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Abstract

Indonesia is characterized by a plurality of values that inspire the formation of the state and its constitution. The democratization after the reformation made some religious communities desire to express their teachings openly. For instance, they desired to implement religious norms, resulting in laws and regional regulations with religious nuances. This study aimed to examine the convergence of Islamic norms and norms of other religions into positive law. It also intended to examine the prospects for converging these norms amid religious plurality. Using a historical and normative approach model, the practice of converging Islamic norms and norms of other religions was found from the formation to the promulgation of Law No. 1 of 1974 concerning Marriage. However, this law often receives judicial reviews, especially concerning interfaith marriages. The latest product of legislation relating to the application of religious norms into positive law is Aceh Qanun No. 6 of 2014 concerning Jinayat. The Qanun is interesting in the study of the convergence of norms of Islam and other religions in Indonesia. Although the formation and promulgation involved only followers of Islam, the Qanun accommodated the teachings of other religions. Therefore, non-Muslims prefer submitting to the Qanun rather than voting for the Criminal Code. These two examples show the prospect of converging open religious norms in various legislations.

Indonesia dicirikan oleh pluralitas nilai yang mengilhami pembentukan negara dan konstitusinya. Demokratisasi pasca reformasi membuat sebagian umat beragama berkeinginan untuk mengungkapkan ajarannya secara terbuka. Misalnya, mereka ingin menerapkan norma-norma agama, menghasilkan undang-undang dan peraturan daerah yang bernuansa agama. Penelitian ini bertujuan untuk mengkaji konvergensi norma Islam dan norma agama-agama lainnya ke dalam hukum positif. Hal ini juga dimaksudkan untuk mengkaji prospek konvergensi norma-norma ini di tengah pluralitas agama. Dengan menggunakan model pendekatan historis dan normatif, praktik konvergensi norma Islam dan norma agama-agama lainnya ditemukan sejak pembentukan hingga diundangkannya Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Namun, undang-undang ini sering mendapat *judicial review*, terutama tentang pernikahan beda agama. Produk perundangan terlambat yang berkaitan pemberlakuan norma agama menjadi hukum positif adalah Qanun Aceh No. 6

Tahun 2014 Tentang Jinayat. Qanun tersebut, menarik dalam kajian konvergensi norma Islam dan agama-agama lainnya di Indonesia. Meskipun pembentukan dan penyebarluasannya hanya melibatkan pemeluk agama Islam, namun qanun tersebut mengakomodir ajaran 70 ma lain. Dalam hal penegakkan hukumnya non-muslim diberikan pilihan tunduk pada Kitab Undang-Undang Hukum Pidana (KUHP) atau Qanun. Faktanya non-Muslim lebih memilih tunduk pada Qanun daripada memilih KUHP. Kedua contoh tersebut menunjukkan bahwa sangat terbuka prospek konvergensi norma-norma agama dalam pembentukan berbagai peraturan perundang-undangan.

Keywords: *Convergence; Religious norms; Plurality*

Introduction

Ibn Khaldun stated that God created human beings with four characteristics. *First*, humans are thinking creatures that produce knowledge. *Second*, they are political creatures that require regulation and control by the power system. *Third*, humans are economic creatures that want to make a living in various ways and professions. *Fourth*, they are civilized creatures that seek aspects of historical life.¹

Living together as a society entails establishing cooperative relationships to meet the living needs. There are also conflicts and competitions between individuals or groups. According to legal history, law grows and develops from society. F.C. von Savigny, the most meritorious expert in the history of law, stated that law began as customs and traditions, followed by jurisprudence.² Savigny identified law as inseparable from intense social interaction. It is called *volkgeist*, meaning that law is the nation's soul.

Indonesia's reformation promoted hope for democratization, as well as law formation and enforcement. The production and enforcement

¹Ibn Khaldun, *Muqoddimah* trans. Ahmadie Thaha, Jakarta: Pustaka Firdaus, 2011, 31.

²M. Zulfa Aulia, "Friedrich Carl von Savigny tentang Hukum: Hukum sebagai Manifestasi Jiwa Bangsa", *Undang: Jurnal Hukum*, Vol. 3, No. 1 (2020), 201-236.

of the law were rather enthusiastic, starting with the amendment of the 1945 Constitution. The law, suspected in the New Order era as a tool for rulers, was expected to respond to and improve social conditions. The enforcement was growing efficient, as evidenced by the trial and imprisonment of white-collar crime perpetrators. This indicated the more careful law formation due to community participation because the trials could be watched live.

The Founding Fathers realized that this newly independent state had to be characterized by a state of law without abandoning its religious plurality. The axiology of the awareness of forming a legal and religious state is stipulated in Article 1 of the 1945 Constitution. It states that Indonesia is the State of Law, while Article 29 mentions that the State is based on the One Godhead.

Indonesia has consciously ordained itself since independence as a state of law. The people and government are subject to the rules of applicable law. Furthermore, this state is based on the One Godhead with the freedom to embrace recognized religions. Soekarno delivered a speech on June 1, 1945, before the Investigation Agency for Preparatory Efforts for Indonesian Independence (BPUPKI) session. This speech became a discussion that the principle of God in the life of the nation was upheld.

Divine Principles! the Indonesian nation should not only have God, but every Indonesian should have God. Their own God. The Christians worship God according to the guidance of Jesus Christ, the Muslims according to the guidance of the Prophet Muhammad s.a.w, and the Buddhists perform their worship according to their books. Let us all have God. Indonesia should be a state where every people can worship their God freely. All people should have God. Culturally, it should be no "religious egoism." And Indonesia should be a God-fearing state.³

As a divinity state, Indonesia guarantees that all recognized religions develop, including expressions protected by laws and regulations. The expression of religious freedom has spread through the formation of central and regional legislation. Subsequently, legislation with the nuances of certain religious norms emerged, especially in Islam.

Table 1. Legislation with the nuances of Islamic norms

No	Type	No/Year	Content
1	Minister of Religion Regulation	4 and 5 of 1968	Establishing the Amil Zakat and Baitul Mal Agency at the central, provincial, and regional levels (implementation is postponed)
2	Law	1 of 1974	Marriage based on religion
3	Law	7 of 1989	Religious Court
4	Presidential Instruction	1 of 1991	Islamic Law Compilation
5	Law	7 of 1992	Recognizing the dual economic system (accommodating Islamic economy)
6	Government Regulations	72 of 1992	Implementing the bank based on cost and profit sharing
7	Law	10 of 1998	Operating sharia banks and directions for conventional banks opening sharia units

After the reformation, power decentralization allowed the granting of special autonomy, stimulating hopes and efforts from religious communities in Indonesia. The hope among Muslims emerged with the issuance of regional regulations with sharia nuances. Regarding special autonomy, the Special Region of Aceh issued various Qanuns (Perda/ Regional Regulation) from the Islamic norms.⁴ There were also regional regulations with biblical nuances in areas where the majority were Christians.⁵ Additionally, Hindu law was alive and well in Bali long before the reformation.⁶

Indonesia has no region where the entire population adheres to a particular religion. Political domination from certain religious laws causes

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⁴The legality of the Qanun establishment was first based on Law No. 44/1999 concerning the Implementation of the Regulas of the Province of the Special Region of Aceh. Article 4 paragraph (1) emphasizes that the implementation of religious life in Aceh is realized in the form of the implementation of Islamic law. The application of Islamic law is emphasized through Law No. 18/2001 on Special Autonomy for the Province of the Special Region of Aceh as NAD (Nanggroe Aceh Darussalam) Province. The more complete the implementation of Islamic Sharia in Aceh with the establishment of the Sharia Court is based on Presidential Decree No. 11/2003. Private and public matters are also regulated by Qanun, for example, Qanun No. 13/2002 on Maisir, Qanun No. 14/2003 on Sedusion, and Qanun No. 7/2004 on Zakat. This is in contrast to other regions where the only private sphere can be solved within the scope of the Islamic religion.

⁵As reported by Syafuan Rozi and Nina Andriana, there were 24 provinces in Indonesia that made regulations with religious nuances until 2009, there were at least 151 regional regulations and decrees of sharia/biblical regional heads that were born at that time, see Syafuan Rozi and Nina Andriana, *Politik Kebangsaan dan Potret Perda Syariah di Indonesia: Studi Kasus Bulukumba dan Cianjur 1999-2009*, Jakarta: Pusat Penelitian Politik LIPI, 2010. According to Michael Buehler, there are 443 Sharia Regional Regulations, apart from those with nuances of other religions (Biblical or Hindu), see Michael Buehler, *The Politics of Shari'a Law: Islamist Activists and the State in Democratizing Indonesia*, London: Cambridge University Press, 2016.

⁶In Papua, Manokwari called itself a Biblical city, the ratification of which was in the form of a regional regulation on October 28, 2008. An angry response came from the Governor of Bali toward same-sex marriage, which was held lively in his administrative jurisdiction. This response was not based on positive law but on Hindu religious values that strongly oppose same-sex marriage. Also, there were various behaviors of law violators who have no respect for the national laws that were made, coupled with the various behaviors of law enforcers who are easily confused and inconsistent in using the right legal norm for a case, easy to intervene and so on.

dissatisfaction among adherents of other religions, leading to vertical and horizontal conflicts. Therefore, this necessitates studies on the convergence of religious norms as the formation of laws and regulations in a pluralistic society such as Indonesia.

Previous studies did not examine the convergence of religious norms in Western and Eastern countries. In Europe, the studies focused on the protection of the human rights of immigrants,⁷ and international economic law.⁸ Furthermore, studies in Indonesia discussed the convergence of law and economy,⁹ national and customary laws,¹⁰ As well as law and information technology.¹¹

This study aimed to examine the convergence of religious legal norms in Indonesia. It used the convergence theory of William Stern and the approach of Ibn Araby's *wihdah al-adyan* and Hussein Nasr's Perennial model.

Convergence: a theoretical framework

Religious plurality brings consequences for laws and the adherents' attitudes. Normatively, people obey the norms of their religion. Religious attitudes promote norms for transplantation into state law in a legal state. The state's accuracy in responding to this problem could prevent religious

⁷See Sonia Marano Foadi and Stelios Andreadakis, "The Convergence of the European Legal System in the Treatment of Third Country National in Europe: The ECJ and ECtHR Jurisprudence," *The European Journal of International Law*, Vol. 22, No. 4 (2011), 1072-1088.

⁸See Sungjoon Cho and Jürgent Kurtz, "Convergence and Divergence in International Economic Law and Politics," *The European Journal of International Law*, Vol. 29, No. 1 (2018), 169-203.

⁹See Muhammad Aswa, "Konvergensi Hukum dan Ekonomi dalam Pengaturan Kartel", Dissertation, Universitas Airlan, 2019.

¹⁰See Hilman Syahril Haq, "Konflik Hukum Lokal dan Hukum Nasional: Studi Resolusi Konflik Menuju Konvergensi Hukum Pada Perkawinan Merarik dan Waris Adat Masyarakat Sasak Lor", Dissertation, Universitas Muhammadiyah Surakarta, 2019.

¹¹See M. Arsyad Sanusi, "Konvergensi Hukum dan Teknologi Informasi dalam Pembentukan Undang-Undang Informasi dan Transaksi Elektronik", Dissertation, Universitas Indonesia, 2007.

conflicts. Also, the convergence of religious norms could be a solution.

Referring to Roscoe Pound, the law is not a condition but a process. Creating, interpreting, and applying national law should be relevant to social facts for it is intended. Therefore Pound distinguished between “Law in the books” and “Law in action,”¹² partly referring to the convergence of religious norms.

The Big Indonesian Dictionary defines convergence as a state towards a meeting point or an intersection. The Oxford Advanced Learner’s Dictionary interprets convergence as moving towards and meeting at the same place or becoming similar. This means that convergence is one meeting point.

The convergence theory closely relates to psychology concerning human personality. The theory was developed by William Louis Stern (1871-1936), a German philosopher and psychologist. It starts from the scientists’ anxiety over whether an individual’s development is influenced by nature (Nativism Theory) or the environment (Empiricism Theory).

The nativism theory was pioneered by Arthur Schopenhauer (1788-1860), a German philosopher. It states that the development of human behavior is influenced by heredity from birth.¹³ The behavior is also influenced by the innate nature of people, ancestors, or the cause of destiny from God.¹⁴ The heredity of each individual determines the outcome of its development. Good innate nature creates good development in individuals and vice versa. External factors, including a good education,

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¹²Mulyana W. Kusuma, *Beberapa Perkembangan dan Masalah dalam Sosiologi Hukum*, Bandung: 60 imni, 1981, 3.

¹³See, Sumadi Suryabrata, *Psikologi Pendidikan*, Jakarta: PT Raja Grafindo Persada, 2008, 177.

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¹⁴Abdul Fatah, “Penyebab Krisis Moral pada Anak Menurut Teori 71 ivisme, Empirisme dan Konvergensi (Studi Analisis Faktor Penyebab Pembunuhan Anak Yang dilakukan Anak di bawah Umur di Desa Cerih Kabupaten Tegal)”, *La-Tahzan: Jurnal Pendidikan*, Vol. XI, No. 2, (2019), 104.

cannot influence personality development. In the education field, this theory is called pedagogic pessimism.¹⁵

The theory of Empiricism was presented by John Locke (1632-1704), an English scientist. It was originally called "The school of British Empiricism," or the "*tabularasa*" theory. It states that humans are born like blank paper, which gets contents or color when a hand scratches ink or dye. This means that personality development is influenced by the external environment, including education or experiences. A good environment supports the development of an individual and vice versa. In the world of education, this theory is called pedagogic optimism.¹⁶

William Stern's convergence theory combines Nativism and Empiricism theories. It states:

11 When two opposite standpoints bring forward weighty arguments to support their position, the truth must lie in their union. Psychic development is not the gradual appearance of inborn qualities or a simple acceptance and response to outside influences. It is the result of a convergence between inner qualities and outer conditions of development.¹⁷

Convergence theory implies that humans are born with good and bad traits, and education affects the children's heredity and their surrounding environment or experience.¹⁸

In this study, convergence theory is based on two approaches. The first approach is *wihdah al-adyan*, pioneered by Ibn 'Arabi. *Wihdah al-adyan* (religious unity). The concept teaches that all religions have the same purpose and serve the same God. The second approach is the perennial

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¹⁵Fadhilah Suralaga dan Solicha, *Psikologi Pendidikan*, Ciputat: Lembaga Penelitian UIN Syarif Hidayatullah Jakarta, 2010, 7.

¹⁶See Syafrudin dan Zelhendri Zen, *Dasar-dasar Ilmu Pendidikan*, Depok: Kencana, 2017, 134.

¹⁷William Stern, *Psychology of Early Childhood: Up to The Sixth Year of Age*, New York: Routledge Taylor & Francis Group, 1924.

¹⁸See Abuddin Nata, *Perspektif Islam tentang Strategi Pembelajaran*, Jakarta: Kencana, 2009, 122.

concept that is important for understanding the ancient religious or spiritual teachings. The perennial theory is rich in popular discourses, including pluralism or inclusivism. It provides many ideas about the relationship between religions and their meeting point.

Long before Stern proposed the Convergence Theory, the classical Islamic intellectual treasures were familiar with *wihdah al-adyān* initiated by al-Hallaj, Ibn Araby, and al-Jiliy. However, Ibn Arabi is better known for systematizing the *wihdah al-adyān* concept introduced by al-Hallaj.¹⁹ A concept of convergence such as this in the Qur'an is called the *kalimatun sawa*.

In *Wihdah al-adyan*, or religious unity, all religions have the same purpose and serve the same God. The difference is only in appearances and procedures for worshipping and getting closer to God. In this concept, there is no superiority and inferiority of religion because it comes from God. Religion is human awareness about something that has become a way of life from God. It comprises the obligations to be fulfilled and prohibitions to be avoided. In this case, the decision is an awareness of its own will, not through compulsion. There is no compulsion because religion is a belief from the knowledge that forms an inevitable consciousness.

Religion is a source of ideology from God, the creator of the universe and its contents. People believe that all religions go to one point because humans differ from others at one time and place. For instance, humans in Adam's and Abraham's times were different, similar to those from the West and East. Therefore, the religion in Adam's time could not be applied to Abraham's time. The religion that prevailed in the West could not be applied in the East. This also applies to the religion of the Israelites and that of the Persians. Modern humans could not take history lessons from

BC humans. Similarly, humans in the West could not behave in the same way as those in the East, and Israelis cannot be treated as Persians because everything is different. This implies that religion is revealed according to suitable conditions and places. The belief that only one religion is true is because human beings and everything related to humans are the same, originating from the same source.

There is no limitation of time and place, which means that religion in the past until the end of time should be accepted by humans anytime and anywhere. This is because it comes from one God that created the universe. Islam, Judaism, Christianity, and others are simply different names with one essence, implying the way to God.

Perennial²⁰ comes from the Latin 'preennis,' meaning eternal. This term implies the entity that has always been and would always be—in this case God—concerning His absoluteness²¹ (*Sceintia Sacra*). It is called Gnostic in the Christian tradition and al-Hikmah in Islam. This is meaningful in exploring religious pluralism to foster awareness of symbols, rites, experiences, and terms. It helps express the meaning of Sanathana Dharma, Tao, Culture, Sophia Perennis, and Sophia Perennis, all implying God's Wisdom.²²

The perennial theory is the doctrine of all primordial developments by humans from the one absolute. Therefore, it should not be a source of conflict but must be seen as diversity.

The theory could be approached from ontological, epistemological, and

²⁰Jane I Smith, "Sayyed Hossein Nasr," in John L. Esposito, *The Oxford Encyclopedia of The Modern Islamic World*, New York: Oxford University Press, 1995, 230.

²¹One opinion is that the term perennial theory was first used in the Western world by Augustine (1497 - 1548) in his *De Perennial Philosophia*, published in 1546. This term was later popularized by Leibnitz in 1715. Another opinion states that this term was first introduced by Leibnitz and later popularized by Aldous Hunley. See Frithjof Schuon, *Islam dan Teori Perennial* ns. Rahmani Astuti, Bandung: Mizan, 1993, 7.

²²Komaruddin Hidayat dan Muhammad Wahyu Nafis, *Agama Masa Depan; Perspektif Teori Perennial*, Jakarta: Paramadina, 1995, 1.

axiological perspectives. Regarding ontology, the theory explains the existence of a source from all sources (*being quo being*). It means that all these forms are traces, creations, or reflections of Him whose essence and substance are beyond the reach of human reason. Epistemologically, perennial discusses religious truth's meaning, substance, and source and how it flows from God. This truth appears in the consciousness of reason and takes form in historical religious traditions. From the axiological perspective, the theory explains inner revelation, the original religion. This implies the wisdom of the *khalidah*, the eternal truth, and *Sophia perennis* in the heart that always longs for God and promotes one to think and behave properly.²³

The perennial theory is eternal and is believed to be passed over generations with flexible tendencies and styles. The true meaning is not easy to find, as philosophers from various schools and ages have tried to answer and stated that this was a perennial theory. The four figures concerned with perennial theory are Marcillio Ficinio, Agostino Steuco, Frithjof Schoun, and Sayyed Hosein Nasr.

This study examined Sayyed Hosein Nasr's perennial theory, an intellectual tradition owned by Western and Eastern civilizations. However, the intellectual tradition, rooted in spiritualism, has lost its place in Western civilization because the truth of rationality is more dominant. The tradition of Perennial Theory still has an important position in Eastern religious belief, reflecting human awareness of God. In this case, God, religious pluralism, and awareness of religiosity are important in discussing Perennialism Theory. According to tradition, the theory departs from the metaphysical discourse of philosophers.

Nasr is an adherent of the Perennial theory and understands the existence of fundamental divine knowledge. This theory does not deny

the importance of religious rites and social aspects but teaches that there is an original tradition. Nasr found that the Perennial theory has branches related to cosmology, anthropology, and art, but at its core lies pure metaphysics. When metaphysics is defined as knowledge of the sacred (*Scientia Sacra*), it should not be confused with the same concept in post-medieval Western theory. According to Nasr, metaphysics is true divine knowledge from the perennial theory perspective. It does not change with culture or discoveries in the material world.

Traditional wisdom has been called many names, such as *al-hikmah al-ilahiyah* (the wisdom of God) in the Islamic tradition or *Scientia sacra* in discussing Islamic traditions. Nasr stated:

*The delivery of revealed truths or divine principles to humans and the whole of nature and their application in various realities is through several selected figures, such as apostles, avatars, and logos. This includes aspects of law and social structure, art, symbolism, and various branches of Science.*²⁴

Nasr explained that tradition relates to oral and written knowledge, procedures, practices, laws, and forms. In another text, Nasr viewed tradition as:

*Something conveyed to humans through revelation is sacred in expressing and developing its role in humanity. It is applied in a horizontal relationship with the source of the chain or in a vertical relationship connecting every pulse of the living tradition being discussed with the transcendent reality behind history.*²⁵

Nasr concluded that immortality in space and time is to make tradition a holy truth, eternal wisdom, and continuous application.

The three stages in converging religious legal norms are harmonization, unification, and integration.

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²⁴Seyyed Hossein Nasr, *Knowledge and the Sacred, Gifford Lectures*, New York: State University of New York Press, 1989, 64.

²⁵Seyyed Hossein Nasr, *Tradisional Islam in The Modern World*, London: Kegan Paul International, 1989, 1.

- a. Harmonization refers to the matching and coordination process. Reduction and elimination are required in harmonizing legal norms as a convergence of legal systems.
- b. Unification means unifying something into one format or system.
- c. Integration means uniting to obtain a single structure in politics, economy, government, and society. It connects different parts into one, similar to forming a state.²⁶

The convergence of religious norms in national law

Religious norms affect attitudes and behavior in living life, including adherence to legal norms. The adherence is significant when the formal and substantial religious norms become the legal norms. Similarly, obedience to state law manifests as submission to religious law.²⁷

Regional regulations with religious nuances and Sharia Qanuns emerged in Aceh due to a desire for rules based on religious norms. It is a reaction to disappointment with legislation products that contradict valid religious norms. Therefore, the desire to deconstruct legal norms emerged without conflicting with religious norms.

An example of acts that violate religious norms is adultery. The Criminal Code does not regulate adultery because the perpetrators are taken into consideration, provided they are not bound by marriages and are not underage. The act is not categorized as a crime of sexual relations

²⁶Yuri Bezborodov, "Methods on International Legal Convergence," *Law Review*, Vol. vii, No. 1, (2017), 21-31.

⁴¹s evidence of the effect of religion on attitudes and behavior can be seen in research by Rizky Sabila Firdausita, "Pengaruh Pemahaman Agama dan Lingkungan terhadap Perilaku Perempuan Hamil di Luar Nikah di Kecamatan T¹⁷uk Kabupaten Lamorang", *Tesis* pada Program Pasca Sarjana UIN Sunan Ampel, 2017, Ulung Giri Sutikno, "Hubungan Antara Ketaatan Beragama dengan Kemampuan Regulasi E²⁵ Pada Mahasiswa Pengurus Lembaga Kemahasiswaan Fummi FIP Unnes Tahun 2019", *Skripsi pa⁴³ fakultas Ilmu Pendidikan Universitas Negeri Semarang*, 2019, and Wana Mayasari et al, "Pengaruh Ketaatan Beragama Terhadap Moral Pajak", *Jurnal Fakultas Ekonomi*, Vol. 6, No. 1, (2015), 1-13.

committed by underage couples. Age is also not considered in the crime of adultery, including sexual relations with same-sex adults. However, private matters and the state require citizens to have good morals.²⁸

Regulations do not promote producing, distributing, and consuming alcoholic beverages. However, many crime cases occur because religious norms prohibit alcoholic beverages. One branch of the judiciary stated that corruption perpetrators should not be imprisoned. Their punishment should involve other mechanisms, provided they pay disproportionate court fees and return the proceeds of corruption to the state.²⁹

Several examples of legal products contradict recognized religious norms in Indonesia. However, legal norms and regulations become juridical references and shields for the perpetrators. From a religious perspective, these actions are immoral, promote degradation and moral decadence, and are criminal acts.

The latest example of adultery is the Sexual Violence Act (TPKS). All regulations of illegal sexual relations use the words coercion, exploitation, rape, fraud, and certain weak conditions as elements of sexual violence. Similarly, abortion and prostitution are based on the same words, which means that the acts are not a crime when carried out voluntarily. This shows that religious norms were not used until the latest legislation was formed.

²⁸The arguments of the expert witnesses in the Judicial Review trial testing Articles 284, 285, and 292, as well as concerns or concerns that overcriminalization will occur if these acts are formulated as part of the criminal act of adultery, see <https://business-law.binus.ac.id/2017/01/20/pengujian-pasal-284-285-dan-292-kuhp-di-mahkamah-konstitusi/>, downloaded on April 8, 2022. In Islam, adultery is not limited by marital status and age. Marital status is used to determine the type of punishment given, those who are married are called *zina muhshan* with a penalty of stoning to death, and those who are not married are called *zina ghairu muhshan* with a penalty of 100 lashes, see Rienaldy Nata and Wismar Ain, "Perbandingan Zinah (Overspel) dalam Kitab Undang-Undang Hukum Pidana (KUHP) dan Zinah (Hubungan Luar Kawin) dalam Hukum Islam," *Lex Jurnalica*, Vol. 12, No. 1, (2015), 56-64. 5

²⁹See <https://news.detik.com/berita/d-5973554/jaksa-agung-ingin-korupsi-di-bawah-rp-50-juta-tak-dipidana-ini-alasannya>, downloaded on April 8, 2022.

Table 2. Legislation Contrary to Religious Norms

No	Legislation	Article	Content
1	Criminal Code	284, 285 and 292 300	Adultery Drunk/ Alcoholic Beverages
2	Bill on the Elimination of Sexual Violence	11-20	Sexual violence
3	Bill on Alcoholic Beverages	8	Exceptions to the prohibition of alcoholic beverages

One legislation could be considered successful in converging Islamic law and religions. This is Law No. 1 of 1974 amended into Law No. 16 of 2019 concerning Marriage. The law only regulates private matters of legal subjects. This change maintains the convergence of religious norms and becomes a positive legal norm applying to all citizens.

Article 2 Paragraph 1 of Law No. 1 of 1974 states that marriage is legal when carried out according to the laws of each religion and belief. The text does not include the articles subject to changes in Law No. 16 of 2019. This means marriage is valid when it follows the religious norms adopted by each bride. The norms for the six religions recognized in Indonesia prohibit interfaith marriages. This is referred to in the following norms.

First, the main argument for prohibiting interfaith marriages is stated in the Qur'an Surah al-Baqarah, verse 221;

Do not marry polytheistic women until they believe; for a believing slave-woman is better than a free polytheist, even though she may look pleasant to you. And do not marry your women to polytheistic men until they believe, for a believing slave-man is better than a free polytheist, even though he may look pleasant

to you. They invite (you) to the Fire while Allah invites (you) to Paradise and forgiveness by His grace. He makes His revelations clear to the people so perhaps they will be mindful.

Second, the prohibition of interfaith marriages in Christianity and Catholicism is stated in the Old and New Testaments as follows:

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Deuteronomy 7:3-4 "You shall not intermarry with them, giving your daughters to their sons or taking their daughters for your sons, for they would turn away your sons from following me, to serve other gods. Then the anger of the Lord would be kindled against you, and he would destroy you quickly".

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Corinthians 6:14 "Do not be unequally yoked together with unbelievers. For what fellowship has righteousness with lawlessness? And what communion has light with darkness?".

Third, marriage in Buddhism aims to achieve a happy home and family. The husband and wife should have equal faith (suddha), comparable morals (sila), generosity (cassa), and wisdom (panna).³⁰

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Fourth, in the Judicial Review Session Article 2 paragraph 1 of Law No. 1 of 1974, expert witnesses from the Hindu religion represented by Parisada Hindu Dharma opposed interfaith marriages. This is because each couple must undergo several rituals that require embracing Hinduism. Furthermore, interfaith marriages in Hinduism are declared illegitimate according to *wiwaha samskara*. When accomplished, the couple is considered invalid, and the act is adultery.³¹

Fifth, regarding the Confucian religion, the Executive Board of the Indonesian Confucian Religious High Council (Matakin), Chandra Setiawan, stated that the marriage confirmation ritual is only for believers

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³⁰See Syaikh, "Perkawinan Beda Agama dalam al-Qur'an dan Bible", *Jurnal Kajian Islam*, Vol. 3, No. 2, (2011), 247. 7

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³¹More can be seen in I Nyor Arthayasa, *Petunjuk Teknis Perkawinan Hindu*, Surabaya: Paramita, 1998, 11 and Laily Dwi Setiarini, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia", *Al Qodiri: Jurnal Pendidikan, Sosial dan Keagamaan*, Vol. 19, No. 1 (2021), 49-50.

in Confucianism. Interfaith marriages are prohibited because they cannot be confirmed according to Confucian teachings. The Confucian religion cannot confirm marriage for non-believers in Confucian teachings. During marriage rituals, adherents must confess faith in Confucian beliefs. The oath contains a confession of faith to accept Confucianism as religion. According to Matakín, Li Yuan (blessing ceremony) in marriage is only conducted for the Confucian bride and groom. This shows that marriage should have an acknowledgment of being Confucian.³²

The arguments indicate that the core teachings of religions in Indonesia prohibit interfaith marriages. Differences of opinion on the permissibility of each religion are due to varied interpretations, the interests of *da'wah* strategies, and the understanding of each religion's periphery.

This study analyzed and linked marriage law formation to the legal convergence stages of harmonization, unification, and integration. No data showed that adherents or religious experts discussed and took steps for convergence. However, the draft law was debated in the courtroom between the United Development, Golkar, and PDI factions. The government's representatives, General Soemitro and the United Development faction, agreed that marriage is legal when conducted according to the laws of each religion and belief.³³ The law is always threatened with abolishment and judicial review for reasons of religious freedom and pluralism,³⁴ human

³²Laili Dwi Setiarini, "Perkawinan Beda...", 50-51.

³³See Khyaroh, "Alasan dan Tujuan Lahirnya Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan*, Vol. 7, No. 1 (2020), 113

³⁴See Muhammad Ashsubli, "Undang-Undang Perkawinan dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama)", *Jurnal Cita Hukum*, Vol. 3, No. 2 (2015), 289-302.

rights³⁵ and private affairs³⁶.

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Accommodative convergence on Qanun Jinayat in Aceh

After the enactment of the Marriage Law, there is no convergence of religious legal norms in forming further legislation. The resulting laws and regulations may accommodate the legal norms of one religion, especially Islamic law. Examples are the enactment of the Waqf Law, the Zakat Management Act, the Hajj Organizing Act, and other laws regulating the private issues of Muslims. These include regional regulations with a Sharia nuance in many areas.

The Qanun Jinayat in Aceh Province is a differentiator in general Sharia regulations besides its historicity in Indonesia.

The difference is in its historicity and mainly on a legal basis. Aceh has implemented Islamic Sharia since the glory of the Islamic kingdoms in the regions. The judiciary “Serambi” and the Acehnese proverb “*hukom ngon adat, lagee zat ngon sifeut*,” implying sharia law with customs, such as substance and nature, is undeniable historical evidence. Referring to Law No. 44 of 1999 concerning the Implementation of the Privileges of Aceh as strengthened by Law No. 18 of 2001 concerning Special Autonomy and Law No. 11 of 2006 concerning the Government of Aceh, Aceh is given special privileges different from other regions. The law characterizes its local political parties that contest in regional elections and the formal implementation of Islamic Sharia in the form of Qanun or local regulations. Law No. 11 of 2006 requires 36 Qanun in *aqidah, shari’ah*, as well as public and private morality.

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³⁵See Danu Aris Setiyanto, “Perkawinan Beda Agama Pasca Putusan Mahkamah Konstitusi Nomor 68/ Puu-Xii/2014 dalam Perspektif HAM”. *Al-Ahwal*, Vol. 9, No. 1 (2016 M/1437 H), 13-29.

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³⁶The last case is the judicial review of interfaith marriages (Article 2 paragraph 1 of Law No. 1 of 1974) by E Ramos Petege. The lawsuit was recorded on the Constitutional Court Number 17/PUU/PAN page.MK/AP3/02/2022 on February 4, 2022.

One public qanun is Qanun Jinayat No. 6 of 2014, with the principle of territorial enforcement. This means that it should be violated by people in Aceh, regardless of where they come from. When violators are non-Muslims, they are subject to the national criminal law or the Aceh Jinayat Qanun.

The population in Aceh province comprises Muslims and minority communities from five other recognized religions in Indonesia. However, the contents of the Qanun Jinayat are all based on the Islamic legal system. Academic texts and Qanun Jinayat drafts are also made without involving adherents of religions. The resulting Qanun is not rejected by non-Muslims.³⁷

During the enforcement of the Jinayat Qanun, violators were arrested by the Hisbah Regional Police at the sharia court. However, not all of them were Muslim, as there were two cases of *jarimah khamr* (drunk) and *maisir* (gambling) from non-Muslim circles. Two Christian and Buddhist perpetrators also preferred submitting to the Jinayat Qanun over the national criminal law (KUHPid). This is because the Qanun sanctions did not take long and did not incur costs compared to complying with the Criminal Code. After being flogged, the perpetrators returned home and continued their business.³⁸

Pastor Reinhad (HKBP Church)³⁹ stated that non-Muslims submitted to Qanun Jinayat because its prohibitions are in all religions, especially Christianity. They felt grateful for Qanun Jinayat because it educates the younger generation on actions prohibited by religion.

The formation of the Qanun Jinayat and the convergence of religious

³⁷Interview with the Chair of the Langsa City FKUB, Zulkarnain, on December 10, 2021, Samsu, a member of the Indonesian Chinese Clan Association, who was Buddhist on December 9, 2021, and Purba, a member of FKUB, who was Christian, on December 10, 2021.

³⁸Interview with Samsu (Chinese Buddha) on December 12, 2021.

³⁹Interview on December 12, 2021.

norms did not involve non-Muslims. Law No. 1 of 1974 accommodates other religious norms to prevent inter-religious conflict in Aceh. Consequently, there is respect and voluntary submission of non-Muslims to Qanun Jinayat.

Prospects of convergence of religious norms

The three religious nuances recorded are the Sharia Regional Regulation, the Gospel City Regional Regulation in Manokwari, and the Nyepi Regional Regulation in Bali. The regional regulations with religious nuances are located in areas with no religious homogeneity. The intense interreligious dialogue eliminated concerns regarding possible discrimination against followers of other religions. This is because the regulations only apply to their respective religions. The life and tolerance of religious life in areas with regional regulations with religious nuances are conducive.

The convergence of Islamic norms and religions in Law No. 1 of 1974 concerning Marriage, which applies nationally and to all religions, indicates the existence of similar noble norms. It also shows that the concept of *wihdah al-adyān* Ibn 'Arabi and Hosein Nasr's Perennial theory is valid in a pluralistic nation and state, such as Indonesia, because religion comes from God Almighty. The expression of the religious attitude differs in rituals but one in God.

The Qanun Jinayat in Aceh does not describe the convergence of Islamic religious norms and religions. Since the Qanun is based on the Qur'an and al-Hadith from God, the norms have similarities to other religions. This means that the convergence model of religious norms has been fulfilled.

The ratification of the West Sumatra Bill into the West Sumatra Law in June 2022 may be used to form Qanun applicable in Aceh. This is because the Minangkabau philosophy of "*adat basandi syara' – syara' basandi kitabullah*" is similar to the Acehnese philosophy of "*hukom ngon*

adat, lagee zat ngon sifeut.”

The three data show that converging religious norms into state or local norms is possible in a plural nation such as Indonesia. It helps realize justice and public order because religious norms are based on holy books believed to be true and adhered to by people. Furthermore, Article 29 of the 1945 Constitution is a juridical basis for the emergence of laws and regulations with religious nuances. This could also be a strong argument for the future convergence of religious norms in Indonesia. Therefore, the consequences of the law resulting from the convergence of religious norms would be obeyed by religious citizens to manifest state life and obedience to God.

Conclusion

Religious norms affect the attitudes and behavior of its adherents, including their adherence to legal norms, which has a significant influence when the formal and substantial norms of religious law become the legal norms of their country. Religious adherents consider state law a manifestation of obedience to God. The reformation period turned religious norms into legal norms. This was evidenced by enacting laws and regional regulations with religious nuances that only accommodated the norms of one religion.

The convergence of religious norms is not as popular as it is with other norms. However, Islamic norms and religions in Indonesia converged from the formation to the promulgation of Law No. 1 of 1974 concerning Marriage. The law applies to all citizens regardless of their religious background. The convergence is often threatened with judicial review, especially concerning interfaith marriages. This happens even as the norms of all religions do not justify interfaith marriages. Regarding the regional regulation, Qanun No. 6 of 2014 concerning Jinayat in Aceh Province is a convergence of religious norms. Although the promulgation process does

not involve followers of other religions, the contents of the Jinayat Qanun accommodate all religious norms in Aceh. Therefore, there is a possibility of converging religious norms into legal norms.

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