

HARMONIZATION OF SHARIA-BASED REGIONAL REGULATIONS IN BANJARMASIN CITY WITH THE CONSTITUTION: A NORMATIVE JURIDICAL STUDY

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Abstract

This study aims to examine the conformity of sharia-based regional regulations in Banjarmasin City with the 1945 Constitution of the Republic of Indonesia and to formulate harmonization strategies to ensure that such regulations remain consistent with the principles of the rule of law, legal pluralism, and the protection of constitutional rights. This research employs a normative juridical method using statutory, conceptual, and case approaches. The data were collected through a literature review of relevant legislation, sharia-based regional regulations in Banjarmasin City, and legal scholarship, and were analyzed qualitatively using systematic and constitutional interpretation. The findings indicate that several sharia-based regulations contain provisions that potentially conflict with constitutional principles, particularly freedom of religion, equality before the law, and non-discrimination. Although these regulations were enacted based on the aspirations of the local majority and intended to promote morality and public order, their implementation has not fully accommodated societal diversity and constitutional rights. This study proposes harmonization through substantive normative revisions, the application of inclusive legal principles, and the establishment of continuous evaluation and monitoring mechanisms. The results of this research are expected to contribute to policy formulation by local governments in developing regional regulations that are constitutional, equitable, and responsive to legal and social pluralism.

Keywords: constitutional law, legal pluralism, regional regulation, sharia-based regulation

Abstrak

Penelitian ini bertujuan untuk menganalisis kesesuaian peraturan daerah bernuansa syariah di Kota Banjarmasin dengan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 serta merumuskan strategi harmonisasi agar perda tetap sejalan dengan prinsip negara hukum, pluralisme, dan perlindungan hak konstitusional warga negara. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Data diperoleh melalui studi kepustakaan terhadap peraturan perundang-undangan, peraturan daerah syariah yang berlaku di Kota Banjarmasin, serta literatur hukum yang relevan, kemudian dianalisis secara kualitatif dengan penafsiran sistematis dan konstitusional. Hasil penelitian menunjukkan bahwa beberapa perda syariah masih memuat ketentuan yang berpotensi bertentangan dengan prinsip kebebasan beragama, persamaan di hadapan hukum, dan asas non-diskriminasi. Meskipun perda tersebut lahir dari aspirasi masyarakat mayoritas dan bertujuan menjaga moralitas serta ketertiban umum, implementasinya belum sepenuhnya memperhatikan keberagaman dan hak konstitusional seluruh warga negara. Penelitian ini merekomendasikan harmonisasi melalui revisi substansi norma, penerapan prinsip inklusivitas, serta pembentukan mekanisme evaluasi dan pengawasan berkelanjutan. Implikasi penelitian ini diharapkan

dapat menjadi rujukan bagi pemerintah daerah dan pembentuk kebijakan dalam merumuskan peraturan daerah yang konstitusional, adil, dan responsif terhadap pluralitas masyarakat.

Kata kunci: harmonisasi hukum, perda syariah, pluralisme hukum, undang-undang dasar

INTRODUCTION

The process of drafting laws and regulations in Indonesia is carefully regulated by Law Number 12 of 2011 on the Formation of Laws and Regulations, as amended by Law Number 15 of 2019 and Law Number 13 of 2022. One of the fundamental principles is the principle of *Bhinneka Tunggal Ika* (Unity in Diversity), which affirms that every law and regulation must respect the diversity of ethnicities, religions, races, and social groups within the framework of the Unitary State of the Republic of Indonesia.¹

Indonesia has consciously established itself as a state governed by law since its independence. Both the people and the government are subject to the rule of law.² The relationship between the state and religion is generally understood through three paradigms: integrative, symbiotic, and secular. These paradigms give rise to three models of statehood: secular states (which strictly separate state and religion), religious states, and non-religious states that do not clearly separate the two. In Indonesia, this relationship is grounded in Pancasila, which serves as a middle-path compromise between a secular state and an Islamic state.³ Consequently, Indonesia differs from other Asian countries, such as Iran as an Islamic (theocratic) state⁴ with its particular form of democratic socialization⁵ and South Korea as a secular state, despite the significant growth of Christianity,⁶ with a high degree of political freedom.⁷

¹ Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan Jo. Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.

² Farkhani Farkhani et al., 'Converging Islamic and Religious Norms in Indonesia's State Life Plurality', *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (December 2022): 424, <https://doi.org/10.18326/ijims.v12i2.421-446>.

³ Muchamad Ali Safa'at, 'The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations', *Constitutional Review* 8, no. 1 (May 2022): 114, <https://doi.org/10.31078/consrev815>.

⁴ Güneş Murat Tezcür and Taghi Azadarmaki, 'Religiosity and Islamic Rule in Iran', *Journal for the Scientific Study of Religion* 47, no. 2 (2008): 214–15, <https://doi.org/10.1111/j.1468-5906.2008.00403.x>.

⁵ Yaghoob Foroutan, 'Institutionalization of State Religion in the Islamic Republic of Iran: A Socio-Demographic Perspective', *Politics, Religion & Ideology* 22, no. 1 (January 2021): 89, <https://doi.org/10.1080/21567689.2021.1877668>.

⁶ Hyaeweol Choi, 'The Sacred and the Secular: Protestant Christianity as Lived Experience in Modern Korea: An Introduction', *Journal of Korean Studies* 25, no. 2 (October 2020): 280, <https://doi.org/10.1215/07311613-8551979>.

⁷ Chong-Min Park and Doh Chull Shin, 'Popular Support for Democracy and Its Institutions in Korea: The Dynamics and Sources of Regime Support and Institutional Trust', *International Review of Sociology* 16, no. 3 (November 2006): 678, <https://doi.org/10.1080/03906700600931483>.

In constitutional practice, compromises have emerged in the application of Islamic law through local governments both executive and legislative by producing regional regulations as a legal umbrella⁸ in the form of Sharia-based regional regulations in several regions whose populations are predominantly Muslim, including the City of Banjarmasin with 96.29% or 656.361 out of 681.683 residents being Muslim.⁹ Although these regional regulations are often based on local community aspirations and are considered to reflect certain moral values,¹⁰ their substance often contains norms that are exclusive to certain religious groups. This condition has the potential to create discrimination against citizens of different beliefs, or even against internal groups that hold different views within the same religion.¹¹

Several regional regulations contain provisions that directly or indirectly may limit, exclude, or provide different treatment to certain parties based on religion, ethnicity, race, gender, social status, or group.¹² This needs to be examined in depth because the validity of regional regulations must be in line with the hierarchy of legal norms and the principle of non-discrimination guaranteed by the 1945 Constitution of the Republic of Indonesia, especially Article 27 paragraph (1), Article 28D paragraph (1), Article 28E paragraphs (1) and (2), Article 28I paragraph (2), and Article 29 paragraph (2).¹³ Incompatibility of the substance of regional regulations with the Constitution has implications for the potential annulment through judicial review mechanisms at the Supreme Court.

On the other hand, regional autonomy provides broad authority to local governments to regulate their domestic affairs according to local characteristics. However, this authority is not absolute, regional regulations as local legal products must not conflict with higher regulations and must respect societal diversity.¹⁴ Therefore, efforts are needed to harmonize the law

⁸ Haedar Nashir, 'Bottom Up-Sharia Formalization in Indonesia's Nation State', *Jurnal Studi Pemerintahan*, 2017, 375, <https://doi.org/10.18196/jgp.2017.0052.352-382>.

⁹ Dinas Kependudukan dan Pencatatan Sipil Kota Banjarmasin, *Jumlah Penduduk Menurut Agama Dan Kecamatan Di Kota Banjarmasin* (2025), <https://satudata.banjarmasinkota.go.id/data-statistik/adccdf24-bddf-4300-9fd4-2c01c8d2af75>.

¹⁰ Gress Selly, 'INTEGRASI SYARIAH DALAM PERATURAN DAERAH INDONESIA: DIALEKTIKA FILSAFAT HUKUM ISLAM PROFETIK DAN PARADIGMA THOMAS KUHN: Sharia Integration in Indonesian Regional Regulations: Dialectics of Prophetic Islamic Law Philosophy and Thomas Kuhn's Paradigm', *Constitution Journal* 2, no. 1 (June 2023): 5, <https://doi.org/10.35719/constitution.v2i1.43>.

¹¹ Abdul Aziz, 'Hukum Melalui Perda Berbuansa Syariah: Analisis Kritis Dalam Bingkai Hukum Nasional Indonesia', *SABILUNA: Journal of Islamic Studies* 2, no. 1 (2025): 179, <https://journal.abdifama.com/index.php/sabiluna/article/view/15/14>.

¹² Ismail Hasani, *Pengujian Konstitusionalitas Perda* (Jakarta: Kepustakaan Populer Gramedia, 2020), 249.

¹³ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

¹⁴ Arifatul Mujahadah, Achmad Zahrul Muttaqin, Suhli, dan Septian Hendra Wijaya, "Implikasi Penerapan Perda Syariah terhadap Pluralisme di Indonesia," *DIKTUM: Jurnal Syariah dan Hukum* Vol 20 No. 2 (2022), 392.

between Sharia-based regional regulations and the 1945 Constitution of the Republic of Indonesia so that local aspirations remain accommodated without sacrificing the principles of unity, equality, and freedom of religion that are pillars of Indonesian society.

To identify potential conflicts between Sharia-based regional regulations in the City of Banjarmasin and the Constitution, a mapping of articles considered not aligned with the fundamental principles of the 1945 Constitution of the Republic of Indonesia. This mapping becomes important because it concretely shows how regional norms may clash with the principle of equality before the law, freedom of religion and belief, and the principle of non-discrimination.

Regional Regulation of Banjarmasin Number 1 of 2014 concerning Zakat Management, for example, regulates the obligation of muzakki to distribute zakat only through BAZNAS, salary deductions of civil servants (PNS) for zakat, and the calculation of zakat that is locked to the Shafi'i school. These provisions have the potential to restrict freedom of religion, force acts of worship that should be voluntary, and discriminate against adherents with different views.

Furthermore, Regional Regulation of Banjarmasin Number 2 of 2021 concerning Halal Tourism defines tourism solely based on Islamic law, requires certain religious facilities, and restricts non-halal forms of tourism. Religious norms are used as the basis of regional policy, thus creating discrimination against non-Muslim business actors and tourists, and restricting freedom of enterprise without an inclusive basis.

Regional Regulation of Banjarmasin Number 4 of 2005 concerning the Amendment to Regional Regulation of the City of Banjarmasin Number 13 of 2003 concerning the Prohibition of Activities during the Month of Ramadan also raises problems. Restrictions on food and beverage operating hours, prohibitions on eating in public places during the daytime, and sanctions for violations apply to all residents without distinguishing belief. This has the potential to impose certain religious norms on all members of society, including non-Muslims.

Regional Regulation of Banjarmasin Number 10 of 2017 concerning Supervision of the Sale of Alcoholic Beverages strictly regulates permits, locations, hours, and sales classification. Prohibitions on sales within a certain radius of places of worship and administrative and criminal sanctions may create discrimination if they are based solely on certain religious norms, especially if law enforcement is carried out without clear procedures.

Lastly, Regional Regulation of Banjarmasin Number 12 of 2023 concerning the Facilitation of the Implementation of Pesantren provides exclusive affirmation to pesantren

through empowerment programs, scholarships, financial assistance, and special recognition. This policy is not neutral because it does not provide equal treatment for other religious institutions, thus potentially violating the principle of legal equality and state neutrality in religious affairs.

Overall, the mapping shows that the potential conflicts of these regional regulations relate to restrictions on freedom of religion, the application of certain religious norms to all citizens, discrimination in access to public services, and the lack of state neutrality in the allocation of regional resources. Although these regional regulations are born from the aspirations of the majority community with noble objectives such as optimizing zakat, developing tourism, or maintaining public order, their implementation must still pay attention to the principles of inclusivity and equality as guaranteed by the Constitution.

Thus, legal harmonization becomes a strategic step so that local aspirations can run in line with national legal norms. This ensures that regional regulations are not only formally valid, but also have strong constitutional legitimacy.

Regional regulations that contain coercive provisions without considering pluralism of belief or without an objective public interest basis have the potential to violate these provisions.¹⁵ Phenomena at the national level show that the Ministry of Home Affairs has evaluated and annulled hundreds of regional regulations deemed contrary to higher regulations or the principle of *Bhinneka Tunggal Ika*. This fact confirms that harmonization of regional regulations with constitutional norms is an urgent need, not merely an academic discourse.

Several previous studies examined Sharia-based regional regulations in South Kalimantan in general and in the City of Banjarmasin in particular, but none explicitly focused on the constitutional harmonization of Sharia-based regional regulations in the City of Banjarmasin. In general, Buehler¹⁶ highlighted that democracy in Indonesia has grown due to fragmented Islamic authority, so that Sharia-based regional regulations are more often born from local dynamics rather than the dominance of Islamic parties at the national level. Buehler and Muhtada¹⁷ emphasized that the diffusion of Sharia-based regional regulations is uneven, with high concentrations in six provinces including South Kalimantan. The main factor in the spread is not geographical proximity or economic conditions, but the presence of local Islamist

¹⁵ Enggar Enggar, 'Otonomi, Perda Syariah Dan Living Law Di Negara Hukum Pancasila', *Jurnal Hukum Dan HAM Wicarana* 1, no. 2 (2022): 157, <https://doi.org/10.57123/wicarana.v1i2.24>.

¹⁶ Michael Buehler, 'Islam and Democracy in Indonesia', *Insight Turkey* 11, no. 4 (2009): 51–63.

¹⁷ Michael Buehler and Dani Muhtada, 'Democratization and the Diffusion of Shari'a Law: Comparative Insights from Indonesia', *South East Asia Research* 24, no. 2 (June 2016): 261–82, <https://doi.org/10.1177/0967828X16649311>.

networks outside the party system that play a major role in encouraging the birth of such regulations.

Buehler's study¹⁸ shows that Sharia-based regional regulations are instead widely adopted by secular political elites such as Golkar or PDIP. In South Kalimantan, Sharia-based regional regulations emerge from interactions between local elites and Islamist networks, not the dominance of Islamic parties. Meanwhile, Pisani and Buehler¹⁹ offer the "Alignment of Interests" framework which explains the motivations of politicians in adopting Sharia-based regional regulations, whether due to ideology, electoral needs, or patronage. In many regions, including South Kalimantan, Sharia-based regional regulations are more often used as instruments of political patronage and electoral legitimacy.

Other local researchers who specifically discuss regional regulations in South Kalimantan or the City of Banjarmasin include Na'imah²⁰ who examines the emergence of Sharia-based regional regulations in South Kalimantan using legal evaluation parameters, although still general at the provincial level. Tabroni and Nasruin²¹ examine the case of Qur'an completion in Banjar Regency through Banjar Regency Regional Regulation Number 4 of 2004, but are limited to a single regulation. Firdaus and colleagues²² highlight legislative conflict and the discriminatory impact of religion motivated regional regulations on minority groups using a socio-legal approach, but do not develop a harmonization scheme with the 1945 Constitution. Lastly, researchers have also discussed Regional Regulation of the City of Banjarmasin Number 4 of 2005 and offered the concept of religious moderation as a solution to intolerant content.²³ Therefore, this analysis includes a comparative analysis of various Sharia-based regional

¹⁸ Michael Buehler, 'Subnational Islamization through Secular Parties: Comparing Shari'a Politics in Two Indonesian Provinces', *Comparative Politics* 46, no. 1 (October 2013): 63–82, <https://doi.org/10.5129/001041513807709347>.

¹⁹ Elizabeth Pisani and Michael Buehler, 'Why Do Indonesian Politicians Promote Shari'a Laws? An Analytic Framework for Muslim-Majority Democracies', *Third World Quarterly* 38, no. 3 (March 2017): 734–52, <https://doi.org/10.1080/01436597.2016.1206453>.

²⁰ Hayatun Na'imah, 'LAHIRNYA PERDA BERBASIS SYARI'AH DI PROVINSI KALIMANTAN SELATAN', *Syariah: Jurnal Hukum Dan Pemikiran* 16, no. 1 (2016): 25–32, <https://doi.org/10.18592/sy.v16i1.1430>.

²¹ Faiq Tobroni and Muhamad Nasrudin, 'Legality and Legitimacy of Khatam Al-Quran: Study on Formalization of Islamic Law in Banjar Regency, South Kalimantan', *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 13, no. 1 (July 2024): 097–116, <https://doi.org/10.14421/qehd7d25>.

²² Muhammad Ananta Firdaus, Jalaluddin, and Nuril Khasyi'in, 'Legislative Conflicts on Religious Regulations: A Case Study in the Province of South Kalimantan, Indonesia.', *Pakistan Journal of Criminology* 16, no. 4 (December 2024): 417, <https://doi.org/10.62271/pjc.16.4.417.434>.

²³ Muhammad Torieq Abdillah, Ichwan Ahnaz Alamudi, and Rahimah Tul Sa'dah, 'Moderasi Beragama Menjawab Intoleransi Di Dalam Peraturan Daerah Kota Banjarmasin Nomor 4 Tahun 2005', *AL-MURABBI: Jurnal Studi Kependidikan Dan Keislaman* 9, no. 2 (January 2023): 1–11, <https://doi.org/10.53627/jam.v9i2.5021>.

regulations in the City of Banjarmasin or the development of a sustainable harmonization institution.

The novelty of this study lies in three aspects. First, this study focuses on all Sharia-based regional regulations in the City of Banjarmasin, not on one regulation or a phenomenon at the provincial level in general. Second, this study combines Hans Kelsen's theory of the hierarchy of norms, the principle of the rule of law, and legal pluralism, as well as the concept of harmonization of laws and regulations to assess their conformity with the 1945 Constitution. Third, this study proposes a practical harmonization model through the establishment of a regional harmonization team, mechanisms for identifying and revising problematic regional regulations, and a plan for continuous monitoring and evaluation. This will allow Sharia-based regional regulations in the City of Banjarmasin to continue reflecting local Islamic values without neglecting the principles of equality, non-discrimination, and protection of the constitutional rights of all citizens.

METHOD

This research uses a normative juridical method by focusing the study on analyzing the conformity of sharia-based regional regulations in the City of Banjarmasin with the provisions of the 1945 Constitution of the Republic of Indonesia through a statutory approach, a conceptual approach, and a case approach.²⁴ The research data are sourced from primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 jo. Law Number 13 of 2022, as well as sharia-based regional regulations in the City of Banjarmasin that are examined; secondary legal materials in the form of books, journals, and expert opinions; as well as tertiary legal materials such as legal dictionaries and encyclopedias. All legal materials are collected through library research and analyzed qualitatively by using systematic, grammatical, and constitutional interpretation to assess whether the substance of the regional regulations is in line with the principles of equality before the law, non-discrimination, and freedom of religion as guaranteed by the constitution.

RESULTS AND DISCUSSION

The Relationship between Banjar and Islam

²⁴ Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 3rd Global Conference on Business and Social Sciences (GCBSS-2016) on "Contemporary Issues in Management and Social Sciences Research", Kuala Lumpur, Malaysia, vol. 219 (May 2016): 203, <https://doi.org/10.1016/j.sbspro.2016.05.006>.

The Banjar Sultanate, located in the City of Banjarmasin, and the process of Islamization that took place in this region gave rise to a new identity and culture known as Banjar identity and culture, characterized by a strong Islamic orientation in various aspects. The formation of this new identity cannot be separated from the role of the local genius of the Banjar people, which is reflected in diverse cultural expressions. Through a deep understanding of the process of Islamization in Banjarmasin from the fifteenth century to the nineteenth century along with all of its social and communal activities, it is possible to discern patterns of social networks that shaped an Islamic society within the framework of the nation-state of the Banjar Sultanate, while at the same time presenting the reality of the existence of *Urang Banjar*.²⁵

During the reign of the sultans, Islamic law was applied quite extensively in the Banjar Sultanate, not only in the civil and criminal spheres, but also in matters of state administration. The peak of this strengthening of Islamic law was evident during the reign of Sultan Adam al-Watsiq Billah with the promulgation of the Sultan Adam Law (UUSA), which further consolidated the position of Islamic law within society. In this context, the Sultan did not merely function as the head of government, but was also positioned as *ulil amri* for the Banjar people, in line with the fundamental principles of Islamic law.

With the advent of Dutch rule, many legal provisions that had previously applied in the Banjar Sultanate were subsequently abolished or restricted. Nevertheless, some elements of the UUSA have remained alive and continue to be practiced to this day, both in the homeland (*banua*) and in migrant regions. These provisions have proven to remain effective in regulating the social life of the Banjar community. Considering that Indonesia's national law is a synthesis of Islamic law, customary law, and colonial legal heritage, efforts to re-strengthen laws imbued with Islamic nuances while revitalizing customary values that are in harmony with sharia constitute an important and relevant agenda.²⁶

Following the implementation of regional autonomy policies through Law Number 22 of 1999, which was later replaced by Law Number 32 of 2004 on Regional Government, each region obtained broader authority to regulate its own domestic affairs. This space of decentralization has been utilized by regional governments to produce various regional

²⁵ Yusliani Noor, 'SEJARAH PERKEMBANGAN ISLAM DI BANJARMASIN DAN PERAN KESULTANAN BANJAR (ABAD XV-XIX)', *Al-Banjari : Jurnal Ilmiah Ilmu-Ilmu Keislaman* 11, no. 2 (August 2012): 242–43, <https://doi.org/10.18592/al-banjari.v11i2.458>.

²⁶ M. Tahir, *Sejarah Dakwah Islam Di Kalimantan (Studi Pendekatan Dan Jaringan)* (Palembang: Bening Media Publishing, 2022), 65–66.

regulations, including in South Kalimantan, some of which regulate religious matters and public morality.

In general, the emergence of sharia-based regional regulations cannot be separated from the role of regional heads (governors, regents, and mayors), especially in regions with Muslim-majority populations and a strong Islamic culture. In such contexts, regional heads can utilize the cultural and religious support of society as a basis of political and social legitimacy for the enactment of sharia regional regulations.²⁷

The Existence of Sharia Regional Regulations in Indonesia

The main factor driving the emergence of sharia regional regulations is the existence of groups within society that seek to move Indonesia toward a religious state, in which the application of sharia becomes an obligation in state life.²⁸ This drive is intertwined with a theological view that sharia is rooted in theocentrism, namely placing God at the center of values and legal order.²⁹

The application of sharia law within the framework of Indonesia's national governmental and legal system is not a new phenomenon.³⁰ From a historical-political perspective, the emergence of various sharia regional regulations after the 1998 reform era can be read as a new channel toward a more democratic state life. During the New Order regime, many aspirations of Muslims were suppressed by state power, so the reform era became a "fresh breeze" for groups advocating the formalization of sharia in the public sphere.³¹

The emergence of sharia regional regulations is also inseparable from the regulation of regional autonomy in Article 1 point (6) of Law Number 23 of 2014 on Regional Government, which essentially defines regional autonomy as the "rights, authorities, and obligations of autonomous regions to regulate and manage their own governmental affairs and the interests of local communities within the system of the Unitary State of the Republic of Indonesia". This definition has then been interpreted as granting freedom for regions to manage governmental affairs by taking existing local characteristics into account. However, behind the progressive

²⁷ Na'imah, 'LAHIRNYA PERDA BERBASIS SYARI'AH DI PROVINSI KALIMANTAN SELATAN', 27–28.

²⁸ Suhli Suhli et al., 'Implikasi Penerapan Perda Syariah terhadap Pluralisme di Indonesia', *DIKTUM: Jurnal Syariah dan Hukum* 20, no. 2 (December 2022): 392, <https://doi.org/10.35905/diktum.v20i2.3117>.

²⁹ Moh Fadhil et al., 'Navigating the Tensions Between Sharia and Human Rights in Regional Legislation', *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (December 2024): 419, <https://doi.org/10.18860/j-fsh.v16i2.29031>.

³⁰ Syahrizal Abbas and Ramzi Murziqin, 'Sharia-Based Regional Regulations in the Indonesian National Law System', *Jurnal Ilmiah Peuradeun* 9, no. 3 (September 2021): 531, <https://doi.org/10.26811/peuradeun.v9i3.673>.

³¹ Selly, 'INTEGRASI SYARIAH DALAM PERATURAN DAERAH INDONESIA', 3.

objectives of regional autonomy, there are various challenges such as conflicts of interest, political will, and changes in the behavior of local elites. One manifestation of these conflicts of interest is reflected in the emergence of sharia regional regulations, which often trigger polemics both at the stage of formulation and in their implementation.³²

From the perspective of the relationship between Islamic law and national law, Pancasila as the *grundnorm* (basic norm) of the state demonstrates the presence of a dimension of national religiosity, particularly through the first principle “Belief in the One and Only God (Ketuhanan Yang Maha Esa)”.³³ Within this framework, a number of legal scholars, such as Mahfud MD, assert that Indonesia is neither a secular state nor an Islamic state, but rather the result of a compromise between the two, which subsequently gave rise to the concept of a *nation state religion*, namely a nation-state that is founded upon belief in God.

Problems arise at the practical level of regional governance in the era of regional autonomy. On the grounds of culture, identity, or distinctive regional characteristics, regional governments often use local identity as a “shield” of legitimacy in formulating the substance of regional regulations that contain religious norms.³⁴ This is where the problem lies: regional autonomy, which was intended to strengthen local democracy, can instead become an entry point for the formalization of religion into regional regulations.

With regard to the number of sharia regional regulations in Indonesia, to date there is no official data issued by the government. However, based on mapping across 34 provinces, it is stated that most of the 443 sharia regional regulations were adopted between 1998 and 2013 in several regencies within a number of relatively small provinces. The provinces with the highest number of sharia regional regulations are West Java (103), West Sumatra (54), South Sulawesi (47), South Kalimantan (38), East Java (32), and Aceh (25). Thus, around 67.7 percent (300 out of 443) of sharia regional regulations are concentrated in only these six provinces.³⁵ This data shows that sharia regional regulations have a fairly strong existence and are concentrated in certain regions. The pressure and ideas of Islamic formalization from groups

³² Enggar Wijayanto, ‘Otonomi, Perda Syariah, dan Living Law di Negara Hukum Pancasila’, *WICARANA* 1, no. 2 (September 2022): 153, <https://doi.org/10.57123/wicarana.v1i2.24>.

³³ Gazali Gazali, ‘PEMBENTUKAN PERATURAN DAERAH BERBASIS SYARIAH PERSPEKTIF OTONOMI DAERAH DAN HUKUM NASIONAL INDONESIA’, *Mu’amalat: Jurnal Kajian Hukum Ekonomi Syariah* 16, no. 1 (June 2024): 77, <https://doi.org/10.20414/mu.v16i1.10611>.

³⁴ Farida Patittingi et al., ‘RELASI NEGARA DAN AGAMA DALAM PERATURAN DAERAH BERNUANSA SYARIAH: PERSPEKTIF PANCASILA’, *Pancasila: Jurnal Keindonesiaan* 1, no. 1 (April 2021): 18, <https://doi.org/10.52738/pjk.v1i1.1>.

³⁵ Mohamad Hidayat Muhtar and Nur Kasim, *Peraturan Daerah Syariah Dalam Sistem Hukum Indonesia* (Purbalingga: Eureka Media Aksara, 2023), 7–8.

supporting sharia regional regulations have proven to be quite effective when viewed from the number of regulations that have been successfully enacted.³⁶

To assess whether sharia regional regulations are legally compatible or not, Na'imah sets out five important characteristics as benchmarks:

First, from the perspective of the Indonesian legal order, as regulated in Law Number 12 of 2011 on the Formation of Laws and Regulations, regional regulations are a type of legislation that occupies the lowest level in the legal hierarchy. This requires that regional regulations must not conflict with higher-level laws and regulations.

Second, from the perspective of substantive content. The material regulated by sharia regional regulations will determine whether such regulations are legally contradictory or not. Regional regulation content that explicitly regulates religious matters has the potential to conflict with the national legal order, because religious affairs are not within the authority of regional governments. Nevertheless, the boundaries regarding what constitutes "religious content" in regional regulations remain an area that is open to debate.

Third, from the perspective of *legal drafting*. The inclusion of the Qur'an and the Sunnah as sources of law for regional regulations is not in line with Indonesia's legal system, which is not a religious state. The inclusion of these two sources causes sharia regional regulations to be considered "defective" in terms of the procedures for drafting legislation (*legal drafting*) or formally, including in the context of drafting regional regulations.

Fourth, from the perspective of the application of sanctions. Regional regulations are only permitted to contain administrative sanctions and criminal sanctions within certain limits. Criminal sanctions in regional regulations may not exceed 6 (six) months of imprisonment, while fines are limited to a maximum of Rp50,000,000.00 (fifty million rupiah), as previously explained. If there are regional regulations that contain sanctions beyond these limits, including sanctions commonly known in Islamic criminal law for certain acts, then such regional regulations are legally problematic.

Fifth, from the aspect of legal ethics and morality (*law in ethic*). The making of sharia regional regulations must be understood proportionally, particularly by taking into account the background and conditions at the time the regulations were drafted. In some regions, there are regional regulations that are substantively more urgent to be enacted. However, these are instead set aside and preceded by the drafting of sharia regional regulations. This situation raises

³⁶ Juparno Hatta, 'Representasi Politis Pada Perda Syariah: Sebuah Kajian Kepustakaan', *Tazkir : Jurnal Penelitian Ilmu-Ilmu Sosial Dan Keislaman* 8, no. 2 (2022): 187, <https://doi.org/10.24952/tazkir.v8i2.6076>.

questions regarding policy priorities and the alignment of regional governments in responding to the real needs of society.

This phenomenon of sharia regional regulations naturally gives rise to pros and cons, including among Muslims themselves. Groups that are in favor argue that Islamic law should naturally become the legal foundation for national and state life, considering that Muslims constitute the majority of Indonesia's population. On the other hand, groups that oppose do not reject Islamic law itself, but rather reject the religious understanding of the first group. According to them, what is understood by the first group as "Islamic law" is in essence fiqh, namely a construction of the thoughts of earlier scholars that is historical and contextual in nature.³⁷

Harmonization of Sharia Regional Regulations with the Constitution in the City of Banjarmasin

The harmonization of regional regulations with the Constitution is an imperative within Indonesia's constitutional system. The 1945 Constitution of the Republic of Indonesia as the highest legal norm requires that every regional regulation enacted at the local level must always be consistent with constitutional provisions and higher-level laws and regulations. Sharia-based regional regulations must not conflict with higher regulations and must take into account the public interest and the principles of the rule of law. The existence of such regulations reflects the dynamics of local democracy and societal diversity within the framework of regional autonomy, yet it still requires oversight to ensure that it does not deviate from constitutional values.³⁸ In the context of the City of Banjarmasin, regional regulations that adopt norms based on Islamic teachings need to be examined for their compatibility with the principle of equality before the law and the principle of non-discrimination, so that the implementation of regional policies does not violate the constitutional rights of citizens.

This is because the debates that arise, when viewed from sharia regional regulations that generally regulate religious matters, particularly Islam, are certainly not appropriate and not in line with the provisions of Law Number 23 of 2014 on Regional Government. Moreover, the

³⁷ Mohamad Hidayat Muhtar, Nur Mohamad Kasim, and Irma Suryani, 'ISLAMIC LAW IN THE CONSTITUTION OF INDONESIA (a Study of Characteristics Sharia Local Regulations)', *TSAQAFAH* 19, no. 1 (May 2023): 239, <https://doi.org/10.21111/tsaqafah.v19i1.8717>.

³⁸ Bimba Valid Fathony, 'Dilema Penerapan Peraturan Daerah (PERDA) Syari'ah Di Indonesia', *Jurnal JISIPOLI* 9, no. 3 (2025): 100, <https://doi.org/10.31293/lg.v10i1.8801>.

substance regulated in these regional regulations enters into the substance of Islamic religious ideology.³⁹

The harmonization of sharia regional regulations is important because even though they are born from the aspirations of the majority of local communities as part of the nation's legal identity, Indonesia is a plural state that upholds diversity and the principle of equality before the law. This paradigm of legal pluralism originates from Griffiths as explained by Humfress,⁴⁰ who emphasizes that the understanding of law should be more open to diverse social realities, rather than being confined solely to the concept of state law.

The application of particular religious norms in regional regulations has the potential to give rise to exclusive provisions, trigger ideological tensions, cause discrimination against minority groups, or even conflict with the principles of human rights and constitutional democracy. Criticism of a number of sharia regional regulations in various regions shows the mixing of religious norms with civil authority, as well as differences in the application of Islamic law at the local level that create problems of standardization and legal uniformity.⁴¹ Therefore, harmonization with the Constitution becomes a strategic step to ensure that the objectives of regulation, namely maintaining morality and public order, remain aligned with the protection of the constitutional rights of all citizens.

The initial step in the strategy for harmonizing sharia regional regulations is to conduct identification and analysis of potential conflicts between the provisions of regional regulations and the 1945 Constitution of the Republic of Indonesia. This inventory aims to map articles that potentially violate constitutional principles, such as freedom of religion, equality before the law, and freedom to conduct business. Referring to Hans Kelsen's *Stufenbau Theory*,⁴² the legal system has a layered hierarchy, in which lower norms derive from and are based on higher norms, ultimately reaching the highest norm that is abstract and fundamental (*grundnorm*). A norm is declared valid if it is formed by an authorized authority on the basis of higher norms.⁴³ In the Indonesian context, this hierarchy is realized in the system of laws and regulations, so that regional regulations as local norms must be based on higher regulations and must not

³⁹ M. Yasin al Arif and Panggih F. Paramadina, 'Konstitutionalistas Perda Syari'ah Di Indonesia Dalam Kajian Otonomi Daerah', *As-Siyasi: Journal of Constitutional Law* 1, no. 1 (June 2021): 59, <https://doi.org/10.24042/as-siyasi.v1i1.8953>.

⁴⁰ Caroline Humfress, 'Legal Pluralism's Other: Mythologizing Modern Law', *Law and History Review* 42, no. 2 (May 2024): 155–56, <https://doi.org/10.1017/S0738248023000172>.

⁴¹ Risqilah, 'Implementasi Hukum Syariah Dalam Sistem Hukum Nasional', *LEGALITAS: Jurnal Ilmiah Ilmu Hukum* 10, no. 1 (2025): 20, <https://doi.org/10.31293/lg.v10i1.8801>.

⁴² Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967), 1–2.

⁴³ Kelsen, 8–9.

conflict with the 1945 Constitution of the Republic of Indonesia.⁴⁴ Therefore, sharia regional regulations in the City of Banjarmasin need to be harmonized so that even though they contain religious values, they remain in line with constitutional principles and guarantee the constitutional rights of all citizens.

Based on the results of the inventory, several sharia regional regulations in the City of Banjarmasin contain substantive provisions that potentially give rise to constitutional issues and therefore require harmonization. Details of these regional regulations are presented in the following table:

Table 2. Proposed Harmonization of Substantive (Material) Amendments to Sharia Regional Regulations in the City of Banjarmasin that Potentially Conflict with the 1945 Constitution of the Republic of Indonesia UUD NKRI 1945

Regional Regulation & Article	Provision Prior to Harmonization	Potential Violation of the 1945 Constitution	Proposed Provision After Harmonization	Substantive Changes
Regional Regulation on the Prohibition of Ramadan Activities - Article 3, Paragraphs (4) & (5)	It is prohibited to eat and drink in public places during the daytime throughout the month of Ramadan, applying to the entire community.	Article 28E paragraphs (1)-(2) (freedom of religion), Article 28I paragraph (2) (non-discrimination).	The prohibition applies only to those who voluntarily choose to comply; the government merely issues an advisory to respect Muslims who are fasting.	From an absolute prohibition to a consciousness-based advisory; does not compel non-Muslims.
Regional Regulation on Zakat Management - Article 8, Paragraph (1)	Muzakki are required to distribute zakat through the BAZNAS of Banjarmasin City.	Article 28E paragraphs (1)-(2), Article 29 paragraph (2).	Muzakki are encouraged to distribute zakat through BAZNAS or other official zakat institutions according to their respective beliefs.	From a single mandatory obligation to a freely chosen option of institution.
Regional Regulation on Zakat Management - Article 15, Paragraph (3)	The deduction of civil servants' salaries for zakat, infak, and sadaqah is carried out automatically.	Article 28E paragraphs (1)-(2), Article 28I paragraph (2).	Salary deductions are carried out based on the individual's written consent.	From automatic to voluntary with individual consent.
Regional Regulation on Halal Tourism - Article 8, Paragraph (2)	All business operators are required to provide prayer facilities, qibla direction, and	Articles 28E paragraphs (1)-(2) and 28I paragraph (2).	From mandatory for all businesses to a recommendation for businesses targeting muslim tourists; non-	From a universal obligation to a segment-based recommendation for tourists.

⁴⁴ Rikardo, Silvi Aulia Purwadini, and Sekar Fuad Maharany, 'Peranan Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia', *JURNAL HUKUM SASANA* 10, no. 1 (2024): 166, <https://doi.org/10.31599/sasana.v10i1.2110>.

	halal/non-halal information.		Muslim businesses are free to decide.	
Regional Regulation on Pesantren Facilitation – Article 7 paragraph (2) & Article 9 letters a–e Pesantren Facilitation Regional Regulation – Articles 17–18 & Articles 49–54	The local government is required to carry out planning, guidance, and special empowerment for pesantren. Regional Regulation provides APBD support, facility assistance, and grants exclusively for pesantren.	Article 27 paragraph (1), Article 28I paragraph (2), Article 29 paragraph (2) Article 28D paragraph (1), Article 28I paragraph (2).	The government provides guidance and empowerment for all religious educational institutions proportionally. The allocation of assistance is carried out equally for all religious-based educational or social institutions.	From being exclusive to pesantren only to being inclusive of all religious institutions. From exclusive assistance to inclusive assistance.

The table shows that efforts to harmonize sharia-based regional regulations do not merely involve changes in terminology, but also touch upon the substantive aspects of the norms being regulated. The transformation of provisions that are exclusive in nature into more inclusive ones, as well as the shift from universal obligations to appeals or optional measures, constitutes an important step to ensure that regional regulations continue to reflect the moral values living within local communities without neglecting the principles of freedom of religion, equality before the law, and non-discrimination as guaranteed by the 1945 Constitution of the Republic of Indonesia. However, concerns arise that several provisions of sharia regional regulations potentially provide advantages to the Muslim majority while offering insufficient protection to citizens of other religions. For example, the application of Islamic legal standards in public spaces may place non-Muslim individuals in uncomfortable positions, as they are required to adjust to religious norms that do not align with their beliefs. This condition has generated criticism from various human rights organizations, which argue that some sharia regional regulations potentially conflict with the principles of freedom of religion and respect for diversity, which are fundamental pillars of the Indonesian Constitution.⁴⁵

To strengthen these harmonization recommendations, a regional harmonization team can be established consisting of representatives from local government, regional legislatures, academics, and community leaders. The application of legal principles in harmonizing sharia regional regulations (or other religion-based regulations) is not a simple task, as it requires close cooperation among government institutions, legal bodies, religious figures, and civil society. All stakeholders must share a common commitment to building an inclusive, just, and diversity-

⁴⁵ Erina Dwi Parawati, 'Analisis Dampak Dan Kontriversi Penerapan Perda Syariat Aceh Indonesia', *Maqasid Jurnal Hukum Islam* 7, no. 2 (2024): 5, <https://doi.org/10.35897/maqashid.v7i2.1562>.

respecting legal framework. These harmonization efforts are not only important for maintaining social order and harmony at the local level, but are also relevant in the context of globalization, which demands respect for human rights and the principle of non-discrimination. Therefore, the application of legal harmonization principles becomes a strategic step in shaping a society that is mutually respectful, inclusive, and just amid increasingly prominent religious diversity. The harmonization team is then tasked with conducting juridical reviews of every draft regional regulation to ensure that no provisions conflict with the Constitution or higher-level laws and regulations, so that sharia regional regulations remain in line with the principles of the rule of law.⁴⁶

In addition to harmonization prior to enactment, continuous supervision and evaluation are also required to ensure uniformity of perception in law enforcement. Both the executive and legislative branches must consistently apply the foundations for the formation of laws and regulations, which include legislative principles, principles of lawmaking, and the legal basis for regulatory implementation. Regional regulations that have been enacted need to be periodically reviewed to assess the effectiveness of their implementation while also ensuring that no violations of citizens' constitutional rights occur. If, during evaluation, provisions are found to create problems or have discriminatory potential, revisions or even annulment of the regulation may be proposed through applicable legal mechanisms. This is particularly relevant given that, based on the researcher's previous study, the Ramadan Regulation has not yet been revised due to the prohibition on opening food stalls or restaurants during Ramadan before 15.00 WITA without exception, thereby disadvantaging non-Muslims.⁴⁷

This monitoring process should ideally also involve public participation. Public reporting mechanisms such as hotlines, community forums, or written complaints can facilitate the submission of grievances or objections regarding the implementation of regional regulations that are considered inconsistent with the principles of non-discrimination and human rights. Thus, post-enactment supervision becomes an integral part of harmonization efforts to ensure that sharia regional regulations remain aligned with the Constitution and the principles of the rule of law.⁴⁸

⁴⁶ Sri Warjiyati and Zeti Nofita Sari, 'Implementai Prinsip-Prinsip Hukum Dalam Membangun Harmonisasi Beragama Melalui Kearifan Lokal', *Prosiding Konferensi Tahunan Cendekiawan Muslim* 7, no. 1 (2023): 419, <https://doi.org/10.36835/ancoms.v7i1.512>.

⁴⁷ Abdillah, Alamudi, and Sa'dah, 'Moderasi Beragama Menjawab Intoleransi Di Dalam Peraturan Daerah Kota Banjarmasin Nomor 4 Tahun 2005'.

⁴⁸ Ida Surya and Abdul Wahab, 'Harmonisasi Peraturan Perundang Undangan Dalam Mewujudkan Pemerintahan Yang Baik', *Jurnal Kompilasi Hukum* 8, no. 2 (2023): 117, <https://doi.org/10.29303/jkh.v8i2.142>.

The researcher also emphasizes that evaluations of sharia regional regulations must consider the social, economic, and cultural impacts they generate. Regulations that restrict certain activities or businesses without an inclusive public interest basis have the potential to hinder economic growth and harm small business actors, so harmonization efforts must ensure a balance between moral objectives and practical consequences in the field. These harmonization efforts can be strengthened through cooperation between local governments and the central government, given that the Ministry of Home Affairs has the authority to evaluate and even annul regional regulations that conflict with higher laws and regulations. Such collaboration functions as an additional filter to ensure that every regional regulation remains aligned with national legal norms.

The researcher views the harmonization of sharia regional regulations as a concrete manifestation of the application of the *checks and balances* principles between local governments and central government. Through this mechanism, regional regulations can continue to accommodate local wisdom without departing from the national legal framework. This harmonization strategy is also consistent with the state's obligation to protect human rights as stipulated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which affirms that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, particularly the government. If the harmonization strategy is implemented consistently, sharia regional regulations in the City of Banjarmasin can function optimally as instruments of social regulation without giving rise to discriminatory practices. Local aspirations remain accommodated, while the principles of diversity and equality that constitute the pillars of the Unitary State of the Republic of Indonesia continue to be upheld.

Thus, the researcher concludes that the harmonization of sharia regional regulations with the Constitution is not merely a legal obligation, but also a political and social necessity to ensure that regional regulations serve as instruments of unity rather than division among citizens. Strategies encompassing problem identification, normative adjustment, inclusive formulation, legal policy recommendations, as well as continuous monitoring and evaluation are key to realizing regulations that are just, equal, and constitutional. Consequently, sharia regional regulations truly correspond to societal needs, as research by Buhri et al. indicates that negative sentiment toward sharia regional regulations is closely linked to political nuances. Therefore, sharia regional regulations represent a form of the politicization of Islam.⁴⁹

⁴⁹ Ahmad Abrori, 'Refleksi Teori Kritis Jurgen Habermas Atas Konsensus Simbolik Perda Syariah', *AHKAM: Jurnal Ilmu Syariah* 16, no. 1 (January 2016): 72, <https://doi.org/10.15408/ajis.v16i1.2897>.

CONCLUSION

Several sharia regional regulations in the City of Banjarmasin still contain provisions that potentially conflict with the constitutional principles enshrined in the 1945 Constitution of the Republic of Indonesia, particularly with regard to freedom of religion, equality before the law, and the principle of non-discrimination. Although these regional regulations emerged from the aspirations of the majority community and are intended to maintain morality and social order, their implementation has not fully taken into account diversity and the constitutional rights of all citizens. Therefore, harmonization between sharia regional regulations and the Constitution is imperative. This step needs to be carried out through the revision of norms that have discriminatory potential, the application of the principle of inclusivity, and periodic evaluations by both local and central governments. Such harmonization is important to ensure that local aspirations can continue to be accommodated without disregarding the values of diversity, human rights, and the principles of the rule of law, while bearing in mind that legal pluralism must be continuously upheld.

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