

The Transformation of Islamic Legal Principles in Contemporary National Legislation: A Comparative Analysis of Legal Harmonization

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Info Articles	Abstract
Article History Received : 20-09-2026 Revised : 28-09-2026 Published: 09-10-2026 Keywords: <i>Islamic Law; Codification; National Legislation; Comparative Law; Legal Certainty</i>	<i>Muslim-majority states no longer apply Islamic law as a jurists' discourse but as state-enacted legislation, so that the resulting norms derive their binding force from the constitution rather than from scholarly authority. In Indonesia this transformation has proceeded through at least four different channels, each with its own criterion of validity, producing a layered normativity that threatens legal certainty. This study explains how Islamic legal principles acquire state validity, identifies the structural pathologies of that process, and proposes an operational standard for assessing the quality of legal harmonization. The research is normative juridical and doctrinal, combining statutory, conceptual, and case approaches with a functional comparison of Indonesia, Malaysia, Morocco, Egypt, and Pakistan, supported by a socio-legal reading and by maqasid reasoning as an internal normative framework. Transformation operates through substantive codification, referential incorporation of fatwa, jurisdictional transfer, and asymmetric territorial regulation. Indonesia harmonizes purposively rather than textually, yet three pathologies persist: an unsettled validity channel for fatwa, hierarchical and horizontal disharmony among instruments, and an unresolved rights-compatibility gap. The comparison shows that the decisive variable is not the volume of Islamic content but the allocation of authority to determine compliance and the reviewability of that determination. Harmonization should be tested against four cumulative criteria, namely constitutional validity, purposive justification, institutional competence, and empirically verified non-discriminatory benefit.</i>

I. INTRODUCTION

Over the past five decades the relationship between Islamic legal principles and state legislation in Muslim-majority jurisdictions has shifted from coexistence to incorporation. The *sharīʿa* that operates inside contemporary legal systems is no longer the jurists' law described in the classical manuals, developed by private scholars and authenticated by the reasoned agreement of a professional community. It is instead a body of state-enacted rules that claims Islamic legitimacy while deriving its binding force from the constitution, the legislature, and the machinery of state adjudication.¹ Wael Hallaq has argued that this displacement is not a change of form but a change of nature, because the state assumes the interpretive authority that once belonged to the jurists and subordinates it to the logic of sovereignty and administration.² Whether one accepts that diagnosis or not, the descriptive claim

¹ Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 443–45.

² Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 1–13.

underlying it is difficult to contest: the operative sources of Islamic law in the twenty-first century are statutes, ministerial regulations, judicial decisions, and administrative standards rather than *fiqh* treatises.

Indonesia is among the densest laboratories of this process. Islamic family law was absorbed into national legislation through the Marriage Law of 1974 and its 2019 amendment,³ and was operationalised for the religious courts through the Compilation of Islamic Law promulgated by Presidential Instruction in 1991.⁴ The jurisdiction of the religious courts was progressively expanded, most significantly by the 2006 amendment that transferred *sharīʿa* economic disputes to those courts.⁵ Islamic economic principles entered positive law through the Sharia Banking Law of 2008,⁶ while waqf, zakat, and halal assurance each received dedicated statutes.⁷ Aceh, under its special autonomy framework, enacted a criminal *qanun* that applies Islamic penal norms within a defined territory.⁸ Most recently, Article 2 of the new Criminal Code opened national criminal law to “the law living in society,” a formula that may in practice channel religious and customary norms into the criminal sphere.⁹ Indonesia therefore presents not one transformation but many, accumulated over half a century and distributed across different instruments.

The analytical problem arises precisely from that plurality. Islamic legal principles do not enter Indonesian positive law through a single gateway. Some are codified directly as substantive statutory rules; some are incorporated by reference, as when banking legislation requires conformity with *sharīʿa* principles whose content is determined by the fatwas of the National Sharia Council; some are transformed institutionally, by allocating jurisdiction to a religious court rather than by rewriting a rule; and some operate territorially, through regional regulations that bind only part of the population in part of the country. Each channel carries a different criterion of validity, a different organ of interpretation, and a different mode of review. The result is a layered normativity in which the same value say, the prohibition of *ribā* or the protection of lineage may possess statutory force in one setting, merely persuasive force in another, and contested force in a third.¹⁰ Legal

³ Republic of Indonesia, Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019, Articles 2 and 7.

⁴ Republic of Indonesia, Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law, Book I.

⁵ Republic of Indonesia, Law No. 7 of 1989 concerning the Religious Judicature, as amended by Law No. 3 of 2006 and Law No. 50 of 2009, Article 49.

⁶ Republic of Indonesia, Law No. 21 of 2008 concerning Sharia Banking, Articles 1(12) and 26.

⁷ Republic of Indonesia, Law No. 41 of 2004 concerning Waqf; Law No. 23 of 2011 concerning Zakat Management; and Law No. 33 of 2014 concerning Halal Product Assurance, as amended by Law No. 6 of 2023.

⁸ Aceh Qanun No. 6 of 2014 concerning *Jinayat* Law, Article 5; Law No. 11 of 2006 concerning the Governing of Aceh, Articles 125–129.

⁹ Republic of Indonesia, Law No. 1 of 2023 concerning the Criminal Code, Article 2.

¹⁰ Yasardin and S. B. Kooria, “Revisiting the Compilation of Islamic Economic Law in Indonesia: Legal Challenges and Pathways to Harmonization,” *JURIS: Jurnal Ilmiah Syariah* 24, no. 1 (2025): 128–30, <https://doi.org/10.31958/juris.v24i1.13736>.

certainty, which is the principal justification offered for codification in the first place, is thereby placed under strain by the very process that claims to secure it.

Scholarly debate has largely polarised around two positions. The first, broadly affirmative, treats the absorption of Islamic norms into national legislation as a necessary modernisation that converts moral obligation into enforceable right and equips *sharīʿa* with the institutional capacity it lacked.¹¹ The second, broadly critical, holds that codification flattens the epistemic pluralism of *fiqh*, converts probabilistic (*ẓannī*) reasoning into a single authoritative text, and hands to the state a doctrinal monopoly it is not competent to exercise.¹² A third and more productive line of scholarship, associated with contemporary *maqāṣid* theory, reframes the question: what is transformed should not be the literal rulings of a particular school but the purposes those rulings were designed to serve, so that legislation becomes an exercise in purposive translation rather than textual transplantation.¹³ Indonesian scholarship has developed a parallel vocabulary, from Hasbi Ash-Shiddieqy's proposal of an Indonesian *fiqh* to more recent work on the "Indonesianisation" of Islamic law and on the transformation and future challenges of Islamic law in the national system.¹⁴

Three gaps remain. First, most existing studies are either single-jurisdiction and descriptive, cataloguing which Islamic rules have been enacted, or theoretical and general, debating whether codification is legitimate in principle; comparatively few examine the *mechanism* by which a religious norm acquires state validity and the institutional consequences of choosing one mechanism over another. Second, comparative work in this field tends to compare outcomes how "Islamic" a given family code is rather than the architecture of authority that produces those outcomes, with the result that jurisdictions with similar substantive rules but radically different allocations of interpretive power are treated as equivalent.¹⁵ Third, although harmonization is constantly invoked as an objective in Indonesian legal writing, the literature offers no operational standard for determining when harmonization has actually been achieved, as distinct from mere formal enactment.¹⁶

This article addresses those gaps. Its contribution is threefold. Analytically, it proposes a typology of four transformation modes substantive codification, referential incorporation, jurisdictional transfer, and asymmetric territorial

¹¹ Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib: Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022): 216–22, <https://doi.org/10.21093/mj.v21i2.4800>.

¹² Hallaq, *Sharīʿa*, 496–99.

¹³ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 2–9.

¹⁴ A. Malthuf Siroj, Ismail Marzuki, and Elkhairati, "Transformation and Future Challenges of Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 97–101, <https://doi.org/10.29240/jhi.v8i1.6618>.

¹⁵ Yeni Salma Barlinti, "Harmonization of Islamic Law in National Legal System: A Comparative Study Between Indonesian Law and Malaysian Law," *Indonesia Law Review* 1, no. 1 (2011), <https://doi.org/10.15742/ilrev.v1n1.95>.

¹⁶ Yasardin and Kooria, "Revisiting the Compilation of Islamic Economic Law," 131–33.

regulation and shows that each generates a distinct pathology. Comparatively, it examines Indonesia alongside Malaysia, Morocco, Egypt, and Pakistan using a single *tertium comparationis*: the mechanism through which a religious norm becomes binding state law and the extent to which the determination of compliance is reviewable. Normatively, it develops a four-criterion harmonization test grounded in constitutional theory and in *maqāṣid al-sharīʿa*, and applies that test to four Indonesian legal regimes in order to demonstrate that formal enactment and genuine harmonization are not the same achievement.

Accordingly, the research addresses four questions. First, through what mechanisms have Islamic legal principles been transformed into binding norms in contemporary Indonesian legislation, and what distinguishes those mechanisms from one another? Second, what structural problems does that transformation generate for the coherence, hierarchy, and certainty of the national legal system? Third, what does a functional comparison with Malaysia, Morocco, Egypt, and Pakistan reveal about the institutional variables that determine the quality of harmonization? Fourth, what normative standard should govern the future transformation of Islamic legal principles into national legislation?

The article proceeds in five parts. Part II reviews the theoretical literature and situates the study within debates on codification, legal transplantation, and *maqāṣid*-based reasoning. Part III explains the research method and the legal materials used. Part IV presents the analysis in five sub-sections: the conceptual anatomy of transformation, the Indonesian experience, the comparative frame, the structural pathologies, and the proposed harmonization test. Part V concludes by answering the research questions and setting out the theoretical and practical implications.

II. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The classical juristic tradition supplies the first layer of the theoretical framework. Al-Ghazālī's formulation of *maṣlaḥa* as the preservation of the five essential interests religion, life, intellect, lineage, and property established that legal rulings are instruments oriented toward identifiable ends rather than self-justifying commands.¹⁷ Al-Shāṭibī systematised that insight by arguing that the *sharīʿa* as a whole possesses purposes ascertainable through inductive reading of its particulars, so that the interpreter is obliged to attend to the purpose of a rule and not only to its wording.¹⁸ Ibn ʿĀshūr subsequently argued that these purposes must be reconstructed for contemporary legislation, and in doing so supplied the conceptual bridge between classical *uṣūl al-fiqh* and modern statutory drafting.¹⁹ Equally important for present purposes is the doctrine of *siyāsa sharʿiyya*, which recognises the political authority's competence to regulate matters left

¹⁷ Abū Ḥāmid al-Ghazālī, *al-Mustasfā min ʿIlm al-Uṣūl* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), 1:174–75.

¹⁸ Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿa* (Cairo: Dār Ibn ʿAffān, 1997), 2:17–20; Muhammad Khalid Masud, *Shatibi's Philosophy of Islamic Law* (Islamabad: Islamic Research Institute, 1995), 151–55.

¹⁹ Muhammad al-Ṭāhir Ibn ʿĀshūr, *Treatise on Maqāṣid al-Sharīʿah*, trans. Mohamed El-Tahir El-Mesawi (London: International Institute of Islamic Thought, 2006), 87–92.

indeterminate by revelation in the interest of public welfare, and Ibn al-Qayyim's principle that legal determinations legitimately change with changes of time, place, custom, and condition.²⁰ Together these doctrines establish, from within the tradition, that state regulation of Islamic legal subject-matter is not a foreign imposition; the contested question is its limits, not its permissibility.

The second layer is the modern scholarship on the historical transformation of Islamic law. Schacht and Coulson described the nineteenth and twentieth-century codifications the *Mecelle*, the Egyptian personal status legislation, the Indian Anglo-Muhammadan law as the moment at which *fiqh* became state law and the jurist became a functionary.²¹ Hallaq radicalised the argument, contending that the modern state's structure is incompatible with the moral architecture of *sharī'a*, because the state locates sovereignty in itself and reduces law to an instrument of governance.²² Others resist that conclusion. Kamali maintains that codification is a technique rather than an ideology and that its effects depend on how it preserves interpretive plurality and procedural fairness.²³ Auda's systems-oriented reading of *maqāsid* similarly treats openness, purposefulness, and multidimensionality as criteria by which a codification may be judged successful or defective.²⁴ The literature therefore supplies both a critique of transformation and standards internal to Islamic legal thought by which particular transformations can be evaluated.

The third layer is general comparative and socio-legal theory. Watson's account of legal transplants holds that rules migrate between systems with surprising ease and comparatively little regard for social context.²⁵ Teubner's counter-thesis, that transplanted norms operate as "irritants" which are transformed by, and in turn transform, the receiving legal order, better describes what happens when *fiqh* categories enter a civil-law statutory system: the category of *ribā* inside a banking statute is neither what it was in classical *fiqh* nor what the statute would have contained without it.²⁶ Friedman's distinction between legal structure, substance, and culture explains why enactment alone rarely produces compliance, since the operative behaviour of officials and citizens is mediated by legal culture.²⁷ These theories matter for the present study because harmonization is frequently treated

²⁰ Ibn Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn 'an Rabb al-Ālamīn* (Beirut: Dār al-Kutub al-Ilmiyya, 1991), 3:11–14.

²¹ Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 92–100; Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 149–61.

²² Hallaq, *The Impossible State*, 37–48.

²³ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008), 221–28.

²⁴ Auda, *Maqasid al-Shariah*, 45–55.

²⁵ Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2nd ed. (Athens: University of Georgia Press, 1993), 21–30.

²⁶ Gunther Teubner, "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences," *Modern Law Review* 61, no. 1 (1998): 11–32, <https://doi.org/10.1111/1468-2230.00125>.

²⁷ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 193–210.

in Indonesian scholarship as a drafting exercise, whereas the comparative literature indicates that it is simultaneously an institutional and a cultural process.

The fourth layer concerns legal certainty and its relationship with substantive justice. Radbruch's formula, which holds that positive law loses its claim to obedience when its conflict with justice becomes intolerable, frames the outer limit of formal validity.²⁸ Fuller's inner morality of law supplies eight procedural requirements: generality, promulgation, clarity, non-contradiction, possibility of compliance, constancy, congruence between declared rule and official action, and non-retroactivity that are directly relevant to assessing instruments such as a compilation issued by presidential instruction or a standard incorporated by reference to a fatwa.²⁹ Hart's analysis of the rule of recognition is equally pertinent, since the central question posed by referential incorporation is precisely which criterion the Indonesian system uses to recognise a fatwa-derived standard as law.³⁰ In the Indonesian context, Mochtar Kusumaatmadja's conception of law as a means of orderly societal renewal has supplied the dominant justification for using legislation as an instrument of social transformation, a justification that has been invoked for Islamic legal codification as readily as for economic regulation.³¹

The fifth layer is the specialised literature on Indonesia. Hooker's study of Indonesian *syariah* traced the emergence of a distinctively national school of Islamic legal thought expressed through fatwa and legislation.³² Bowen's ethnography of religious court reasoning demonstrated that Indonesian judges routinely reconcile *fiqh*, statute, and local practice through public justification rather than textual deduction.³³ Salim and Hosen examined the constitutional politics of Islamisation and showed that the failure of proposals to constitutionalise *shari'a* redirected Islamic legal aspiration into ordinary legislation.³⁴ Nurlaelawati's study of the Compilation of Islamic Law found that religious court judges apply it selectively, retaining recourse to classical *fiqh* where the Compilation is silent or contested a finding of direct importance for any claim that codification produces uniformity.³⁵ Lukito analysed the persistent tension between Islamic, customary, and state law as

²⁸ Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," trans. Bonnie Litschewski Paulson and Stanley L. Paulson, *Oxford Journal of Legal Studies* 26, no. 1 (2006): 6–8, <https://doi.org/10.1093/ojls/gqi041>.

²⁹ Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1969), 33–94.

³⁰ H. L. A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Clarendon Press, 1994), 100–110.

³¹ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan* (Bandung: Alumi, 2002), 13–20.

³² M. B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: Institute of Southeast Asian Studies, 2008), 1–15.

³³ John R. Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003), 47–60.

³⁴ Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), 63–90; Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007), 190–200.

³⁵ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 175–90.

a problem of legal pluralism that unification has not dissolved.³⁶ More recent Indonesian scholarship has examined the harmonization of *sharīʿa* economic law, the positivisation of National Sharia Council fatwas, and the relationship between Aceh's criminal *qanun* and the new national Criminal Code.³⁷

Taken together, this literature leaves an identifiable theoretical gap. The classical and *maqāṣid*-oriented scholarship establishes why purposes rather than literal rulings should be the object of transformation, but does not translate that insight into criteria usable by a legislature or a constitutional court. The comparative and socio-legal scholarship explains why transplantation is unpredictable, but is rarely applied to the specific problem of religious norms acquiring state validity. The Indonesian literature documents the results of transformation in considerable detail, yet analyses each regime family law, banking, halal assurance, Aceh in isolation, so that the common structural question of validity channels remains unasked. This article addresses that gap by treating the mechanism of validity as the unit of analysis and by proposing an explicit test for evaluating it.

III. RESEARCH METHOD

This study is normative juridical research, which treats legal norms, judicial decisions, and authoritative doctrine as the primary material of analysis rather than as background to empirical observation.³⁸ Within that framework it employs doctrinal legal research to reconstruct the content and hierarchy of the relevant norms, and it is prescriptive in orientation: it does not merely describe the state of Indonesian law on the transformation of Islamic legal principles but evaluates that state against articulated criteria and proposes a normative standard for future legislation.

Four approaches are combined. The statutory approach is used to examine the constitutional provisions, statutes, government regulations, presidential instruments, Supreme Court regulations, and regional *qanun* through which Islamic legal principles have obtained binding force. The conceptual approach is used to clarify the relations among transformation, codification, positivisation, harmonization, and legal certainty, which are frequently conflated in the literature. The case approach is applied to decisions that changed the structure of the field rather than merely resolving a dispute, principally Constitutional Court Decision No. 46/PUU-VIII/2010 on the civil relationship of a child born outside a registered marriage, Decision No. 93/PUU-X/2012 on the absolute competence of the religious courts in *sharīʿa* economic disputes, and Decision No. 22/PUU-XV/2017 on the minimum age of marriage, together with the Malaysian Federal Court's decision in

³⁶ Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (London: Routledge, 2013), 1–20.

³⁷ Yasardin and Kooria, "Revisiting the Compilation of Islamic Economic Law," 127–36; Dimas Muhammad Yezar and Faisal Riza, "Legal Harmonization Between Aceh's Qanun Jinayat and Indonesia's National Criminal Code," *Abdurrauf Law and Sharia* 3, no. 1 (2026): 113–18, <https://doi.org/10.70742/arlash.v3i1.572>.

³⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 55–60.

JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd.³⁹ The comparative approach follows the functional method: legal institutions are compared not by their labels but by the problem they solve, with the *tertium comparationis* defined as the mechanism by which a religious norm acquires binding force in a state legal system and the extent to which the determination of compliance with that norm is subject to review.⁴⁰

Two supplementary methodologies are used. A socio-legal reading is applied at the level of effects, drawing on published empirical and evaluative studies to ask whether an enacted norm has produced the protective outcome claimed for it; this is not fieldwork but the use of secondary empirical findings to test normative claims. Islamic legal methodology is used internally rather than ornamentally: *maqāṣid al-sharīʿa* provides the substantive criterion against which particular legislative choices are assessed, and the classical distinction between certain (*qaṭʿī*) and probable (*ẓannī*) determinations is used to identify which matters properly admit of legislative discretion.⁴¹

The legal materials are of three kinds. Primary materials comprise the 1945 Constitution; Law No. 1 of 1974 as amended by Law No. 16 of 2019; Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law; Law No. 7 of 1989 on the Religious Judicature as amended by Law No. 3 of 2006 and Law No. 50 of 2009; Law No. 41 of 2004 on Waqf; Law No. 21 of 2008 on Sharia Banking; Law No. 23 of 2011 on Zakat Management; Law No. 33 of 2014 on Halal Product Assurance as amended by Law No. 6 of 2023; Law No. 12 of 2011 on the Formation of Legislation as amended; Law No. 11 of 2006 on the Governing of Aceh and Aceh Qanun No. 6 of 2014 on *Jinayat*; Law No. 1 of 2023 on the Criminal Code; Supreme Court Regulation No. 2 of 2008 on the Compilation of Sharia Economic Law and Supreme Court Regulation No. 14 of 2016 on the procedure for *sharīʿa* economic disputes; the decisions of the Constitutional Court identified above; and, for comparison, sections 56 and 57 of the Central Bank of Malaysia Act 2009, Moroccan Law No. 70-03 constituting the Family Code, Article 2 of the Egyptian Constitution, and Article 203D of the Constitution of Pakistan. Secondary materials consist of peer-reviewed articles, monographs, and classical works of *uṣūl al-fiqh*. Tertiary materials include legal dictionaries and reference works used for terminological precision.

Analysis proceeds in four stages. Norms are first classified by transformation mode. Each mode is then tested for internal coherence against the hierarchy established by Article 7 of Law No. 12 of 2011 and against Fuller's procedural criteria. The comparative material is then used to isolate the institutional variables that distinguish more from less successful harmonization. Finally, the four-criterion test developed in Part IV.E is applied to four Indonesian regimes. The study has two

³⁹ Constitutional Court of the Republic of Indonesia, Decision No. 46/PUU-VIII/2010, 17 February 2012; Decision No. 93/PUU-X/2012, 29 August 2013; Decision No. 22/PUU-XV/2017, 18 December 2018; *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd*, Federal Court of Malaysia, decision of 10 April 2019.

⁴⁰ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd ed., trans. Tony Weir (Oxford: Clarendon Press, 1998), 34–47.

⁴¹ Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Sharīʿa into Egyptian Constitutional Law* (Leiden: Brill, 2006), 174–80.

acknowledged limitations: it does not generate original empirical data on compliance, and its comparative component is limited to five jurisdictions selected for structural diversity rather than statistical representativeness.

IV. RESULTS AND DISCUSSION

A. The Anatomy of Transformation: Four Modes and Their Logics

The first finding of this study is that “the transformation of Islamic legal principles into national legislation” is not a single operation but a family of operations that differ in their legal architecture. Four modes can be distinguished analytically, and all four are present in Indonesian law.

Substantive codification transfers the content of an Islamic legal rule into a statutory provision that thereafter operates as ordinary positive law. The Marriage Law’s requirements of consent, guardianship, and witnesses, and the Compilation of Islamic Law’s articulation of the pillars of marriage, of maintenance, and of inheritance shares belong to this category.⁴² Its distinguishing feature is that the state assumes full responsibility for the rule: the text is enacted, published, amendable, and justiciable in the ordinary manner, and its Islamic provenance becomes a matter of legislative history rather than of continuing validity. The advantage is certainty; the cost is that a single juristic position is elevated over the alternatives that classical *fiqh* preserved.

Referential incorporation leaves the content of the norm outside the statute and binds the addressee to a standard determined elsewhere. Indonesian sharia banking legislation defines *sharīʿa* principles as principles of Islamic law in banking activity based on a fatwa issued by the institution authorised to determine fatwas in the field of *sharīʿa*, and requires products and services to conform to that standard.⁴³ The statute thus creates the obligation while delegating its content. This mode is administratively efficient and doctrinally sensitive, since it allows expert bodies to respond to new financial instruments without legislative amendment. Its difficulty is constitutional: the fatwa itself is not among the categories of legislation recognised by Article 7 of Law No. 12 of 2011, and its content therefore enters the legal system through a channel the hierarchy of norms does not describe.⁴⁴

Jurisdictional transfer transforms the institutional location of decision-making rather than the substance of any rule. The successive expansions of religious court competence culminating in the 2006 transfer of *sharīʿa* economic disputes and the Constitutional Court’s removal of the choice-of-forum explanation in the Sharia Banking Law changed who decides, and therefore which interpretive tradition frames the decision, without enacting a single new substantive norm of Islamic law.⁴⁵ This mode is easily underestimated, yet it may be the most consequential: allocating jurisdiction determines the reasoning environment in which all future substantive questions will be resolved.

⁴² Compilation of Islamic Law, Articles 14, 80–84, and 176–185; Law No. 1 of 1974, Article 6.

⁴³ Law No. 21 of 2008, Articles 1(12) and 26(1)–(2).

⁴⁴ Law No. 12 of 2011 concerning the Formation of Legislation, as amended by Law No. 15 of 2019 and Law No. 13 of 2022, Article 7(1).

⁴⁵ Law No. 3 of 2006, Article 49(i) and its Elucidation.

Asymmetric territorial regulation confines an Islamic legal regime to a particular region under a special autonomy arrangement. Aceh's authority to enact *qanun* implementing Islamic law, exercised most visibly in the *Qanun Jinayat*, produces norms that bind within one province while the national criminal law governs elsewhere.⁴⁶ The mode accommodates historical and political particularity, but it generates problems of equality before the law, of conflict with national statutes, and of the personal scope of application that the other three modes do not raise in the same form.

Mode	Locus of norm content	Indonesian example	Principal risk
Substantive codification	Inside the statute	Marriage Law; Compilation of Islamic Law	Doctrinal monopoly; loss of juristic plurality
Referential incorporation	Outside the statute, in a fatwa or standard	Sharia Banking Law and the fatwas it incorporates	Unrecognised validity channel; limited review
Jurisdictional transfer	Unchanged; the deciding institution moves	Expansion of religious court competence	Forum friction; uneven judicial expertise
Asymmetric territorial regulation	Regional instrument	Aceh <i>Qanun Jinayat</i>	Equality; conflict with national law

Table 1. Four modes of transforming Islamic legal principles into national law

This typology yields a second and more important finding. What is transformed is rarely the classical ruling itself. In almost every Indonesian instance the legislature has enacted a rule that serves the *purpose* attributed to a classical ruling while departing from its literal form. Marriage registration is not a pillar of marriage in classical *fiqh*, yet it is required by statute because the purpose of the classical requirement of publicity and witnesses evidentiary security and the protection of lineage and property is better achieved under modern conditions by a public register.⁴⁷ The minimum age of marriage has no fixed classical equivalent, yet the Constitutional Court's reasoning in Decision No. 22/PUU-XV/2017 and the subsequent amendment by Law No. 16 of 2019 rested on the protection of the child, which is a *maqāṣid* argument conducted in constitutional language.⁴⁸ Indonesian transformation is therefore purposive rather than textual. That characterisation is descriptive, not celebratory: purposive transformation is also more easily instrumentalised, because a legislature that claims to serve a purpose is less constrained than one that must show fidelity to a text.

⁴⁶ Law No. 11 of 2006, Articles 125–129; Aceh Qanun No. 6 of 2014, Article 5.

⁴⁷ Law No. 1 of 1974, Article 2(2); Compilation of Islamic Law, Articles 5–7; Nurlaelawati, *Modernization, Tradition and Identity*, 121–30.

⁴⁸ Constitutional Court Decision No. 22/PUU-XV/2017, 18 December 2018; Law No. 16 of 2019, Article 7(1).

B. The Indonesian Experience: Absorption Without a Constitutional Sharia Clause

Indonesia's distinctiveness lies in what its constitution does not say. The deletion of the seven words of the Jakarta Charter in 1945 and the rejection of proposals to restore them during the constitutional amendments of 1999–2002 mean that Indonesia possesses no provision equivalent to Article 2 of the Egyptian Constitution.⁴⁹ Islamic legal norms consequently enter the national system through ordinary legislative politics, justified by the language of national interest, public welfare, and the protection of citizens rather than by a constitutional command of *sharī'a* conformity. This produces what may be called absorptive harmonization: the Islamic content of a statute is defended by reference to the good it achieves for the population, and the statute is subject to the same constitutional review as any other.

Family law illustrates the pattern most clearly. Article 2(1) of the Marriage Law makes validity dependent on each party's religious law, while Article 2(2) requires registration; the Compilation of Islamic Law elaborates both, declaring that marriages concluded outside the supervision of the registrar have no legal force.⁵⁰ The Constitutional Court declined to invalidate the religious-validity provision when it was challenged, and has consistently treated the statutory scheme as a legitimate accommodation of religious norms within a constitutional order.⁵¹ In Decision No. 46/PUU-VIII/2010 the Court nevertheless held that a child born outside a registered marriage has a civil relationship with the man whose paternity can be proved by science or other legally admissible evidence, a ruling that protects the child without pronouncing on *nasab* in its theological sense.⁵² The decision has been criticised from both directions, but its structure is instructive: the Court separated the religious question, which it left to religious authority, from the civil question, which it resolved by reference to constitutional protection of children. That separation is the technique by which Indonesian harmonization has generally proceeded.

The *sharī'a* economic regime displays the same absorptive logic with a different architecture. The Sharia Banking Law recognises *sharī'a* principles by reference to fatwa, the Supreme Court issued the Compilation of Sharia Economic Law as a regulation to supply the courts with an applicable substantive text, and a further regulation established a simplified procedure for *sharī'a* economic disputes.⁵³ Constitutional Court Decision No. 93/PUU-X/2012 completed the structure by removing the statutory explanation that had permitted parties to select the district

⁴⁹ Hosen, *Shari'a and Constitutional Reform in Indonesia*, 195–200; Salim, *Challenging the Secular State*, 91–100.

⁵⁰ Law No. 1 of 1974, Article 2(1)–(2); Compilation of Islamic Law, Articles 5–7.

⁵¹ Constitutional Court Decision No. 68/PUU-XII/2014, 18 June 2015.

⁵² Constitutional Court Decision No. 46/PUU-VIII/2010, 17 February 2012; Achmad Irwan Hamzani, "Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *Jurnal Konstitusi* 12, no. 1 (2015), <https://doi.org/10.31078/jk1214>.

⁵³ Supreme Court Regulation No. 2 of 2008 concerning the Compilation of Sharia Economic Law; Supreme Court Regulation No. 14 of 2016 concerning the Procedure for the Settlement of Sharia Economic Disputes.

court, thereby confirming the absolute competence of the religious courts.⁵⁴ What the structure does not resolve is the legal status of the fatwas themselves. They are indispensable to the operation of the regime, they are relied upon by regulators and by judges, and yet they remain formally non-binding until absorbed into a regulatory instrument; scholarship describes this as a transformation of authority from charismatic to legal-rational that the hierarchy of norms has not yet acknowledged.⁵⁵

Halal assurance demonstrates the administrative frontier of transformation. The Halal Product Assurance Law created a state agency, made certification obligatory for products entering circulation, and distributed the functions of standard-setting, auditing, and fatwa determination among different bodies; the 2023 amendment adjusted the process and the timelines, particularly for micro and small enterprises.⁵⁶ Here an Islamic legal category has been converted into a regulatory compliance system with international trade implications, and the debate has shifted accordingly from the theological content of the norm to the proportionality of the burden it imposes. That shift is itself evidence of the maturity of transformation: once a religious norm becomes a regulatory standard, it is evaluated by regulatory criteria.

Zakat and waqf legislation completes the picture on the philanthropic side. The Waqf Law recognised cash waqf and created a national board; the Zakat Management Law centralised administration and was challenged before the Constitutional Court, which upheld the scheme while narrowing the exposure of traditional collectors to criminal sanction.⁵⁷ In both statutes the legislature has converted an act of worship into an object of governance registration, supervision, audit, reporting which increases accountability while raising the classical question of how far the state may regulate ritual obligation.

Aceh and the new Criminal Code mark the outer boundary. The *Qanun Jinayat* applies Islamic criminal norms in Aceh, including in some circumstances to non-Muslims who consent to its application, and has attracted sustained human rights criticism concerning corporal punishment and the treatment of women.⁵⁸ Article 2 of Law No. 1 of 2023 provides that the living law in society remains a basis for criminal liability, subject to further regulation, which raises the prospect that locally determined religious or customary norms may acquire criminal force without satisfying the legality principle in its strict statutory sense.⁵⁹ These are the points at which absorptive harmonization ceases to be a technique of accommodation and becomes a constitutional question about equality, legality, and the limits of pluralism.

⁵⁴ Constitutional Court Decision No. 93/PUU-X/2012, 29 August 2013.

⁵⁵ Yasardin and Kooria, "Revisiting the Compilation of Islamic Economic Law," 130–34.

⁵⁶ Law No. 33 of 2014 concerning Halal Product Assurance, Articles 4, 5, and 33, as amended by Law No. 6 of 2023.

⁵⁷ Law No. 41 of 2004, Articles 28–31 and 47; Law No. 23 of 2011, Articles 5–7; Constitutional Court Decision No. 86/PUU-X/2012, 31 October 2013.

⁵⁸ Aceh Qanun No. 6 of 2014, Articles 5 and 72; Yezar and Riza, "Legal Harmonization Between Aceh's Qanun Jinayat and Indonesia's National Criminal Code," 119–24.

⁵⁹ Law No. 1 of 2023, Article 2(1)–(2).

C. Comparative Frame: Who Holds the Interpretive Last Word

Comparison confirms that the crucial variable is not how much Islamic content a legal system contains but who is authorised to determine compliance and whether that determination can be reviewed.

Malaysia distributes the question federally. Islamic law is a state matter under the Ninth Schedule, the *syariah* courts possess jurisdiction over Muslims in enumerated personal matters, and Article 121(1A) of the Federal Constitution removes those matters from the civil courts.⁶⁰ In Islamic finance, however, sections 56 and 57 of the Central Bank of Malaysia Act 2009 require the civil courts and arbitrators to refer *sharīʿa* questions to the Shariah Advisory Council and make its rulings binding. In *JRI Resources Sdn Bhd v Kuwait Finance House* the Federal Court upheld those provisions by a majority of five to four, holding that the Council ascertains Islamic law rather than exercising judicial power, while the minority considered that the arrangement transfers judicial power to a non-judicial body contrary to Article 121.⁶¹ The Malaysian model thus achieves a high degree of doctrinal consistency at the price of insulating the determination of *sharīʿa* compliance from ordinary judicial review the precise trade-off that Indonesia has left unresolved.

Morocco transformed family law through a commission convened by the King as Commander of the Faithful, which exercised *ijtihād* and produced the Family Code of 2004.⁶² The Code placed the family under the joint responsibility of both spouses, set the marriage age at eighteen for both sexes, permitted an adult woman to conclude her own marriage, subjected polygamy to judicial authorisation on stringent conditions, and placed divorce under judicial supervision.⁶³ The reform is widely regarded as the most substantial purposive reinterpretation of classical personal status law in the Arab world, and the process of further revision initiated in 2022 has followed the same pattern, with proposals referred to the Higher Council of Ulema and a distinction drawn between matters open to *ijtihād* and matters governed by definitive texts.⁶⁴ Morocco therefore institutionalises the *qaṭʿī/zannī* distinction procedurally: religious authority controls the boundary, but within that boundary reform is thorough.

Egypt places the question in the constitution. Article 2 makes the principles of Islamic *sharīʿa* the principal source of legislation, and the Supreme Constitutional Court developed an interpretive technique under which only rulings whose authenticity and meaning are certain bind the legislature, while the vast domain of

⁶⁰ Federal Constitution of Malaysia, Ninth Schedule, List II, item 1, and Article 121(1A).

⁶¹ Central Bank of Malaysia Act 2009 (Act 701), sections 56–57; *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd*, Federal Court of Malaysia, decision of 10 April 2019.

⁶² Kingdom of Morocco, Dahir No. 1-04-22 of 3 February 2004 promulgating Law No. 70-03 constituting the Family Code (*Moudawana*).

⁶³ *Moudawana*, Articles 4, 19, 24–25, 40–46, and 78.

⁶⁴ Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007), 41–60; Léon Buskens, “Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere,” *Islamic Law and Society* 10, no. 1 (2003): 70–131, <https://doi.org/10.1163/156851903321196294>.

probable rulings is open to legislative determination in the light of public interest.⁶⁵ The Egyptian model shows that a constitutional *sharīʿa* clause need not produce doctrinal rigidity if the court that interprets it adopts a purposive methodology; it also shows the dependence of that outcome on judicial independence.

Pakistan allocates the last word to a specialised court. Article 203D of the Constitution empowers the Federal Shariat Court to examine whether any law conforms to the injunctions of Islam and to declare it repugnant, and in 2022 the Court held that the banking system must be made free of *ribā*, setting a period within which the transition should be completed.⁶⁶ The Pakistani model produces the strongest formal supremacy of Islamic legal criteria over ordinary legislation, and correspondingly the greatest risk of implementation gaps between declared norm and economic reality.

Variable	Indonesia	Malaysia	Morocco	Egypt / Pakistan
Constitutional anchor	No sharia clause; ordinary legislation	Federal division of powers; Art. 121(1A)	Monarch as Commander of the Faithful	Art. 2 (Egypt); Art. 203D (Pakistan)
Main channel of transformation	Statute; fatwa by reference; jurisdiction	State enactment; statutory referral	Royal commission; codified family law	Constitutional review; repugnancy jurisdiction
Gatekeeper of compliance	National Sharia Council (informal)	Shariah Advisory Council (binding)	Higher Council of Ulema	Constitutional Court / Federal Shariat Court
Reviewability of the determination	High for statutes; low for fatwa	Low for Council rulings	Limited for religious determinations	Judicial but centralised

Table 2. Comparative architecture of authority over sharia compliance

Two conclusions follow. First, every system studied confronts the same structural choice: either the determination of *sharīʿa* compliance is treated as a question of law, in which case it must be reviewable by courts applying ordinary standards of reasoning, or it is treated as a question of religious expertise, in which case it must be insulated, and the legal system must accept a domain of unreviewable authority. Malaysia chose insulation explicitly and defended it constitutionally; Egypt chose reviewability and made the *qaṭʿī/zannī* distinction the instrument of review; Indonesia has chosen neither, allowing the fatwa to function with practical bindingness and formal non-bindingness simultaneously. Second, the substantive outcomes of transformation correlate more strongly with the reasoning method adopted by the gatekeeper than with the presence or absence of a constitutional *sharīʿa* clause. Morocco, without such a clause in the Egyptian sense, produced deeper family law reform than jurisdictions that possess one, because its gatekeeper reasoned purposively.

⁶⁵ Constitution of the Arab Republic of Egypt of 2014, Article 2; Lombardi, *State Law as Islamic Law in Modern Egypt*, 174–200.

⁶⁶ Constitution of the Islamic Republic of Pakistan 1973, Article 203D; Federal Shariat Court of Pakistan, judgment on the elimination of *ribā*, 28 April 2022.

D. Three Structural Pathologies of Indonesian Harmonization

The analysis identifies three pathologies that recur across Indonesian regimes and that any reform proposal must address.

The first is the *validity-channel deficit*. Referential incorporation makes a fatwa operationally binding without giving it a recognised place in the hierarchy of norms.⁶⁷ Three consequences follow. Addressees are bound by a standard that is not promulgated as legislation, which strains Fuller's requirements of promulgation and clarity. The body that determines the standard is not constituted as a public authority subject to administrative law, so its reasoning is not required to satisfy the duties of consultation and public justification that bind regulators. And judicial review is structurally awkward, because a court asked to assess the validity of a regulation that merely restates a fatwa must either evaluate the fatwa itself, for which it claims no competence, or decline review, which immunises the substance. The remedy is not to abolish the channel but to formalise it: fatwa should be treated as a material source that becomes binding only through a reasoned act of adoption by an authorised state organ, with that act and not the fatwa being the object of review. That is already the implicit practice of financial regulators; what is missing is its explicit statutory articulation.

The second is *hierarchical and horizontal disharmony*. The Compilation of Islamic Law, which functions as the operative code of Islamic family law for the religious courts, was promulgated by presidential instruction, an instrument that does not appear in the hierarchy established by Article 7 of Law No. 12 of 2011 and whose binding force on citizens is therefore contestable.⁶⁸ The Compilation of Sharia Economic Law rests on a Supreme Court regulation, which binds courts but cannot create substantive obligations for private parties in the way a statute can.⁶⁹ Horizontally, Aceh's criminal *qanun* and the national Criminal Code regulate overlapping conduct with different sanctions, and the elevation of the living law in Article 2 of the new Code creates a further source of potential contradiction.⁷⁰ Legal certainty in these areas depends less on the quality of the substantive rules than on the instrument chosen to carry them. Elevating Islamic family law into a statute a proposal advanced for decades under the label of an applied law bill for the religious courts would resolve much of the difficulty at a stroke, though it would also require the legislature to take public responsibility for choices that the Compilation currently presents as merely technical.

The third is the *rights-compatibility gap*. The Constitution guarantees equality before the law, freedom of religion, and the protection of children, and permits limitation of rights only by statute and only for the purposes enumerated in Article 28J(2); Indonesia is also bound by the human rights treaties it has ratified.⁷¹ Several

⁶⁷ Law No. 12 of 2011, Article 7(1); Yasardin and Kooria, "Revisiting the Compilation of Islamic Economic Law," 132–34.

⁶⁸ Law No. 12 of 2011, Articles 7–8; Nurlaelawati, *Modernization, Tradition and Identity*, 100–110.

⁶⁹ Supreme Court Regulation No. 2 of 2008.

⁷⁰ Yezar and Riza, "Legal Harmonization Between Aceh's Qanun Jinayat and Indonesia's National Criminal Code," 124–29.

⁷¹ The 1945 Constitution of the Republic of Indonesia, Articles 27(1), 28D(1), 28I, and 28J(2); Law No. 39 of 1999 concerning Human Rights; Tamyiz Mukharrom and Supriyanto Abdi, "Harmonizing

products of transformation sit uneasily with those commitments: corporal punishment under regional criminal *qanun*, the evidentiary and economic vulnerability of women in unregistered marriages, and the unequal practical consequences of rules that formally apply to both spouses. A *maqāṣid*-based reading does not aggravate this tension but relieves it, because the protection of life, lineage, intellect, and property is most plausibly served by rules that reduce vulnerability rather than by rules that demonstrate religious identity. Where a transformed norm cannot be shown to reduce harm, its claim to Islamic legitimacy is weaker, not stronger, than the constitutional objection to it.

A fourth difficulty deserves mention although it is not structural in the same sense. Enactment does not produce compliance. Unregistered marriage persists despite decades of statutory obligation, and halal certification has encountered capacity constraints among small enterprises. Friedman's analysis explains why: legal culture mediates between rule and behaviour, and a transformation that ignores the cost, accessibility, and social meaning of compliance will produce formal law without operative law.⁷²

E. A Four-Criterion Harmonization Test

The normative contribution of this study is a test for evaluating whether a proposed or existing transformation constitutes genuine harmonization. The four criteria are cumulative: failure of any one indicates defective harmonization even where the substantive rule is unobjectionable.

Constitutional validity and hierarchical fit. The norm must be carried by an instrument competent to produce the legal effect claimed for it, and must be consistent with the Constitution and with higher legislation. This criterion disqualifies the use of non-hierarchical instruments to impose obligations on citizens and requires that referentially incorporated standards be adopted by a reasoned act of an authorised organ.

Purposive justification. The legislature must be able to state which of the essential purposes religion, life, intellect, lineage, property the norm protects, and to show that the means chosen is proportionate to that purpose. This is the criterion that distinguishes transformation of purposes from transplantation of symbols. It also implies a negative test: a rule whose principal effect is to mark religious identity, without a demonstrable protective function, fails even if its classical pedigree is impeccable.⁷³

Institutional competence and procedural integrity. The test asks who determines compliance, by what reasoning, and subject to what review. A determination of *sharīʿa* compliance that binds legal subjects should be published with reasons, should be open to challenge, and should be made by a body whose composition and procedure are regulated. Where insulation from review is chosen deliberately, as in

Islam and Human Rights Through the Reconstruction of Classical Islamic Tradition," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (2023): 44–50.

⁷² Friedman, *The Legal System*, 223–30.

⁷³ Auda, *Maqasid al-Shariah*, 248–50; Kamali, *Shari'ah Law*, 32–40.

Malaysia, that choice should be made expressly by the legislature rather than emerging by default.

Empirically verified, non-discriminatory benefit. Because *maṣlaḥa* is a claim about consequences, it is falsifiable. Harmonization should be accompanied by evaluation: does the registration requirement in fact protect wives and children; does mandatory certification in fact improve consumer confidence without excluding small producers; does the regional criminal norm in fact reduce the harm it targets, and does it do so without imposing disproportionate burdens on women, the poor, or religious minorities?

Applying the test to four Indonesian regimes yields differentiated results. Marriage registration satisfies the first, second, and fourth criteria and partially satisfies the third, since the substantive code remains a presidential instruction; its principal defect is instrumental rather than conceptual. The *sharī'a* banking regime satisfies the second and fourth criteria but fails the first and third in their present form, because the validity channel for fatwa is unarticulated and the determination of compliance is effectively unreviewable. Halal assurance satisfies the first and third criteria, satisfies the second in principle, and remains under test on the fourth, where the proportionality of compliance costs for micro-enterprises is the operative question. The regional criminal *qanun* satisfies the first criterion only in the formal sense conferred by special autonomy and encounters serious difficulty under the second and fourth, since the protective purpose is asserted rather than demonstrated and the distribution of enforcement burdens is uneven.⁷⁴ The value of the test lies precisely in producing such differentiated results: it replaces the binary question whether Islamic law has been enacted with the graduated question how well it has been harmonized.

V. CONCLUSION

This study set out to explain how Islamic legal principles acquire binding force in contemporary national legislation, what structural problems that process generates, what comparison reveals about its institutional variables, and what standard should govern it.

In answer to the first question, transformation in Indonesia operates through four distinguishable modes substantive codification, referential incorporation, jurisdictional transfer, and asymmetric territorial regulation each with a different locus of norm content and a different criterion of validity. What is transformed is generally the purpose attributed to a classical ruling rather than the ruling's literal form, which makes Indonesian harmonization purposive rather than textual. In answer to the second, that plurality of channels produces three pathologies: a validity-channel deficit for fatwa-derived standards, hierarchical and horizontal disharmony among the instruments that carry Islamic legal content, and an unresolved gap between transformed norms and constitutional rights commitments, compounded by a persistent distance between enactment and compliance. In answer to the third, comparison with Malaysia, Morocco, Egypt, and

⁷⁴ Aceh Qanun No. 6 of 2014, Articles 5 and 72; Yezar and Riza, "Legal Harmonization Between Aceh's Qanun Jinayat and Indonesia's National Criminal Code," 126–29.

Pakistan shows that the decisive variable is the allocation of authority to determine *sharī'a* compliance and the reviewability of that determination; systems differ less in substantive Islamic content than in whether they treat compliance as a question of law or of religious expertise, and Indonesia is distinctive chiefly in having declined to choose. In answer to the fourth, the article proposes a cumulative four-criterion test constitutional and hierarchical validity, purposive justification, institutional competence with procedural integrity, and empirically verified non-discriminatory benefit and demonstrates its discriminating power across four Indonesian regimes.

The theoretical implication is that harmonization should be reconceived as a problem of validity-channel design rather than of doctrinal content. Debates that ask whether a given classical rule has been “accommodated” miss the question that determines the rule’s operation in practice, namely by what mechanism it binds and who may be called upon to justify it. This reframing also offers a partial answer to the codification critique: what corrodes the moral architecture of *sharī'a* is not enactment as such but enactment through channels that suppress reasoning and evade review. The practical implications follow directly. The status of fatwa-derived standards should be regulated by statute, so that such standards bind only through a reasoned and reviewable act of adoption. Islamic family law should be elevated from presidential instruction to statute, with the legislative debate that such elevation entails. Regional Islamic criminal regulation should be subjected to an explicit constitutional compatibility review addressing equality, legality, and proportionality, and the implementing regulation contemplated by Article 2 of the new Criminal Code should be drafted so as to prevent the indeterminate expansion of criminal liability. Finally, every significant transformation should carry an evaluation obligation, so that claims of public benefit can be tested rather than assumed.

Three lines of further research follow. The first is empirical: measuring whether transformed norms achieve the protective outcomes claimed for them, particularly for women and children in family law and for micro-enterprises in halal regulation. The second is comparative and institutional: examining how other plural legal systems have formalised the incorporation of religious standards without either abolishing or immunising the bodies that produce them. The third is doctrinal: developing the *qaṭʿī/ẓannī* distinction into a workable Indonesian standard of legislative discretion, so that the boundary between what the legislature may determine and what it may not is drawn by reasoned criteria rather than by political contingency.

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