

## **The Legal Politics of Religious Courts in Indonesia: The Relevance of Islamic Law and Positive Law in Judges' Decisions**

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**Abstract:** Religious Courts in Indonesia are an integral part of the national justice system that has an important role in resolving legal disputes related to Islam. Based on the 1945 Constitution and applicable legal provisions, Religious Courts in Indonesia are run with the aim of providing justice to Muslims in resolving civil and family problems. The legal politics of religious courts are very important to understand how the religious court system works in the context of national law and to see the extent of the relevance and influence between Islamic law and positive law in judges' decisions. The type of research used in this paper is normative legal research, while the research method used is a qualitative research method. Namely research that uses descriptive data in the form of written or spoken language from people and actors that can be observed. The conclusion of this study is that positive law and Islamic law have relevance in judges' decisions, the application of these two legal systems in Indonesia is not always easy. The biggest challenge lies in the integration and harmonization between the two. Overall, positive law and Islamic law are not two separate entities in the Indonesian justice system, but two sources of law that complement each other and provide guidance in achieving justice.

**Abstrak:** Peradilan Agama di Indonesia merupakan bagian integral dari sistem peradilan nasional yang memiliki peran penting dalam menyelesaikan sengketa hukum yang berkaitan dengan agama Islam. Berdasarkan UUD 1945 dan ketentuan hukum yang berlaku, Peradilan Agama di Indonesia dijalankan dengan tujuan untuk memberikan keadilan kepada umat Islam dalam menyelesaikan masalah perdata dan keluarga. politik hukum peradilan agama menjadi sangat penting untuk memahami bagaimana sistem peradilan agama bekerja dalam konteks hukum nasional dan melihat sejauh mana relevansi serta pengaruh antara hukum islam dan hukum positif dalam putusan hakim. Jenis penelitian yang digunakan dalam tulisan ini adalah penelitian yuridis normatif, Sedangkan Metode penelitian yang dilakukan adalah metode penelitian kualitatif. Yaitu penelitian yang menggunakan data deskriptif berupa bahasa tertulis atau lisan dari orang dan pelaku yang dapat diamati. Kesimpulan dari penelitian ini bahwa hukum positif dan hukum Islam memiliki relevansi dalam putusan hakim, penerapan kedua sistem hukum ini di Indonesia tidak selalu mudah. Tantangan terbesar terletak pada integrasi dan harmonisasi antara keduanya. Secara keseluruhan, hukum positif dan hukum Islam bukanlah dua entitas yang terpisah dalam sistem peradilan Indonesia, melainkan dua sumber hukum yang saling melengkapi dan memberikan panduan dalam pencapaian keadilan.

**Keywords:** Religious Courts, Islamic Law, Positive Law, Legal Politics.

## Introduction

Religious Courts in Indonesia are an integral part of the national judicial system and serve a critical role in resolving legal disputes related to Islam. These courts are specifically designated for the Muslim population in Indonesia. Based on the 1945 Constitution and the prevailing legal provisions, the Religious Courts are operated with the aim of providing justice to Muslims in resolving civil and family matters, such as divorce, inheritance, and other issues governed by Islamic law. Historically, the establishment of Religious Courts in Indonesia was influenced by the legal politics during the Dutch colonial era, which began in 1596 when the Dutch East India Company (VOC) first arrived in Banten with the intention of acquiring trade goods – particularly spices.

However, the VOC's presence in Indonesia was not solely motivated by economic interests. It also had political and religious objectives (Abdul Halim, 2000, p.46), commonly known as the 3G mission: *Gold, Glory, and Gospel*. During the Dutch colonial period, the colonial government acknowledged the existence of customary law (*adat*) for the indigenous population. Over time, the Dutch began to view religious law as a part of native customary law. This perception led to a dual judicial system: the Raad van Justitie, which handled both criminal and civil cases for Europeans and civil cases for the Chinese community, and the Landraad, a district court that handled criminal and civil cases for the native population (*Inlanders*) and for non-European foreigners in criminal cases.

At this stage, the Religious Courts had not yet developed. Religious matters were still managed by *penghulu* (religious leaders), who became the forerunners of today's Religious Courts in Indonesia. Religious Courts now play a significant role in the Indonesian judicial system, particularly in handling cases related to family law, inheritance, marriage, and other matters associated with Islamic jurisprudence. As institutions that base their decisions on Islamic legal norms, Religious Courts are also required to take into account the existing positive law in Indonesia. This creates a unique challenge in establishing a judicial system that is just and in accordance with Islamic legal principles, without violating the national constitution or prevailing positive laws.

For this reason, the legal politics of the Religious Courts is vital in understanding how the system operates within the context of national law, and in assessing the relevance and influence of Islamic law and positive law in judicial rulings.

## Method

The type of research used in this paper is normative juridical research, which is a study that refers to and is based on legal norms and principles, statutory regulations, as well as various legal theories, doctrines, and other relevant literature.

The research method employed is qualitative research, which utilizes descriptive data in the form of written or spoken language from individuals or actors who can be observed. This approach focuses on the depth of analysis and understanding of legal phenomena rather than numerical data.

## Results and Discussion

### Theoretical Foundation

#### 1. Receptio in Complexu Theory

This theory states that Islamic law applies in Indonesia, albeit with certain deviations (Abdul ghafur, 2008, p. 125). It implies that the Dutch colonial government recognized Islamic law as valid within the territory of Indonesia, and that Islamic Sharia, in its entirety, was applicable to its adherents ( Saidus Syahar, 1996, p. 105-106). Based on this theory, in 1882 the Dutch East Indies government established Religious Courts for Muslims, which initially only applied in Java and Madura, and had not yet extended to other islands.

This concept significantly influenced Dutch colonial legal politics. It marked the period when Islamic law was officially acknowledged and applied as positive law for the Muslim population in Indonesia.

#### 2. Receptie Theory and the Restriction of Islamic Law

According to this theory, Islamic law could only be enforced if it had first been received and accepted by customary (adat) law. Consequently, under this view, Islamic inheritance law, for instance, could not be applied if it had not been accepted or was in conflict with existing adat (Abdul Ghafur, 2008, p. 106). The Dutch continued to regard religion as part of native customs and believed that Indonesian society was deeply shaped by both adat and religion. Therefore, they sought methods to facilitate the acceptance of Western culture among Indonesians.

One such method was the establishment of a special religious court—namely the Religious Court—to attract sympathy from the native population. However, the Dutch simultaneously introduced their own values and culture. Generally, the Dutch aimed to prevent the native people from adhering too strictly to Islamic teachings, as those who strongly followed Islam were considered less susceptible to Western influence. On this basis, the Dutch colonial government tried to bring native Indonesians closer to European culture and colonial authority.

This concept significantly influenced Dutch colonial legal politics. It marked the period when Islamic law was officially acknowledged and applied as positive law for the Muslim population in Indonesia.

#### 3. Shahādah Theory

The application of Islamic law to an individual is based on their declaration of faith through the recitation of the two testimonies (*shahādah*). Upon declaring the *shahādah*, one affirms their belief in Islamic teachings and commits to practicing and obeying all the laws encompassed in Islamic teachings, both in matters of worship (*ʿibādah mahdah*) and worldly affairs (*ghayr mahdah*) (Haras Rasyid, 2013, p. 17)

The commitment of Muslims to Islamic law, rooted in faith and affirmed through the *shahādah*, has led Islamic legal scholars to develop the Shahādah Theory as a framework for

the implementation of Islamic law (Suparman, 2001, p. 119). This theory is considered ideal for guaranteeing the existence and future of Islamic law in Indonesia, as the strength of belief ('*aqidah*) among Muslims forms the primary foundation, supported by other complementary aspects.

#### 4. Maqāṣid al-Sharī'ah Theory

In Islamic legal theory (*uṣūl al-fiqh*), the concept of *maqāṣid al-sharī'ah* focuses on the objectives and purposes behind the establishment of laws. These objectives are essential in guiding the formation of Islamic legal rulings through *ijtihād* (independent reasoning). Among scholars of *uṣūl al-fiqh*, *maqāṣid al-sharī'ah* is also referred to as *asrār al-sharī'ah*, meaning the wisdom or underlying rationale behind specific legal provisions. These are meant to achieve the welfare (*maṣlaḥah*) of humankind, both in this world and in the hereafter (Zamakhsyari, 2013, p. 1-2)

### The Legal Politics of Religious Courts in Indonesia

The legal politics of Religious Courts in Indonesia refers to the state's policies in establishing, regulating, and developing the system of Religious Courts within the framework of national law based on Pancasila and the 1945 Constitution. This political-legal framework is essential for structuring a judicial system that not only serves the legal needs of Muslims but also aligns with the principles of a democratic legal State. Several important aspects of this legal politics include:

#### 1. Enforcement of Islamic Law within the Framework of the Pancasila State

As a country founded upon Pancasila, Indonesia guarantees religious freedom for all of its citizens, including Muslims. This principle makes the Religious Courts an essential institution in providing legal protection to the Muslim community. However, the state must also ensure that the implementation of religious law does not contradict the fundamental principles of Pancasila, such as social justice, humanity, and national unity. This illustrates the close relationship between religion, law, and the state.

As a legal state rooted in Pancasila, Indonesia not only protects religion and its followers, but also attempts to incorporate religious teachings and laws into national life. Muhammad Hatta stated that in the legal framework of the Republic of Indonesia, Islamic Sharia based on the Qur'an and Hadith may serve as a source of legislation (Ichtijanto, *mimbar hukum*, p. 17)

#### 2. The Role of Religious Courts in Upholding Justice

The Religious Courts play a vital role in ensuring justice for Muslims, particularly in matters that relate to Islamic teachings. However, this role must be balanced with universal principles of justice, including respect for human rights, equality before the law, and non-discriminatory treatment. Therefore, Religious Courts must be able to adapt to changing times while preserving the essential substance of Islamic teachings, which form the basis of their rulings. This is also aligned with the concept of judicial power as articulated by Bagir Manan (Bagir Manan, 1989, p. 5)

#### 3. Strengthening Religious Courts in the Context of Human Rights (HAM)

Along with democratic development in Indonesia, Religious Courts must be responsive to issues of human rights. At times, there are differences in interpretation between religious law and constitutional human rights principles, particularly concerning the rights of women in marriage, divorce, and inheritance. For this reason, the legal politics of Religious Courts must continue to promote dialogue between interpretations of religious law and constitutional principles, in order to establish a fair and balanced justice system.

This is consistent with the teachings of Surah An-Nisa' (4:58) and Surah Al-Ma'idah (5:8), both of which stress that justice is closely connected to rights and responsibilities. A person's rights—including human rights—must be administered fairly. Rights and responsibilities are also linked to trust (*amānah*), and such trust must be granted to those who are entitled to it. Hence, laws based on trust must be implemented fairly, without hatred or other negative attributes (Zamakhsyari, 2013, p. 95).

## Challenges Faced by Religious Courts

### 1. Quality of Human Resources and Judicial Professionalism

One of the main challenges faced by the Religious Courts is the limited quality and professionalism of some of its judges. A number of Religious Court judges in Indonesia have relatively limited educational backgrounds in Islamic jurisprudence, which necessitates continuous training and regular updates in legal knowledge to keep pace with evolving legal developments. This is crucial, as the position of *qāḍī* (judge) in Islam is considered a *farḍ kifāyah* (Wahbah Al-Zuhaili, 1986, p. 62) (communal obligation) in the implementation of Sharia.

### 2. Diverse Interpretations of Religious Law

Islamic law encompasses multiple schools of thought (*madhāhib*), which often result in diverse legal interpretations. This diversity can pose a challenge in establishing consistent and uniform legal enforcement within the Religious Courts. Therefore, it is essential to maintain coherent interpretations of Islamic law to avoid inconsistencies in judicial practice.

### 3. Effective and Efficient Dispute Resolution

One of the primary aims of the Religious Courts is to provide a legal process that is both effective and efficient. However, in practice, many court cases are subject to prolonged proceedings due to limitations in resources—particularly the shortage of judges and insufficient facilities or infrastructure. This situation can negatively affect public satisfaction and trust in the Religious Court system.

This issue is also closely related to the role of judges in Islamic teachings. In Islam, judges hold a central role, especially in the concept of *taḥkīm* (arbitration), where judges are regarded as '*ulamā*' (religious scholars). In this context, judges are entrusted not only to resolve legal disputes but also to uphold and spread Islamic teachings. They are appointed and trusted by disputing parties to resolve their conflicts, and the decisions they issue are to be implemented as part of Islamic law (Abdul Ghafa Mallo, 2013, p. 190).

## The Relevance of Islamic Law and Positive Law in Judges' Decisions

## 1. Positive Law in the Indonesian Judicial System

Positive law in Indonesia refers to legal norms that have been formally established by the state through legislative institutions, including statutes, government regulations, and other binding rules. In judicial practice, judges are required to issue rulings based on the applicable law, which predominantly refers to positive law. This is in line with the development of law and the legal needs of Indonesian society, especially among Muslims.

As Eugen Ehrlich stated:

“Good law is the law that reflects the living law within society.” (Soerjono Soekanto, 1985, p. 19). He also emphasized that positive law is only effective when it aligns with the social norms that are practiced by the community. In anthropology, this is often referred to as “cultural patterns.”

Examples of positive laws currently in effect in Indonesia include:

- The Criminal Code (KUHP), which governs criminal offenses and penalties.
- The Civil Code (KUHPer), which regulates legal relationships and obligations between individuals.
- The Child Protection Law, which ensures the rights and welfare of children.

These laws form the primary reference for judges in issuing decisions, and judges are obliged to follow these statutes. However, in certain cases, they may also consider moral, ethical, and religious aspects. Additionally, the Religious Courts have jurisdiction over specific civil cases involving Muslims, including matters of marriage, inheritance, wills, endowments (*waqf*), almsgiving (*zakat*), charitable giving (*infaq, sadaqah*), and Sharia economic transactions (Undang-Undang No. 03 Tahun 2006).

## 2. Islamic Law in Judges' Decisions

Islamic law, derived from the teachings of Islam, holds a distinctive position within Indonesia's legal system. Although Indonesia is not a theocratic state, Islam—as the religion of the majority—significantly influences the cultural and legal frameworks, especially in the Religious Courts.

In judicial practice, the application of Islamic law is particularly relevant in matters such as:

- *Fiqh al-mu'āmalāt* (jurisprudence concerning transactions), covering financial contracts, commercial agreements, and civil dealings.
- *Fiqh al-munākahāt* (marital jurisprudence), addressing issues of marriage, divorce, spousal rights, alimony, and division of marital property.
- *Fiqh al-mawārīth* (inheritance jurisprudence), which governs the distribution of wealth among heirs based on Qur'anic provisions.

Judges often refer to the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI), published by the Supreme Court of the Republic of Indonesia, as a key reference in Religious Court rulings (Mahkamah Agung, Himpunan Peraturan, 2011).

Although Islamic law is not fully codified as national law, Religious Courts are authorized to adjudicate disputes related to Islamic matters, such as marriage, divorce, and inheritance, for Muslim citizens (Undang-undang No. 50 Tahun 2009).

### 3. *Relevance of the Two Legal Systems*

Although Islamic law and positive law are two distinct legal systems, both hold significant relevance in the judicial decisions rendered in Indonesia. This relevance is particularly evident in cases that concern religious, moral, and family matters. Several reasons underscore the necessity of integrating both systems:

- a. **Adherence to the Principle of a Legal State:**  
As a legal state (*rechtsstaat*) that upholds the principle of legality – meaning that an act can only be punished if it is clearly defined as a crime by law prior to its commission – judges are bound to follow the applicable positive law. However, in practice, many judges also consider religious values, especially in cases involving Muslim parties.
- b. **Integration of Islamic Law and Positive Law:**  
In certain legal cases, particularly those involving family and inheritance law, judges may incorporate Islamic legal principles into positive law. For instance, in divorce proceedings, judges may refer to Islamic rulings concerning spousal alimony, while still basing their verdicts on prevailing state law.
- c. **Cases Handled by Religious Courts:**  
Religious Courts have the authority to resolve legal issues based on Islamic law in matters such as marriage, inheritance, and other civil matters involving Muslims. Meanwhile, in General Courts, which handle criminal and civil cases involving the general public, judges are required to apply positive law, though Islamic values may still influence their reasoning in specific circumstances.

### 4. *Examples of Cases Combining Islamic and Positive Law*

Some legal cases in Indonesia illustrate the integration between Islamic and positive law, particularly in the Religious Courts or in matters that reflect religious and moral concerns:

#### a. **Marriage and Divorce Cases:**

In divorce cases, judges in the Religious Courts may consider Islamic law in determining alimony, the division of marital assets, and child custody. Nevertheless, positive law remains the formal legal framework used to validate and enforce such rulings.

#### b. **Inheritance Cases:**

Islamic inheritance law provides detailed guidelines for the distribution of an estate according to the Qur'an. At the same time, Indonesian positive law governs inheritance rights, which may differ in structure and procedure. In certain cases, judges can combine both legal frameworks – especially when the parties involved are Muslims – to ensure fairness and legal certainty.

## Conclusion

Although Islamic law and positive law both play a role in judicial decisions, the implementation of these two legal systems in Indonesia is not always straightforward. The greatest challenge lies in the integration and harmonization of the two, given the fundamental differences that exist in certain legal aspects – such as inheritance and divorce.

Nevertheless, both legal systems remain relevant, particularly in cases involving religious and family matters. Judicial decisions must consider not only the applicable positive law but also the religious norms that are deeply rooted in society, all while upholding the principles of justice and legal certainty.

In essence, Islamic law and positive law are not separate or opposing entities within the Indonesian legal system. Rather, they are complementary sources of law that jointly provide guidance in the pursuit of justice. As a country that recognizes religious freedom, Indonesia must be able to balance the application of both legal systems in order to create a just legal framework – one that upholds universal principles of justice while accommodating the legal needs of both Muslim and non-Muslim communities.

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