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Islamising Policy or Decolonising Law? Constitutional Negotiation in Indonesia's Local Sharia Regulations

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Abstract

In post-Reform Indonesia, decentralisation has generated numerous Sharia-inspired local regulations, many of which were initially associated with symbolic, moralistic, and punitive forms of legal formalisation. This article examines a subsequent shift toward more substantive forms of local Islamic legal governance. Using a normative legal method informed by a socio-legal perspective, it analyses halal tourism regulations in West Nusa Tenggara and West Sumatra and child-marriage prevention policies in Gresik and Ponorogo. The concept of 'beyond formalisation' is used here to describe a reinterpretation of Islamic legal values through legal pluralism, responsive law, and *maqāṣid al-sharī'ah* within local public policy. The analysis shows that these regulations cannot be understood uniformly. Some continue to reproduce coercive or majoritarian tendencies, while others translate Islamic legal principles into instruments of economic development, social protection, and the safeguarding of vulnerable groups. The article argues that such policies are best understood as sites of constitutional negotiation in which local governments and social actors reinterpret Islamic legal norms within Indonesia's plural legal order. From a postcolonial perspective, this shift illustrates an effort to move beyond the rigid positivisation of *fiqh* toward contextual forms of legal reasoning that connect Islamic legal values with constitutional rights, public welfare, and local social needs.

[Pasca-Reformasi, desentralisasi di Indonesia melahirkan berbagai peraturan daerah bernuansa syariah yang pada fase awal banyak diasosiasikan dengan

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formalisasi hukum yang simbolik, moralistik, dan punitif. Artikel ini mengkaji pergeseran berikutnya menuju bentuk tata kelola hukum Islam lokal yang lebih substantif. Dengan menggunakan metode penelitian hukum normatif yang diperkaya perspektif sosio-legal, studi ini menganalisis regulasi pariwisata halal di Nusa Tenggara Barat dan Sumatera Barat serta kebijakan pencegahan perkawinan anak di Gresik dan Ponorogo. Konsep 'melampaui formalisasi' digunakan di sini bukan sebagai istilah baru, melainkan sebagai pembacaan ulang atas pluralisme hukum, hukum responsif, dan maqāṣid al-sharī'ah dalam kebijakan publik lokal. Analisis menunjukkan bahwa regulasi tersebut tidak dapat dipahami secara seragam: sebagian masih berpotensi mereproduksi kecenderungan koersif dan bias mayoritarian, sementara sebagian lainnya menerjemahkan prinsip hukum Islam ke dalam instrumen pembangunan ekonomi dan perlindungan kelompok rentan. Artikel ini berargumen bahwa kebijakan tersebut lebih tepat dipahami sebagai arena negosiasi konstitusional, tempat pemerintah daerah dan aktor sosial menafsirkan kembali norma hukum Islam di dalam tatanan hukum Indonesia yang plural. Dari perspektif pascakolonial, pergeseran ini bukan kelanjutan dari positivisasi fikih ala kolonial, melainkan upaya mengembalikan fikih pada karakter kontekstual dan responsifnya, meski hasil dari upaya ini tetap tidak seragam antar daerah.]

Keywords: sharia-based local regulations, postcolonial constitutionalism, legal decolonisation, halal tourism, prevention of child marriage.

Introduction

Decentralisation and regional autonomy following the 1998 reform in Indonesia not only redistributed administrative authority from the central government to the regions but also spurred the resurgence of identity politics and legal pluralism at the local level. One of the most prominent phenomena is the proliferation of Sharia-inspired local regulations (*Perda*). In the early phase, this formalisation was dominated by regulations of a symbolic, moralistic, and punitive nature, such as the obligation to wear Muslim attire, bans on alcoholic beverages, and the eradication of prostitution and gambling (Buehler 2016). This approach has often been criticised as a new form of legal positivism, in which classical *fiqh* texts are rigidly incorporated into the colonial-era legal system without adequate sociological contextualisation (Salim 2008).

Entering the second and third decades following the Reformasi, the practice of Islamic law at the local level has shown a significant shift. Formalisation is no longer limited to criminal (*jināyāt*) and ritual aspects but has

begun to move toward more substantive, rational, and responsive public policies addressing contemporary needs, including in the fields of economics and social protection (Feener 2013). This phenomenon is often referred to as moving beyond formalisation, namely, the tendency to operationalise the values of *maqāṣid al-sharī'ah* into public policy. In this article, the concept of moving beyond formalisation is not presented as new but rather as a reinterpretation of the approaches of legal pluralism, responsive law, and *maqāṣid al-sharī'ah* to explain the transformation of the function of Islamic law at the local level.

To understand this shift, it is important to examine the colonial legacy in Indonesia's legal system briefly. The Dutch colonial government institutionalised legal pluralism, separating Islamic law, customary law, and state (Western) law as a strategy for social and political control (Lukito 2012; Otto 2010). Through the theory of reception, Islamic law was placed in a subordinate position to customary law so that its existence depended on social acceptance rather than functioning as an autonomous legal system.

Although various decolonisation efforts have been undertaken post-independence through the reintegration of Islamic law into the national system, such as via the Compilation of Islamic Law and the strengthening of religious courts, the legacy of legal dualism and patterns of colonial domination have not entirely disappeared (Salim 2008). In this context, Sharia local regulations occupy an ambivalent position: on the one hand, they are viewed as an attempt to break free from the colonial legal hierarchy, yet on the other hand, they have the potential to reproduce coercive and formalistic regulatory patterns (Wignjosoebroto 2014).

These dynamics can be observed in two policy sectors. First, regulations on halal tourism in West Nusa Tenggara (Regional Regulation No. 2 of 2016) and West Sumatra (Regional Regulation No. 1 of 2020) demonstrate how Islamic law is adapted into instruments of economic development and public service (Santoso et al. 2022). Second, policies to prevent child marriage in regions such as Gresik and Ponorogo demonstrate a reinterpretation of *fiqh* norms through the *maqāṣid al-sharī'ah* approach to support the protection of children and women (Rofii 2014). These two examples demonstrate that Islamic law at the local level is no longer monolithic but has become a space for negotiation between religious norms, social needs, and the constitutional framework (Widiyanto et al. 2024).

Nevertheless, existing academic studies remain largely fragmented. Most research focuses on the early wave of repressive Sharia-based local regulations

or on aspects of identity politics and elite competition (Rani et al. 2020; Jahar 2019; Muhtada 2014). Meanwhile, other studies address specific sectors such as the halal economy or the issue of child marriage in isolation, without viewing them as part of a broader transformation of the Islamic legal paradigm (Hallaq 2014, 78; Santoso and Wahid 2023). Consequently, there remains a gap in analysis that connects these various phenomena within a coherent conceptual framework.

This article argues that the development of Sharia-based local regulations in Indonesia following the Reform era signifies a shift from symbolic formalisation toward the utilisation of Islamic legal values as substantive instruments of public policy. Drawing on postcolonial legal theory and postcolonial constitutionalism, this article analyses how this phenomenon, which goes beyond mere formalisation, represents a reinterpretation of Islamic law within the framework of legal pluralism and the constitutional state. Thus, this article seeks to fill a research gap by offering an integrative reading of the transformation of Islamic law at the local level as a dynamic, contextual, and public-welfare-orientated process. The uniqueness of this study lies in its effort to examine local Sharia regulations not merely as a legal formalisation project but as a form of postcolonial constitutional adaptation in which Islamic legal values are translated into inclusive economic and social governance policies. This involves adapting Sharia within the framework of a constitutional state through the legal recognition of Islamic family law, the incorporation of religious courts into the state system, Sharia-based economics and finance, and several aspects related to Islamic values within constitutionalism. Thus, this can be described as a constitutional accommodation of Islam, not a constitutional Sharia state, which would make Sharia the supreme source of state law or include a Sharia clause in the constitution.

To sharpen the focus and strengthen this article's contribution to both empirical and theoretical aspects, Sharia-based local regulations discussed here can be categorised as going beyond mere formalisation if they exhibit at least four characteristics. *First*, such regulations do not merely reproduce religious symbols or enforce morality through sanctions. *Second*, these regulations translate Islamic legal principles into solutions for real social or economic problems. *Third*, their formulation links *the maqāṣid al-sharī'ah* to constitutional rights, public welfare, and the protection of vulnerable groups. *Fourth*, their implementation could involve collaboration among local governments, religious authorities, civil society, and affected communities.

Method

A socio-legal perspective informs this normative legal study. It focuses on analysing legal norms and public policies related to sharia-inspired regulations in Indonesia following the reform era. Although this study discusses the social implications of local sharia regulations, its analysis remains normative and doctrinal. It is limited to legal documents, policy texts, and secondary socio-legal literature. Therefore, this study does not empirically measure policy effectiveness or public perception. The research was conducted in two stages. The first stage involved a conceptual and doctrinal analysis of the development of sharia regulations, examining academic literature and legal frameworks related to legal positivism, Islamic legal thought, and the decolonisation of law. The analysis focuses on how the principles of *fiqh* and *maqāṣid al-syarī'ah* are interpreted and integrated into contemporary legal policies.

The second phase involved a comparative analysis of several regional policies as case studies: halal tourism regulations in West Nusa Tenggara and West Sumatra and policies to prevent child marriage in West Sumatra, Gresik, and Ponorogo. The selection of cases was conducted purposively to represent two distinct policy sectors, economics and social protection, demonstrating variations in the translation of Islamic legal values into public policy. Research data was obtained through a document review covering legislation, local government policies, official reports, and relevant academic literature. Data analysis used qualitative content analysis to identify patterns in regulatory orientation, forms of Islamic legal argumentation, and their relationships with constitutional principles.

Postcolonial Constitutionalism and the Decolonisation of Local Sharia Law

To dissect local sharia regulations as a project of decolonisation and position the region as an epistemic actor, the relevant theoretical framework is a synthesis of postcolonial legal theory and postcolonial constitutionalism.

The presence of postcolonial legal theory in law does not merely examine the past; it deconstructs how the structures of power, epistemology, and legal paradigms inherited from the colonisers continue to dictate, structure, and limit the way of thinking of the legal systems of independent countries (Fitzpatrick 1992). In the Indonesian context, the Dutch colonial project not only exploited economic resources but also committed "epistemological violence" against the

local legal system. The Dutch introduced the concept that the only valid law is codified, written law that is enforced centrally by the state, a doctrine rooted in 19th-century European legal positivism.

Through this postcolonial lens, the phenomenon of regional autonomy after the 1998 Reformation and the discourse on Islamic law in Indonesia can be analysed not merely as a clash between "religion" and the "secular state" but as a continuation of the unfinished hegemonic negotiations of the colonial legacy.

Historically, Islamic law (*fiqh*) has been pluralistic, dynamic, and non-state-centric. Wael B. Hallaq, in his work The Impossible State argues that traditional Islamic jurisprudence was in the hands of scholars, *muftis*, and *qāḍīs* who were independent of executive power (sultan/caliph). Law was produced from the bottom up through a dialectic between sacred texts and social reality (*'urf'* or 'custom'*).* Legal decisions (*fatwas* or *qāḍī* rulings) were highly casuistic and flexible, rather than codified in rigid articles of law.

In contrast, the Dutch colonial government brought with it the tradition *of civil law,* which glorified codification and formal legal certainty. Through the principle of concordance (*concordantiebeginsel*) and legal policies that separated population groups, the Dutch imposed the paradigm that "law is legislation" (*lex*), and anything not written in articles ratified by the state was not true law (Lev 1972). The law lost its sociological flexibility and became an instrument of top-down social engineering.

After the reformation, alongside the opening of political decentralisation through Law No. 22 of 1999, various Islamist groups at the local level pushed for the formation of sharia regional regulations (*Perda*). The rhetoric was to restore Islamic identity and "indigenise" the law by rejecting the Western-inherited "secular" legal system.

However, this is where the greatest irony captured by the postcolonial lens lies: the method used to "Islamise" society is a method that was entirely adopted from the Dutch colonial legal architecture. When *fiqh*, which is originally fluid, multi-interpretative, and discursive, is reduced, crystallised, and frozen into articles of local regulations (for example, stipulating the millimetre length of skirts or punishing specific behaviours with state administrative sanctions), what occurs is not the revival of Islamic law but rather the positivisation of Islamic law (Salim 2008; Santoso dan Rachman 2024).

Borrowing a famous aphorism from postcolonial feminist thinker Audre Lorde, *"the master's tools will never dismantle the master's house"* (Lorde 1979).

Ironically, the early wave of the movement to formalise sharia law in Indonesia was trapped in the iron cage of colonial positivism. They replaced the 'content' of the law with Arabic terminology (such as *'khalwat', 'khamr', and 'jināyāt'*) but left the 'container' (the form and epistemology of the law) with its 19th-century European face, namely, the state as the holder of a coercive monopoly on legal truth (Buehler 2016). This rigid formulation failed to respond to social complexity, leading to discrimination against women and minority groups and ignoring the substance of economic justice and social protection.

Recognising the impasse of this sharia-based positivism, the second decade after the Reformation saw a crucial shift towards what is known as 'beyond formalisation'. In a postcolonial framework, this marked the beginning of the true decolonisation of Islamic law. The decolonisation of law does not mean being anti-state law but rather the liberation of law-making from the rigidity of the letter of the law towards the realisation of the noble objectives of law (the *spirit of the law*).

In Islamic law, this is manifested through the operationalisation *of Maqāṣid al-sharī'ah* (the universal objectives of sharia), namely the protection of religion, life, reason, lineage, and property. This reinterpretation frees local law from being merely a matter of private morality and makes it public policy orientated towards welfare (*maṣlaḥah 'āmmah*).

Through this postcolonial theoretical framework, it can be understood that simply positivising *fiqh* into local regulations is not a form of decolonisation but rather a blind adoption of the Dutch colonial positivist method that stifles the internal dynamics of Islamic law. The decolonisation of Islamic law after the Reformation in Indonesia only found its authentic form in the era *beyond formalisation.* At this stage, as reflected in halal tourism policies and the prevention of child marriage, regional autonomy has become a laboratory where sharia values *(maqāṣid)* are negotiated with public reason, contextualised with modern needs, and translated into emancipatory instruments of public welfare.

Meanwhile, postcolonial constitutionalism serves to dismantle the position of sharia regulation in the Indonesian legal system. Unlike Western liberal constitutionalism, which emphasises a strict separation between the public sphere (the state) and the private sphere (religion), this theory acknowledges the reality of "constitutional anxiety" in former colonial countries. Upendra Baxi and Werner Menski argue that post-colonial states do not have a

monolithic legal system but rather a plurality of competing normative and legal orders (W. F. Menski 2006; Vilhena et al. 2013).

From this theoretical perspective, sharia regulation is not seen as "insubordination" to national law but rather as a constitutional dialogue from the periphery. Menski offers a *flying kite* model, in which law is the result of a tug-of-war between four corners: state law, religious/natural law, social law, and international values (W. Menski 2011). Until now, legal analysis in Indonesia has been too heavy on the "state law" corner (a colonial legacy).

This theory suggests that when regions issue local regulations on halal tourism or child marriage, they are correcting the imbalance of the kite. They reject the hegemony of Dutch colonial criminal law, which does not base halal/permissibility on religion, and replace it with a more contextual interpretation of religious norms. This perspective supports the view that in a post-colonial state, "modernity" does not necessarily mean "secularism". Therefore, sharia regulations are a *bottom-up* mechanism to fill the moral void in a constitution that is often too formalistic.

The problem that has arisen so far is that the constitution is often positioned as a rigid, sacred document, locked away in the ivory tower of the highest judicial institutions and state elites. This paradigm, deeply rooted in Western legal positivism, assumes that the constitution is a dead text that can be "voiced" only through dry, legal-formalistic logic. This assumption creates an epistemological monopoly, whereby only judges in the Constitutional Court or legal experts at the centre of power have the authority to determine what is constitutional and what is unconstitutional. As a consequence, legal aspirations that arise from the womb of society, especially those with local and religious nuances, are often viewed with suspicion, considered a deviation, or even accused of being a threat to the integrity of the nation-state.

This centralistic view is problematic, especially for a diverse post-colonial country like Indonesia. Monopolising the interpretation of the constitution in central institutions and Western secular logic is tantamount to alienating the law from its own subjects. This idea rejects such elitism and proposes a counter-thesis: that the constitution should be understood as a "living charter" open to the participation of various actors. The courts are not the sole interpreters; local governments and civil society are equal partners in the constitutional dialectic. This shift is not merely a matter of legal technicalities but rather a project of

decolonisation to restore a sovereignty of meaning sensitive to local socio-religious realities.

The dominance of Western legal logic in constitutional interpretation is evident in its obsession with uniformity and a strict separation between the public (legal) and private (religious/moral) spheres. When imposed top-down in Indonesia, this logic often fails to capture the sociological complexity of a society that does not separate civic identity from religious identity. Mark Tushnet, in his critique of judicial supremacy, introduced the concept of popular constitutionalism. Tushnet argues that entrusting the constitution entirely to the courts is a form of "usurpation" of people's sovereignty. The people, through their representatives and social dynamics, have the capacity and right to interpret their own constitution outside the courtroom.

In the Indonesian context, this criticism is very relevant. Secular Western logic often views regional regulations (*Perda*) with religious overtones as merely a violation of the principle of individual freedom (a liberal perspective). However, if we remove these Western glasses, we can see that these local initiatives are actually the community's efforts to interpret the first principle of Pancasila ("Belief in One God") into everyday practice. Rejecting the hegemony of Western interpretations means recognising that religious values and local wisdom are legitimate sources of constitutional material, not anomalies that must be eliminated in the name of biased standards of "modernity".

Local governments have often been viewed merely as technical implementers (administrators) of central government policies. This perspective reduces the strategic role of decentralisation. In fact, when local governments draft policies, such as regulations to prevent child marriage or regulations for traditional villages, they are acting as constitutional interpreters. They are translating the constitutional mandate on social welfare and the recognition of customary law communities into the specific context of their region.

The concept of constitutionalism from below provides theoretical legitimacy for this role. This theory asserts that constitutional norms do not descend from Jakarta but rather grow from struggles at the local level. When a region in West Sumatra or Aceh formulates rules based on sharia law, it is not rebelling against the unitary state of the Republic of Indonesia but rather offering an alternative interpretation of what it means to be Indonesian. They fill the void left by the abstract central constitution with culturally relevant details. Thus, regional autonomy is not only administrative autonomy but also hermeneutic

(interpretive) autonomy, namely the right to read the constitution through the lens of local legal dialects.

The most important implication of this democratisation of interpretation is the creation of legal products that are highly sensitive to local communities' social and religious contexts. A constitution that is interpreted solely by the central government tends to be a "one size fits all" solution that often does not fit and causes suffering for those who have to live with it. In contrast, decentralised interpretation offers flexibility. What is understood as "public order" in Hindu-based Bali may differ from that in Islamic-based Aceh or in Papua, which is based on customary law and Christianity.

James Tully, a political philosopher, calls this approach 'strange multiplicity', in which modern constitutionalism must accommodate cultural diversity and different legal traditions without imposing assimilation (Tully 1995). In Indonesia, recognising the role of regions and civil society in interpreting the constitution is a middle ground for maintaining diversity. This does not mean legalising human rights violations in the name of culture but rather placing the constitution as a framework for dialogue. If there is a conflict, the solution is not arrogant, unilateral cancellation by the centre but public discourse that respects local values as part of the nation's constitutional wealth.

This is important to strengthen the role of decentralisation and regional autonomy within the constitutional framework. This theory positions regions as *bottom-up* constitutional *actors*. Local regulations can be understood as constitutional practices that challenge colonial legal centralism. In this framework, debates about sharia-based regulations, public morality, or the halal economy cannot be resolved solely through a hierarchical approach to norms. but must instead be read as expressions of postcolonial constitutional negotiations between the centre and the regions.

Sharia-inspired local regulations can serve as a form of legal decolonisation when they challenge colonial legal centralism while still respecting constitutional rights, social diversity, and the protection of vulnerable groups. As Walter Mignolo said, there is a need to delink from the colonial power matrix that dictates how we think about law and the state. In this narrative, local regulations are not merely administrative regulations but a statement of identity. When a region in East Java created regulations to prevent child marriage based on *maqāṣid al-sharia*, they were delinking from the assumption that "religious law

is conservative and oppresses women". They used religious logic for progressive purposes that secular law might fail to achieve.

Based on this theoretical synthesis, the analysis of the regulations is conducted through three approaches. *First* is epistemic transformation, which refers to whether legal reasoning shifts from textual formalisation toward a contextual interpretation of *maqāṣid al-sharia. Second*, constitutional negotiation refers to the process by which local religious and cultural norms are reconciled with national law, human rights, and constitutional protections for citizens. *Third* is institutional participation, which refers to the roles of local governments, religious authorities, courts, civil society organisations, and affected communities in drafting and implementing these regulations.

Transformation, Decolonisation, and the Problematics of Local Sharia Regulations

Studies on the discourse of Islamic law in Indonesia cannot be separated from the shifting socio-political conditions that surround it. According to Muhammad Latif Fauzi, the trend of sharia studies in Indonesia has mutated through three main phases: the debate between Islam and *adat* (customary law) during the colonial period; the shift in viewing Islam as an interpretive source in the 1950s-1970s; and the focus on the dynamics of family law and the role of the courts and state policy (including local regulations) after codification (Fauzi 2022). This mapping provides an important foundation: Islamic law in Indonesia is an entity that continues to be contextualised, often intersecting with efforts at decolonisation, political decentralisation, and constitutional clashes in recent literature.

Many scholars agree that the current position of Islamic law cannot be separated from the traces of Dutch East Indies policy. Fitra Syari Linda and Anastyapatika Sari highlight that European colonialism systematically weakened the Islamic legal system since the 16th century by dividing customary law and applying the theory of receptie (Islamic law applies only if accepted by custom). This legal dualism is a harmful legacy that places Islamic law exclusively in the private sphere (Linda dan Sari, 2025). Martin Ramstedt further analyses this through a decolonial lens, noting that the sharp separation between customary law and Islamic law is rooted in the German Historical School (Savigny), Dutch, and indigenous law.

Efforts to decolonise and dismantle this legacy have been made since independence. Linda and Sari note that the integration of Islamic law into the national framework was made possible through the Pancasila model, which gave rise to various modern codifications (Linda and Sari 2025). This is confirmed by Rüdiger Lohlker, who sees a process of "indigenisation" and universalisation of fiqh in Indonesia. The pluralistic nature of Indonesian law allows Islamic law to be re-examined not only as a religious dogma but also as a political and social effort to balance religious demands with the archipelago's culture (Lohlker 2021). In the public sector, Erie Hariyanto proves that the revitalisation of sharia economic law (such as sharia banking, which survived the 1998 crisis) is a form of codification that upholds the principle *of maslahah* (public interest) and is proven to be in line with the foundations of the 1945 Constitution, showing that sharia is capable of adapting to rational economic developments (Hariyanto et al. 2023).

Entering the post-1998 Reformation era, efforts to integrate Islamic law shifted from the centre to the regions in line with decentralisation policies. Syahrizal Abbas and Ramzi Murziqin explain that the transition to regional autonomy triggered the emergence of sharia-based local regulations in regions such as Aceh, South Sulawesi, and West Java. This implementation was driven by the democratic climate, community aspirations for social order, and the revival of cultural identity and also served as a political capital instrument for regional elites (Abbas and Murziqin 2021).

The most recent and comprehensive phenomenon of this autonomy occurred in Aceh. Khamami Zada, in his study, found that the implementation of sharia law in Aceh was carried out gradually through democratic constitutional channels to avoid conflict with the national system. The expansion of these regulations into the criminal (*jināyāt*) and economic spheres has sociologically transformed Aceh into a "small prototype" of an Islamic state operating within Indonesia's democratic sovereignty (Zada 2023).

Although sharia regulations are often framed as a form of decolonisation and cultural revival, the literature critically highlights their negative excesses on the architecture of human rights and the constitution. Mohamad Hidayat Muhtar et al. acknowledge that although sharia regulations have an ideal basis in Article 29 of the 1945 Constitution, these regulations harbour crucial problems in the form of discrimination against non-Muslims and restrictions on women's freedoms. There is a clear tension between the conservative *fiqh* principles

adopted in the region and the guarantee of individual freedoms in the national constitution (Muhtar et al. 2023).

A specific case study by Rohidin et al. in Padang City, West Sumatra, highlights this dilemma. Although Padang does not have special autonomy like Aceh, majoritarian sentiment and Minangkabau identity have resulted in very strong sharia regulations. Unfortunately, this exclusive policy has a detrimental impact on the fulfilment of the Right to Freedom of Religion and Belief (FoRB). Although discriminatory local regulations can be revoked through *judicial review*, the judicial review mechanism in Indonesia is currently still fraught with procedural and political obstacles (Rohidin et al. 2023).

These various studies clearly confirm that the discourse on Islamic law in post-reform Indonesia is caught in a paradox. On the one hand, decentralisation is seen as a space for decolonisation, freeing Islamic law from historical colonial constraints. However, on the other hand, several sharia-based local regulations have also generated criticism related to majoritarian bias, discrimination against minorities, and restrictions on women's freedoms. Therefore, the transformation of sharia regulations into inclusive public policy frameworks cannot be generalised across all regions, as their implementation remains highly dependent on local political, cultural, and institutional contexts.

Local Sharia Law: Transition towards Substantive Justice and Local Wisdom

1. Halal Tourism: From a Punitive Approach to Economic Emancipation

The early phase of the emergence of sharia regional regulations in Indonesia was often characterised by an obsession with the body (especially women) and public morality, which was manifested through prohibitions and sanctions (Fealy dan White 2008). This approach inherited the colonial criminal law rationale that viewed law solely as an instrument of state coercion (*command and punish*). However, the emergence of halal tourism regulations in West Nusa Tenggara (NTB) and West Sumatra marks a significant epistemological *turning point*.

In NTB, through Local Regulation No. 2 of 2016 on Halal Tourism, the local government does not formulate Islamic law as a tool for punishment but rather as a facilitative instrument for regional economic development. This regional regulation governs substantive matters such as service standardisation, halal certification, the provision of worship facilities in public spaces, and tourism ethics that are friendly to Muslim tourists without discriminating against non-Muslim tourists (Hooker 2008). From a postcolonial perspective, this is a

form of economic decolonisation. Instead of submitting to the secular, centralist, capitalist paradigm of mass tourism, NTB has formulated its own development identity based on inclusive *mu'āmalah* (social-economic interaction) values.

A similar pattern, albeit with deeper cultural roots, can be found in West Sumatra. Halal tourism regulations in *Ranah Minang*, as outlined in Local Regulation No. 1 of 2020 concerning the Implementation of Halal Tourism, are explicitly based on the philosophy *of Adat Basandi Syarak, Syarak Basandi Kitabullah* (ABSSBK). This is where the concept of integration with local wisdom finds its perfect form. Islamic law does not come as a foreign entity that suppresses local traditions (as often feared by critics of formalisation), but rather merges with customary law to create a harmonious social order (Benda-Beckmann dan Benda-Beckmann 2012; Huda et al. 2024).

For the Minangkabau people, halal tourism is not merely an MUI certification label but a manifestation of traditional hospitality imbued with the values of protecting welfare (*hifz al-mal*) and honour (*ḥifẓ al-'irḍ*). This regulation proves that when Islamic law is returned to its original habitat as a social ethic that dialogues with *'urf* (local customs/traditions), it is freed from the rigidity of positivistic codification and becomes a driving force for an economy that humanises its citizens.

Along the same spectrum, Padang Panjang's experience as the City of Serambi Mekah shows how this transformation operates at a more practical, internalised level (Aliman et al. 2019; Saputra et al. 2022). If provincial regulations, such as West Sumatra's Local Regulation No. 1 of 2020 concerning the Implementation of Halal Tourism, provide an ABSSBK-based normative framework. Padang Panjang articulates it in its daily city governance. Religious branding does not stop at being a symbol; it is institutionalised through development policies, the strengthening of the sharia economy, and the management of destinations in line with Islamic values and customs (Abrar et al. 2024; Soemargono 1977). Thus, the law does not appear as a repressive tool but rather as an ethical architecture that guides the direction of the development (Asril and Yoserizal 2019; Asrinaldi and Yoserizal 2020; Darwis and Muslim 2024).

The formal designation of Padang Panjang as the Veranda of Mecca began with Padang Panjang City Council Decree No. 2/DPRD/PIM/III/1990 (March 21, 1990), which was later reinforced by Mayor's Decree No. 13/WAKOPP/1993, which served as the basis for revitalising the city's religious identity. In the next

stage, this orientation was institutionalised in various regional regulations, such as Local Regulation No. 7 of 2008 concerning Zakat Management, which emphasised zakat management as an instrument of welfare distribution; Local Regulation No. 11 of 2009 concerning the 2005-2025 RPJPD (Regional Medium-Term Development Plan); Local Regulation No. 13 of 2011 concerning the RPJMD; Local Regulation No. 7 of 2014 concerning the RPJMD; Local Regulation No. 5 of 2016 concerning Amendments to the RPJMD; and Local Regulation No. 2 of 2019 concerning the 2018–2023 RPJMD, which consistently places religiosity as a long-term development vision. In addition, the strengthening of symbolic and economic infrastructure was carried out through Local Regulation No. 56 of 2019 concerning the Management Agency of the Serambi Mekah Islamic Center (Abrar et al. 2024).

At the technical policy level, economic transformation is strengthened through *Perwako* (Mayoral Regulation) No. 1 of 2022 concerning the implementation of sharia cooperatives, which encourages the conversion of conventional cooperatives to the sharia system, as well as *Perwako* No. 12 of 2023 concerning the 2024 Local Government Work Plan, which aligns the annual development agenda with the religious vision of the city (Santoso 2021). The management of the Islamic Centre area, the optimisation of zakat, and the transformation of cooperatives show that the sharia orientation is directed at strengthening the community's economy. In the context of tourism, the regulation of visitation ethics and the provision of worship facilities are not framed as exclusive restrictions but rather as an affirmation of the cultural-religious identity that has existed within Minangkabau society. Regulations, therefore, do not precede culture but institutionalise values that are already socially established (Noviyani and Ratnasari 2021).

It is at this point that a fundamental shift becomes evident: sharia is no longer positioned within a command-and-punishment framework but rather as a value-based governance (Al-Fatih et al. 2025). It functions as a guiding norm that shapes development orientation, not as an instrument of moral criminalisation. Halal tourism in Padang Panjang has become the hub of the local sharia economic ecosystem, connecting the service sector, Islamic education, cooperatives, and the strengthening of the mosque community. The post-Reformation development of Islamic law has gradually shifted from rigid, formal legal approaches toward more contextual and socially orientated public policies

and has moved further: Building a regional development model rooted in *mu'āmalah*, social sustainability, and indigenous community participation.

Thus, the continuity between West Nusa Tenggara, West Sumatra, and especially Padang Panjang shows a coherent line of evolution: from facilitative economic regulations at the provincial level to the internalisation of values at the city level. This marks a shift from symbolic formalisation to structural emancipation. Halal tourism is no longer understood as an exclusive identity project but rather as an inclusive, participatory, value-based development strategy. In this perspective, the decolonisation of Islamic law does not stop at the release from the coercive colonial legal heritage but extends to the construction of local governance rooted in tradition, responsive to economic needs, and humanising its people.

Furthermore, this pattern shows that post-Reformation Islamic law did not develop through the expansion of criminal norms but through the consolidation of public ethics in productive sectors. Halal tourism became a gateway to linking religious identity with economic prosperity, without being trapped in the logic of exclusivity. When regulations are born from dialogue between sharia and *adat*, between local governments and local communities, the law functions as a social enabling structure rather than a device of domination. It is at this point that the epistemological transformation reaches its depth of meaning: sharia moves beyond formalisation, becoming a development paradigm that frees regions from dependence on centralised models and opens space for civilised autonomy.

2. Prevention of Child Marriage: Deconstruction of Patriarchy and Protection of Human Rights

If halal tourism shows the face of decolonisation in the macroeconomic realm, then regulations to prevent child marriage in the *Kawasan Tapal Kuda* (the East Java Region) regions and *Santri* (Islamic student) bases in East Java, such as Gresik and Ponorogo, show decolonisation in the realm of human rights and gender justice. However, claims of decolonisation in this context must be treated with caution, given the limited empirical data directly measuring the effectiveness of policies in reducing child marriage rates in the region (Santoso et al. 2026).

Historically, rigid interpretations of orthodox *fiqh munakahat* (marriage) have often been used as a shield to legitimise child marriage. The logic usually

revolves around the prevention of adultery (*sadd al-dharī'ah* in a narrow interpretation) or relies on classical texts that do not limit the minimum age for marriage. This practice was once institutionalised through Law No. 1 of 1974 on Marriage (before revision), which, by adopting a political compromise between positive state law and conservative religious interpretations, indirectly reflected the New Order era (Crouch 2014). However, progressive initiatives emerged from below. The local governments in Gresik, through Local Regulation No. 23 of 2025, and in Ponorogo, through Regency Regulation No. 63 of 2018, responded to the high number of marriage dispensations that endangered children's futures by issuing integrated policies to prevent child marriage. Interestingly, these local regulations did not originate in secularism but rather in intensive dialogue with religious scholars, religious courts, and local community leaders (Azni et al. 2025).

The increase in requests for marriage dispensations in East Java, particularly in Ponorogo and Gresik, following the revision of Law No. 16 of 2019 (JDIH BPK), reflects a clash between formal regulations and social realities on the ground. Although data from the Surabaya Religious High Court (Kinsatker Badilag, 2024) shows a trend of a gradual decrease in the number of cases from around 15,000 in the 2022 (Kinsatker Badilag, 2022) to under 9,000 cases by the end of 2024, the high grant rate (over 90%) indicates that dispensations remain a commonly used "emergency exit". This is reinforced by reports from the Gresik Religious Court (Gresik Religious Court Annual Report, 2024) and the Ponorogo Religious Court (Ponorogo Religious Court Performance Report, 2024), which note that out-of-wedlock pregnancy and low educational attainment remain the primary drivers. This situation underscores that the policy to raise the minimum age limit will not be fully effective without stronger structural interventions at the local level, as highlighted in the East Java BPS analysis (East Java Child Marriage Statistics), such as strengthening reproductive health education and family economic empowerment to break the cycle of child marriage.

This is where the novelty and decolonisation lie. Local actors have reclaimed the authority to interpret Islamic law from the central government and textual literalism. Nevertheless, this process of reinterpretation has not proceeded entirely without resistance, as some segments of society still hold onto normative views that permit child marriage on the grounds of morality and tradition.

They engage in *public reasoning* by shifting the focus from formal *fiqh* to the essential *maqāṣid al-sharī'ah*. Protection of offspring (*ḥifẓ al-nasl*) is no longer interpreted merely as legitimate biological reproduction. Still, it is reconceptualised as the protection of the quality of life, reproductive health of girls, and access to education (*ḥifẓ al-'aql*). Allowing children to marry underage is considered a violation of the principle *of maṣlaḥah 'āmmah* (public interest) because it causes *mudharat* (harm) in the form of structural poverty, stunting, and maternal/infant mortality. The movements in Gresik and Ponorogo prove that Islamic law, when decolonised from its patriarchal interpretations of the past and freed from rigid codification, has tremendous emancipatory capacity to protect vulnerable groups.

Furthermore, the policies in Gresik and Ponorogo demonstrate a paradigm shift from a moralistic-repressive approach to a protective-transformative approach. Whereas previously the prevention of adultery was used as the main justification for accelerating marriage, the new regulations argue that protecting children from early marriage is a tangible form of protection of human dignity (*karāmah insāniyyah*) (Muzaiyanah 2022). In practice, the local regulation in Gresik and the regency regulation in Ponorogo do not merely impose prohibitive norms but establish collaborative mechanisms: family education, psychosocial support, school involvement, and coordination with the Religious Court to tighten the issuance of marriage dispensations (Mahmuddin et al. 2023).

Normatively, this step is also in line with changes to the national legal regime following the revision of the minimum marriage age through Law Number 16 of 2019, which set the marriage age at 19 for both men and women (Ayu and Kamsi 2022). However, what is interesting is that this local initiative is not merely an "extension" of central regulations but rather internalises values through a cultural-religious approach. The language used is not the abstract and often unfamiliar language of "human rights" but rather the language of *maqāṣid, maslahah*, and collective moral responsibility (Putra and Burhanusyihab 2023).

Decolonisation in this context works on two levels simultaneously. *First*, at the epistemic level, *fiqh* interpretations previously dominated by ahistorical textual readings are being supplanted by contextual and sharia-based approaches (Hidayah 2023). *Second*, at the structural level, interpretive authority, which was previously centralised in state and national discourse, is now being renegotiated by local actors such as *pesantren* scholars, women activists, regional

bureaucrats, and Religious Court judges. They do not reject tradition but rather rearticulate tradition to make it compatible with the principles of gender justice and child protection (Nurlaelawati and Witriani 2023).

The social implications are significant. By tightening marriage dispensations and strengthening reproductive education, the policy seeks to break the chain of intergenerational poverty. Child marriage has been correlated with school dropouts, low female labour participation, high risk of domestic violence, and increased maternal and infant mortality rates (Holden and Nurlaelawati 2019). Thus, preventing child marriage is not only a moral or religious issue but also a strategy for sustainable human development. At this point, deconstructing patriarchy is key. Patriarchy works by placing girls' bodies and futures as "tools" to maintain family honour or social stability. Regulations in Gresik and Ponorogo break this logic by emphasising that honour is not built on the sacrifice of children's rights but on the fulfilment of their rights to education, health, and participation. Girls are no longer positioned as passive objects of protection but as legal subjects with autonomy and a future.

Various national studies, including reports from the Central Statistics Agency (BPS), show a strong correlation between child marriage and high school dropout rates: 7.6% of women who married early failed to complete elementary school, compared to just 3.1% of those who remained unmarried (Holden and Nurlaelawati 2019). This is reinforced by Susenas data, which show that 13.76% of poor women aged 20–24 were married before age 18 and that the probability of falling into poverty increases by 13–15% for those who marry early (Azizah 2023; Khairina and Putra 2023). Beyond economic impacts, early marriage significantly increases health risks such as childbirth complications and the birth of low-birth-weight infants (Maulinda et al. 2021). Although the government, through the National Strategy for the Prevention of Child Marriage, has targeted a reduction in prevalence to 8.74%, the effectiveness of implementation at the local level remains highly dependent on cross-sectoral collaboration and local regulatory support, as evidenced by the success in reducing the number of marriage dispensations in Bone Regency through the active role of Bappeda (Anas 2024; Duadji and Tresiana 2021; Handayani et al. 2023).

Thus, this phenomenon indicates a tendency to reinterpret Islamic legal principles within local governance frameworks, particularly in relation to child protection and gender justice. Decolonisation, in this context, is not understood as a rejection of Islamic law but as an effort to reconstruct it and liberate it from

patriarchal interpretations and past political compromises that are no longer relevant to contemporary needs. The implication is the formation of a model of legal governance that is both religious and progressive, which positions the protection of children's rights and gender equality as substantive manifestations of sharia values. However, this finding cannot be viewed as definitive proof, but rather as an initial indication of the potential for transformation, which still requires further empirical testing and verification.

3. Beyond Formalisation: An Inclusive Offer of Legal Decolonisation

From the two case studies above, both Halal Tourism (Lombok/Minang) and the Prevention of Child Marriage (East Java), a strong theoretical thread can be drawn. The development of local sharia regulations in Indonesia increasingly reflects adaptation to local social and constitutional contexts. Instead, what is happening is localisation and substantialisation.

Within postcolonial legal theory, colonialism is understood not merely as political domination but also as the imposition of legal positivism that prioritises rigid codification and state coercion. In the Indonesian context, this legacy influenced the formalisation of Islamic law, including local sharia regulations. However, contemporary developments indicate attempts to reinterpret Islamic legal values more substantively through public policy approaches orientated toward welfare, social protection, and local participation (Hallaq 2014).

Meanwhile, post-colonial constitutionalism rejects the blind adoption of Western concepts of the rule of law, which often ignore local pluralism. Still, it also rejects the romanticism of applying pre-modern religious law in its raw form, which threatens human rights. It is a space for negotiation in which local/religious values are transformed to align with the principles of protecting citizens' rights in a modern democratic state.

When the substantive values of justice in Islamic law are integrated with modern public policy instruments, Islamic law regains its historical relevance. It is no longer distant from society as "God's punitive law", but rather is present as an emancipatory value system that guides holistic human development. This is manifested in two policy axes: economic emancipation (halal tourism) and social protection (prevention of child marriage). Colonial economic law was extractive, with regulations designed to facilitate capital accumulation for a handful of elites. In contrast, post-colonial constitutionalism demands distributive justice. This is

reflected in the regulatory transition in West Nusa Tenggara (NTB) and West Sumatra.

Under NTB Provincial Regulation No. 2 of 2016 on Halal Tourism and West Sumatra Provincial Regulation No. 1 of 2020 on the Implementation of Halal Tourism, local governments do not use Islamic law as a punitive tool against those who do not comply. Instead, they extract the value *of ḥifẓ al-māl (protection/circulation* of wealth) and translate it into economic certification mechanisms, MSME facilitation, and the standardisation of ethical tourism services. This is a form of sociological decolonisation, in which Islamic identity (and its connection with *Adat Basandi Syarak* in West Sumatra) is not alienated from the modern economic arena but rather designed to be an inclusive instrument that promotes collective welfare without discriminating against non-Muslims.

On the social axis, the *Beyond Formalisation* project directly confronts orthodox interpretations of texts that are biased against gender equality. Historically, family law (including marriage) was an area that the Dutch colonialists left to be regulated by religious law as long as it did not interfere with their economic interests. Ironically, this allowed patriarchal practices such as child marriage to continue to exist with traditional *fiqh* justification (avoiding adultery) (Lukito 2012).

The breakthrough made by the local government in East Java represents the pinnacle of this progressive constitutionalism. Through Gresik Regent Regulation No. 23 of 2025 concerning the Prevention and Handling of Child Marriage, as well as policy synchronisation in Ponorogo through Regent Regulation No. 63 of 2018 concerning the Prevention of Child Marriage and Local Regulation No. 4 of 2020 concerning the Implementation of a Child-Friendly Regency, local actors have reversed the old paradigm.

They use the reasoning *of maqāṣid al-sharī'ah*, specifically *ḥifẓ al-nasl* (protection of offspring) and *ḥifẓ al-'aql* (protection of reason/education), not to legalise early marriage, but to prohibit it institutionally. Marrying children who are not yet physically and mentally mature is considered a violation of sharia objectives because it causes *mudharat* (structural damage in the form of poverty and maternal mortality). This is a perfect example of how post-colonial constitutionalism works, whereby local authorities break down restrictive interpretations of texts and transform them into policies that protect children's

rights in line with the national constitution. The following table identifies ideas for realizing beyond the formalisation of local sharia law in Indonesia.

Table 1. Identification of Beyond Formalisation Models in Decolonisation Local Sharia Law in Indonesia

Aspect	Empirical & Historical Conditions	Beyond Formalisation
Basic Legal Paradigm (Postcolonial Theory)	• The first wave of "sharia formalisation" projects (e.g., *Qanun Jināyāt*) often got stuck in legal positivism. • Copying and pasting fiqh texts into criminal law actually perpetuates colonial methods of coercion. • Islamic law is alienated from society and becomes merely "God's punitive law".	• **Epistemological Decolonisation:** Moving away from rigid textual formalisation. • Exploring *the ratio legis* (*'illah*) and substantive justice of Islamic teachings. • Changing the approach from *command and punishment* to a value system that guides modern public policy in its entirety.
Economic Sector: Halal Tourism (NTB & West Sumatra) ***(NTB Regional Regulation 2/2016 & West Sumatra Regional Regulation 1/2020)***	• Regulations are not designed to restrict the freedom of non-Muslim tourists but rather to standardise affirmative services. • Islamic law is strongly intertwined with local customs (such as the philosophy *of Adat Basandi Syarak and Syarak Basandi Kitabullah* in Minangkabau).	• **Indigenisation of Inclusive Economics:** Making sharia law an instrument of prosperity that is integrated with local culture (the value *of hifz al-mal*). • Offering an antithesis to colonial-era extractive capitalism and neoliberalism through the empowerment of MSMEs and inclusive community-based economies.

Social Sector: Prevention of Child Marriage (Gresik & East Java) ***(Gresik Regency Regulation 23/2025, Ponorogo Regency Regulation 63/2018, Ponorogo Regional Regulation 4/2020)***	• There has been a shift from orthodox *fiqh* interpretation (which condones early marriage to avoid adultery/sadd *al-dharī'ah*) towards awareness of the adverse effects (*mudharat*) of child marriage. • Local authorities collaborate across sectors (clerics, courts, activists) to prevent child marriage.	• **Deconstruction of Patriarchy & Protection of Human Rights: Revitalising** the reasoning *of maqāṣidal-Syariah* (especially *ḥifẓ al-nasl* and *ḥifẓ al-'aql*) to protect the rights of children and women. • Transforming Islamic law from a gender-biased textual dogma into a shield for human rights that aligns with the principles of constitutionalism in modern constitutions.
Constitutional Synthesis (Post-Colonial Constitutionalism)	• Centralisation of law often fails to respond to the sociological needs of the region. • However, uncontrolled pure sharia regulations are prone to triggering majoritarian bias and discrimination against minorities.	• **Convergence of Democracy and Sharia:** Re-weaving the archipelago's legal system where religious values are negotiated with constitutional principles. • Proving that the pinnacle of sharia implementation in a democratic country is not an archaic criminal regime but rather an emancipatory and inclusive policy.

Source: Author's elaboration based on processed data (2026).

Ultimately, the convergence of various local regulations that appear distinct across these regions reveals a broader pattern in the development of contemporary Islamic law in Indonesia. Cases in West Nusa Tenggara, West

Sumatra, Gresik, and Ponorogo demonstrate how local governments and communities actively reinterpret Islamic legal values within the framework of regional autonomy and constitutional governance. Rather than merely applying legal norms issued by the central government or classical religious authorities, local actors also adapt Islamic principles to address concrete social and economic challenges.

From this perspective, the development of halal tourism regulations and local policies regarding the prevention of child marriage indicates a shift in orientation within sharia-based public policy. These policies no longer focus on formalizing criminal sanctions or on symbolic religious legislation, but rather on efforts to translate the principles of *maqāṣid al-sharī'ah* into practical governance instruments, particularly in the fields of economic development and social protection.

The findings of this study indicate that sharia-based local regulations in Indonesia cannot be understood solely through the framework of legal formalisation. Rather, these regulations reflect a broader transformation in how Islamic legal values are interpreted and institutionalised within a pluralistic legal system. In the cases examined, Islamic principles are translated into policy frameworks that emphasise inclusive economic development, protection of vulnerable groups, and governance strategies rooted in local contexts.

From a postcolonial constitutionalism perspective, this development can be understood as a form of legal reconfiguration in which local governments become key actors in shaping the relationship between religion, law, and the state. The reinterpretation of the concept of halal in tourism governance, as well as the application of the principle of *maqāṣid al-sharī'ah* in policies to prevent child marriage, demonstrate how Islamic legal traditions are adapted to contemporary socio-legal contexts. Thus, the transformation of sharia regulation in Indonesia does not merely reflect a process of legal formalisation but also demonstrates an effort to harmonise Islamic legal values with constitutional principles, social justice, and the real needs of postcolonial society.

Conclusion

This study demonstrates that the development of Islamic law in post-reform Indonesia is no longer solely focused on the textual formalisation of *fiqh* norms. Through the perspectives of postcolonial legal theory and postcolonial constitutionalism, this study demonstrates that the transformation of Islamic law

occurs precisely when sharia values are translated into contextual public policies orientated toward substantive justice. The empirical findings of this study reveal two main directions of this development: through economic policies and social protection. Halal tourism regulations in West Nusa Tenggara (Regulation No. 2 of 2016) and West Sumatra (Regulation No. 1 of 2020) demonstrate how *mu'āmalah* values and local wisdom are translated into policy instruments that support more inclusive regional economic development. On the other hand, policies to prevent child marriage in Gresik (Regent Regulation No. 23 of 2025) as well as in Ponorogo (Regent Regulation No. 63 of 2018 and Regional Regulation No. 4 of 2020) demonstrate efforts to reinterpret the principles of *maqāṣid al-sharī'ah* to strengthen the protection of children's and women's rights.

These findings indicate that sharia-based local regulations in Indonesia are not always tied to the symbolic formalisation of religious law but can also function as a space for policy experimentation that integrates religious values with contemporary social needs. In this context, local governments and local actors play a crucial role in reinterpreting Islamic legal principles within the framework of constitutional governance and a pluralistic legal system. Thus, this study contributes to the study of Islamic law and postcolonial legal studies by demonstrating that the dynamics of sharia regulation at the local level can be understood as part of the process of adaptation and transformation of Islamic law within a constitutional democracy. This process reflects efforts to harmonise religious values, local wisdom, and principles of human rights protection within public policy. However, this study is limited by its normative document-based approach, which does not empirically assess policy effectiveness, lacks disaggregated data to establish causal impacts, and does not fully capture implementation challenges such as social resistance, inclusivity concerns, and the potential commodification of religious values, thereby requiring further socio-legal and empirical research.

Declarations

Author Contribution Statement

Lukman Santoso contributed to the conceptualisation, research design, and development of the research framework. Mega Puspita contributed to data collection, data analysis, and interpretation of the findings. Arifah Millati Agustina contributed to the drafting, reviewing, and editing of the manuscript. All authors reviewed and approved the final version of the manuscript.

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