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Legal Positivism and the Positivization of Islamic Law in Indonesia: A Transformative-Constitutional Framework[1]

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Abstract:
Legal positivism and the positivization of Islamic law are often presented as opposing positions, yet they belong to different analytical categories: the former is a theory of legal validity; the latter, a process by which norms enter positive law. This article asks how Islamic norms acquire validity as state law in Indonesia, how that process can be assessed, and what an assessment reveals when applied to concrete instruments. Using normative-doctrinal research with statutory, case, conceptual, and brief historical approaches, it analyses the 1945 Constitution, the law on the formation of regulations, and three channels of positivization: the Halal Product Assurance Law, Aceh's special-autonomy legislation and Qanun Jinayat, and the translation of DSN-MUI fatwas into Islamic banking regulation. The article argues that inclusive legal positivism already allows religious criteria to enter the rule of recognition, so the central issue is not reconciliation but the quality of transformation. It distinguishes sharia from fiqh, links Indonesian legal validity to Pancasila and Article 29 of the Constitution, and proposes a transformative-constitutional framework of four principles, each with assessable indicators. Applied to the three cases, the framework exposes accountability gaps in fatwa-based regulation, the limited place of intra-Islamic plurality, and uneven protection of vulnerable groups, which a purely formal analysis does not reveal. The article concludes with criteria for lawmakers to assess future positivization.

Keywords: Fatwa; Islamic Law; Legal Positivism; Positivization; Transformative-Constitutional Framework

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A. INTRODUCTION

Indonesia is constitutionally a state based on law (1945 Constitution, Article 1(3)), and its legal order has developed through the interaction of customary law, Islamic law, and Western legal traditions. Within this plural setting, Islamic law is not only a religious system followed by most citizens but also a source of values that legislators, regulators, and courts draw upon repeatedly. This article uses *"positivization" to mean the process by which an Islamic norm* acquires validity as state law, whether through a statute, a regional regulation, a judicial instrument, or a regulatory rule that incorporates a fatwa. The question is how that process should be understood and assessed.

Existing scholarship has approached it from several directions. Rahmatunnair (2012) frames the formalization of Islamic law as a paradigm problem and favors a transformative approach in which substantive values, rather than symbols, enter the national legal system. Muslihun (2018) examines legal positivism, positive law, and the positivization of Islamic law in Indonesia and argues that the Indonesian system adopts positivism only in part because religious and customary norms continue to influence state law. Fauzan and Fata (2018) analyze the zakat, waqf, and hajj statutes and identify a tension between the legalization of sharia and its bureaucratization. Itmam and Liyana (2019) discuss strategies for translating Islamic values into norms compatible with the national system. More recent work examines contemporary *ijtihad* (Caniago et al., 2025) and the social and philosophical forces behind positivization (Alifah & Roibin, 2025).

This body of work leaves three problems open. First, the relationship between legal positivism and positivization is usually stated as a contrast, although positivism is a theory about what makes a norm legally valid, while positivization is a process; the two do not stand on the same plane, and the contemporary debate between exclusive and inclusive positivism, which bears directly on whether religious criteria may determine validity, has not been brought into the Indonesian discussion. Second, the Islamic side is generally treated as a single normative system. The distinction between sharia and *fiqh*, the internal mechanisms of codification (*taqnin*) and governmental regulation in the public interest (*siyasah shar'iyyah*), and the diversity of Islamic opinion are seldom analyzed. Third, proposals remain conceptual: they are not accompanied by indicators that would allow a given instance of positivization to be assessed, nor are they tested against instruments in which non-state norm-makers and sub-statutory rules play the main role.

The contribution of this article is therefore defined against that background. That Indonesia is not a case of pure positivism has been argued by Muslihun (2018) and is taken here as a starting point rather than a finding. The article adds three things. It replaces the opposition between positivism and positivization with the distinction between exclusive and inclusive positivism and places Pancasila and Article 29 of the 1945 Constitution at the center of Indonesian validity. It develops the Islamic side by distinguishing between sharia and fiqh and by internal mechanisms such as *taqnin*, *siyasah shar'iyyah*, and *maqāṣid al-sharī'ah*. And it converts a general framework into four principles with assessable indicators and tests them on three instruments the earlier

studies did not analyze together: the halal product assurance regime, Aceh's *qanun* legislation, and the passage of DSN-MUI fatwas into Islamic banking regulation.

The study is guided by three research questions. (1) How should the relationship between legal positivism and the positivization of Islamic law be conceptualized once exclusive and inclusive positivism are distinguished, and Pancasila is taken into account? (2) How do concepts internal to Islamic legal tradition explain what is positivized, by whom, and with what authority? (3) What indicators allow positivization to be assessed, and what does the assessment show when applied to halal regulation, Aceh's Qanun Jinayat, and Islamic banking regulation? The argument is that positivization is best understood as the transformation of *fiqh* into state norms through constitutionally recognized procedures, and that its quality, rather than the mere presence of Islamic content, determines its legitimacy.

B. METHOD

This is normative-doctrinal legal research on legal norms, principles, and doctrines (Marzuki, 2017). Four approaches were combined. The statutory approach examines the 1945 Constitution, Law 12 of 2011 on the Formation of Laws and Regulations as amended by Law 15 of 2019 and Law 13 of 2022, and the instruments discussed in Section C. The case approach uses Constitutional Court decisions and petitions that bear on validity and constitutionality. The conceptual approach clarifies the theories of Austin, Kelsen, and Hart, drawing on primary texts and concepts from Islamic legal scholarship. A brief historical approach is used for the reception debate in Indonesian Islamic law (Salim, 2008).

Primary materials are the statutes, regional regulations, ministerial and judicial instruments, and court decisions listed in the References. They are cited in their current form: Law 12 of 2011 has been amended twice; Law 3 of 2006 on the Religious Courts was amended by Law 50 of 2009; and Law 33 of 2014 on Halal Product Assurance was amended by Law 6 of 2023 (enacting Government Regulation in Lieu of Law 2 of 2022 on Job Creation). Secondary sources were selected on three criteria: they address legal positivism, Islamic law and the state, or positivization in Indonesia; they are published in peer-reviewed journals or by academic presses; and they supply primary theory rather than summaries of it.

Three instruments were selected for testing because they represent different channels of positivization: a national statute that adopts the output of a non-state religious body (halal assurance); a regional regulation issued under special autonomy (Aceh); and sector regulation that incorporates fatwas (Islamic banking). The analysis proceeded in four steps: identifying the validity criteria provided by each theory; identifying the Islamic law concepts that govern each channel; formulating indicators for each principle of the framework; and applying the indicators to the selected instruments by comparing statutory text with doctrine and court reasoning. The findings are limited to the instruments analyzed and to the materials available to the authors.

C. RESULT AND DISCUSSIONS

1. Validity, Pancasila, and the Category Error in "Versus"

Legal positivism is a thesis about the conditions under which a norm is law. Austin located validity in the command of a sovereign (Austin, 1995, pp. 21–29), Kelsen in a chain of authorization leading to a presupposed basic norm (Kelsen, 1967, pp. 193–205), and Hart in a rule of recognition that identifies law in a given society (Hart, 1994, pp. 94–110). Positivization, in contrast, is a process: it describes how a particular norm moves from one normative order into the state's legal system. Because one is a theory of validity and the other a process of transformation, they cannot be opposed to each other, and no reconciliation between them is required. What can be asked is whether the theory of validity permits the norm to enter, and under what conditions.

The relevant debate lies within positivism. Exclusive positivism holds that moral or religious criteria can never be part of the test of validity; they can influence law only as material that lawmakers choose to adopt. Inclusive positivism, which Hart accepted in his Postscript, allows a legal system to incorporate moral or substantive criteria into its rule of recognition, so that conformity with them becomes a condition of validity (Hart, 1994, p. 250). If Indonesian law, as will be argued below, recognizes religion as a constitutional value, then the inclusive account fits it better than the classical one. This also reduces the force of the earlier claim that Indonesia is not purely positivist: it is positivist in the inclusive sense, and what remains to be explained is how religious content passes the tests of validity.

In Indonesia, those tests are anchored in Pancasila. In Kelsenian terms, Pancasila is generally read as the fundamental norm of the state (*Staatsfundamentalnorm*, following Nawiasky) from which the Constitution and the hierarchy of regulations derive their validity (Asshiddiqie & Safa'at, 2006). Its first principle, belief in the One Supreme God, is given constitutional force by Article 29, which declares that the state is based on belief in One Supreme God and guarantees freedom of religion. Religion is therefore not an external moral standard imposed on Indonesian law; it is part of the framework that defines validity. Constitutional limits are equally part of that framework: Article 28J(2) allows limits on rights only by law and only for stated purposes, and Articles 28D(1) and 28I(2) protect legal certainty and equal treatment. The Law on the Formation of Laws and Regulations addresses the procedural aspects by defining the types and hierarchy of regulations (Articles 7 and 8) and by requiring meaningful public participation, a requirement strengthened by Law 13 of 2022.

The relationship can accordingly be restated. Religious-normative validity (the authority of a norm within Islamic legal reasoning), substantive legitimacy (its capacity to serve justice and public benefit), and formal legal validity (recognition and

enforceability within the national legal system) are three distinct levels of a norm's existence. A norm may have the first without the third. The task of positivization is to connect the levels without collapsing them. This claim is consistent with Rahmatunnair's (2012) transformative paradigm and Muslihun's (2018) observation of non-pure positivism, and it differs from them by locating the connection in inclusive positivism and Pancasila, thereby making it testable.

2. What Is Positivized: Sharia, Fiqh, and Internal Mechanisms

The Islamic side requires a precision that earlier discussions often omit. Sharia, understood as the divine guidance revealed in the Qur'an and Sunnah, is not itself positivized; what the state enacts is *fiqh*, the human understanding of sharia produced by *ijtihad* and shaped by schools, institutions, and historical conditions. This distinction determines what "religious-normative validity" can mean. A norm's validity within Islamic reasoning depends on the method and authority of the jurist or institution that produced it, so the validity claimed for a statute is, at most, derivative: the statute rests on a *fiqh* opinion, not on revelation directly.

Islamic legal tradition has its own vocabulary for the process. *Taqnin* refers to codification, the reduction of juristic opinion to state-enacted rules, a development Hallaq (2009) associates with the modern state's displacement of juristic authority. *Siyasah shar'iyyah* names the authority of the ruler to regulate matters in accordance with the objectives of sharia where *fiqh* offers no fixed rule, and the authority of those in charge of affairs (*ulil amri*) to make binding decisions for the public interest is its classical anchor. Reading positivization through these concepts shows that it is not alien to the tradition: the legislature acts as *ulil amri*, selects among competing opinions, and gives the selected rule binding force. It also shows what must be justified. A rule chosen by *siyasah shar'iyyah* is legitimate to the extent that it serves the public good, which makes maqāṣid al-sharī'ah an analytical test rather than a decorative reference: the question is whether the selected rule protects religion, life, intellect, lineage, and property in the circumstances in which it is applied.

The tradition is also plural. Schools of law, mass organizations, the Indonesian Ulema Council (MUI), and academic jurists hold differing views, so any positivist answer addresses which Islamic law, whose interpretation, and by whom. Hallaq (2013) goes further and argues that the modern state is structurally unable to embody Islamic governance, a position that, if accepted, would make positivization a perpetual compromise. An-Na'im (2008) argues the opposite, that Islamic ethics is better served when the state remains neutral and religious norms enter public law only through reasons accessible to all citizens. The framework proposed below does not settle this debate. It takes the Indonesian constitutional order as given and asks how well a

particular instance of positivization performs within it, and the dispute between these positions reappears in the counterarguments discussed in Section 6.

Table 1 restates the dimensions of positivization with these qualifications. The enforcement dimension, in particular, should not be read as an opposition between purely ethical compliance in Islamic law and coercion in state law: the Islamic tradition has its own adjudication (*qaḍā'*), market supervision (*ḥisbah*), and sanctions. What changes in positivization is the institution that enforces, not the existence of enforcement.

Table 1. Dimensions of Islamic Law Positivization in the National Legal System

Dimension	Islamic legal framework	Positive legal framework	Transformation
Source	Qur'an, Sunnah (sharia); *fiqh* and *ijtihad* as human understanding	Constitution, statutes, regional and sub-statutory regulations	A *fiqh* opinion is selected and translated into a legally recognized norm
Authority	Juristic and scholarly authority; in governance, the authority of *ulil amri*	State and institutional authority within the hierarchy of Law 12 of 2011	Normative legitimacy is joined by institutional legitimacy
Formation	*Ijtihad*, *fatwa*, *taqnin*, *siyasah shar'iyyah*	Legislative and regulatory procedure, including public participation	Selected rules undergo legal formulation and procedural validation
Enforcement	Ethical and religious compliance; adjudication (*qaḍā'*), market supervision (*ḥisbah*), and sanctions in the tradition	State courts and agencies with coercive power	The enforcing institution changes; the existence of enforcement does not
Adaptation	*Maqāṣid al-sharī'ah*, *maṣlaḥah*, juristic reasoning	Constitutional and legislative principles	Values are adjusted to the national context and tested against it

Source: Author's analysis based on Rahmatunnair (2012), Muslihun (2018), Fauzan and Fata (2018), and Hallaq (2009).

3. A Transformative-Constitutional Framework and Its Indicators

The framework consists of four principles, each paired with indicators so that a given instance of positivization can be assessed rather than merely described. The first substantive transformation holds that Islamic law should enter national law through its objectives and selected rules, rather than through the automatic transplantation of classical formulations. Indicators include whether the legislative rationale states the norm's objective in terms of *maqāṣid*, and whether the rule is selected among competing *fiqh* opinions with reasons given. The second, **constitutional conformity**, requires that the norm rest on an express constitutional basis (Articles 29, 18B(1), or 18(6)) and respect the limits of Articles 28D, 28I, and 28J, as well as the regulatory hierarchy. Indicators are the stated constitutional basis, consistency with higher and parallel norms, and the outcome of judicial review.

The third principle, **procedural legitimacy**, requires that the norm acquire legal force through the competent authority and the procedures set forth in Law 12 of 2011. Where a non-state body, such as MUI, supplies the content, the indicators extend to the openness of its process, the body's accountability for the content, and the existence of a means to contest the outcome. The fourth, **social responsiveness**, asks whether the norm answers actual social conditions and distributes burdens fairly. Indicators are the compliance burden on affected groups, especially micro and small enterprises; protection of women, children, and minorities; and accommodation of intra-Islamic and non-Muslim plurality. The principles of constitutional conformity and procedural legitimacy overlap with general rule-of-law requirements. They are retained because they are the points at which the religious origin of a norm raises specific questions, for example, who is accountable for a fatwa that becomes binding. Table 2 summarizes the indicators and the test results discussed below.

Table 2. Principles, Indicators, and Results of the Test on Three Instruments

Principle	Indicators	Halal assurance (Law 33/2014 as amended)	Aceh (Law 11/2006; Qanun Jinayat)	Islamic banking (Law 21/2008; Law 4/2023)
Substantive transformation	Objective stated in terms of *maqāṣid*; selection among *fiqh* opinions explained	Religious category turned into consumer-protection and assurance regime	Classical offense categories adopted; 2025 amendment concedes inadequate victim protection	Fatwa-defined contracts (e.g., *murabahah*) turned into licensed products

Principle	Indicators	Halal assurance (Law 33/2014 as amended)	Aceh (Law 11/2006; Qanun Jinayat)	Islamic banking (Law 21/2008; Law 4/2023)
Constitutional conformity	Express constitutional basis; consistency with hierarchy and rights; judicial review outcomes	Basis in Art. 29; mandatory scope contested (petition inadmissible)	Basis in Arts. 18B(1) and 29; consistency with national protection norms questioned	Statutory basis clear; forum certainty resolved (Decision 93/PUU-X/2012)
Procedural legitimacy	Competent authority; openness; accountability of non-state fatwa body; route to contest	Fatwa body central to statutory duty; allocation of authority and remedies challenged	Enacted as *qanun* through regional procedure; firm footing in hierarchy	Authorized body identified; openness, accountability, and effect of fatwa changes not addressed in provisions analyzed
Social responsiveness	Compliance burden; protection of women, children, minorities; plurality	Art. 33A self-declaration eases burden on micro and small enterprises; scope for non-Muslims disputed	2025 amendment responds to child and female victims	Single recognized fatwa institution; other fatwa bodies not reflected

Source: Author's analysis of the instruments cited in Section C.4.

4. Testing the Framework on Three Instruments

4.1 Halal product assurance: from fatwa to mandatory certification

Law 33 of 2014 transformed the religious categories of *halal* and *haram* into a regime of certification, institutional authority, and legal duty. Under Article 4, products that enter, circulate, and are traded in Indonesia must be halal-certified. Certification is issued by the Halal Product Assurance Agency (BPJPH), but the determination of halal status remains with MUI through its halal fatwa session, and the costs of certification fall on

business actors (Law 33 of 2014). Law 6 of 2023 altered the structure. It introduced a Halal Product Fatwa Committee to determine halal status when statutory deadlines are exceeded, and added Article 33A, which allows micro and small enterprises to obtain certification through a halal declaration.

In substantive transformation, the regime converts a religious category into a consumer-protection and product-assurance system, a shift in objectives rather than of any single classical rule. Regarding constitutional conformity, Article 29 and the state's duty of consumer protection provide the regime with a clear basis, although the scope of mandatory measures has been contested. Petitioners who are non-Muslim business actors challenged the word "mandatory" in Articles 4 and 26(2), and the Constitutional Court declared the petition inadmissible (Constitutional Court Decision 96/PUU-XXIII/2025), so the question of how an obligation grounded in a religious category applies to those outside the faith has been raised but not answered on the merits. On procedural legitimacy, the regime places a fatwa of a non-state body at the center of a statutory duty. The creation of the Committee under Law 6 of 2023 was challenged as creating duplicate certification bodies (Petition 49/PUU-XXI/2023, Constitutional Court, 2023), illustrating that the allocation of authority between the state and a religious organization is itself a question of legitimacy. Petitioners have also argued that no legal remedy is available against a halal determination (Constitutional Court Order 58/PUU-XXI/2023), which points to the accountability gap that the framework identifies. On social responsiveness, Article 33A is a direct response to the compliance burden on micro and small enterprises, and this is the strongest point of the regime.

4.2 Aceh: special autonomy and Qanun Jinayat

Aceh shows positivization through regional law. Law 11 of 2006 on the Governance of Aceh gives Aceh authority to implement sharia (Article 125), and the *qanun* of Aceh are the instruments through which that authority is exercised; the law also provides for the Shar'iyah Court. Qanun Aceh 6 of 2014 on Jinayat Law codifies offenses such as *khamr*, *maisir*, and *khalwat* and prescribes penalties. In the Indonesian hierarchy, a *qanun* is a regional regulation recognized under Law 12 of 2011, so it has a firm procedural footing. The constitutional basis is Article 18B(1) on special regions, together with Article 29.

The framework's value lies in its ability to identify a failing side. In 2025, Aceh amended the Qanun (Qanun Aceh 12 of 2025) after recognizing that the original text did not give sufficient protection to child and female victims of sexual violence. The amendment concedes that the first version did not satisfy the objectives the regime itself invokes (justice, benefit, and legal certainty), thereby failing to achieve substantive transformation and social responsiveness as defined above. The need for amendment also raises a question of conformity with national law on the protection of children and

women, which the framework treats under constitutional conformity and consistency within the hierarchy. A formal-validity analysis would classify the Qanun as valid at every stage. The indicator-based analysis separates validity from quality and shows where the instrument needed correction.

4.3 Islamic banking: from DSN-MUI fatwa to regulation

Islamic banking illustrates the chain that the earlier literature seldom analyzes. Law 21 of 2008 on Islamic Banking requires business activities to comply with sharia principles, as expressed in MUI fatwas and given effect through banking regulations, and establishes a sharia supervisory board within each bank. Law 4 of 2023 on the Development and Strengthening of the Financial Sector defines sharia principles by reference to fatwas or statements of sharia conformity issued by an institution with authority over sharia fatwas, and its explanation identifies that institution as MUI. Fatwas such as DSN-MUI Fatwa 4/DSN-MUI/IV/2000 on *murabahah* thus supply the content of contracts that regulators license and supervise. Disputes are heard in the religious courts under Article 49 of Law 3 of 2006, using the Compilation of Islamic Economic Law (KHES) issued by Supreme Court Regulation 2 of 2008. The Constitutional Court resolved the uncertainty regarding the forum by confirming the jurisdiction of the religious courts (Constitutional Court Decision 93/PUU-X/2012), thereby supporting the constitutional conformity of this channel under Article 28D(1).

The test here is mainly of procedural legitimacy. A fatwa does not bind on its own, but it binds when a statute or regulation makes it the standard for compliance. The provisions analyzed identify the authorized body but do not set out how its deliberation is opened to those it affects, who is accountable for its content, or what happens to contracts already concluded when a fatwa changes. For business actors, legal certainty depends on exactly these matters, and the assertion that positivization secures certainty is therefore a hypothesis to be examined in terms of regulatory consistency, compliance costs, and dispute risk, not a premise. On plurality, petitioners before the Constitutional Court argued that the language of Law 4 of 2023 leaves unclear which fatwa institution counts and that other bodies, such as those of Nahdlatul Ulama and Muhammadiyah, also issue fatwas (Petition 179/PUU-XXIV/2026, Constitutional Court, 2026; the application was rejected). The Court's response confirms the legal position but leaves the intra-Islamic question to be addressed by policy design. A further route should be noted: much Islamic commercial practice is positivized through contract under freedom of contract (Civil Code, Articles 1320 and 1338), which explains why Islamic transactions operated before specific regulation and why validity does not always originate in legislation.

5. Instruments Below the Statute and the Hierarchy of Regulations

Many positivizations in Indonesia do not take the form of statutes. The Compilation of Islamic Law (KHI), issued by Presidential Instruction 1 of 1991 and implemented by a decree of the Minister of Religious Affairs, guides judges in family and inheritance matters, but a presidential instruction has no place among the types listed in Article 7 of Law 12 of 2011, and its force rests on practice and on recognition under Article 8. KHES, issued as Supreme Court Regulation 2 of 2008, is similarly a judicial instrument; Supreme Court Regulation 14 of 2016 supplies procedure for Islamic economic disputes. Fatwas of DSN-MUI acquire force only through their incorporation into regulations. These instruments test procedural legitimacy directly, because they show that validity in Indonesian positivization often depends on recognition by a competent authority rather than on rank in the formal hierarchy. They also explain why inclusive positivism is the more accurate description: the rule of recognition accepts several sources, and the framework's task is to evaluate each source against the four principles.

6. Counterarguments and the Risks of Selective Positivization

Two kinds of objection should be addressed. The first, associated with Hallaq (2013), holds that the modern state cannot uphold Islamic law as it was understood in the tradition, since codification severs rules from the juristic institutions that conferred on them authority. This is a substantial critique, and the present framework accepts part of it: its distinction between sharia and *fiqh* concedes that the process of positivization changes the character of what is enacted. It does not accept that the change makes the project illegitimate in the Indonesian constitutional order, in which the state is not secular in the strict sense and religion is a constitutional value. The second kind of objection concerns outcomes. Selective positivization can disadvantage women, children, and religious minorities, and can be used instrumentally for political purposes (Alifah & Roibin, 2025). The Aceh amendment and the halal petitions discussed above are examples of where these risks have been raised in practice. The framework responds by treating such risks as an indicator of social responsiveness, not as an incidental remark. Its limits should also be stated: it does not predict political behavior, and the cases analyzed show that the indicators can be applied but not that applying them would change outcomes.

7. Comparison with Previous Findings

The results agree with Rahmatunnair (2012) that positivization should be transformative and with Muslihun (2018) that Indonesian law is not purely positivist. They differ in three ways. First, the non-purity of Indonesian positivism is explained by inclusive positivism and Pancasila rather than described as a deviation, and the

proposed reconciliation is found within existing theory. Second, Fauzan and Fata's (2018) analysis of the tension between legalization and bureaucratization is extended to channels in which a non-state body supplies the content, showing that the tension encompasses accountability rather than only administrative form. Third, the tested framework distinguishes validity from quality: Qanun Jinayat and the halal regime are formally valid, and the indicators nonetheless identify where each needs correction.

D. CONCLUSION

The answer to the first research question is that legal positivism and positivization are not opposing paradigms. Positivism supplies a theory of validity; positivization is the process by which a norm acquires validity. Because inclusive positivism allows religious criteria into the rule of recognition, and because Pancasila and Article 29 of the Constitution give religion a constitutional place, Islamic norms can become law without any change of paradigm. The answer to the second is that what is positivized is *fiqh*, not sharia; that taqnin and siyasah shar'iyyah explain the legislator's authority to select and enact it; and that *maqāṣid* and intra-Islamic plurality determine whether the selection is justified. The answer to the third is that the four principles, with their indicators, can be applied to concrete instruments and separate formal validity from quality: the halal regime shows an accountability gap but a responsive treatment of micro and small enterprises; Qanun Jinayat shows shortcomings that Aceh itself corrected in 2025; and Islamic banking shows a clear statutory basis but unaddressed questions of openness, accountability, and plurality in the use of fatwas.

Several recommendations follow for lawmakers and regulators. A draft that incorporates Islamic norms should state its objective in terms of public benefit and explain why a particular *fiqh* opinion was chosen. Where a fatwa is made binding, the incorporating law should specify the authorized body, the openness of its process, the effect of changes on existing relationships, and a means of objection. The compliance burden on small enterprises, and the effect on women, children, and non-Muslims, should be assessed before enactment and not after. Positivization through instruments below statute should be placed expressly within the hierarchy of Law 12 of 2011. Future research may apply the framework to Islamic family law, zakat and waqf, and Islamic capital markets; measure compliance costs and dispute rates empirically to test claims about legal certainty; and compare Indonesia with other Muslim-majority jurisdictions.

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