
Islamic legal authority in the Indonesian legal system: a historical-normative analysis from the fiqh siyasah perspective

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Abstract: This study aims to analyze the authority of Islamic law in the Indonesian national legal system using the theoretical frameworks of authority and persuasive sources from H. Patrick Glenn, as well as the perspective of fiqh siyasah. This study uses a historical-normative method, tracing the development of Islamic law from the colonial period to post-independence, and analyzing its authority in the current legal system in Indonesia. The results of the study indicate that during the colonial period, Islamic law functioned primarily as a persuasive source, namely, religious norms implemented socio-religiously without formal binding force within the state's legal structure. However, after independence, Islamic law underwent a significant transformation through normative recognition in laws and regulations, such as Law No. 1 of 1974/19 of 2019 and Law No. 7 of 1989 concerning Religious Courts. The existence of these laws implies that Islamic legal norms become legal, binding, and have legal consequences. This transformation from persuasive norms to authoritative norms does not conflict with the principles of the rule of law or the character of Indonesia as a Pancasila state, but rather reflects the dialogical and complementary relationship between religion and the state. In the fiqh siyasah perspective, the state is seen as having the legitimacy to adopt Islamic legal values oriented towards justice and public benefit into positive law.

Keywords: Islamic Legal Authority, Position of Islamic Law, Fiqh Siyasah.

How to Cite: Chakim, M, L., Nugroho, I, Y., (2026). Islamic legal authority in the Indonesian legal system: a historical-normative analysis from the fiqh siyasah perspective. *Asy-Syariah: Jurnal Hukum Islam*, 12 (1), 72-84. <https://doi.org/10.55210/assyariah.v12i1.2412>

Introduction

The dominance of Dutch colonial law in Indonesia was one of the main foundations of the national legal system, and its influence is still felt today. During the colonial period, the Dutch introduced a Continental European legal system that replaced local legal systems such as customary law and Islamic law. This system was formal, written, and hierarchical (Ahmad 2021). Colonial judicial institutions such as the Raad van Justitie were established to adjudicate cases involving Europeans, while separate courts were established for the indigenous population (Maulida Fitriani 2024). Islamic law was no longer positioned as an authoritative legal system but was reduced to norms dependent on the recognition and policies of the colonial power. Thus, the authority of Islamic law was institutionally displaced by the colonial state's laws.

Furthermore, the Dutch introduced the theory of Receptie, which holds that Islamic law is valid only if it has been accepted by customary law. Snouck Hurgronje and Van Vollenhoven developed this theory to suppress the influence of Islamic law and strengthen the dominance of customary law, thereby serving colonial interests (Mauliddiyah 2021). The Dutch government systematically weakened the role of Islamic law by controlling and limiting the scope of jurisdiction of religious courts. Under this theory of Receptie, Islamic law applies only if it is accepted by customary law, so it is not recognized as a separate law. The colonial government viewed Islamic teachings as a potential social and political force

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<https://doi.org/10.55210/assyariah.v12i1.2412>



that could threaten colonial stability. If Islamic law were recognized as authoritative, Muslims would be more obedient to religious norms than to colonial law. As a result of applying this theory of Receptie, Islamic law was recognized only to the extent permitted by the colonial state (Nugroho et al. 2022).

The legacy of this colonial legal system remains deeply ingrained in the Indonesian legal system after independence. Legal products such as the Criminal Code (KUHP) and the Civil Code (KUHPer) originating from the colonial era are still used today, despite various legal reforms (Norrahrman et al. 2023). After Indonesia's independence, there were significant changes in the recognition and application of Islamic law in the national legal system. Religious courts were then institutionally strengthened through Law Number 7 of 1989 concerning Religious Courts, which was updated by Law Number 3 of 2006 and Law Number 50 of 2009 (Ismaidar 2025).

The position of Islamic law in the Indonesian legal system can be understood through the categorization of authoritative and persuasive sources. During the colonial period, Islamic law functioned as a persuasive source because it lacked formal binding force. Conversely, Islamic law can be considered an authoritative source after independence, as many sources of Islamic law have become laws, such as laws on marriage, zakat, waqf, and others. The terms persuasive source and authoritative source were introduced by H. Patrick Glenn. An authoritative source is a legal source that has formal binding force within a legal system, requiring compliance by legal subjects and enforcement by state institutions, such as laws and court decisions. Conversely, a persuasive source is a legal source that lacks direct binding force but can influence the formation, interpretation, and application of law, such as scholarly doctrine, moral values, principles of justice, and legal traditions (Glenn 1987).

Several studies have examined the position of Islamic law in the Indonesian national legal system, but few have directly addressed it within a historical and normative framework. For example, research by Rinda and Sukoco discusses how Islamic law became part of the national legal system and its role in legal development in Indonesia (Rinda 2021). Other research this research examines the implementation of Islamic law within the Indonesian national legal system, focusing on the extent to which it was formally (authoritatively) accommodated in post-independence laws and state institutions (Adha 2025). In addition, research on the institutionalization of Islamic law highlights the process of recognizing Islamic law through national legislative procedures and the challenges faced in efforts to incorporate Islamic norms into national law. Still, it places less emphasis on the philosophical aspects of the shift in authority over the legal sources themselves (Rokhmad dan Universitas 2021).

Thus, None of these studies explicitly conceptualize the transformation of Islamic law from a persuasive source into an authoritative source within the Indonesian legal system. Existing research focuses more on describing the role of Islamic law or legal pluralism than on the legitimacy of Islamic legal authority as a source of law within the national legal system. The novelty of this study lies in its conceptual mapping of the transformation of Islamic law from a persuasive source into an authoritative source within the Indonesian legal system through the integration of H. Patrick Glenn's legal theory and the normative perspective of *fiqh siyasah*. H. Patrick Glenn's theories of authoritative and persuasive sources are used to map the position of Islamic law within the Indonesian legal system. Glenn asserts that in a pluralistic legal system, law originates not only from the formal authority of the state but also from traditions and norms that have normative influence in society.⁷ In the Indonesian context, Islamic law can be understood as a living, persuasive source that is adhered to by Muslims, and under certain conditions transforms into an authoritative source when laws and state institutions are enacted. Meanwhile, Islamic jurisprudence in this study is positioned as a normative-theoretical framework to explain the legitimacy of Islamic legal authority in the relationship between religion and state, including how Islamic law gains legitimacy for application in the public sphere. In the Indonesian context, *siyasah fiqh* is used not to assess the suitability of the state system to the Islamic state model, but rather to assess whether the state's restrictions and institutionalization of Islamic law are in line with Islamic legal principles.

This study aims to analyze the historical development of Islamic law within the Indonesian legal system from the colonial period to the post-independence era. Furthermore, it seeks to examine the transformation of Islamic law from a persuasive source into an authoritative source using the theoretical framework of H. Patrick Glenn and the normative perspective of *fiqh siyasah*.

Methods

This study is normative legal research (doctrinal research) with a descriptive-analytical character. The research employs several approaches commonly used in normative legal studies, namely the statute approach, historical approach, and conceptual approach. The approaches employed are historical and normative. The historical approach is used to trace the chronology of Islamic law's influence on Indonesian state administration, from the colonial period to the post-independence phase of national legal codification. This is crucial for observing the changing status of Islamic law over time. The statute approach is used to examine laws and regulations related to Islamic law in Indonesia, including the Marriage Law, Zakat Law, Waqf Law, and Islamic Banking Law. Meanwhile, the conceptual approach is used to analyze theoretical concepts related to legal sources, particularly the distinction between authoritative and persuasive sources as proposed by H. Patrick Glenn. This research's analytical method utilizes H. Patrick Glenn's theory of authoritative and persuasive sources. H. Patrick Glenn's theory of authoritative and persuasive legal sources is used as the analytical framework to examine the transformation of Islamic law within the Indonesian legal system. Through this theory, the study analyzes whether Islamic law functions merely as a persuasive normative reference or has transformed into an authoritative legal source formally recognized by the state through legislation and judicial institutions.

In addition, the perspective of *fiqh siyasah* is used as a normative analytical framework to assess the legitimacy of state policies related to the institutionalization of Islamic law, particularly whether these policies align with the principles of *siyasah syar'iyah* such as public welfare (*maslahah*) and justice. The sources of legal materials in this study include primary and secondary sources. Primary legal materials include laws and regulations related to Islamic law, such as the Marriage Law, Islamic Banking, Zakat, and Waqf. Secondary legal materials include *fiqh siyasah* literature, works by classical and contemporary scholars, and relevant journal articles and scientific books. The analysis is conducted by systematically describing historical and normative legal materials and relating them to the theoretical framework used in this study. H. Patrick Glenn's theory of authoritative and persuasive legal sources is employed to map the transformation of Islamic law from a persuasive source during the colonial period to an authoritative legal source in the post-independence Indonesian legal system. Furthermore, the perspective of *fiqh siyasah* is used to evaluate the legitimacy of Islamic legal authority in the relationship between religion and the state. Through these analytical frameworks, this study aims to explain the position and authority of Islamic law within the Indonesian national legal system.

Results and Discussion

Historical Dynamics of Islamic Law in Indonesia

1. Islamic Law in the Early Colonial Era

Colonial legal politics resulted in complex and conflicting legal dynamics. When a policy was deemed ineffective in accelerating the integration of colonial law with indigenous society, the Dutch often shifted their approach to a more repressive one. The reactions of the Muslim community to these policies were largely ignored. In fact, the impression arose that the colonial government deliberately pitted the three legal systems existing in the archipelago Islamic law, customary law, and Western (Dutch) law against each other in an unequal competition. In this configuration, Islamic law was often sidelined or positioned subordinately. In general, the Dutch legal approach to Islam can be divided into

two major periods: the first period spanned the period of Dutch East India Company (VOC) rule from 1596 to the mid-19th century, including the intervening British rule (1811–1816); and the second period began in the mid-19th century and continued until the end of Dutch colonialism (Zaelani 2019).

During the VOC era, initial attempts to impose Dutch law on the native population did not go as planned, leading them to allow local institutions and norms to remain in place. One form of recognition of local legal systems, particularly Islamic ones, was evident in the 1642 Batavia Statute, which stipulated that Muslim inheritance matters must be resolved in accordance with Islamic law. The VOC even commissioned D.W. Freijer to compile a Compendium of Islamic law on marriage and inheritance, which the court ratified on May 25, 1760 (Mardani 2018). The *Compendium Freijer* later became a reference for courts to resolve cases among Muslims. In addition, there were also several other legal books compiled by the VOC, such as the *Compendium Mugharrar* (derived from the book *al-Muharrar*) used in Semarang, the *Cirbonsch Rechtboek* or Pepakem Cirebon, and the *Compendium Indiansche Wetten bij Hoven van Bone en Goa*, which was applicable in the Bone and Gowa regions (Iqbal 2012).

In addition, the books *al-Muharrar* and *Pepakem Cirebon* were used in the *Cirebon Sultanate*, the book *Sabīl al-Muhtadīn* by Sheikh Nuruddin ar-Raniri was used in the Banjar Sultanate, and the establishment of the Priesteraad religious court in Java and Madura was based on *Staatsblad* 1882 Number 152. These various pieces of evidence show that Islamic law has become an inherent part of Muslim society, carried out not only as a custom but also as a religious obligation based on the command of Allah and His Messenger. The application of Islamic law demonstrates internal legitimacy among Muslims, who see sharia as the highest source of legal authority, a view strengthened by the emergence of the theory of *receptio in complexu*, which holds that Islamic law applies fully to Muslims as a system universally accepted (Rana 2018).

From the perspective of H. Patrick Glenn's theory of legal sources, Islamic law during the early colonial period functioned in a dual position. For Muslim communities, Islamic law operated as an authoritative source because it was perceived as a binding religious norm derived from divine authority. However, within the colonial legal structure, Islamic law functioned merely as a persuasive source whose validity depended on recognition by colonial authorities. This situation illustrates how the colonial legal system subordinated Islamic law by placing it outside the formal hierarchy of state law.

2. Christiaan Snouck Hurgronje and Receptie Theory

Christiaan Snouck Hurgronje was born on February 8, 1857, in Costerhout, Netherlands, and raised in a Reformed (Calvinist) family, where his father was a pastor. After completing secondary education at the Hogere Burgerschool (HBS) in Breda, he continued his studies at Leiden University, majoring in theology. There, he passed his candidate's examination in theology and then went on to study Semitic literature. His interest in Islam began to emerge during his studies. On November 24, 1880, he earned his doctorate cum laude with a dissertation entitled "*Het Mekkaansche Feest*," which examined the origins of the Hajj pilgrimage based on Islamic sources, including the Quran, the hadiths of Abu Dawud, Malik, Bukhari, and Muslim (Sidik 2020).

From 1881 to 1889, Snouck served at the East Indies Civil Service Education Institute in Leiden, while actively researching fiqh (Islamic law), the biography of the Prophet Muhammad, and Islamic history. In 1885, he departed for Mecca under the pseudonym "Abdul Gaffar." While in Mecca, he disguised himself as a Muslim to blend in and obtain information directly from the Muslim community, including pilgrims from the Dutch East Indies. This strategy provided access to detailed information about the social and religious conditions in Mecca, including information about the political situation in Aceh, which he obtained from pilgrims. He also believed that Western civilization was superior to Eastern civilization (Benda, Gobe, dan Adriaanse 1967).

In 1889, Snouck was summoned by the Dutch colonial government to Aceh. Although formally assigned as a researcher, his primary mission was to support the colonial strategy to subdue the Acehnese resistance. Snouck's views and strategies had a significant influence on Dutch colonial policy,

particularly in regulating Muslims and suppressing resistance in Aceh. After more than three decades of war, on January 3, 1904, the colonial government began implementing a normalization policy for Aceh, still adhering to Snouck's recommendations, which emphasized a military approach and a strategy of approaching the people (Sidik 2020).

Snouck then proposed the theory of *receptie*, which holds that Islamic law does not automatically apply to indigenous Muslims unless these Islamic legal norms have been accepted and integrated into local customary law. In other words, Islamic law is valid and binding only if it has undergone a process of reception, or acceptance, by customary law. This establishes customary law as the primary basis for the legal life of indigenous communities. In contrast, Islamic law becomes secondary or complementary and can only function if it does not conflict with customary norms (Tobroni 2009).

From the perspective of H. Patrick Glenn's theory of legal sources, the *receptie* doctrine effectively transformed Islamic law from a potentially authoritative source into a merely persuasive source within the colonial legal system. Although Islamic law remained binding for Muslims in the religious sphere, the colonial legal structure positioned it only as a normative reference whose applicability depended on recognition by customary law and colonial authorities. This policy illustrates how the colonial government strategically limited the institutional authority of Islamic law in order to maintain political control over the Muslim population.

The background to the emergence of this theory cannot be separated from the political and social context of the Dutch East Indies at the end of the 19th century. The colonial government faced significant challenges in managing the archipelago's dominant Muslim population. Christiaan Snouck Hurgronje, an advisor on indigenous and Islamic affairs, argued that Islam's power was not merely a religion but also a political potential that could threaten colonial rule. He proposed that the Dutch government limit the influence of Islamic law and institutions and accommodate local, flexible customary law, which did not unify the broader community.

The formal implementation of this theory was reflected in colonial judicial policy, particularly in Article 134 of the *Indische Staatsregeling* (IS), which stipulated that customary judges must decide cases according to customary law, unless the parties chose Islamic law. However, in practice, the colonial government often enforced customary law even when the parties were Muslim. Religious courts were given limited authority over marriage and inheritance, and even then, they were under the supervision of colonial courts. As a result, the role of Islamic law in the public sphere was marginalized during the Dutch colonial period (Syafe'i 2008).

3. Liberation from Snouck Hurgronje's theory

The application of Islamic law in Indonesia after independence has experienced ups and downs along with the legal policies implemented by state authorities. Behind these dynamics, socio-cultural forces continually interact in the political decision-making process. Islamic law continues to develop, both through political infrastructure such as community organizations and political parties and through other channels.

The transformation of Islamic law in Indonesia is influenced by differing perspectives on Islamic legal thought, which can be divided into four categories: classical *fiqh* texts, decisions of Religious Courts, laws and regulations applicable in Muslim-majority countries, and fatwas (religious edicts). Within this framework, the debate over the applicability of Islamic law in Indonesia is inextricably linked to the ideological clash between the legacy of colonial law and the spirit of Islamic legal reform, particularly in the context of the rejection of the theory of *receptie*, which served as the basis for the subordination of Islamic law during the colonial period (Rana 2018).

Hazairin considers the theory of *reception* to be contrary to the constitutional and spiritual values of the Indonesian nation, even calling it a "*devil's theory*" because it contradicts the teachings of Allah and His Messenger. According to him, the independence achieved through the grace of Almighty God, as stated in the Preamble to the 1945 Constitution, demonstrates that Indonesian national life is deeply

imbued with divine values, including in the development of national law. Therefore, Muslims should be free to apply Islamic law not because it is accepted by custom, but as an expression of gratitude for the independence bestowed by God (Tobroni 2009).

Hazairin's thinking was later further developed by Sayuti Thalib through the theory of *receptie a contrario*, which states that Islamic law directly applies to Muslims. In contrast, customary law only applies if it does not conflict with Islamic law. This theory emphasized the position of Islamic law in the post-independence national legal system. The struggle against the dominance of the *receptie* theory gained legal legitimacy through the ratification of the 1945 Constitution and further through the enactment of Law No. 1 of 1974 concerning Marriage, which reflects the spirit of Islam in national law.

In the context of Glenn's theoretical framework, the rejection of the *receptie* doctrine marked an important transformation in the legal status of Islamic law in Indonesia. Islamic law gradually shifted from a persuasive normative influence into an authoritative legal source as it began to be institutionalized through state legislation and religious courts. This transformation reflects the increasing recognition of Islamic legal norms within the Indonesian national legal system.

Furthermore, efforts to strengthen religious court institutions began to be evident with the issuance of Government Regulation No. 45 of 1957 concerning the establishment of Religious Courts outside Java and Madura. However, at that time it still provided a choice between litigating cases in Religious Courts or District Courts. It was not until 1989, with the issuance of Law No. 7 concerning Religious Courts, that the independence of Islamic law in the civil sphere was affirmed, with Muslims obligated to resolve their cases in Religious Courts. Thus, the theories of *receptie exit* and *receptie a contrario* became important milestones in freeing Islamic law from the shackles of colonialism and in establishing it as an integral part of the national legal system, grounded in belief in God and the true independence of the Indonesian nation (Syafe'i 2008).

4. Development of Islamic law

During the Old Order, Islamic law did not undergo significant development, and the government of that era did not provide much room for Islamic legal values to play a role in the national legal system. This is evident in state planning documents such as the Outlines for the First Stage of Planned National Development (1961–1969), in which Islamic values were not a central element. The Old Order government emphasized development based on secular nationalism and socialism, so Islamic law, derived from Sharia, was not recognized as a primary pillar of national law but was confined to the private and customary spheres.

In contrast to the Old Order, during the New Order, despite the government's initial repressive stance against Islamic political expression, the development of Islamic law began to show a more positive direction. In the initial phase (1966–1981), the relationship between Muslims and the government was antagonistic. The government marginalizes the role of Islam in politics, as seen in the rejection of the aspirations of Muslims who want to include sharia values in legislation. (Alfanny, Dh, dan Muhammad 2025) The enactment of Marriage Law No. 1 of 1974 and Government Regulation No. 9 of 1975 was an important milestone because it stated that a marriage is valid if it is carried out in accordance with the laws of each religion. Hazairin and Mahadi consider this provision as the endpoint of the validity of the theory of *receptie*. In addition, the New Order era was also marked by the birth of several legislative products that accommodate Islamic law, such as Law No. 7 of 1989 concerning Religious Courts, Law No. 5 of 1960, and Government Regulation No. 28 of 1977 concerning Waqf. Although the New Order regime still formally stifled Islamic political aspirations, the acceleration of Islamic law continued through institutional channels (Yazid et al. 2022).

After the collapse of the New Order regime in 1998, the Reformation era marked a revival of Islamic law in Indonesia. This era was marked by the opening of democratic spaces that allowed Muslims to play a more active role in the national legal and political systems. Islam found a new place in society and government, including representation in political parties and participation in national

leadership. The direction of national development outlined in the 1999 GBHN (State Guidelines for the Development of Islamic Law) gave greater recognition to Islamic law as a source of national law, on a par with customary law and Western law (Munawaroh, Putri, dan Sujana 2025).

This development was marked by the enactment of various laws that accommodated Islamic legal values, including Law No. 38 of 1999 concerning Zakat Management, Law No. 17 of 1999 and Law No. 13 of 2008 concerning the Implementation of the Hajj Pilgrimage, Law No. 41 of 2004 concerning Waqf, Law No. 3 of 2006 as a revision of the Religious Courts Law, Law No. 21 of 2008 concerning Sharia Banking, Law No. 19 of 2008 concerning State Sharia Securities (SBSN), and Law No. 18 of 2001 concerning Special Autonomy for the Province of Nanggroe Aceh Darussalam which provides space for the official implementation of Islamic law. The Reformation Era shows that Islamic law not only develops through legal-formal channels, but also through cultural strengthening and participation of the people in various aspects of national and state life.

From the perspective of Glenn's theory, the post-reform era demonstrates a significant transformation in the authority of Islamic law. Various legislative products such as the Zakat Law, Waqf Law, and Sharia Banking Law illustrate how Islamic legal norms have been formally incorporated into the national legal system. In this context, Islamic law no longer functions solely as a persuasive moral reference but has become an authoritative legal source recognized and enforced by the state.

Islamic Law as a Persuasive Source and Authority Source

In the early colonial period, Islamic law occupied a complex position within the legal structure of the Dutch East Indies. Although not formally recognized by the colonial government as positive law, Islamic law was widely practiced by the Muslim community. In this regard, Islamic law functioned as a persuasive source, meaning a source of law practiced socially and religiously, but without formal binding force within the colonial legal system. Muslims adhered to Sharia law not out of obligation to the state, but out of religious conviction stemming from the commands of Allah and His Messenger. From the perspective of Glenn's theory of legal sources, this situation reflects the position of Islamic law as a persuasive source, namely a normative system that influences social behavior but lacks formal recognition and coercive authority within the state legal structure.

Although the Dutch colonial government did grant limited recognition to Islamic law, as evident in the 1642 Statute of Batavia, which stipulated that Muslim inheritance cases must be resolved according to Islamic law, furthermore, the compilation of the *Compendium Freijer* and the use of other Islamic legal texts, such as *the Pepakem Cirebon* and *al-Muharrar*, this recognition was administrative in nature. It did not fully recognize Islamic law as part of the state legal system. Islamic law was used only to the extent that it served the interests of the colonial government's stability and continuity. Therefore, Islamic law during this period remained institutionally subordinated within the colonial legal hierarchy. It functioned as a persuasive normative reference rather than an authoritative legal source formally integrated into the colonial legal system.

A major shift in the position of Islamic law occurred at the end of the 19th century with the emergence of the *Receptie theory*, developed by Christiaan Snouck Hurgronje. The practical implications of the *Receptie theory* were evident in the colonial judicial system. Article 134 of the *Indische Staatsregeling* (IS) stipulated that customary judges must decide cases based on customary law, unless the parties chose Islamic law. However, in practice, customary law was often enforced even if the disputing parties were Muslim. Religious courts (*Priesteraad*) were granted only limited authority in marriage and inheritance matters and remained under the supervision of colonial courts. This demonstrates that Islamic law was not granted an independent space within the colonial legal structure, but rather positioned subordinately.

Indonesian independence marked a significant turning point in the transformation of Islamic law from a mere persuasive source to an authoritative source within the national legal system. The end of

colonial rule also brought an end to the dominance of *the Receptie theory*, which had subordinated Islamic law to customary law and to the interests of the colonial government. In the context of an independent state, the source of legal legitimacy no longer rested on the will of colonial rulers, but rather on the constitution, popular sovereignty, and the nation's fundamental values. This transformation illustrates the shift of Islamic law from a socially persuasive norm toward an authoritative legal source institutionalized through the constitutional and legislative framework of the Indonesian state.

Constitutionally, this change was supported by Pancasila and the *Preamble* to the 1945 Constitution, particularly the principle of Belief in One Almighty God, which provided the normative basis for the recognition of religious values in the formation of national law. In H. Patrick Glenn's framework, this legitimacy marked the process of legalizing religious norms into formalized normativity, namely the transformation of previously socially existing norms into legal sources recognized by the state. Thus, Islamic law no longer functioned merely as a persuasive norm but began to acquire the status of an authoritative source with legal binding force.

From the perspective of Glenn's theory of authoritative legal sources, the transformation of Islamic law in Indonesia can be observed through three main implications. First, from the aspect of normative recognition, the recognition of a legal system or norm through official legal rules (positive legal norms), so that its existence is recognized as legitimate within the state's legal system, although not necessarily all of it has direct coercive power or criminal sanctions. This contrasts with the persuasive nature of Islamic law, where it was not recognized as a state legal norm. Islamic law is adhered to solely because of the religious convictions of Muslims, not because of state recognition. The state maintains a neutral stance or even limits its application.

In this regard, various laws and regulations explicitly establish Islamic law as a source of law. Law Number 1 of 1974 concerning Marriage, for example, states that the law of the religion concerned determines the validity of a marriage. This provision applies normatively because the state relies on the validity of a legal event (marriage) for its validity on religious and state norms. For Muslims, Islamic law serves as the legal standard for determining an individual's legal status, including its implications for civil rights and obligations. Under this law, marriages not conducted in accordance with the rules can be annulled and denied legal protection.

This research confirms the findings of Sopyan et al., who stated that, normatively, Islamic law in Indonesia has attained authoritative status within the state administration system. Islamic law has the potential to become an authoritative source in Indonesian state administration, though this would require strong political and legislative involvement (Sopyan, Rohayana, dan Yahya 2022). Furthermore, Abu Rokhmad's research shows that Islamic law has become a legitimate source of national law, not merely a value proposition in legal formation (Rokhmad dan Universitas 2021). Other research also reveals that the formation of positive law in Indonesia is influenced by Islamic legal principles, further strengthening its normative legitimacy within the national legal system. Islamic legal principles no longer function merely as moral or social norms but have been officially adopted in the formation of national legislation. This demonstrates the state's normative recognition of Islamic law as a legitimate source of law within the Indonesian legal system. The state considers Islamic law to be appropriate, valid, and relevant as a source of law (Muhammad Hilman Asysyegav 2025).

Second, the transformation of Islamic law has conferred legal binding force on it, shifting its status from a social norm to part of positive law officially recognized by the state. When Islamic norms are established or referenced in laws, the Compilation of Islamic Law (KHI), and implemented by state institutions (e.g., Religious Courts), they become legally binding rather than merely persuasive. This means the state creates legal space that allows Sharia norms to be enforced through formal legal mechanisms. The establishment of Religious Courts through Law Number 7 of 1989 (and its amendments) places Islamic law within the state's judicial power structure. Religious court judges do not apply Islamic law as moral advice, but rather as a source of binding positive law for the parties.

Religious court decisions are final and binding and can be enforced by the state, a key characteristic of an authoritative source according to Glenn's theory.

This change in the status of Islamic law renders it legally binding, as Darian Ezra, Luhung Cahya Adi, and colleagues state. Religious Courts play a direct role in resolving cases under Islamic law, including marriage, inheritance, and sharia economics. This implementation indicates that Islamic legal norms are applied through state legal institutions, thus having a legally binding force for disputing parties ('Aabidah, Darian Ezra 2025). Other research confirms that Islamic law has transformed into positive law through adaptation to societal needs and the national legal system. This article emphasizes that Islamic law in Indonesia has become part of positive law, for example, through the inclusion of Islamic legal principles in judicial regulations and practices (Nur et al. 2020).

Third, the enactment of Islamic law can have real legal consequences if Islamic legal norms are violated. This results in legal consequences that can be enforced through state mechanisms, such as binding court decisions, administrative or civil sanctions, and legally enforceable obligations or responsibilities. These implications can be seen in the fields of waqf, zakat, and Islamic economics, where violations of provisions can result in administrative and civil sanctions. For example, in Islamic banking, Sharia principles are not merely business ethics but also legal standards overseen by the state through official authorities. This demonstrates that Islamic law has become part of the state's legal control and enforcement system (state-enforced normativity).

Studies examining the implementation of Religious Court decisions on child custody after divorce can reinforce this finding by showing that Islamic legal norms can be enforced by the state (*through court decisions*), although challenges remain, as explained by Ahmad Haris Muizzuddin. (Muizzuddin 2025) Other research shows that although Islamic law and national law are still undergoing a dynamic of harmonization, Islamic norms have influenced the formation of positive law in Indonesia, so that legal consequences for violations take into account Islamic values. For example, in regulating marriage registration, divorce, inheritance, and waqf, Islamic norms are integrated into national law, so that violations of these rules have legal consequences because the rules themselves are part of positive law (Puspa et al. 2023).

Based on the above analysis, it can be concluded that the position of Islamic law in Indonesia underwent a fundamental transformation, from being merely a persuasive source during the colonial period to a legal source possessing legal authority and binding force in the post-independence national legal system. In the persuasive phase, Islamic law was adhered to on the basis of the people's religious consciousness, without the support of state power. Hence, its validity depended solely on social and moral legitimacy. Conversely, after independence, Islamic law gained normative recognition through legislation that explicitly made it the legal basis for Muslims in certain fields.

The Authority of Islamic Law in the Perspective of Fiqh Siyasah

1. Justice and *Maṣlaḥah*

In this context, the transformation of Islamic law from a persuasive source into an authoritative legal source can be understood as legitimate when the institutionalization of Islamic legal norms contributes to justice and public welfare. This principle holds that justice and public good are the primary objectives (*maqasid*) of every legal and political policy implemented by the state. Therefore, Islamic law gains public authority not because of its religious identity, but because its underlying values align with the fundamental objectives of state administration.

Islamic jurisprudence (*fiqh siyasah*) views the authority of the ruler (*waliy al-amr*) to establish legal policy (*tasyri' siyasi*) as legitimate as long as the policy is directed toward protecting the interests of the wider community and preventing harm (*daf'al-mafasid*). In this context, the institutionalization of Islamic legal norms into positive state law can be understood as the state's effort to adopt normative values deemed effective in realizing order, justice, and social welfare. Thus, the transformation of

Islamic law from a persuasive to a legally binding norm is a logical consequence and serves the public interest, not merely a form of religious formalization. In the Indonesian context, this perspective explains why Islamic legal norms are selectively incorporated into national legislation through democratic and constitutional mechanisms rather than applied in a purely textual or formalistic manner.

This principle of public interest is reflected in various Indonesian laws and regulations. The requirement for the registration of marriages, as stipulated in Law Number 1 of 1974 concerning Marriage (Article 2, paragraph 2) and Government Regulation Number 9 of 1975, has a positive effect in preventing social conflict arising from unregistered marriages. With this authority, marriage, which was previously a private law, becomes a binding law between the individual and the state. In this regard, the state guarantees and protects its citizens who enter into marriages in accordance with religious and state regulations. This protection, from a *fiqh* perspective, is a manifestation of the public interest that must be supported to avoid potential risks. The findings of this study are in line with those of Anthin Lathifah; the author argues that religious norms are used as a reference in drafting laws that protect religious rights and individual freedoms, thus providing space for social welfare through equal legal protection for all citizens (Lathifah 2022). In addition, the norms adopted in marriage regulations (status, age, rights of spouses) reflect the objectives of *maqasid* such as protection of life (*hifẓ al-naḥs*), descendants (*hifẓ al-nasl*), and property (*hifẓ al-māl*). Religious values can improve the quality of national law by emphasizing social welfare and protection (Chelongwa 2025).

2. Relations between Religion and State

The principle of *siyasah shar'iyah* is one of the most important foundations in *fiqh siyasah*, providing normative justification for the state's authority to establish legal policies for the public good, even if these policies are not textually regulated in the shari'a texts. From this perspective, Islamic law is not understood merely as a collection of standard norms to be applied literally, but rather as a system of values and goals (*maqasid al-sharī'ah*) that must be realized through contextual public policies. Therefore, the state has discretionary space (*ijtihād siyasi*) to formulate *fiqh* norms to align with prevailing social, political, and legal conditions (Sandra 2026). The *fiqh* principle of *taṣarruf al-imām 'alā al-ra'iyah manūṭ bi al-maṣlaḥah* (state policy towards its people must be based on the principle of benefit) emphasizes that all policies of the ruler towards the people must be oriented towards benefit, not on the imposition of formalities of religious law (Al-Suyuthi 1999).

In the context of Indonesia as a pluralistic nation-state under the constitution, the application of the principle of *siyasah shar'iyah* is evident in the pattern of integrating Islamic legal values into positive law through a democratic, constitutional legislative process. Legal products such as the Marriage Law, Sharia Banking, Zakat, and Waqf demonstrate that the state does not position *fiqh* as a directly and independently applicable law, but rather as a normative source that influences the substance of public policy. This approach reflects the application of *siyasah shar'iyah* in a functional sense: the state adopts *fiqh* values deemed relevant to the goals of justice, public welfare, and social order, and institutionalizes them within a binding national legal framework after passing through legitimate legislative procedures (Faizin 1829).

The state occupies a central position as the authority responsible for managing public affairs and safeguarding the public welfare, including regulating the relationship between religion and law. The state is not positioned as a theocratic entity obligated to apply all *fiqh* norms literally. Still, it is not a secular state that excludes religion from the public sphere. Rather, the state functions as a normative mediator, bridging the values of religious teachings with the social and constitutional needs of a pluralistic society. This position positions religion as the source of values, ethics, and moral legitimacy. At the same time, the state has the authority to determine the form, scope, and mechanisms for its institutionalization in positive law.

The relationship between religion and the state in this context is functional and complementary, not hierarchical or subordinate (Sutopo dan Basri 2023). Within Glenn's framework, this relationship

illustrates how religious norms function as persuasive sources influencing the formation of law, while the state transforms selected norms into authoritative legal rules through formal legislation and institutional enforcement. Religion provides a normative framework and moral orientation, while the state acts as a regulatory authority, ensuring legal order and certainty of implementation. Therefore, when the state incorporates Islamic law through legislation, such as in marriage, sharia economics, zakat, and waqf, it is not ideologically Islamizing the law but rather fulfilling its constitutional function of absorbing the socio-religious values entrenched in society. This pattern confirms that the relationship between religion and the state in Indonesia falls within an integrative-proportional model, in which religion plays a persuasive role in shaping law. In contrast, the state holds formal authority in its enactment and enforcement.

The symbiotic relationship between religion and the state is reinforced by research by Ahmad Hamidi et al., who stated that the relationship between religion (especially Islam) and the state must be understood as a process of value negotiation that runs together in accordance with Pancasila and the 1945 Constitution, so that religion contributes to the formation of law without making the state a religious state (Hamidi dan Matondang 2022). Other research states that although Indonesia is not a religious state, religion remains an important element in national legal life, influencing public norms and policies. State law and religious norms interact in many areas, including family law and regulations governing social life, so that the relationship between religion and the state is formed in a *symbiotic-integrative* pattern (Daharis dan Halim 2024). From this, it can be concluded that the transformation of Islamic law in Indonesia represents a complementary relationship between religion and the state. The state can adopt religious norms as legal regulations that advance justice and public welfare. The state does not unilaterally impose religious law, but rather conducts a normative selection of Islamic values that are compatible with the constitution, the principle of pluralism, and the needs of public welfare. Therefore, the shift from persuasive to authoritative does not contradict Indonesia's character as a Pancasila state that respects religious diversity. Rather, this transformation demonstrates that state law and religious law can support each other in building a just legal order.

Conclusion

The position of Islamic law within the Indonesian legal system has historically changed in response to the surrounding legal and political context. During the Dutch colonial period, Islamic law was not recognized as formally binding state law. Although in the early days of the Dutch East India Company (VOC), there was limited recognition of Islamic law, such as in the 1642 Batavia Statute, the compilation of *the Compendium Freijer*, and the use of fiqh texts in judicial practice, Islamic law remained valid as long as it did not conflict with colonial interests. This situation changed significantly with the emergence of the theory of receptie, developed by Christiaan Snouck Hurgronje, which placed Islamic law below customary law and limited its application to certain private spheres. During this phase, Islamic law remained alive in Muslims' socio-religious practices, but was recognized only as a persuasive source, not as legally binding.

After independence, the position of Islamic law underwent a fundamental transformation in line with changes in national legal policy. The rejection of the *theory of reception* through the concepts of *receptio exit* and *receptie a contrario* paved the way for the recognition of Islamic law as law directly applicable to Muslims. This transformation is institutionalized through state legislative processes, such as the Marriage Law, the strengthening of Religious Courts, and regulations on zakat, waqf, hajj, and sharia economics. Thus, Islamic law is no longer merely a *socio-religious* norm but has become part of national positive law, binding in certain areas.

The shift in Islamic legal authority from a persuasive source to an authoritative source cannot be understood solely as a process of legal formalization, but rather as a normative transformation rooted in the principle of *siyasah shar'iyah*. Within this framework, the institutionalization of Islamic law

through constitutional mechanisms and state legislation is oriented toward the public good rather than the imposition of religious norms. This integration model positions Islamic law as a source of values that functions functionally within the national legal system, ensuring that its strengthening aligns with the principles of pluralism, democracy, and social justice within the Indonesian nation-state. This research implies that the strengthening of Islamic law within the Indonesian national legal system should continue to be pursued through a persuasive, constitutional, and inclusive approach. This approach allows Islamic law to develop sustainably within the national legal system without compromising the principles of democracy, pluralism, and social justice.

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