The Existence of Sharia Based Regional Regulations In Indonesian Legal System

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ABSTRACT

Indonesia is a plural state law. This can be seen from the Indonesian national legal system which recognizes and respects the plurality of laws in society. This plural legal system cannot be separated from its historical-empirical experience, that the Indonesian national legal system as it has been known for a long time originates from various legal subsystems, namely the Western legal system, the Customary legal system, and the Islamic legal system. The emergence of a number of shari'a nuanced regional regulations is a very interesting constitutional phenomenon to study considering the content of sharia nuanced regional regulations is the values or teachings of certain religions which in this study are Islamic so that they have been considered to violate the constitutional mandate, violate human rights, discriminatory, and does not reflect tolerance. On the other hand, the birth of shari'ah nuanced regional regulations philosophically-juridically is caused by a paradigm shift that was previously centralistic to decentralized which was marked by the birth of Law Number 22 Year 1999 which was later changed to Law Number 32 Year 2004 and then last changed to Law No 9 of 2015 concerning Regional Government. The decentralization policy contained in the Act then makes people in the regions encouraged to compete in regulating matters relating to their respective regions into a regional regulation including religious affairs. The existence of sharia regulations must be examined based on the national legal system or system, so that its position in the national legal system becomes clear.

Keywords: Existence, Sharia Regulations Regional Law, Indonesian Legal System
Preliminary

A. Introdactioan

Indonesia is an archipelagic country whose population is very diverse in terms of ethnicity, culture, and religion. The majority of the population is Muslim, about 88% of the more than two hundred million people, but did not later make Indonesia an Islamic State. History has recorded that Indonesia had been colonized by the Dutch for around 350 years, a period that was not short. In addition, it was also colonized by the British and Japanese in a not too long time compared to the Dutch colonial period. From this brief description, it can be understood that there is a plurality of legal systems in force in Indonesia, both in terms of time or type.

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The plurality of the legal system that applies in Indonesia can be categorized into three types of legal systems which are the consequences adopted by the Indonesian population, namely:[2]

a. In terms of the plurality of types of population, it can be said that Indonesian society has a legal system that has been in effect since the primitive times from customs or customs to provisions that are believed to be obeyed. In its later development, when Indonesia was colonized by the Dutch colonial, customs or customs were called "customary law". In a dynamic sense, this type of law is more accurately referred to as customary law (customary law) or law that lives in society (living law).
b. In terms of religion, certainly there are religious values that have been believed together, used as their life systems and regulate relations between their peers, which are then considered as law. This religious law came to Indonesia along with the presence of religion. Therefore, as a majority of Muslims, Islamic law is one of the legal systems that prevails in Indonesian society. However, it must also be noted that this Islamic law has a dynamic understanding as a law that must be able to provide answers to social change, so it does not have to always refer to the classical books of fiqh.
c. As a State that has been colonized for 350 years, it is clear that colonialist countries are unlikely to not bring their legal system to Indonesia. It is very likely that the invaders will impose their laws on the Indonesian people they face. This can then be called the Dutch legal system or the western legal system. Identifying western law with Dutch government law is in a static and backward-oriented sense, because Indonesia was colonized by the Dutch earlier. However, in its dynamic definition, western law must be understood as outside law, especially the influence of developed countries as a consequence of international relations and in the realization of the era of globalization.

B. Discussion

1. Indonesian Legal System

It can be said that in Indonesia three legal systems apply, namely: Customary law, Islamic law, and Western law, with all the instruments and requirements of anyone and in any aspect or essence that must comply with the laws of the three systems.[3] So, in outline the legal system in Indonesia includes three types: the Adat legal system, the Islamic legal system, and the Western legal system. In the development of the legal system in Indonesia in the future, the three legal systems in a dynamic sense will become the raw material for national law.[4] Even more concrete, when Indonesia was independent, the laws in force in Indonesia as quoted from the Kansil were as follows:[5]

> In the field of service there is one Criminal Law Book, namely Wetboek van Strafrecht from 1918, which is already in effect for all Indonesian citizens.

[2] A. Qodri Azizy, *National Law: Eclecticism of Islamic Law and General Law*, 1st Printing, Teraju, South Jakarta, 2004, p. 137-138

[3] Ibid, p.139. See more R. Supomo, *Legal System in Indonesia before World War II*, Pradnya Paramita, Jakarta, 1982.

[4] Ibid, p. 139

[5] C.S.T Kansil and Christine S.T. Kansil, *Introduction to Indonesian Law and Legal Studies*, Balai Pustaka, Jakarta, 2000, p. 200

However, because some regions outside of Java still have original justice, Wetboek van Strafrecht did not apply in that area, besides only a series of articles which by Law 1932 No. 80 is declared valid.

The area of civil status is still such that the official colors of the various groups apply, as a political legacy of the Dutch colonial government law. The various groups are as follows:

a. Laws that apply to all residents, for example the Law on Author Rights, Industrial Laws, and so on;
b. Customary law that applies to all native Indonesians;
c. Islamic law for all native Indonesians who are Muslim, regarding some areas of their lives, although official (according to article 131 I.S.) the enactment of this law is as customary law for these fields "adheres" to Islamic law;
d. Laws specifically created for native Indonesians, in the form of laws, such as Laws (ordinances) regarding Indonesian Airlines, Laws (ordinances) Marriage of Indonesian Christians, etc.
e. Burgerlijk Wetboek and Wetboek van Koophandel, which were first intended for Europeans, were later declared applicable to Chinese people, while some parts (especially from W.v.K.) had also been declared applicable to native Indonesians, such as shipping law (sea law).[6]

The detailed description is also grouped into three legal systems: West, Adat and Islam. The three legal systems are also at the same time a standard source of national law development, when national law will reveal its Indonesian face, which until now has not been realized with certainty. In other words, Islamic law as one of the three raw materials of national law became increasingly clear and constitutional with the birth of the Guidelines of State Policy (GBHN) in 1999, which was a constitutional product in the reform era.

In discussing this sub-chapter, the writer wants to give an illustration that given the fact that the legal system in Indonesia is very plural, the existence of all laws and regulations cannot be kept away from the existence of the legal system, including in this case local regulations. which has substance or charged values of Islamic teachings (shari'ah-based regional regulations). However, it must still be noted that the national legal system must be built based on the ideals of the nation, the goals of the State, the ideals of the law, and the guidance contained in the Preamble to the 1945 Constitution; meaning that no legal product may conflict with the things mentioned above. The national legal system encompasses a broad dimension, which Friedmen abstracts into three broad elements, namely substance or content, legal structure, and culture of law.[7]

2. Islamic law as a source of law

In various kinds of existing literature, the discourse on Islamic law as one source of law in Indonesia has produced many ideas which, according to the author, are very appropriate to be used as guidelines given that Indonesia is a pluralistic country. One of the writer's guidelines in discussing this sub-theme is Prof.'s writings. Mahfud MD on Political Law in Sharia-based Regional Regulations issued by the Faculty of Law of UII in the legal journal Ius Quia Iustium.

[6] *Ibid*, p. 200

[7] Lawrence M. Friedman, *A History of American Law, Simon and Schuster*, New York, 1973; also in Lawrence M. Friedman, American Law: an Introduction, W.W. Norton and Company, New York, 1984.

The writing in the journal emphasizes that Islamic law becomes a source of national law along with Western law and Customary law, it does not mean that it must become formal law with its own exclusive form, except for its nature to serve (not to impose imperatively) on what already applies as awareness in life everyday of the adherents. The source of law here must be interpreted as a source of material law in the sense of being a material content for sources of formal law.[8]

The strictness of Islamic law in the field of civil law can apply to awareness (self-determination) without coercion through formal law and the State must provide protection and regulate its services, while those relating to public law (such as criminal law, state administrative law, state administrative law) are applicable national sources of material can vary and Islamic law is one of them. Here Islamic law can be knitted eclectically with other legal sources whose substance is mutually acceptable.[9]

To clarify the problem, it can be stated briefly that there are two kinds of legal sources, namely material legal sources and formal legal sources. Material legal sources are legal materials that do not yet have a specific form and are not formally binding but can be made into a form of legal content in order to become binding, for example through a legislation process. While formal legal sources are legal sources that have a certain form and are binding as a law because they have been established by the competent institution such as the legislation process. Aside from going through the process and product of legislation, formal legal sources can also be in the form of jurisprudence, conventions, and doctrines. Jurisprudence is a court decision that has permanent legal force and is accepted as a guideline (followed) by judges to be used as a guideline in handling the same case. The Convention is a practice of state and government that comes from customs (not written) but is accepted as fairness. While doctrine is the opinion of experts (experts) whose opinions are influential.

One source of formal law is the Law in the material sense which consists of various laws and regulations arranged hierarchically. In addition there are also laws in the formal sense (which already have a certain form, determined by the House of Representatives with the President) which are part of the Act in the material sense, meaning to be part of the laws and regulations which each have a certain hierarchical form and position. The explanation above can be stated with the following chart:[10]

[8] Mahfud MD, *Legal Politics in Sharia-Based Regional Regulations*, Journal of Law Volume 14 No.1, Yogyakarta, 2007, p.14

[9] *Ibid*, p. 14

[10] This chart has been adjusted to the latest laws and regulations, namely Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations.

Table 1:
Material Sources of Legal and Formal

Material Legal Sources	Formal Legal Sources	Legislation (Law in the material sense)
1. Historical	1. Law in the material sense	1. UUD 1945
2. Sociological		2. TAP MPR RI
3. Philosophical	2. Jurisprudence	3. Act / Perppu
	3. Convention	4.Government Regulations
In this source of material law, religious values, customs, economics, culture, sociology, anthropology and so on are included. Islamic law is included as a source of this material law	4. Doctrine	5. Presidential Regulation 6. Provincial Regulation 7. District / City Regulations.

In line with that, each regional regulation must comply with the guiding principles that are the same as national level legal products, namely: must maintain integration (non-discriminatory), be made democratically and nomocratic, guarantee social justice, and guarantee religious tolerance that is civilized. Shari'a nuanced local regulations must also be made based on these rules. This means that if there are allegations of violations by and in a local regulation of these rules, they must be tested or monitored in accordance with available legal instruments such as cancellation (repressive actions) by the government, judicial review by judicial institutions, and revisions themselves by legislative body (legislative review).[11]

From the description above it appears that Islamic sharia in our national legal system is a source of material law that can be combined eclectically with other sources of law to later become a source of formal law. Islamic law cannot exclusively be a separate source of formal law except for matters of service nature in matters related to worship (*mahdhah* worship) such as the organization of the pilgrimage, zakat, and so on.

Islam itself instructs its adherents to take part in ma'ruf nahi munkar so that their followers can carry out religious orders and non-Muslims can follow the teachings of Islam with awareness and without coercion. Based on the command amar ma'ruf nahi munkar, an organization such as the state is needed as a tool. Because if the order is not supported by the organization it will be difficult to realize, maybe even it will not be implemented as it should. Imam al-Ghazaly said that "ad-dien was-sulthaan taw-amaan", which means carrying out religious orders and achieving power is a twin sister. Both need each other, the position of one

[11] *Ibid*, p. 16

"principle" while the other "bodyguard". Based on this, the ushul fiqh is used "maa laa yatimmul waajib illa bihi fahuwa waajib" which means that "if an obligation cannot be carried out without something else then something is obligatory to be done".[12]

This rule leads to the conclusion that the existence of a State organization is obligatory for Muslims because without the State religious obligations will be difficult to implement. In fact, from this principle, there was also an interpretation that the formal application of Islamic law made it easier to implement Islamic law in society. But actually, both in the texts (the naqly argument) and in the history and political thought of Islam, there has never been a strict order to establish an Islamic State or formally impose Islamic laws. At least the problem is still being debated and has never come to the same conclusion and attitude both in thought (istinbath) and in concrete steps.[13]

In the historical context of the struggle of Muslims to enact "the foundation of the State" as a State based on the teachings of Islamic law that has long been done, the end result remains unchanged. The result ended with a compromise (vivendi mode) in the form of the Pancasila State. Pancasila state is a religious nation state which in no way prevents Muslims from carrying out their religious teachings without being able to discriminate against their application in the midst of a pluralistic society.

The ushul fiqh can be used "*maa laa yudraku kulluhu laa yutraku kulluhu*" which means "if you cannot get it all, then don't leave it entirely but take it which is still possible to take". This rule gives the meaning that what can be done for amar ma'ruf nahi munkar in Indonesia today is not to build an Islamic State but to build an Islamic society, because after being constitutionally championed the Indonesian State is finally built as a Pancasila State. If we cannot formally formulate Islam in the legal system or the constitution of Indonesia, we can fight for the substance of Islamic teachings in accordance with human nature.

The values of the substance of Islamic teachings that can be fought for and certainly will not be rejected by other groups because of its universal nature is to uphold justice, establish togetherness, build security, preserve nature, respect human rights, uphold honesty and trust, and other universal values. These values must be included in national law. Thus, what is very realistic to do the amar ma'ruf nahi munkar in the state and political aspects of legal development in Indonesia is to fight for the values of the substance of Islamic teachings which are then knitted eclectically with other legal sources to become national law.

3. Hierarchy of Statutory Regulations in Indonesia

Referring to the legal norm hierarchy theory, the types of hierarchy are generally classified into two types, namely formal hierarchy and functional hierarchy.

Formal hierarchy is a hierarchy of legal norms as Hans Kelsen is often referred to as the Stufenbau des recht or The Hierarchy of Law. In his theory he argues that legal norms are tiered and multi-layered in a hierarchical arrangement of structures, where a lower legal norm applies, sourced and based on even higher norms, and so on until the norms cannot be further explored which are hypothetical and fictitious, namely the basic norm (grundnorm).[14]

[12] *Ibid*, p. 18
[13] *Ibid*, pp. 18-19
[14] Jimly Asshiddiqie and M. Ali Safa'at, *Hans Kelsen's Theory of Law, First Matter*, KON Press, Jakarta, 2006, p.100

Basic norms, which are the highest norm in the legal norm system, are no longer formed by a higher norm, but the norm was established in advance by the community as a basic norm that is a hanger for the norms below it.[15]

From the distinctive character of the legal dynamics as explained by Kelsen above, this theory was later developed by one of his students named Hans Nawiasky who argued that in addition to the legal norms that were multi-layered and tiered, the legal norms of a country were also in groups. According to him, the legal norms in a country consist of 4 (four) major groups as follows:[16]

Group I: Staatfundamentanorm (fundamental norms of the country), which is the basis for the formation of a constitution or basic law for a country including the amendment norms. The nature of the law for staatfundamentalnorm is a condition for the application of the constitution. He existed before the constitution. Besides grundnorm or staatfundamentalnorm can not be further explored the basis of its validity so it must be accepted as something fictitious or axiom. This is needed not to shake layers of the structure of the legal system which ultimately depend on or base on it;

Group II: staatgrundgesetz (basic rules / principal of the state), which is a group of legal norms under the fundamental norms of the state. Normanorma of the basic rules of the state are still basic and are general rules that are outline so that it is still a single norm and not accompanied by secondary norms. In every basic rule / principle the state usually regulates matters concerning the distribution of state power at the top of the government, and besides that it also regulates the relationship between state high institutions and the relationship between the state and citizens;

Group III: Formell Gesetz (formal law), which is a group of norms that are under the basic rules of the country. Norms in law are concrete and detailed legal norms that can be directly applied in society. Legal norms in the law can include norms that contain sanctions both criminal sanctions and civil sanctions.

Group IV: Verordnung und Autonome Satzung (implementing rules and autonomous rules), which is a regulation located under the law which functions to implement the provisions in the law, where the implementing regulations are from the delegation's authority, while the autonomous regulations come from attribution authority.

Thus, the norm hierarchy theory above basically contains the following principles or principles:[17]

a. Lower level legislation must be sourced or have a legal basis from a higher level legislation; and
b. The contents or contents of lower level statutory regulations may not deviate or contradict higher level statutory regulations, except if the higher level legislation is made without authority (onbevoged) or exceeds the authority (deternement de pouvoir).

The principles or principles of the theory of stufenbau mentioned above, have been accepted in Indonesia and have been formalized in MPRS Decree No. XX / MPRS / 1966, which

[15] Maria Farida Indrati Soeprapto, *Statutory Sciences and Basis of Their Establishment*, Kanisius, Yogyakarta, 1988, p. 25

[16] Muntoha, Regional *Autonomy and the Development of "Sharia Regulations Regional Regulations"*, Safiria Insania Press: Cet.I, Yogyakarta, 2010. p. 28-29

[17] Bagir Manan, *Constitutional Theory and Politics, First Printing*, FH UII-Press, Yogyakarta, 2003, p. 211-212

was later revised by MPR Decree No. III / MPR / 2000 and have been perfected by Law Number 10 of 2004 concerning Procedures for Making Legislation Regulations which are then replaced by Law Number 12 of 2011 concerning Formation of Legislation. In the following it can be stated that the development of the hierarchy in the order of laws and regulations in Indonesia is as follows:

Table:
Development of the Hierarchy of Laws and Regulations in Indonesia

TAP MPRS NUMBER XX / MPRS / 1966	TAP MPRS NUMBER III / MPR / 2000	Act No 10 of 2004	Act No 12 of 2011
1. 1945 Constitution; 2. SRMP / MPR provisions; 3. Law / Government Regulation in Lieu of Law; 4. Government Regulations; 5. Presidential Decree; 6. Other implementing regulations such as: a. Ministerial regulation; b. Instructions	1. UUD 1945; 2. MPR Stipulation; 3. Act; 4. Government Regulations in lieu of laws; 5. Government Regulations; 6. Presidential Decree; and 7. Regional Regulation	1. UUD 1945; 2. Laws / Government Regulations in Lieu of Laws; 3. Government Regulations; and 4. Regional Regulation a. Provincial Regional Regulations; b. Local regulation	1. UUD 1945 2. MPR Stipulation; 3. Government Act / Regulation in Lieu of Law; 4. Government Regulations; 5. Presidential Regulation; 6. Regional Regulations; a. Province; b. Regency / city

Legislation, in the context of the Indonesian State, is a written regulation established by a state institution or an official with the authority to bind it in general. While the hierarchy means a level or level where the lower statutory regulations may not conflict with higher statutory regulations. Types and hierarchy of laws and regulations are regulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Regulations and Regulations.

The type and hierarchy of the statutory regulations in Law Number 12 of 2011 concerning the Formation of Statutory Regulations is affirmed in Article 7 paragraph (1) consisting of:[18]

a. The UUD 1945 Constitution of the Republic of Indonesia;
   The UUD 1945 Constitution of the Republic of Indonesia as stipulated in Article 3 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Regulations and Regulations states:

[18] Article 3 paragraph (1) of Law Number 12 of 2011 concerning Formation of Laws and Regulations

> "The 1945 Constitution of the Republic of Indonesia is the basic law in statutory regulations".

The UUD 1945 Constitution is a written basic law of the Republic of Indonesia in statutory regulations, containing the basis and outline of law in the administration of the State.

b. Decree of the People's Consultative Assembly;
The MPR TAP is the decision of the People's Consultative Assembly as the bearer of the people's sovereignty determined in the MPR sessions or the form of the People's Consultative Assembly's decision which contains matters that are determinative (beschikking). The re-inclusion of the MPR TAP in the order of the legislation based on what is stipulated in Law Number 12 of 2011 is a form of confirmation that the legal products made under the MPR TAP are still recognized and valid in the Indonesian legal system.
c. Government Act / Regulation in Lieu of Law;
The definition of Law as regulated in Article 1 number 3 of Law Number 12 of 2011 concerning Formation of Regulations and Regulations:

> "The law is the legislation established by the House of Representatives with the joint agreement of the President"[19]

The law is a joint product of the President and Parliament. In its formation, this Law could have been a President who submitted a bill that would become law if the Parliament approved it, and vice versa.

While the definition of "Government Regulation in Lieu of Law" is regulated in Article 1 number 4 of Law Number 12 of 2011 concerning the Formation of Regulations that state that:

> "Government Regulations in lieu of Laws are Legislative Regulations established by the President in matters of compulsive concerns".[20]

The laws and regulations stipulated by the President in matters of urgency (the state in an emergency) with the following conditions: (1) Perpu is made by the president only, without the involvement of the DPR. (2) Perpu must be submitted to the DPR in the following trial. (3) DPR can accept or reject Perppu by not making changes. (4) If the DPR rejects it, the Perppu must be revoked.
d. Government regulations;
The definition of "Government Regulation" is regulated in Article 1 number 5 of Law Number 12 of 2011 concerning Formation of Regulations and Regulations that:

> "Government Regulation is a legislator set by the President to carry out the law as it should."[21]

[19] Article 1 number 3 of Law Number 12 of 2011 concerning Formation of Laws and Regulations
[20] Article 1 number 4 of Law Number 12 of 2011 concerning Formation of Laws and Regulations
[21] Article 1 number 5 of Law Number 12 of 2011 concerning Formation of Laws and Regulations

The content of government regulations is the material for implementing the law. In Law Number 12 of 2011 concerning the formation of laws and regulations stated that government regulations as organic rules rather than laws according to their hierarchy may not overlap or contradict.

e. Presidential decree;
Presidential regulations are statutory regulations established by the President to carry out the law accordingly. Presidential Regulation is a statutory regulation that is determined by the President to carry out higher regulations in carrying out governmental power.

f. Provincial Regional Regulations;
Provincial regulations are laws and regulations established by the Provincial DPRD with the joint agreement of the Governor. The content of the Provincial Regulation contains the content in the context of the implementation of regional autonomy and assistance tasks as well as accommodating the special conditions of the region and / or further elaboration of the higher laws and regulations.

g. Regency / City Regulations.
District / city regional regulations are laws and regulations established by the Regency / City DPRD with the mutual agreement of the Regent / Mayor. The content of Regency / City Regional Regulations contains content in the context of the implementation of regional autonomy and assistance tasks as well as accommodating the special conditions of the region and / or further elaboration of the higher laws and regulations.

4. Position of Sharia Regulations in Hierarchy

Law in Indonesia must be based on agreed guidelines or ideology, the ideology of the Indonesian people is Pancasila and Pancasila has four legal guides, one of which is not allowing the application of laws based on certain religions even in the name of democracy. As an important note that if the regulation has good substance it is highly recommended but the considerations are not based on the Qur'an, verses, and hadiths.

Even though the majority of Indonesian citizens are Muslim, laws and regulations must respect the rights of other people, as mandated by the constitution. Any religious law must be correct but Islamic law cannot be made a state law. All forms of regulations, laws, norms and ethics must be based on universal regulations and accepted by all groups, especially the Indonesian people based on Pancasila which guarantees all citizens' rights and does not discriminate against any religion. So in making a local regulation it must pay attention to the principle of compliance with the hierarchy (lex superior derogat lex inferior); the laws and regulations at the lower levels must not conflict with the laws and regulations at the higher levels and so on in accordance with the hierarchy of norms and regulations. Substantially or in substance the contents of the legislation must pay attention to the values of human rights (HAM) and gender justice that are already listed in the constitution; guarantee the integrity of national law; and the role of the state versus society in a democratic country.

The position of sharia regulations in the hierarchy is very clear. In the hierarchy of statutory regulations there is no explicit term for sharia regulations. Article 7 of Law Number 12 of 2011 only confirms the existence of provincial and district / city regional regulations. Thus, the position of sharia nuanced regional regulations in the hierarchy of statutory regulations according to the author must be considered the same as provincial and district / city regional regulations. Because sharia regulations are actually ordinary regional regulations whose content

contains certain religious elements or values which in this case are the teachings of Islam. So it must be distinguished that local regulations are part of the laws and regulations of the State, while sharia is a religious teaching (law).

If judged according to formal law, sharia regulations cannot be directly considered to be in conflict with Law Number 23 of 2014 concerning regional government, even though religious matters are the domain of the central government. The religious issues referred to in the law as stipulated in the Elucidation of Article 10 Paragraph (1) letter F are for example stipulating religious holidays that apply nationally, giving recognition of the existence of a religion, establishing policies in the administration of religious life, and so on. So if the sharia regional regulations govern the matters above, even though the scope is local, then in an orderly manner, national law is considered to be contradictory and must be declared null and void.

C. Conclusion

The existence of shari'ah nuanced regional regulations can also be seen from the perspective of the legislative hierarchy. The position of sharia regulations in the hierarchy is very clear. In the hierarchy of statutory regulations there is no explicit term for sharia regulations. Article 7 of Law Number 12 of 2011 only confirms the existence of provincial and district / city regional regulations. Thus, the position of sharia nuanced regional regulations in the hierarchy of statutory regulations according to the author must be considered the same as provincial and district / city regional regulations. Because sharia regulations are actually ordinary regional regulations whose content contains certain religious elements or values which in this case are the teachings of Islam. So it must be distinguished that local regulations are part of the laws and regulations of the State, while sharia is a religious teaching (law). Regional regulations (perda) which have religious nuances or spirit or later better known as sharia-nuanced local regulations

Not much different from other local regulations in general, it's just that there are differences that are openly given the name of Islamic regulations and some are not. If there is a legislation adopted from religious law or using a particular source of religious law as long as it does not conflict with the 1945 Constitution, then it is justified because if the regulation has been ratified and applies as Indonesian law, then the law has become national law. Perda must refer to Pancasila and the 1945 Constitution and there must be no regulations that conflict with Pancasila. Sharia-based regional regulations basically have nothing to worry about, because from a democratic perspective, existing regulations have been drafted constitutionally. In terms of manufacturing authority, local regulations are the authority of regional governments and are a joint product between the executive and regional legislatures. If from the aspect of material content that is regulated in sharia regulations, there are those that are considered to overlap or contradict the laws and regulations that are at the top level. The government has the authority to conduct repressive oversight of the Perda.

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