



The Role of Islamic Law in the Formation and Interpretation of Positive Law: A Case Study of the Constitutional Court

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Abstract: *This research discusses the role of Islamic law in the formation and interpretation of positive law in Indonesia through a study of the decisions of the Constitutional Court. The background of this research is the importance of understanding the extent to which the principles of Islamic law are accommodated in the national legal system, especially in the process of legislation and law review. In a plural legal system like Indonesia, Islamic law is often faced with challenges of harmonization with the constitution and human rights principles. This research uses a normative qualitative method with a juridical-constitutional approach and analysis of relevant Constitutional Court decisions. Data were obtained through literature study, documentation of the Constitutional Court's decision, as well as fiqh literature and Islamic legal theory. The results of the analysis show that the Constitutional Court selectively integrates Islamic legal values, especially in cases related to public morality, civil rights, and the Islamic economic system. Islamic law is not a formal source of national law in Indonesia, however, its values have contributed substantially to the formation of positive law and strengthened the ethical and justice dimensions of the Indonesian legal system. It is recommended that courts and lawmakers continue to open space for Islamic legal values that are in line with the constitution and principles of universal justice.*

Keywords: *Islamic law, Constitutional, positive law, maqāṣid sharia, jurisprudence*

Introduction

Indonesia is a legal state that has a pluralistic legal system, where various sources of law-including customary law, Western law, and Islamic law-are recognized in state and social practices.¹ Islamic law, as one of the legal systems that lives and develops in Indonesian Muslim society, plays an important role in the formation of moral values and social norms.² As a country with a majority Muslim population, sharia values have influenced the formation of national positive law, especially in the fields of family law, sharia economy, and some aspects of criminal law.³

In the constitutional system, the Constitutional Court (MK) has a central role as the guardian of the constitution, including in examining laws against the 1945 Constitution.⁴ The Constitutional Court often considers not only formal and juridical aspects in its decisions, but also philosophical and moral aspects, including religious values such as Islamic law.⁵ In its various decisions, the Constitutional Court has shown a tendency to adopt sharia principles as a basis for consideration, without ignoring the universal principle of constitutionality.⁶ This phenomenon shows that there is room for dialog between Islamic law and positive law in the process of legal interpretation at the constitutional level.⁷

Theoretically, the relationship between Islamic law and positive law can be analyzed from the perspective of legal pluralism and legal integration.⁸ Legal pluralism recognizes the existence of more than one legal system that applies simultaneously in a country or society.⁹ In the Indonesian context, this pluralism is reflected in the interaction between customary law, state law and religious law that influence each other in the formation and implementation of law.¹⁰ This is interesting to examine and

¹ Jimly Asshiddiqie, *Introduction to Constitutional Law*, 1 Cet. 5 (Jakarta: Rajawali Pers, 2011).

² Ahmad Badrut Tamam, "Religious Research: An Introduction," *Madinah: Journal of Islamic Studies* 3, no. 1 (2016): 9-23.

³ Ahmad Qodri Abdillah Azizy, "National Law: Eclecticism of Islamic Law and Common Law," 2004.

⁴ Constitutional Court of the Republic of Indonesia, *Constitutional Court Guidelines* (Jakarta: Sekretariat General of the *Constitutional Court*, 2010).

⁵ Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: ISEAS, 2007).

⁶ Hosen.

⁷ Hosen.

⁸ John Griffiths, "What Is Legal Pluralism?", *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1-55.

⁹ Griffiths.

¹⁰ Bernard Arief Sidharta, *Reflections on the Structure of Legal Science* (Bandung: Mandar Maju, 2000).

make this theory as a tool to analyze the Constitutional Court's decision to assess how much influence religious law has on the Constitution.

Legal integration theory emphasizes the importance of incorporating local or religious values into the national legal system to produce laws that are contextual and rooted in the culture of the community.¹¹ In this case, Islamic law is not only seen as a transcendent normative system, but also as a source of material law that can influence legislation and jurisprudence.¹² The Constitutional Court, as a constitutional guardian institution, has interpretative authority that can be an integrative medium between religious norms and constitutional norms.¹³

Various previous studies have highlighted the integration of Islamic law in Indonesia's national legal system. For example, Qodri Azizy asserts that Indonesian national law is eclectic, selectively combining elements from Islamic and Western law.¹⁴ Research by Nadirsyah Hosen also shows that in judicial practice, including in the Constitutional Court, there is a tendency to accommodate Islamic values in the decision-making process, especially in sensitive issues relating to public morality and the value of justice.¹⁵

Another study by Asrorun Ni'am Sholeh examined the role of the Constitutional Court in shaping law through judicial review and found that religious considerations, especially Islam, often become ethical references in decisions related to human rights and family law.¹⁶ However, there are not many studies that specifically review systematically how Islamic law is used by the Constitutional Court in the formation of jurisprudence.¹⁷ Therefore, this research is present to fill this void.

This research uses a qualitative juridical-normative method with a library research approach and a legislative and jurisprudential approach.¹⁸ Primary data is obtained from Constitutional Court decisions related to Islamic values in legal

¹¹ Hj. Nadiyah Hj. Diana Rahmi, *Religious Courts and Islamic Shari'a Courts in the Province of Nanggroe Aceh Darussalam in the Indonesian Legal System* (Yogyakarta: Zahir Publishing, 2023).

¹² Diana Rahmi.

¹³ Jimly Asshiddiqie, *Peradilan Etik Dan Etika Konstitusi: Perspektif Baru Tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics (Edisi Revisi)* (Sinar Grafika, 2022).

¹⁴ Azizy, "Hukum Nasional: Eklektisisme Hukum Islam Dan Hukum Umum."

¹⁵ Hosen, *Shari'a and Constitutional Reform in Indonesia*.

¹⁶ Nurul Etika, *Qanun Jinayat Aceh: Dinamika Sosial Politik Dan Aspek Fiqhiyah* (Penerbit A-Empat, 2024).

¹⁷ Etika.

¹⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 1985).

interpretation, while secondary data comes from Islamic law literature, constitutions, and legal theories. The criteria for selecting Constitutional Court decisions are based on three main things: (1) decisions that explicitly or implicitly consider the principles of Islamic law, such as *al-'adl* (justice), *maslahah* (benefit), and *musawah* (equality); (2) decisions that have a significant impact on the formation of national law or constitutional interpretation; and (3) decisions that touch on public issues relevant to the discourse of Islamic law, such as civil rights, Islamic economics, and social morality. Using these criteria, several key decisions were selected that represent patterns of integration of Islamic law values in the constitutional process. The analysis technique used is descriptive-analytical, which explains how Islamic legal values are contained and considered in the Constitutional Court's decisions, and assesses the extent to which these values influence the direction of positive law.¹⁹

In the Indonesian national legal system that adheres to the principle of legal pluralism, the relationship between Islamic law and positive law raises various interesting issues to be examined. One of the main issues that arise is how Islamic law plays a role in the formation of positive law in Indonesia, both through legislation and in judicial practice by judicial institutions, especially the Constitutional Court. In this context, it is important to see whether sharia values are only a source of ethics or have undergone a formalization process in state legal products.

In addition, the question arises to what extent the Constitutional Court as a constitutional interpretation institution considers the principles of Islamic law in its decisions. Are these values used only as moral considerations or have they become an integral part of the legal argumentation that influences the substance of the decision? The formulation of this problem is important to understand the dynamics between Islamic law and positive law in the realm of state administration and constitutional justice. Furthermore, it is also necessary to explore the concrete form of integration of Islamic law into the jurisprudence of the Constitutional Court. Are there certain patterns or trends in the use of sharia arguments or values in certain cases, such as family law, sharia economics, or human rights? This will provide an overview of how Islamic norms are translated into constitutional practice in Indonesia.

This research aims to identify and analyze the contribution of Islamic law in the formation of positive law in Indonesia. This objective is based on the need to

¹⁹Soekanto and Mamudji.

understand how the national legal system opens space for the integration of sharia values, both explicitly in legislation and implicitly in the process of legal interpretation by the judiciary. Thus, this research wants to highlight the position of Islamic law not only as a source of morality, but also as part of the construction of state law

More specifically, this research aims to examine the role of the Constitutional Court in considering the values of Islamic law in its decisions. This research will explore whether these considerations are normative, philosophical, or merely symbolic. Through the analysis of a number of relevant Constitutional Court decisions, it is hoped that it can be seen how Islamic law influences the direction and content of decisions that have binding legal force. Another goal is to reveal the concrete form of integration of Islamic law in the jurisprudence of the Constitutional Court. By studying juridical patterns in decisions that touch on Islamic issues, this research is expected to contribute to the development of legal integration theory and offer a new perspective in contemporary Islamic law discourse in Indonesia.

Islamic Law in the Structure of National Law

Islamic law in Indonesia is not part of the formal state legal system in the sense of being a stand-alone source of written law, but its existence cannot be separated from the social and cultural life of the community. The principles of Islamic law have long influenced the social norms of Indonesian Muslim society, and in many cases, it is accommodated into positive law through the legislative process.²⁰

The Indonesian Constitution, particularly Article 29 of the 1945 Constitution, provides a normative basis for the recognition of religious values, including Islam, in state life.²¹ In practice, Islamic law is widely adopted in formal legal products such as the Marriage Law, Zakat Law, Religious Courts Law, and Sharia Banking Law.²² This shows that Islamic law has become a source of material inspiration for national law, although it has not been recognized as a formal source in the Indonesian legal system.²³

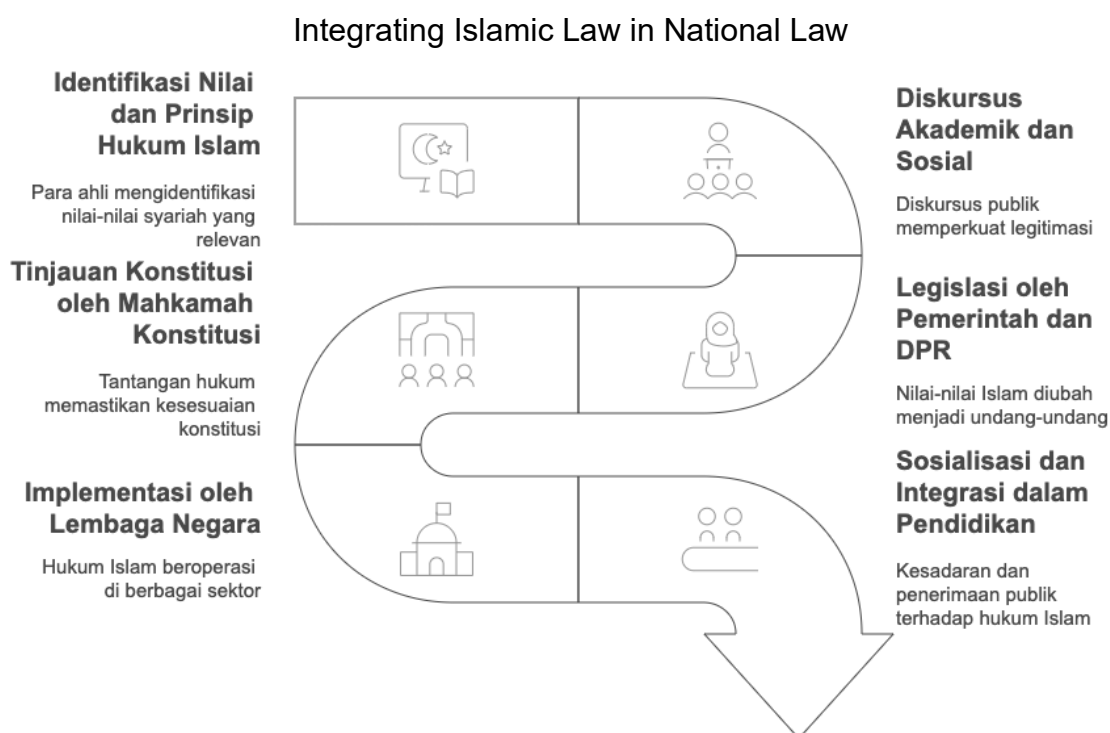
²⁰Edi Susanto, *Dimensi Studi Islam Kontemporer* (Kencana, 2016).

²¹Feby Yudianita, Mexasai Indra, and Abdul Ghafur, "Tinjauan Yuridis Terhadap Aliran Kepercayaan Dihubungkan Dengan Pasal 29 Ayat 2 UUD 1945" (Riau University, 2015).

²²Eka Sakti Habibullah, "Hukum Ekonomi Syariah Dalam Tatanan Hukum Nasional," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 5, no. 09 (2017).

²³A Sukoco, "KEDUDUKAN HUKUM ISLAM DALAM SISTEM HUKUM NASIONAL," *Jurnal Hukum Keluarga Islam El-Qisth* 4, no. 01 (2021).

In Indonesia's pluralistic legal system, the existence of Islamic law has a significant position as one of the sources of value in the formation of national law.²⁴ Although not explicitly mentioned as a formal source of law in the hierarchy of legislation, Islamic law has played an important role in shaping the normative structure of positive law, especially in the fields of family law, sharia economy, and public morals. The presence of the Constitutional Court as a constitutional guardian institution provides interpretative space for legal norms, which often adopt Islamic law principles as part of philosophical, sociological, and juridical considerations.²⁵ This phenomenon shows that Islamic law is not a separate entity from the legal framework of the state, but has the potential to become a source of moral and legal principles that contribute to the formation and interpretation of national law that is just.



Source : Napkin Ai

1. Identification of Islamic Legal Values and Principles

The absorption of Islamic law into national law begins with the process of identifying sharia values that are relevant and contextual in the life of the state.²⁶

²⁴Azizy, "Hukum Nasional: Eklektisisme Hukum Islam Dan Hukum Umum."

²⁵Sarifudin Sarifudin and Kudrat Abdillah, "Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 Dalam Bingkai Hukum Progresif," *Jurnal Yuridis* 6, no. 1 (2019): 94–111.

²⁶Azizy, "Hukum Nasional: Eklektisisme Hukum Islam Dan Hukum Umum."

These values are usually sourced from the principles of maqāṣid al-syarī'ah which include the protection of religion (ḥifẓ al-dīn), soul (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), offspring (ḥifẓ al-nasl), and property (ḥifẓ al-māl).²⁷ This process is carried out by Islamic law experts, scholars, and academics through ushul fiqh studies, ijtihād, and fatwas that are contextual and solutive.²⁸ These values are then assessed for their compatibility with the general principles of the constitution and the legal needs of modern society.²⁹

2. Academic and Social Discourse

Once Islamic values are identified, the next stage is to bring them into the public sphere through academic and social discourse. Scientific forums, religious seminars, fatwas of the Indonesian Ulema Council (MUI), and the mass media become channels of social legitimacy that strengthen the proposal that Islamic values be incorporated into the positive legal system.³⁰ This process also marks that Islamic law does not only apply among certain communities, but has moral legitimacy in the wider society. This discourse is important because in a democratic legal system, social acceptance is one of the bases for legitimizing a norm into positive law.³¹

3. Legislation by the Government and Parliament

The third stage is the legislative process, which is the transformation of Islamic legal values into written legal norms in the form of laws.³² This process can come from the initiative of the DPR, the government, or the results of community encouragement through the aspirations of Islamic organizations. In the formation of the law, harmonization is carried out between Islamic values and the principles of Pancasila, the 1945 Constitution, and human rights so that there is no conflict of norms.³³ This harmonization aims to maintain the inclusiveness of national law and

²⁷Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought (IIIT), 2008).

²⁸S H I Amrullah Hayatudin, *Ushul Fiqh: Jalan Tengah Memahami Hukum Islam* (Amzah (Bumi Aksara), 2021).

²⁹Sidharta, *Refleksi Tentang Struktur Ilmu Hukum*.

³⁰Slamet Mujiono, "PERLINDUNGAN TERHADAP KONSUMEN MUSLIM DALAM KONTEKS HUKUM EKONOMI INDONESIA (KAJIAN LABELISASI DAN SERTIFIKASI HALAL)" (Universitas Islam Indonesia, 1998).

³¹Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*.

³²Soekanto and Mamudji, *Penelitian Hukum Normatif*.

³³Mahkamah Konstitusi RI, *Panduan Legislasi* (Jakarta: : Setjen MK, 2012).

ensure that sharia principles do not conflict with the constitutional principles of the state.³⁴ One example of the implementation of this stage is the enactment of Law No. 21/2008 on Islamic Banking.³⁵

4. Constitutionality test by the Constitutional Court

If a legal product containing Islamic values is legally questioned, the constitutional testing mechanism can be submitted to the Constitutional Court (MK). The Constitutional Court acts as a tester of whether the norm is contrary to the constitution or in line with the spirit of the 1945 Constitution.³⁶ In practice, the Constitutional Court does not close itself to religious values, including Islamic law, as long as it can be proven to be philosophically, juridically and sociologically relevant. For example, in Constitutional Court Decision No. 46/PUU-VIII/2010, the Court considered Islamic values in protecting the rights of children out of wedlock.³⁷ This constitutional test serves as a filter to prevent discriminatory legislation in the name of religion.³⁸

5. Implementation by State Institutions

After going through the legislative process and/or constitutional review, laws containing Islamic values are implemented by state institutions according to their fields.³⁹ For example, Islamic family law is implemented by religious courts, while Islamic economics is implemented by Islamic banks and financial institutions. The Ministry of Religious Affairs also plays an important role in the implementation of Islamic law in the education, zakat, waqf and hajj sectors.⁴⁰ This implementation confirms that sharia values are not just symbolic norms, but operational in the legal life of the state. This implementation also shows that Islamic law is not exclusive, but is included in the national legal system that applies to all.⁴¹

6. Socialization and Integration in Education

³⁴Jimly Asshiddiqie, "Hukum Acara Pengujian Undang-Undang," 2006.

³⁵Halil Khusairi, "Hukum Perbankan Syariah," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 13, no. 1 (2015): 31–50.

³⁶Arhanuddin Salim et al., *Mozaik Kajian Islam Di Indonesia* (PT. Pustaka Alvabet, 2018).

³⁷Mahkamah Konstitusi RI, *Putusan No. 46/PUU-VIII/2010*, n.d.

³⁸Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*.

³⁹Alfian Yulianto, "Judicial Preview Sebagai Mekanisme Penakaran Konstitusionalitas Rancangan Undang-Undang," *Journal of Indonesian Law* 1, no. 1 (2020): 1–34.

⁴⁰Pepen Irpan Fauzan and Ahmad Khoirul Fata, "Positivisasi Syariah Di Indonesia, Legalisasi Atau Birokratisasi?," *Jurnal Konstitusi* 15, no. 3 (2018): 592–615.

⁴¹S H Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Sinar Grafika, 2021).

The final stage of the absorption of Islamic law into national law is the socialization and integration of these values into public education and legal awareness.⁴² Socialization is carried out by the government, Islamic organizations, and educational institutions so that people understand and accept legal norms originating from Islam. On the other hand, integration in the legal education curriculum aims to make prospective law graduates understand the position of Islamic law scientifically and constitutionally.⁴³ Without this stage, laws derived from Islamic values are vulnerable to being rejected or misunderstood by the public.

The Role of the Constitutional Court as a Medium of Integration

The Constitutional Court has an important authority in maintaining the constitutionality of legislation, which allows this institution to become a space for integration between the values of Islamic law and positive law.⁴⁴ In practice, the Constitutional Court often refers to religious values as part of philosophical, moral, and even sociological considerations in assessing a legal norm.⁴⁵

One concrete example is the Constitutional Court Decision No. 46/PUU-VIII/2010 on the recognition of the status of out-of-wedlock children. In this decision, the Court accommodated religious perspectives, including principles in Islamic law, which recognize the rights of out-of-wedlock children to their mothers and humane legal protection.⁴⁶ The Court stated that the recognition of the rights of out-of-wedlock children is part of the protection of human rights and the principle of substantive justice that is not contrary to religious values. In the deliberations of the judges, there were differences of opinion on the extent to which such recognition did not contradict religious norms. Some constitutional judges emphasized the principles of substantive justice and the protection of human rights as the main basis, while others highlighted the importance of not violating sharia provisions regarding nasab. Although the Court ultimately decided to recognize the rights of unmarried children, there was a dissenting

⁴²Wahyudin Darmalaksana, "Filsafat Dan Politik Hukum Islam Perbankan Syariah" (Sentra Publikasi Indonesia, 2022).

⁴³Idul Rishan, *Teori & Hukum Konstitusi* (Sinar Grafika, 2024).

⁴⁴Abdul Rasyid Thalib and M Sh, *Wewenang Mahkamah Konstitusi Dan Implikasinya Dalam Sistem Ketatanegaraan Republik Indonesia* (PT Citra Aditya Bakti, 2018).

⁴⁵Yuli Asmara Triputra, "Implementasi Nilai-Nilai HAM Global Ke Dalam Sistem Hukum Indonesia Yang Berlandaskan Pancasila," *Jurnal Hukum Ius Quia Iustum* 24, no. 2 (2017): 279–300.

⁴⁶Ahmad Farahi and Ramadhita Ramadhita, *Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010* (Maulana Malik Ibrahim State Islamic University of Malang, 2016).

opinion that rejected the extension of civil rights to biological fathers, on the grounds that it was not in line with Islamic law and Indonesian legal culture.

Another example is the Constitutional Court Decision No. 93/PUU-X/2012 regarding the enforceability of the Syariah Banking Law. The Court in its reasoning emphasized that Islamic banking is the implementation of the people's constitutional right to practice religion, including in economic activities.⁴⁷ This reflects the Court's recognition of the principle of muamalah in Islam as a legitimate part of the national economic system. Here, too, there are internal dynamics between judges. Some judges emphasized aspects of religious freedom and diversity of economic systems as normative justifications, while others questioned the implications of segregating economic legal systems on the basis of religion. Nevertheless, the majority of judges agreed that the principles of muamalah in Islam can be accommodated as long as they do not conflict with constitutional principles, such as non-discrimination and social justice.

Through these two decisions, it is clear that the Constitutional Court acts as a bridge between the universal principles of the constitution and the particular norms of Islamic law that live in society.⁴⁸ The different views among judges show that the integration of Islamic values in national law is not a single process, but rather the result of a dialectic between religious norms, constitutional principles and social realities. This shows that sharia values are not only compatible with positive law, but can enrich the ethical and moral dimensions of legislation and law enforcement.

Principles of Islamic Law Accommodated in the Constitutional Court Decision

In several of the Constitutional Court's decisions, it can be seen that key principles in Islamic law such as justice (*al-'adl*), benefit (*maslahah*), equality (*musawah*), and the prohibition of *madharat* (*la dharara wa la dhirar*) are part of the argumentative narrative.⁴⁹ For example, the principle of *maslahah* was used in the Constitutional Court's Decision on the Minerba Law (No. 10/PUU-XII/2014), where the Court emphasized the importance of natural resource management for the benefit of

⁴⁷Ahmad Baihaki and M Rizhan Budi Prasetya, "Kewenangan Absolut Pengadilan Agama Dalam Penyelesaian Sengketa Ekonomi Syariah Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-XI/2012," *Krtha Bhayangkara* 15, no. 2 (2021).

⁴⁸Taufik Firmanto, Apriyanto Apriyanto, and Rahma Melisha Fajrina, *Buku Referensi Dasar-Dasar Hukum: Teori Dan Konsep* (PT. Sonpedia Publishing Indonesia, 2024).

⁴⁹Wahbah Zuhaili, *Ushul Al-Fiqh Al-Islami* (Damaskus: Dar al-Fikr, 2005).

the people and environmental balance, values that are also taught in maqashid sharia.⁵⁰

The principle of justice in Islam, which includes distributive and corrective justice, is often used in assessing the constitutionality of norms that have an impact on inequality or discrimination.⁵¹ The Constitutional Court, in Decision No. 5/PUU-V/2007 on Elections, cited the principle of justice as a basis for invalidating legal provisions deemed detrimental to citizens' rights in politics.⁵²

The implementation of Islamic legal values in the national legal system is not always present in an explicit form through normative legislation, but is also reflected in decisions of the Constitutional Court that consider the philosophical and moral aspects of sharia principles. In many cases, the Court has shown sensitivity to universal values in Islam, such as justice, benefit, protection of rights, and public morality, which are in line with the objectives of the Indonesian constitution. The adoption of these principles not only demonstrates the flexibility of Islamic law in a democratic system, but also confirms the ethical and substantive contribution of Islamic law in the formation of constitutional jurisprudence. The following table presents a number of key principles in Islamic law that have been accommodated in Constitutional Court decisions, along with the juridical context of their respective applications.

⁵⁰Arifin Ma'ruf, "Problematika Stabilization Clauses Dalam Kontrak Karya PT Freeport Indonesia Dan Kewajiban Membangun Smelter Pasca Putusan MK No 10/PUU-XII/2014," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 5, no. 1 (2016).

⁵¹Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law (Bosnian Language): A Systems Approach* (International Institute of Islamic Thought (IIIT), 2017).

⁵²Khoerul Imam Mahdi, "Putusan MK No. 5/PUU-V/2007 Tentang Calon Independen Dalam Pilkada Perspektif Hukum Tata Negara Islam" (UIN Sunan Kalijaga, 2017).

Table 1. Principles of Islamic Law Accommodated in the Constitutional Court Decision

No.	Principles of Islamic Law	Brief Description	Example of Constitutional Court Decision	Decision Context
1	Justice (<i>al-'adl</i>)	Emphasizes balance of rights and obligations and substantial justice	Decision No. 5/PUU-V/2007	The Court invalidates electoral provisions that discriminate against independent candidates in favor of the principle of electoral justice
2	Benefit (<i>maslahah</i>)	Protection of public benefits and prevention of damage	Decision No. 10/PUU-XII/2014	Management of natural resources must be for the greatest benefit of the people
3	Protection of Children's Rights (<i>hifz al-nasl</i>)	Ensure protection of children's rights without discrimination	Decision No. 46/PUU-VIII/2010	Extra-marital children still have civil rights over their mother, in line with the principles of love and justice in Islam.
4	Rejecting Harm (<i>la dharara wa la dhirar</i>)	Prohibition of creating harm or loss to individuals or society	Decision No. 138/PUU-VII/2009	Constitutional Court overturns potentially harmful rules in Consumer Protection Law
5	Freedom of Religion (<i>hifz al-dīn</i>)	Safeguarding the right of Muslims to fully practice their religion	Decision No. 93/PUU-X/2012	The Constitutional Court affirmed the validity of the Islamic banking system as an implementation of the constitutional rights of Muslims
6	Equality (<i>musawah</i>)	All citizens have equal legal standing	Decision No. 24/PUU-XX/2022	Elimination of discrimination against certain groups in access to public services, in accordance with Islamic principles of equality
7	Moral Civilization (<i>akhlaq karimah</i>)	Promoting the rule of law based on noble morality	Decision No. 2/PUU-V/2005	The Court upheld the prohibition of pornography to safeguard public morals, in line with Islamic values

Source: Constitutional Court of Indonesia. Constitutional Court Decisions (2005-2022), available at: <https://www.mkri.id>

The integration of these values shows that Islamic law has great potential in providing an ethical and philosophical basis for Indonesian constitutionalism, as long as it is positioned proportionally and non-sectarian.⁵³ Islamic law in this context does not appear as a closed normative system, but as a source of value that is open to dialogue and rationalization in the state legal system.

The application of Islamic legal values in the national legal system is not always present in an explicitly normative form, but rather reflected in Constitutional Court decisions that consider the philosophical and moral aspects of sharia principles. In

⁵³Catur Wahyudi, *Marginalisasi Dan Keberadaan Masyarakat* (Yayasan Pustaka Obor Indonesia, 2015).

many cases, the Court has shown sensitivity to universal values in Islam such as justice, benefit, protection of rights, and public morality, which are in line with the objectives of the Indonesian constitution. However, it is important to distinguish that the concept of justice according to *maqāṣid al-syarī'ah* emphasizes the balance between individual rights and collective benefit, including the protection of the five main objectives of sharia (religion, soul, mind, offspring, and property), while constitutional justice tends to emphasize equal rights, individual freedom, and the protection of human rights within the framework of a democratic rule of law. In practice, criticism of the Constitutional Court shows that the use of the term *maslahah* or sharia principles in several decisions tends to be normative and symbolic, without being accompanied by in-depth methodological analysis as in the tradition of *usul fiqh*. This indicates that despite the accommodation of Islamic values, the Court's approach is still dominantly legal-formal rather than substantive when citing Islamic legal thought in its reasoning.

Challenges and Limitations

Although the Constitutional Court has made room for Islamic values in its decisions, there are still challenges in this integration process. One of them is the concern of some people about the possibility of developing a theocratic state if religious values are used as the main source of state law. For this reason, the Pancasila principle of the rule of law must be used as the main reference in balancing between religious values and the principles of democracy and human rights.

In addition, the absence of standardized methodological standards in using sharia principles as a source of judicial consideration is another obstacle. Most of the Constitutional Court's references to Islamic values are general and normative, not the result of a rigid *ushul fiqh* approach or legal *istinbath* methodology. This opens up opportunities for debate about the validity of methodological use of religious values in the constitutional realm.

Conclusion

This research shows that Islamic law has a significant role in the formation and interpretation of positive law in Indonesia, especially through the jurisprudence of the Constitutional Court (MK). Although not explicitly recognized as a formal source in the hierarchy of national legislation, Islamic law values such as justice (*al-'adl*), benefit (*maslahah*), equality (*musawah*), and protection of human rights have been

accommodated in various Constitutional Court decisions. This shows that Islamic law functions as a material source that is relevant and can be harmonized with the principles of the constitution, democracy, and human rights.

Through a number of important decisions such as Decision No. 46/PUU-VIII/2010 on the rights of unmarried children and Decision No. 93/PUU-X/2012 on sharia banking, the Constitutional Court explicitly integrated sharia values in the process of testing the constitutionality of laws. This strengthens the position of Islamic law as an integral part of the national legal system, rather than as a separate, particular norm. The process of absorption of Islamic law values into national law is carried out in stages: from value identification, public discourse, legislation, to constitutional testing and implementation by state institutions.

Islamic law has proven to be compatible with national law and able to enrich the moral, philosophical and ethical dimensions of law formation and interpretation in Indonesia. For this reason, careful harmonization between Islamic norms and constitutional principles is required in order to remain within the corridors of a democratic and plural state of law. As a suggestion, the Constitutional Court and lawmakers need to continue to open.

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