia Penal Law provides punishment for alcohol drinkers and thieves, namely cutting off hands and whipping aimed at deterring perpetrators. The third stage of the implementation of Islamic Sharia took place after two years of the second stage; this third stage includes stoning and beheading punishments that will be given for criminal offences such as adultery, sodomy, blasphemy of Islam, insult to the Quran and the Prophet Muhammad (pbuh)⁵⁰.

The order was made by the Minister of Religious Affairs, not by the Attorney General regarding the date of its implementation. The jurisdictional order was the beginning of the previous legal system, the Continental European legal system (*Civil Law System*). Sharia Penal Law which used to only apply to people in Brunei, now applied also to anyone without exception even if the person is not a Muslim. There are several rules that apply to all, such as *liwat* (sodomy), *homosexuality* (same-sex lovers), and for those who do not pay *zakat*. There are also rules that apply only to Muslims, such as offences regarding pregnancy or childbirth out of wedlock. In addition, there are rules that only apply to non-Muslims, for example, committing the offense of ridiculing or mocking the *Qur'an* and *Hadith* of the prophets. Muslim communities who commit apostasy acts will be given sanctions in the form of *hadd*. Consuming liquor *orintoxicants* is an offence for Muslims, whereas for non-Muslims, consuming such beverages is an offence when consumed in public⁵¹.

Table. 1
Similarities and Differences in the Implementation of Sharia Law
in Indonesia and Brunei Darussalam

Similarities Enforcement of Sharia Law		Differences Enforcement of Sharia Law	
Indonesia (Special : Autonomy Aceh)	Brunei Darussalam	Indonesia (Special : Autonomy Aceh)	Brunei Darussalam
The factor influencing the implementation of Sharia Law is that the majority of the people are Muslim.		Sharia law is only enforced in Aceh Province	Sharia Law enforced nationwide
Apply Sharia Criminal Law or <i>Qanun Jinayat</i> which applies to Muslims and non-Muslims.		Violations of Sharia Law committed by Muslims, the authority is in the Sharia Court, while for non-Muslims the authority is in the Civil Court.	Violations of Sharia Law committed by both Muslims and non-Muslims belong to the authority of the Sharia Court.
Sanction for violations of Sharia law in accordance with Sharia Islam and the Qur'an.			
Sharia law regulates almost all aspects of people's lives.			

CONCLUSION

The difference in the institutional system between Indonesia and Brunei Darussalam affects the existence of the application of Sharia Law in the two countries. In its development, Sharia Law in Indonesia only applies in the Aceh region; besides Aceh, there is no other region in Indonesia that applies Sharia Law as the main source of law. One of the reasons why Sharia Law can be applied in the Aceh region is because the people living in the Aceh region are homogeneous people with similarities in terms of beliefs. In Brunei Darussalam, Sharia Law is applied nationally, and not only in one region as in Indonesia. Brunei Darussalam enforces Islamic Sharia penalties, making the country the first country in Southeast Asia that fully implements Islamic law. Islamic Sharia enforcement in Brunei includes imprisonment or fines for offences, such as ignoring the performance of Friday prayers and unwed pregnancy. In addition, Islamic criminal law is also applied in the form of cutting hands, flogging, and death penalty by stoning for crimes, like sodomy and adultery.

The difference and similarity of Sharia Law in Indonesia and Brunei Darussalam is that Sharia Law in Brunei Darussalam is applied nationally which applies to all Bruneians, both Muslims and non-Muslims. Regarding violation of Sharia Law in Aceh for a Muslim, the authority to try him rests with the Aceh Sharia Court and for non-Muslims, the authority rests with the Civil Court. In Brunei Darussalam, for both Muslims

⁴⁹ Ann Black, *Brunei Darussalam: Small by Choice but Great in The Eyes of Allah*, The University of Queensland, hlm. 96-Bill Ozanick, *The Implications of Brunei's Sharia Law*, The Diplomat, (<https://thediplomat.com/2015/05/the-implications-of-bruneis-sharia-law/>), accessed on 28 March 2024

⁵⁰ Ann Black, *Brunei Darussalam: Small by Choice but Great in, Ibid* -Shodiq Ramadhan, *HukumanRajam dan PotongTanganDiberlakukan di Brunei Darussalam*, Nahimungkar.org, (<https://www.nahimunkar.org/hukuman-rajam-dan-potong-tangan-akan-diberlakukan-di-bruneidarussalam/>), access on Mar2024

⁵¹ Ann Black, *Brunei Darussalam: Small by Choice but Great in, Ibid*.

and non-Muslims who violate Sharia rules, the authority to try them rests with the Sharia Courts. Meanwhile, the similarity is on the enforcement of Islamic Sharia Law.

REFERENCES

BOOK

- [1]. Abdullah, A. G, Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia, Jakarta: Gema Insani Press, 2002
- [2]. Ali, M. D, Hukum Islam: Pengantar Tata Hukum dan Tata Hukum Islam di Indonesia, Cetakan Kesepuluh, Jakarta: Raja Grafindo Persada, 2002
- [3]. Arini Firdausiyah, Penerapan Hukum Syariah Di Brunei Darussalam, Digital Repository Universitas Jember, 2017
- [4]. Arskal Salim, Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism, Exploring Muslim Contexts, Edinburgh University Press In Association With The Aga Khan University (Intenational) in The United Kingdom Institute for The Study of Muslim Civilisations, 2015
- [5]. Asy-Syatibi, al-Muwafakat Fie Ushul asy-Syariat, (al-Qohiroh: Dar al-Hadis, 1427 H/ 2006 M) , 2/261-266, Tahun 2006
- [6]. Ayu Tifani Khairul Putri, Konstruksi Rezim Islam Brunei Darussalam Melalui Penerapan Syariah Islam, Universitas Muhammadiyah Malang, 2019
- [7]. Barrett, S, A Theory of Full International Cooperation . Journal of Theoretical Politics 11 (4) Sage Publications, 519-541, 1999
- [8]. Chris Barker, Cultural Studies: Teori dan Praktek. Yogyakarta: Bentang, 2005
- [9]. Dedi Soemardi, Pengantar Hukum Indonesia, Jakarta, Indhillco, 1997
- [10]. Ma'arif, A. S, Islam dan Pancasila Sebagai Dasar Negara: Studi tentang Perdebatan dalam Konstituante, Jakarta: LP3ES, 2006
- [11]. Moh. Mahfud MD, Pergulatan Politik dan Hukum di Indonesia, Yogyakarta: Gama Media, 1999, Dasar dan Struktur Kenegaraan, Jakarta: PT. RinekaCipta, 2001.
- [12]. Sitompul, A, Usaha-Usaha Mendirikan Negara Islam dan Pelaksanaan Syariat Islam di Indonesia, Jakarta: Misaka Galiza, 2008
- [13]. Sunny, I, Kedudukan Hukum Islam dalam Sistem Ketatanegaraan Indonesia", dalam Amrullah Ahmad dkk Mardani, Hukum Islam; Pengantar Ilmu Hukum Islam di Indonesia, Yogyakarta: Pustaka Pelajar, 2015

JOURNALS

- [14]. Ahyar Ari Gayo, Aspek Hukum Pelaksanaan Qanun Jinayat di Provinsi Aceh, Jurnal Penelitian Hukum, Number 740, April 2016
- [15]. Al Faruq, M, Penerapan Syari'ah Islam dalam Negara Bangsa di Indonesia, Jurnal El-Faqih, Volume 4, Number 2, October 2018
- [16]. Andi Muhammad Asrun, Mempertanyakan Legalitas Qanun Aceh: Sesuaikan Dengan Sistem Peraturan Perundang-Undangan, Kanun Jurnal Ilmu Hukum, Volume 21, Number 2, August 2019
- [17]. Ann Black, Ideology and Law: The Impact of The MIB Ideology on Law and Dispute Resolution in The Sultanate of Brunei Darussalam, Third Asian Journal of Comparative Law, Number 105, 2008
- [18]. Kenedi, J, Penerapan Syariat Islam Dalam Lintasan Sejarah dan Hukum Positif di Indonesia. Nuansa: Jurnal Studi Islam dan Kemasyarakatan, 10(1), 2017
- [19]. Mohdar Yanluar, Prospective Islamic Law in Indonesia, Journal of Humanity, Lecturer STAIN Ambon, Indonesia, Volume 3, Number 1, February 2015.
- [20]. Nasarudin Umar, Konsep Hukum Modern: Suatu Perspektif Keindonesiaan, Integrasi Sistem Hukum Agama dan Sistem Hukum Nasional, Walisongo, Volume 22, Nomor 1, Mei 2014
- [21]. Panji Putra Pratama, Ismail Munir, Alimni, Penerapan Syariah dan Hukum Islam di Indonesia, JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah, 8(3), 2023. Hlm. 1992-2001 P-ISSN: 2964-7231, E-ISSN: 2614-3658 DOI: <https://doi.org/10.24815/jimps.v8i3.25495>, accessed on 28 Maret 2024
- [22]. Panji Putra Pratama, Ismail Munir, Alimni, Penerapan Syariah dan Hukum Islam di Indonesia, JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah, 8(3), 2023. Hlm. 1992-2001 P-ISSN: 2964-7231, E-ISSN: 2614-3658 DOI: <https://doi.org/10.24815/jimps.v8i3.25495>, accessed on 28 Maret 2024
- [23]. Syahrizal, Dimensi Pemikiran Hukum Dalam Implementasi Syariat Islam di Aceh, Dinas Syariat Islam, 2007, hlm. 9-Dikutip Dalam Kamarusdiana, Qanun Jinayat Dalam Perspektif Negara Hukum Indonesia, Ahkam, Volume. XVI, Number 2, July 2016

WEBSITES

- [24]. Arshiyah Khullar, Brunei Adopts Sharia Law Amid International Outcry, CNN, (<https://edition.cnn.com/2014/05/01/world/asia/brunei-sharia-law/index.html>), accessed on 28 March 2024
- [25]. BBC Indonesia, Syariah di Brunei Darussalam, (https://www.bbc.com/indonesia/forum/2014/05/140502_forum_shariah), accessed on 28 March 2024
- [26]. Council of ASEAN Chief Justice, Overview of Brunei Legal System, (<https://cacj-ajp.org/web/brunei/overview>)-Index Mundi, Brunei Legal System, (https://www.indexmundi.com/brunei/legal_system.html), accessed on 28 March 2024
- [27]. Daily Mail Reporter, Sultan of Brunei Hits Back at Foreign Criticism of Looming Implementation of Sharia Law that Will Introduce Amputations and Stonings as Punishments, (<https://www.dailymail.co.uk/news/article-2574637/Brunei-sultan-urges-country-support-Islamic-law.html>), accessed on 28 March 2024
- [28]. Eka Yudha Saputra, Brunei Darussalam Mulai Terapkan Hukum Syariah Rajam dan Cambuk, (<https://dunia.tempo.co/read/1192075/brunei-darussalam-mulai-terapkan-hukum-syariah-rajam-dan-cambuk/full&view=ok>), accessed on 28 March 2024
- [29]. <https://www.kompas.com/skola/read/2019/12/29/200000469/sistem-hukum-anglo-saxon-perbedaannya-dengan-sistem-eropa-kontinental?page=all>, accessed on 28 June 2022
- [30]. Muhammad Alashari, Everything You Need To Know About Sharia Law/Islamic Law, August 2019, hlm.2, https://www.researchgate.net/publication/335320513_Everything_You_Need_to_Know_About_Syaria_Islamic_Law, accessed on 27 July 2023
- [31]. Muhammadiyah.or.id, Sejarah Muhammadiyah, (<https://muhammadiyah.or.id/sejarah-muhammadiyah/>)-Serafica Gischa, Sejarah Singkat Berdirinya Muhammadiyah, Kompas.com, (<https://www.kompas.com/skola/read/2020/07/17/164408569/sejarah-singkat-berdirinyamuhammadiyah?page=all>), accessed on 28 March 2024
- [32]. Mui.or.id, Sejarah MUI, (<https://mui.or.id/sejarah-mui/>) - Wikipedia Indonesia, Majelis Ulama Indonesia, (https://id.wikipedia.org/wiki/Majelis_Ulama_Indonesia), accessed on 28 March 2024

- [33]. Panji Putra Pratama, Ismail Munir, Alimni, Penerapan Syariah dan Hukum Islam di Indonesia, *JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah*, 8(3), 2023. Hlm. 1992-2001 P-ISSN: 2964-7231, E-ISSN: 2614-3658 DOI: <https://doi.org/10.24815/jimps.v8i3.25495>, accessed on 28 Maret 2024
- [34]. Robin Gardner, MLS, The University of Melbourne, Southeast Asean Legal Research Guide: Introduction to Brunei Darussalam & Its Legal System, <https://unimelb.libguides.com/c.php?g=402982&p=4622754>, accessed on 27 July 2023
- [35]. Sistem peradilan pidana Indonesia: suatu pengantar, <https://perpustakaan.mahkamahagung.go.id> › slims › pusat, accessed on 27 June 2023
- [36]. Thorsten Koch, MA. Islamic Law: Ordained Shari'ah Principles & Man-Made Code, University of Wales Trinity Saint David, June 30, 2017, hlm.2, diakses pada tanggal 23 Juli 2023, https://www.researchgate.net/publication/318044038_Islamic_Law_Ordained_Shari'ah_Principle s_v_Man-Made_Code_UWTSD_2017

LAWS AND REGULATIONS

- [37]. Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations
- [38]. Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations