CENTER FOR RESEARCH AND STUDY OF THE CASE AND LIBRARY MANAGEMENT

RESEARCH REPORT

THE DYNAMICS OF DEVELOPMENT OF ISLAMIC LAW IN THE CONSTRUCTION OF STATE AND RELIGION RELATIONS IN INDONESIA THROUGH JUDICIAL REVIEW VERDICTS BY THE CONSTITUTIONAL COURT

Cooperation between the Constitutional Court and the Faculty of Law, Gadjah Mada University

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RESEARCH RESULT

Cooperation between the Constitutional Court and

the Faculty of Law, Gadjah Mada University

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The Clerk's Office and the Secretariat General of

the Constitutional Court

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APPROVAL SHEET

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2019

DECLARATION OF RESEARCH ORIGINALITY

I hereby declare that the research entitled "Dynamics of Development of Islamic Law in the Construction of State and Religious Relations in Indonesia through Judicial Review Verdicts by the Constitutional Court" is really the work of researchers and to the best of the researcher's knowledge, there are no works or opinions in it that has been written or published by other people, except as in writing referred to in this research and are mentioned in the bibliography.

Yogyakarta, October 30, 2019

Chairman of Researchers Team

Dr. Khotibul Umam, S.H., LL.M.

PREFACE

Assalamualaikum warahmatullahi wabarakatuh.

All praise and gratitude to Allah SWT, because for the grace, guidance and blessings of Allah SWT, the Research entitled "Dynamics of Islamic Law Development in the Construction of State and Religious Relations in Indonesia through Judicial Review Verdicts by the Constitutional Court" can be completed properly. This research departs from the historical fact that Islamic law is one of the fields of law in the construction of national law development. This is in accordance with the First Principle of Pancasila, namely "God Almighty" and Article 29 of the 1945 Constitution of the Republic of Indonesia which emphasizes that the state is based on One Godhead.

Departing from this, in the course of Indonesian constitutionality, many efforts to formalize the provisions of Islamic law were made. This can be shown from the number of laws and regulations, especially at the legal level, which explicitly or implicitly have Islamic legal content. In practice, it turns out that there are many laws that contain Islamic law that are reviewed in the Constitutional Court because they are considered to have substances that violate the constitutional rights of citizens. This implies the role of the Constitutional Court in the development of Islamic law in Indonesia. Based on this, this research intends to see how the true positivization model of Islamic law in the national legal system, as well as the impact of a judicial review against the Constitution of the dynamics of Islamic law in Indonesia.

We do not forget to thank the various parties who were involved and supported the work and completion of this research, especially all members of the Researchers Team and the Constitutional Court. We are aware that this research is still far from perfect, so that criticism and suggestions from readers are expected to develop and perfect this research. It is hoped that this research can contribute to the development of the scientific repertoire of Constitutional Law and Islamic law.

Wassalamualaikum warahmatullahi wabarakatuh.

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CHAPTER I

INTRODUCTION

A. Background

Islamic law is one of the fields of law that is the source of national law development, apart from customary law and western law. The three of them electively colors the legal products issued by the State, from the level of law to the level of technical regulations. The enforcement of Islamic law as a source of national law development in accordance with Pancasila, especially the precepts of "God Almighty" and Article 29 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which in essence affirms that the State is based on One Godhead and granting of guarantees by the State for each resident to worship according to their respective religions and beliefs. Article 29 of the 1945 Constitution of the Republic of Indonesia is the basis of legitimacy for the positivization of laws originating from religion (read: Islamic law) into national law through the legislative process. The phrase "guarantee" in Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia can at least be interpreted as a form of active verb that must be carried out by the State in order to grant a guarantee. This means that the State imperatively and positively needs to issue laws and regulations which are in accordance with the sharia of religions and negatively prohibited from issuing laws and regulations that contradict the sharia of religions.

Legislation containing religious law, especially Islamic law, in its development reaches various fields of law. The field of family law is the first and is followed by other fields of law, for example economic law and even specific Islamic criminal

law (jinayah) in the Aceh region. In the realm of family law, the most phenomenal norming of Islamic law into national law is the promulgation of Law Number 1 of 1974 concerning Marriage and Law Number 7 of 1989 concerning Religious Courts, while in the realm of economic law, for example it is marked by the promulgation of Law Law Number 38 of 1999 concerning Zakat Management (which was later amended by Law Number 23 of 2011 concerning Zakat Management), Law Number 41 of 2004 concerning Waqf, Law Number 19 of 2008 concerning State Sharia Securities, and Law Number 21 of 2008 concerning Islamic Banking.

In order to enforce this material law, courts within the Religious Courts which initially only had competence in resolving disputes in the field of family law, in the end since 2006 with the enactment of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts are granted the competence to receive, decide and resolve disputes in the field of sharia economics. Thus the Courts within the Religious Courts are not only authorized to resolve disputes in the field of marriage and inheritance, but have the authority to resolve disputes between customers and sharia financial service institutions, in which by the Financial Services Authority can be differentiated into Banking (Sharia), Capital Market (Sharia), and Non-Bank Financial Industry (Sharia). Specifically, in Aceh, the absolute competence of the Religious Courts (known as the Sharia Court) was expanded to also adjudicate Islamic criminal cases.

In practice, justice seekers not only resolve various legal problems through the judiciary under the Supreme Court, but also through the Constitutional Court

by taking judicial review because they think that a provision in the Law is contrary to the 1945 Constitution of the Republic of Indonesia. Law Number 1 of 1974 concerning Marriage, Law Number 19 of 2008 concerning State Sharia Securities, Law Number 21 of 2008 concerning Sharia Banking, and Law Number 23 of 2011 concerning Management of Zakat have been reviewed for their constitutionality through the Constitutional Court. Law Number 1 of 1974 is the law that has experienced the most reviews, namely regarding the civil relations of child born out of wedlock, marriage covenants in the field of assets, and the age limit of marriage. Not only regarding laws that substantively regulate Islamic law, Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 concerning Religious Courts has also been tested in the Constitutional Court, where the Petitioner asked the Constitutional Court to expand its authority to include criminal law (jinayah), even though the petition was rejected by the Constitutional Court.

This fact at least indicates that the Constitutional Court, which is given the authority as the guardian of the constitution, among others, through judicial review plays a role in determining the dynamics of the development of Islamic law in Indonesia. The judicial review verdict regarding the content of Islamic law is at least related to the dialectic of state and religion relations. The fact that judicial review contains material on Islamic law indirectly indicates the role of the Constitutional Court in the development of Islamic law in the national legal system, which mutatis mutandis has an impact on the dialectic of state and religion relations in the context of the Indonesian rule of law.

B. Problem Formulation

Based on the background of the problems above, the problems that can be identified are as follows:

1. How manifestations of the substance of Islamic law in the national legal system?
2. How implications of the judicial review verdict by the Constitutional Court against the dynamics of the development of Islamic law in the construction of state and religious relations in Indonesia?

C. Research Objectives

There are two objectives of the implementation of this research, namely:

1. Identifying and inventorying, as well as understanding, reviewing and analyzing the manifestation of the containing of the substance of Islamic law into the national legal system; and
2. Understanding, reviewing and analyzing the implications of judicial review decisions by the Constitutional Court on the dynamics of the development of Islamic law in the construction of state and religious relations in Indonesia.

D. Literature Review

The discussion on the relationship between the state and religion within the framework of the rule of law in Indonesia is an interesting and growing topic. The presence of the Constitutional Court as an institution that has the authority to decide cases for judicial review of the Constitution, as well as the existence of various statutory provisions which substantially contain Islamic legal material,

indirectly indicates the role of the Constitutional Court in the development of Islamic law in Indonesia, particularly in relation to statutory norms containing Islamic legal material reviewed and decided by the Constitutional Court. This encourages the author to review more deeply how true the norming of Islamic legal material in positive law and how the judicial review verdict by the Constitutional Court can have an impact on the development of Islamic law in the construction of state and religion relations within the framework of the Indonesian rule of law. For this reason, the author conducts an investigation and review of previous books and journal articles that are relevant to the research topic being raised, including as follows:

First, the journal article by Hasyim Asy'ari entitled "The Relationship of State and Religion in Indonesia". As the title of this journal article, the author of the article discusses how the relationship between state and religion occurs in Indonesia. The author divides at least three models of state and religion relations, namely: (1) the state based on religion; (2) religion as the spirit of the state; and (3) a secular state. The author argues that Indonesia refers to the second model, where the state does not formally adhere to a particular religion, but religious values are the spirit of state administration, and there is a guarantee of citizens' rights to have a religion. The author also argues that the absorption of Islamic law in national law is a necessity. However, in order for the parts of Islamic law to be fully implemented, a role and support from the state is needed. This paper provides a perspective on the relationship between the role of the state and the absorption of Islamic law in national law. This can be used as an initial foundation

before entering into the role of the Constitutional Court in the dynamics of the development of Islamic law which has been positivated into national law.

Second, a journal article by Nadirsyah Hosen entitled "Religion and the Indonesian Constitution: A Recent Debate". This paper discusses the debate regarding the position of sharia in constitutional amendments in Indonesia, especially in relation to the rejection of amendments to Article 29 of the 1945 Constitution of the Republic of Indonesia. The author of the article states that Indonesian Islam uses a substantive approach to sharia and does not use a formal approach. One of the conclusions obtained is that based on Article 29 of the 1945 Constitution of the Republic of Indonesia, religion can have a public role at the community level. This also confirms that Indonesia is neither a secular state nor an Islamic state. This journal article can provide an overview of how substantially Islamic law is the source of law in Indonesia.

Third, a journal article by Bani Syarif Maula entitled "Political Law and Positivisation of Islamic Law in Indonesia (Study concerning Islamic Law Products in the Direction of State Law Policy)". The article discusses the politics of state law in terms of the application of Islamic law in Indonesia, in particular in two laws, namely the Law on Marriage and the Law on Religious Courts. The author in the article states that there is a legal conflict in its application because Islamic law is considered subordinate compared to western law and customary law. In addition, the author in the article above argues that the application of Islamic law is only limited to the formal legal aspects, but it is considered that the author substantively ignores the aspects of justice because many provisions are considered to cause legal rigidity and prevent parties from seeking justice. This

paper provides another perspective regarding problems in the context of the application of Islamic law within the framework of positive law in Indonesia.

Fourth, a journal article by Alfitri entitled "The Constitutional Court Verdict as the Official Interpretation of Islamic Law in Indonesia". This article discusses the discourse on how the state decides disputes regarding the interpretation of Islamic law contained in positive law in Indonesia. The author of the research also discusses whether the approach used by the Constitutional Court in the context of judicial review is still within the limits of Islamic legal theory or not. Based on this research, the author of the article above argues that the Constitutional Court, which has the authority to interpret the constitution, also has the power to interpret and limit Islamic law in Indonesia based on the constitution. However, it was also stated that the Constitutional Court judges still used arguments in Islamic law when deciding Judicial Review disputes. Furthermore, the author also states that the Constitutional Court verdicts fall into the siyasa shar'iyya category, so that the Constitutional Court's interpretation of the norms of Islamic law is considered the official interpretation of Islamic law in Indonesia. Based on the explanation above, this paper provides another perspective regarding the position of the Constitutional Court in "interpreting" Islamic law which is substantively contained in the provisions of the law.

Fifth, a journal article by Simon Butt entitled “Islam, the State, and the Constitutional Court in Indonesia”. This paper discusses whether the right to religion as stated in the constitution requires the state to provide the facilities to implement or enforce Islamic law. Specifically, several issues discussed were related to several petitions for judicial review of the Law regarding whether the

state needs to remove restrictions on polygamy, and whether the Religious Courts can apply Islamic law as a whole, including criminal law. The author of this article highlights how the Constitutional Court has strengthened the state's dominance over Islam and its interpretation of which Islam is preferred by the state and less conservative Muslim groups. This paper can provide another view on the position of the Constitutional Court in interpreting Islamic law which is substantively contained in a law.

Sixth, a journal article written by Khotibul Umam entitled "Implications of the Constitutional Court Verdict Number 93/PUU-X/2012 for the Settlement of Sharia Business and Financial Disputes". This journal article is one of the author's previous researches examining the impact of the Constitutional Court Verdict on the settlement of Islamic business and financial disputes. Based on the results of this research, there is a juridical implication of the verdict that the Panel of Judges of the District Court are obliged to declare that they are not authorized to disputes that occur in cases related to Islamic banking even though they have been agreed in the receipt. In addition, the author states that the verdict can be applied and applies to Islamic business and financial institutions in general because it provides confirmation of which judicial environment is authorized to resolve disputes that may occur. This research indicates the role of the Constitutional Court, especially in the context of the application of Islamic law in Indonesia, particularly in relation to sharia business and financial disputes.

Seventh, journal articles written by Hartini, Mahaarum Kusuma Pertiwi, Destri Budi Nugraheni, and Khotibul Umam entitled "The Changing of Laws Characteristics on Rights Determination of Children Born out of Wedlock on the

Frame of Legal Pluralism in Indonesia". Author in this research highlights the dynamics of change in the legal characteristics of determining the rights of children born out of wedlock in Indonesia, one of which is through the approach of civil law and Islamic law. One of the results of this research indicates that Islamic law in Indonesia can be said to be quite responsive in advocating for the rights of children born out of wedlock, for example through the Decision of the Religious Court and the Fatwa of the Indonesian Ulema Council. In addition, this research indicates how the interaction between the application of Islamic law provisions in positive law construction in Indonesia.

Eighth, a journal article by Islamiyati entitled "Analysis of the Constitutional Court Verdict No. 68/PUU-XII/2014, Relation to Interfaith Marriage according to Islamic Law in Indonesia". This paper discusses the legal considerations of the Constitutional Court in Verdict No. 68/PUU-XII/2014 related to Article 2 paragraph (1) of the Marriage Law and its legal consequences. In the a quo verdict, the Constitutional Court rejected the petitioner's petition related to interfaith marriage on the grounds that the petitioner's argument is contrary to the principle of Almighty God, moral values, culture and the principles of marriage law in Indonesia. In this research, the author also highlights that the Constitutional Justice also uses the basic legal considerations that live in society, one of which is religious law. This is considered by the author above to be able to uphold the spirit of justice as the ideal of maqasid shari'ah law. Furthermore, the author also states that the decision is also able to correlate a harmonious legal relationship between religion and state. The author's statement becomes interesting for further elaboration, to find out how the Constitutional Court's consistency in using Islamic

sharia principles in making judicial review verdicts that have the substance of Islamic law.

CHAPTER II

THEORY AND CONCEPTUAL FRAMEWORK

A. Positivisation Concept of Islamic Law in National Law

The implication of the reception theory put forward by Snouck Hurgronje, which is provided for in Article 131 and Article 163 Indische Staatsregeling (IS) is the emergence of population classifications and laws that apply to each group. Indonesian independence which Hazairin considers the end of the reception theory is not always correct, because after independence the state still recognizes the existence of 3 (three) legal traditions which are the sources for the development of national law. Islamic law, customary law, and European law eclectically become material for the establishment of national law, meaning that the three legal traditions can be adopted as raw material for the preparation of laws and regulations that apply to all citizens.

After independence, the spirit that emerged from legal experts was the need for unification and codification of law which functioned as a substitute for colonial law which was considered no longer in accordance with the realm of independence. According to the author, unification is certainly not easy, especially in the field of law which is not "neutral", namely the field of law which includes religious law, especially in this context is the Islamic law. This can be seen, among others, when the state is about to unify the marriage law and preparation of the Law on the Religious Courts.

In this section, the author first needs to state how the concept of positivation in the national legal system is viewed from: (a) laws and regulations; and (b)

doctrines which have been put forward by jurists. First, positivation in the national legal system cannot be separated from the legal basis for the establishment of laws and regulations, namely Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (UU P3), namely through the stages of planning, drafting, discussion, ratification or stipulation, and enactment. Second, positvisation in the realm of Islamic law according to Syamsul Anwar is known as qanun which describes the part of sharia that has been positivated and integrated by a government into state law.

The substance of Islamic law is one of the raw materials for the establishment of laws and regulations through a positivization mechanism. The positivization of Islamic law in the development of national law takes two forms, namely: (a) Islamic law cannot be enforced in the national scope due to the plurality of the Indonesian nation, but Islamic law can be a source of value in the preparation of national law; or (b) Islamic law can become positive law that applies to all citizens through a lawfull legislation process, such as the field of muamalah or private law.

The positivization of Islamic law has bright prospects because the democratic reform era has a responsive legal character, which is in contrast to the less developed Western/Colonial legal system. This is supported by the majority of the population who are Muslim and government politics that support the development of Islamic law, so that Islamic law becomes one of the sources of raw material in the establishment of national law in addition to customary law and Western/colonial law. The author argues that the values, principles, and norms of Islamic law have the potential to be used as material for laws and regulations,

namely in the fields of family law (munakahat and faraidh), economic law (ahkam iqtishadiyyah), and currently also criminal law (jinayah).

Islamic law which has been positivated, but cannot be applied in the national scope in the sense of binding to all citizens, is stated in Law Number 41 of 2004 concerning Waqf and Law Number 23 of 2011 concerning Management of Zakat. Positivisation in the meaning of containing of Islamic legal values, according to the author, is contained in Law Number 5 of 1960 concerning Basic Regulation of Agrarian Principles, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, as well as Law Number 8 of 1999 concerning Consumer Protection. According to the author, these three laws are in line with Islamic law.

Islamic law which becomes positive law and applies to all citizens, namely positivation in the field of family law and economic law. The field of family law is contained in Law Number 1 of 1974 concerning Marriage, while the positivisation of Islamic law in the economic field is contained in Law Number 21 of 2008 concerning Islamic Banking. In the realm of public law, criminal law has been positivated as contained in the Qanun issued by the Provincial Government of Nanggroe Aceh Darussalam.

B. Concept of Characteristics of Judicial Review Verdicts in the Constitutional Court

The construction of judicial review verdicts at the Constitutional Court cannot be separated from the inherent nature of the verdict itself. At least when referring to the norming in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that the authority of the Constitutional

Court is to judge at the first and last instances whose verdicts are final to review laws against the Constitution. The meaning of the final nature in regulating the a quo is that the Constitutional Court verdicts immediately acquire permanent legal force since they are pronounced and no legal remedy can be taken. The final nature of the Constitutional Court verdict also includes the power of binding (final and binding) which immediately acquires permanent legal force (inkracht van gewisjde) since it was read out.

Apart from being final and binding, another characteristic of the Constitutional Court Verdict in the case of judicial review is erga omnes, that is, it has legally binding power over all components of the nation, so that all parties must obey and comply with the verdict. Thus the verdict on judicial review is binding not only for the litigating parties but also for all Indonesian citizens. This is of course contrary to court verdicts in general, which are only inter pares, which only binds the litigating parties.

The nature of erga omnes in judicial review verdicts cannot be separated from the construction of the law which is the object of review. Because the law is a form of laws and regulations which contains legally binding norms, then if the norm of the law is canceled by the Constitutional Court, then mutatis mutandis the loss of binding legal force affects all Indonesian citizens.

Furthermore, if it is based on an injunction on judicial review, there are at least 2 (two) characteristics, namely declaratoir and constitutive. Declaratoir verdicts are judges' verdicts that state what constitutes law, which in cases of judicial review of the Constitution, the verdict grants is declaratoir because it states what constitutes law from a statutory norm, which is contrary to the 1945

Constitution. Meanwhile, a constitutief verdict is a decision which negates a legal condition and or creates a new legal condition. In the context of reviewing the law, a decision that grants means stating that the norm is contradictory and has no binding legal force, thus creating a new legal state due to the annulment of the norm.

Referring to the description of the nature of verdicts based on injunction, it can be understood that the existence of injunction is an important aspect of judicial review verdicts, in which Article 56 of the Constitutional Court Law of 2003 contains several types of verdicts, namely: (a) rejected; (b) unacceptable; and (c) granted. **First**, rejected. Article 56 paragraph (5) of the Constitutional Court Law of 2003 states that in the event that the law does not contradict the 1945 Constitution of the Republic of Indonesia, both regarding the establishment and material in part or in whole, the injunction states that the petition is rejected. An injunction rejecting a petition is usually passed if the petition is not legally grounded.

Second, unacceptable (niet onvantkelijk verklaard). The petition is declared unacceptable if the petition does not meet the requirements as provided for in Article 50 and Article 51 of the 2003 Constitutional Court Law.The provisions of Article 50 have been abolished through the Constitutional Court Verdict Number 004/PUU-I/2003 because it is seen as reducing the authority of the Constitutional Court given by the 1945 Constitution of the Republic of Indonesia and contradicting the hierarchical doctrine of legal norms that has been universally recognized and accepted. The only requirements that must be met are the qualification requirements of the petitioner as provided for in Article 51 of the 2003 Constitutional Court Law, so that if the requirements referred to in Article 51 of the

2003 Constitutional Court Law are not fulfilled, the petition is declared unacceptable (niet onvantkelijk verklaard).

Third, it was granted. In the case that the Constitutional Court has an opinion that the petition is grounded, the verdict states that the petition is granted, this is followed up in the verdict by stating the content of paragraphs, articles and/or parts of the Law that is contrary to the 1945 Constitution of the Republic of Indonesia. This also applies to the formal review of laws, where if the formation of laws does not meet the provisions of the formation of laws based on the 1945 NRI Constitution, then the verdict states that the petition is granted. The verdict of the Constitutional Court that approves the application must be published in the State Gazette within 30 (thirty) working days from the time the decision is pronounced.

In addition to the three types of verdicts, the dynamics in judicial review have created new types of verdicts, namely conditional decisions, both conditionally constitutional and conditionally unconstitutional. This conditional decision was first introduced during the review of Law Number 7 of 2004 concerning Water Resources. According to Harjono, the idea arose because laws often have very general formulations of articles and it is not yet known whether their implementation contradicts the Constitution or not.

In the types of conditional and unconstitutional constitutional verdicts, the Constitutional Court provides certain interpretations or requirements of the norms being reviewed, so that when the norms are not read as interpreted by the Constitutional Court, or not implemented in accordance with the requirements given, then the norm will be unconstitutional. Thus, although there is a dichotomy in the type of conditional verdict, however, conditional constitutional decisions and

conditional unconstitutional decisions have substantially the same characteristics, namely that norms will become unconstitutional if they do not meet the requirements determined by the Constitutional Court. Referring to the opinion of the Constitutional Court in its verdict, the conditional verdict in principle is passed to provide a certain interpretation so as not to cause legal uncertainty or violation of the rights of citizens.

Furthermore, the regulation in Article 48 paragraph (2) of the 2003 Constitutional Court Law provides a systematic construction of judicial review verdicts, which at least must contain:

a. the head of the verdict reads: "FOR JUSTICE BASED ON ONE ALMIGHTY GOD";

b. the identity of the parties;

c. a summary of the petition;

d. consideration of the facts revealed in the trial;

e. legal considerations which form the basis of the verdict;

f. injunction; and

g. day, date of verdict, name of constitutional judge and clerk.

Apart from the nature and construction of judicial review verdicts, as well as the development of the types of Constitutional Court verdicts above, historically there have been several limitations in the Constitutional Court verdicts which originated from the minutes of the Ad Hoc Committee (PAH) session in the formation of the Constitutional Court, namely:

1. Constitutional Court verdicts cannot contain regulatory content. A Constitutional Court verdict can only state that a law or part of the contents of the law contradicts certain parts of the constitution.

2. The Constitutional Court verdict cannot invalidate the law or part of the contents of the law, which the authority of the constitution is attributed to the law.

3. The verdict of the Constitutional Court cannot exceed what the petitioners ask for (ultra petita). Even though the Constitutional Court sees that there are important things in the petition that are not asked to be decided, the Constitutional Court is not allowed to decide based on the assumptions of the Constitutional Court itself.

4. The verdicts of the Constitutional Court cannot touch matters relating to the Constitutional Court or concerning judicial institutions. This opinion is based on legal principles, namely Nemo judex in causa sua or Nemo judex indoneus in propia causa, as a universal legal principle against which judges decide cases relating to themselves and/or those relating to judicial institutions.

CHAPTER III

RESEARCH METHODS

A. Nature of Research

This research is basically a normative legal research, which emphasizes library research, so that the data source is in the form of secondary data. In this research several approaches were used in legal research, namely the statutory approach, and the conceptual approach, and the case approach. The statutory approach is carried out by examining laws and regulations related to the legal issue being discussed.

The conceptual approach is used to obtain scientific clarity and justification based on legal concepts derived from legal principles. The case approach is carried out by examining court verdicts that have permanent legal force.

B. Research Materials

As is known, in normative legal research, the data source used is secondary data. In legal research, secondary data consists of primary legal materials (laws and regulations and court verdicts), secondary legal materials (such as books, articles, research results), and tertiary legal materials (for example dictionaries). In this research, primary legal materials were used in the form of laws that contained Islamic legal substance and Constitutional Court verdicts that tested laws that contained Islamic law. Meanwhile, the secondary legal materials used are books, journal articles, and research results related to the positivisasi of Islamic law in the national legal system and the construction of state and religious relations. Related

to the tertiary legal material used in the form of a legal dictionary such as Black's Law Dictionary.

C. Data Collection Method

Data collection in this research is in the form of collection of secondary data. Secondary data is carried out by means of literature study as a means of collecting data through written data using "content analysis". Literature studies are carried out on laws and regulations, Constitutional Court verdicts, books, journal articles, research results related to the positivization of Islamic law in the national legal system and the construction of state and religious relations. Data collection is based on the three approaches mentioned above. The statutory approach is used to search for and examine laws with Islamic legal substance and Constitutional Court verdicts that test laws with Islamic law. The conceptual approach is used to search for and examine views related to the positivisasi of Islamic law in the national legal system and the construction of state and religion relations. Meanwhile, the case approach is used to search for and examine Constitutional Court verdicts that test laws that contain Islamic law.

D. The course of research

There are three stages in this research. First, the author is looking for laws that contain the substance of Islamic law and verdicts of the Constitutional Court that test laws that contain Islamic law. For this reason, the author opens one by one a database of laws and regulations at the Directorate General of Legislation of the Ministry of Law and Human Rights of the Republic of Indonesia, as well as judicial review verdicts against the Constitution from 2003 to 2018 which are in the directory of the Constitutional Court verdicts.

Second, laws and verdicts that have been found are inventoried in the list of laws containing Islamic law and lists of verdicts that test laws that contain Islamic law. In addition, at this stage, a review of various related literature was also carried out. Third, after all the data in this research is processed, it will then examine how the manifestation of containing of the substance of Islamic law in the national legal system and the implications of judicial review verdicts by the Constitutional Court on the dynamics of the development of Islamic law in the construction of state and religious relations in Indonesia.

E. Results Analysis

After all the legal materials constituting the data in this study have been collected, all of the data is systematically compiled and then analyzed qualitatively using deductive logic. This qualitative analysis produces descriptive-analytical data. Thus, qualitative analysis is not only used to present facts, but to understand or comprehend these facts. Then, deductive logic is a way of thinking in which specific conclusions are drawn from general phenomena.

CHAPTER IV

RESEARCH AND DISCUSSION RESULTS

A. The manifestation of Containing of the substance of Islamic law into the National Law System

1. Categories in Islamic Law as a Basis for Containing of the Substance of Islamic Law

Islam recognizes three main pillars, namely creed, sharia, and morals. This was concluded from a conversation between Prophet Muhammad SAW and Angel Jibril who gave birth to three concepts, namely Iman, Islam, and Ihsan. Iman is related to the creed that is studied in kalam science (theology), Islam in the sense of law (sharia) is studied in jurisprudence, and Ihsan or the ability to know and adorn oneself with virtues which are an integral part of what is studied in Sufism.

The meaning of the three basic frameworks can be distinguished, but they cannot be separated. The following is the meaning of the three terms:

a. Creed

Aqidah (creed) is the faith or belief that is the rule of life for every Muslim. The aqidah is studied in a scientific discipline called kalam science. The main material in the aqidah, namely regarding the pillars of faith (arkanul iman), namely that a Muslim must believe/have faith in Allah as God, the Angels, the books of Allah, the messengers of Allah (Rasul), the Last Day, and Destiny (Qadha and Qadar). The value of truth in a creed (aqidah) is untestable truth or does not need to be proven empirically, but is based on faith based on existing signs. The aspect

of faith is the main foundation, containing teachings or provisions regarding this creed. This aspect is also called Ahkam I'tiqadiyah.

During its development, theology or kalam was divided into several schools, namely: First, Jabariyah. Adherents of the Jabariyah school of thought believe that the good and bad that happen to humans are solely due to Allah's destiny, so that humans have no role at all in it. Second, qadariyah. The Qadariyah school believes that humans have the freedom to try and act, so that good and bad depend on the efforts made by humans and God simply gives human potential and ability to do and act. Third, ahlu sunnah wal jama'ah. Ahlu sunnah wal jama'ah or often known as the Sunni school of thought adheres to the teachings of Abu Hasan Ashari (Ashariyah) and Abu Ishaq al Maturidi (Maturidiyah). This school basically emphasizes human endeavor to achieve the goodness of life, but the final result is still determined by Allah SWT. Fourth, mu'tazilah. A break from Asy'ariyah gave birth to the Mu'tazilah school which believes that Allah not only gives people the ability to think rationally, but also commands them to use it in formulating moral and legal choices.

b. Sharia

Sharia is a set of divine norms that regulate the relationship between humans and God, the relationship between humans and humans, and the relationship between humans and objects and nature surroundings.

Sharia is divided into worship and muamalah. Sharia is studied through a scientific discipline called fiqh. Thus, the fiqh of worship and the fiqh of muamalah will be known. The difference between sharia and fiqh will be highlighted in the next learning activity. In the field of worship, the rule applies that everything is

prohibited (haram), unless there is a strict order regarding that worship and exemplified by the Prophet Muhammad. On the other hand, the basic principle in muamalah is that all muamalah activities (mubah/ibahah) are carried out, unless there is a strict prohibition on this matter. In the field of muamalah, it can be exemplified that buying and selling is permissible, however riba (interest in money) is strictly prohibited in the Al-Qur'an.

c. Morals

Morals are provisions concerning human behavior or morals, namely concerning good and bad. Morals are studied in a scientific discipline called tassawuf. In the realm of philosophy, ethics is known as ethics, which is one of the parts studied in the realm of axiology.

These three aspects are interrelated. This means that true and strong faith in Allah SWT will give birth to good and right deeds (charity), in the form of worship (devotion) to Allah SWT. True worship to Allah SWT will give birth to good behavior or morals. If we compare it to a tree, the first aspect is like a root, the second is like a leaf, and the third is like a fruit. If the roots (faith) are strong, good and dense leaves (amal) will grow, and dense leaves will grow good fruit (ikhsan, morals). These aspects of Din al-Islam can be further explained as follows:

a. Ahkam l’tiqadiyah

Ahkam I'tiqadiyah is an aspect of faith or theology, namely the monotheistic belief system (faith) in Din al-Islam. The discipline in this aspect is called the science of Tawhid, the knowledge of Kalam or the science of Ushuluddin.

b. Ahkam ‘Amaliyah

Ahkam 'Amaliyah contains a set of rules governing human behavior, which includes two relationships, namely humans and their God (worship) and human relations with other creatures (muamalat). The discipline of Ahkam 'Amaliyah aspects is called fiqh science. In this aspect, in the realm of worship, the elements of Islam (the pillars of Islam) are discussed, namely: (a) the recognition that there is no God but Allah SWT, and Muhammad SAW is His messenger or what is known as shahada; (b) pray five times a day and night; (c) pay zakat for those who meet the requirements; (d) fasting the month of Ramadan; (e) perform the pilgrimage to Baitullah, for those who are able.

c. Ahkam Khuluqiyah

Ahkam Khuluqiyah contains a set of ethical or moral norms and values (morals). In this aspect, Islam regulates how humans should behave properly towards God or other fellow creatures. The discipline related to this aspect is the Science of Tasawwuf.

Thus, Islamic law is one of the three pillars (pillars) of Islamic teachings, namely sharia (ahkam 'amaliyah). This field is divided into two, namely worship and muamalah. The original law of the sharia of worship, which is haram in the sense that everything must not be carried out unless there is a strict command from Allah in the form of the word of Allah (Al-Qur'an) and is exemplified by the Prophet Muhammad SAW, while in the realm of muamalah the law of origin applies (mubah), which means that everything can be done by humans, unless there is a strict prohibition in both the Koran and the sunnah of the Prophet Muhammad.

The matters of relations between fellow humans and between humans and nature are regulated thus including in the realm of muamalah and are further studied in muamalah fiqh. In Islamic law there are parts of law (in the sense of muamalah), in the form of: (1) munakahat, (2) wirasah, (3) mu'amalat in a special sense, (4) jinayat or 'ukubat, (5) al-ahkam as-sulthaniyah (khilafah), (6) siyar, and (7) mukhasamat. If included in the public and private categories, each of these fields can be explained as follows:

a. Islamic Private/Civil Law, including:

1) munakahat regulates everything related to marriage, divorce, and its consequences;

2) wirasah (faraid) regulates all matters relating to inheritance, heirs, inheritance, legacy and distribution of inheritance;

3) muamalat in a special sense, regulates material matters and rights over objects, the system of human relations in matters of buying and selling, leasing, borrowing, unions, and so on.

b. Islamic Public Law, including:

1) jinayat which contains rules regarding actions that are punishable by punishment, both Jarimah Hudud and Jarimah Ta'zir. Jarimah hudud is a criminal act whose form and limit of punishment have been determined in the Al-Quran and the Sunnah of the Prophet Muhammad, while Jarimah ta'zir is a criminal act whose form and threat of punishment is determined by the authorities as a lesson for the perpetrator;

2) al-ahkam as sulthaniyah, namely discussing matters relating to the head of state, government, both central and regional governments;

3) siyar, namely regulating matters of war and peace, the arrangement of relations with adherents of religion and the state;

4) mukhasamat regulating the judiciary, judicial and procedural law.

According to these categories, it will then be used as a basis for investigating how the substance of Islamic law is poured into the national legal system. What is the basis for the justification of the pouring of the substance of Islamic law in the national legal system and how is the positivisation of Islamic law and the characteristics of normalizing Islamic law in the national legal system.

2. Justification of Containing of the Substance of Islamic Law in the National Legal System

The debate about the relationship between the state and religion becomes an important issue if a country has a religion that is dominant in the majority of the people in that country. Some important questions that arise from this condition are: What is the state's definition of religion? What is the definition of religion regarding the state? Who has the right to define and determine religion? And what is the role of religion in the state and what is the role of the state on religion? These four questions can serve as a basis for knowing how the true relationship between the state and religion is in the Indonesian context. By looking at the construction of the relationship between the state and religion in Indonesia, a common thread can be drawn to see the justification for normalizing Islamic law in the national legal system.

From a historical perspective, the relationship between the state and religion is a dualistic one. On the one hand, the state provides legitimacy for religion, and on the other hand religion becomes legitimacy for the state. In an additional position, the relationship between the state and religion can be manipulative, which only makes religious symbols the legitimacy of power. The form of the relationship between state and religion should use the perspective of functionality, in which religion and state have a social function in society. Thus, although state and religion have different functions, they cannot cancel each other out.

Then, theoretically there are three types of paradigms in relation to the relationship between state and religion, namely:

a. Integralistic or integrated paradigm. In this view, state and religion are integrated. The state is based on God's sovereignty, and the state is an integrated institution that combines political institutions with religious institutions. The source of the law is religious provisions.

b. Symbiotic Paradigm. Based on this paradigm, there is a reciprocal relationship between religion and state. On the one hand, religion needs state policies to develop, but on the other hand, the state needs religion to obtain moral and ethical guidance.

In this view, the provisions of the dominant religion can affect state law, or can be adopted in statutory regulations. Thus, state and religion have a functional relationship.

c. Secularistic Paradigm. This view rejects the relationship between state and religion. The main idea of the secularistic paradigm is to separate the state

from religion, so that the state does not use religion as a political instrument. Furthermore, there are no religious provisions regulated in statutory regulations. Religion is an individual matter and is not related to the state, so all religions are equal and nothing is privileged.

Furthermore, in relation to the integralistic paradigm, Parakitri T. Simbolong explained three types of relations between the state and religion in the context of the integralistic paradigm, namely:

a. Symmetric Integralistic Model. In this model, the relationship between state and religion cannot be separated from one another. Both are integrated in one body, or generally referred to as theocracy. For example, the Vatican and Saudi Arabia. In its development, the theocratic state can be divided into two types, namely the direct theocratic state and the indirect theocratic state. The theocratic state directly believes that the government is the power of God, while the theocracy does not directly believe that the government is not God's power, only the head of the state is sent by God.

b. Asymmetric Integralistic Model. In this model, the relationship between the state and religion can be divided into two types, namely "religion within the state" or "state within religion". In the first form, religion must submit to the power of the state, although religion can intervene in state policy, and vice versa in the second form. The countries that implement this model are the UK and Pakistan.

c. Civil Model. In the Civil Model, there are two conditions that occur: in formal conditions, the state and religion are separate, but in practice, one or more religions dominate. For example, this model was adopted in Malaysia,

Brunei, the Philippines and Indonesia. Malaysia and Brunei define what is the state religion, but still protect other religions from developing. Meanwhile, the Philippines and Indonesia recognize the plurality of religions with one religion being more dominant.

In the Indonesian context, the relationship between the state and religion has never been explicitly regulated in the Indonesian constitution. Bachtiar Effendy in his dissertation stated as follows:

> The polemic between Soekarno and Natsir is a debate that has no end and can still be explored. Both have no intention of formulating a ready-to-use conception between state and religion. They also have no intention of looking for similarities between their arguments (kalimah sawâ '). Both of them only show their ideological-political position. Consequently, the debate that took place highlighted only the unsolvable differences of the two.

Furthermore, based on the above treatise on the formation of the 1945 Constitution of the Republic of Indonesia as quoted by Bachtiar Effendy, it can also be said that Indonesia does not have a clear concept of the relationship between state and religion. Thus, it also becomes apparent why the provisions in the 1945 Constitution of the Republic of Indonesia do not clearly state the pattern or model of the relationship between the state and religion.

The relationship between the state and religion in the Indonesian constitution is only regulated in Article 29 of the 1945 Constitution of the Republic of Indonesia. The a quo article is one of the articles that was not changed in the amendment process of the 1945 Constitution of the Republic of Indonesia which was carried out from 1999 to 2002. The article also states that: (1) The state is

based on the One Godhead; and (2) “The State guarantees the freedom of each resident to embrace his own religion and to worship according to his religion and belief.

In addition, there are also several constitutional provisions related to religion that were added during the amendment, namely Article 28E and Article 28I. In Article 28E, specifically related to religion can be seen in paragraph (1) which states that everyone has the right to embrace a religion and worship according to their religion, and paragraph (2) which states that everyone has the right to freedom of belief in accordance with their conscience. Whereas in Article 28I paragraph (1), it is stated that the right to religion is one of the rights that cannot be reduced under any circumstances.

The provisions above indicate a constitutional mandate for the state to respect, protect and fulfill the right to have a religion. The state cannot directly intervene in religious practices or rituals, but the state can take a role in religious affairs, none other than ensuring the fulfillment of religious rights. For example, it can be seen in the statutory regulations regarding zakat, marriage and haj, then the determination of the start of the month of Ramadan, and efforts to secure religious events and celebrations, as well as other involvement of the state in various religious affairs.

Furthermore, these various provisions are actually in line with the concept of the rule of law Pancasila which was introduced by the Indonesian constitution as prismatic law among various concepts of rule of law that combine various concepts of rule of law that are relevant to Indonesian conditions. The rule of law of Pancasila contains not only a combination of elements from the concept of

rechtsstaat and rule of law, but also the concept of socialist legality and Islamic nomocracy. Not only that, the rule of law of Pancasila has a unique element that combines divine principles (derived from the Islamic nomocracy concept, so that there is no separation between state and religion), deliberative democracy, social justice, and Indonesian unity.

In the context of the relationship between the state and religion in Indonesia, Mahfud MD chose a nomenclature for "religious nationalist state", namely Indonesia is not a religious state, but Indonesia is a country with divine principles. Referring to Soekarno's speech, every citizen in Indonesia must have God and Indonesia is a country that has God. Therefore, even though Indonesia is not a religious state, every citizen is obliged to become a god. However, the state cannot understand how citizens worship their God. Furthermore, in the construction of governmental affairs, religion is one of the governmental affairs which is explicitly stated as an absolute governmental affair, namely a governmental affair which fully falls under the authority of the central government.

When viewed historically juridically, based on the construction of provisions regarding religion in the 1945 Constitution of the Republic of Indonesia and the various dynamics that occurred during the process of formation and during its implementation, it can be seen that in fact the relationship between the state and religion in Indonesia is very close and related. The existence of a constitutional provision which states that the state is based on the one and only Godhead and the guarantee of freedom to embrace a religion and worship according to one's own religion, can be a constitutional justification for pouring out various substances of Islamic law in the national legal system. Its purpose is solely to

ensure the fulfillment of citizens' rights to practice religion as stipulated in the Indonesian constitution, especially for those who are Muslim. Thus, various provisions of Islamic law can be adopted as a source of law in Indonesia, namely through the norming in statutory regulations at the national level. There are also types of containing of the substance and characteristics of the norming of Islamic law into statutory regulations discussed in the next section.

3. Positivisation of Islamic Law and Manifestation of the Norming of Islamic Law in the National Legal System

The issue of positivating Islamic law into national law actually began to emerge in the debate at the trial of the Indonesian Independence Preparatory Investigation Agency (BPUPKI), especially when the founders of this republic discussed the Basic of the State, one party wants Islam as the basis of the state while the other party thinks that the state that will be formed will be a nationalist state that separates religion and state. In the end the nationalists as the main line of supporters of Pancasila "won" the debate by compromising that in the divine precepts added seven words namely "with the obligation to carry out Islamic sharia for its adherents". In the end, on August 18, 1945, the seven words contained in the Jakarta Charter were crossed out with the knowledge of religious leaders, including Ki Bagus Hadi Kusumo and K.H Wachid Hasyim.

The argument that arises is that in the precepts of the One and Only Godhead, the principle of monotheism has been contained, which is an essential principle in Islamic teachings.

Efforts to implement Islamic sharia in state life did not stop with the adoption of Pancasila as the basis of the State by the Preparatory Committee for

Indonesian Independence (PPKI) on August 18, 1945, but continued in the decades that followed, using both a formal approach and a substantial approach. Mochtar Kusumaatmadja as a former Minister of Foreign Affairs, Minister of Justice and at the same time the head of the National Law Development Institution (now the National Law Development Agency/BPHN) has emphasized that in the legislative process or making laws and regulations is prioritized for “neutral” issues, meaning that it does not contain issues of religion, race, ethnicity and group which he deems to divide religious life.

The empirical reality shows that the process of making national laws does not completely ignore the values or principles that are known in religion, especially Islam. This included the promulgation of Law Number 1 of 1974 concerning Marriage and at the end of the 80s Law Number 7 of 1989 concerning Religious Courts was promulgated. In the end, National Law Development Agency acknowledged Islamic law as one of the sources in national legal legislation in addition to customary law and western law.

Based on the categories previously described, the positivization of Islamic law will be described in the national legal system, particularly in statutory regulations. Apart from that, the characteristics of the norming of Islamic law will also be elaborated.

a. Islamic Private/Civil Law

Islamic private or civil law as described above, includes:

1) Munakahat

The real form of positivization of Islamic law in the field of munakah in the national legal system can be seen in Law Number 1 of 1974 concerning Marriage (Marriage Law). The next question that arises is what is the relationship between fiqh munakah and the Marriage Law? If the Marriage Law is connected to fiqh munakahat which has been valid in Indonesia, according to the Syafii mazhab, there are five forms of relationship, namely:

a) The marriage law has fully followed the fiqh munkahat and even seems to quote directly from the Al-Quran. An example in this case is the existence of provisions regarding the prohibition of marriage and provisions regarding the waiting period for wives who are divorced from their husbands which are further elaborated through Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage.

b) The provisions contained in the Marriage Law are completely absent in fiqh mazhab of any mazhab, but because they are administrative and not substantial, they can be added to fiqh munakahat. For example, in this case, for example, the provisions concerning the registration of marriage and the prevention of marriage.

c) The provisions in the Marriage Law are not contained in fiqh munakahat in any mazhab, but with considerations of benefit it can be accepted. An example in this case is the provisions regarding the minimum age limit for the spouse to be married and joint assets in marriage.

d) The provisions of the Marriage Law which are physically inconsistent with the provisions of fiqh munakahat in any mazhab, but by using reinterpretation and considering maslahat there is nothing wrong with being accepted in fiqh.

For example, in the form of provisions regarding the obligation to divorce in court and requiring polygamy permission from the court and divorce must be based on reasons that have been determined cumulatively. Fiqh munakahat in any mazhab I allows divorce outside the court; divorce is allowed without any reason and does not require court permission to practice polygamy.

e) There is also the possibility that the provisions of the Marriage Law according to birth are not in line with the fiqh munakahat that applies in certain mazhab, but does not violate the fiqh munakahat of the other mazhab. For example: provisions in the Marriage Law that do not require a guardian in the marriage of an adult partner. According to fiqh munakahat the Syafi'i mazhab applicable in Indonesia such a marriage is invalid, because the guardian is one of the pillars in marriage. Nevertheless, the provisions of this law are in line with the Hanafi mazhab.

If we explore the articles of the Marriage Law one by one, one of the possibilities mentioned above will be included. The first form of possibility does not have a problem because so far it has been carried out in the context of carrying out fiqh munakahat. The second and third forms have started and can be understood and practiced by Muslims. However, the fourth possible form is difficult for some Indonesian Muslims to accept. This can be proven by the occurrence of irregularities such as divorce outside the court and polygamy without court permission because it is carried out in siri.

2) Wirasah (Faraidh)

Until now, inheritance law in Indonesia still shows legal pluralism, so that customary law, Islamic law and BW civil law (Burgelijk Wetboek/Civil Code) as

long as inheritance is concerned, applies to Indonesian citizens. Efforts to codify Islamic law in the field of inheritance have not indicate results, but only in the form of compilation, namely Book II of Islamic Law Compilation (KHI) as stated in Presidential Instruction Number 1 of 1991 concerning Dissemination of Islamic Law Compilation. This instruction is addressed to the Minister of Religion to disseminate Islamic Law Compilation which consists of Book I on Marriage Law, Book II on Inheritance Law, Book III on Waqf Law as well received by Indonesian religious scholars at a workshop in Jakarta from 2 to 5 February 1988, to be used by government agencies and communities that need it. In this instruction, the Minister of Religion was ordered to carry out the best possible and with full responsibility.

Since its publication, Islamic Law Compilation has been widely used by the Religious Courts in resolving cases in the fields of marriage, inheritance and waqf. Especially in the field of inheritance, the Islamic Law Compilation has become a reference for judges in the Religious Courts, in addition to reforms that have been carried out by the Supreme Court. The following are various provisions in Book II of the Islamic Law Compilation concerning Inheritance Law: First, understanding. Islamic inheritance law is a law that regulates the transfer of ownership rights to the inheritance (tirkah) of the heir, determining who has the right to become heirs and how much of each. Second, elements of Islamic heritage. Elements in Islamic inheritance law include:

a) The heir is a person who at the time of death or who is declared dead based on the decision of the Muslim court, leaves an heir and inheritance. Thus, there are two categories of heirs, namely those who died essentially or those

who died legally, namely the First Dictum of Presidential Instruction Number 1 of 1991 concerning the Dissemination of Islamic Law Compilation based on a court decision in which someone is declared possibly dead.

b) An heir is a person who at the time of death has a blood or marital relationship with the heir, is Muslim and is not prevented by law from becoming an heir. Thus, in Islamic inheritance there are at least two relationships that cause a person to appear as an heir, namely the lineage relationship or marriage relationship.

(1) The lineage relationship is obtained because of the legal marriage and the birth of children thereof. The child has a nasab relationship with both parents because both parents are bound by a legal marriage bond. Without it, according to the Islamic perspective a person only has a nasab relationship with his mother and his mother's relatives. Simply put, namely that the child resulting from adultery will only have a nasab relationship with the mother and the mother's relatives, the implication is that the child is only entitled to inherit from the mother's line. The child is not entitled to inherit from the father and relatives of the father.

(2) Furthermore, the existence of a marital relationship causes husband and wife to inherit from each other. Judging from who the party who died first. The husband dies, then his wife/widow has the right to inherit from the husband, and vice versa. Thus, because the marriage relationship gives birth to an heir in the form of a widow or widower.

c) Inheritance assets are inherited assets plus part of the joint assets after being used for the needs of the heir during illness until death, costs of

managing the body (tajhiz), paying debts and giving to relatives Thus the inheritance as above needs to be purified, that is, it is issued to fulfill the obligations of the inheritor. The obligations referred to include debts to fellow humans, medical expenses when sick and funeral costs. These two things are also obligations that must be carried out by the heir to the heir. Then in the event that the heir leaves the will, it must be paid a maximum of 1/3 of the inheritance after deducting the previous obligations. In the event that the heir does not inherit something, but in real there is an adopted child in it or there is an heir of a different religion from the heir by law, it is considered that there is a will (wasiatajibah) whose amount is determined to a maximum of 1/3 of the inheritance. The judge is allowed to determine the amount of the will, as long as it does not exceed 1/3.

Third, the procedure for distribution of inheritance. Based on the principle of Ijbari and the principle of inheritance due to death, the heirs who are entitled individually can ask to immediately distribute the inheritance. Before this step is taken, legally the heirs are burdened with obligations that must be fulfilled, among others, namely:

a) Take care and finish until the funeral is over.

   The organization of the corpse is carried out from the time it is bathed until it is buried under the Islamic law, the cost of which is taken from the inheritance.

b) Settling both debts in the form of medication, treatment, including the obligations of the heir and collecting accounts receivable. If the amount of debt is greater than the inheritance, the payment must be made with the

existing inheritance. The heirs are not burdened or have an obligation to pay debts of the heir.

c) Complete the will of the heir.

d) Divide the inheritance among the rightful heirs.

Fourth, wills and grants. A will is the gift of an object from the heir to another person or institution which will take effect after the heir dies. From this understanding it can be concluded that the giving of property from one person to another can only be realized after the death of the testator. In contrast to a will that comes into effect after the testator passes away, the grant can be paid directly by the donor of the grant while the person concerned is still alive. This is concluded from the meaning of a grant, which is the giving of an object voluntarily and without reward from someone to another person who is still alive to have. If wills and gifts occur from someone to their descendants who will later become heirs, when that person dies, then there are a number of things that you must pay attention to. The point is that in fiqh the principle applies that "there is no will for the heir". With the qiyas method, the rule can also be given "no grant for potential heirs". This means that wills and grants given to heirs are basically not permitted. If it turns out that there is a will or gift to the heir, then it is necessary to take into account for the sake of justice.

Fifth, peace in Islamic heritage. One of the breakthroughs in the Islamic Law Compilation which at the same time shows the flexibility of Islamic inheritance law in Indonesia is the introduction of a peace institution (tasaluh), in which heirs can share inheritance through deliberation after each heir knows his share according to the law, peace in Islamic heritage. One of the breakthroughs in the Islamic Law

Compilation which at the same time shows the flexibility of Islamic inheritance law in Indonesia is the introduction of a peace institution (tasaluh), in which heirs can share inheritance through deliberation after each heir knows his share according to the law.

The instruction is addressed to the Minister of Religion to disseminate a Compilation of Islamic Law which consists of Book I on Marriage Law, Book II on Inheritance Law, Book III on Waqf Law as well received by Indonesian religious scholars in a workshop in Jakarta from 2 to 5 February 1988. Until now, there is no law on inheritance, either specifically for Muslims or that applies generally to all citizens, as is the law in the field of marriage, which already has Law Number 1 of 1974 concerning Marriage. However, the Supreme Court has carried out reforms in the field of inheritance law, both through jurisprudence and various published manuals. One of the phenomenal things is the sharing of assets to heirs of different religions with the heirs through the compulsory will.

3) Muamalat in a Special Meaning

Muamalat in a special sense that regulates material matters and rights over objects, the system of human relations in matters of buying and selling, renting, borrowing, unions, and so on. This field of law has been accommodated in laws and regulations in the banking sector, the non-bank financial industry and the capital market. In addition, there are philanthropic institutions that have a slice between the fields of worship and muamalah, namely zakat, waqf, and hajj fund management.

a) Sharia Financial Institution

When using the nomenclature that applies in the Financial Services Authority, then as conventional financial institutions in Islamic financial institutions are divided into three, namely Sharia Banking, Sharia Non-Bank Financial Industry, and Sharia Capital Market. The laws and regulations in these institutions have been issued, but for the purposes of this research, the researcher will only discuss statutory regulations at the statutory level, while those at the level below the law will only be briefly discussed.

First, Syariah banking. Recognition of the validity of Islamic law in the banking sector, as stipulated in the Banking Law, both Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, as well as more solidly through Law Number 21 of 2008 concerning Syariah banking. The term "sharia principle" is known in both laws a quo.

Sharia principles are defined as the rules of agreements based on Islamic law between banks and other parties for the deposit of funds and/or financing of business activities, or other activities that are declared in accordance with sharia, including financing based on the principle of profit sharing (mudharabah), financing based on the principle of equity participation (musyarakah), the principle of buying and selling at a profit (murabahah), or financing of capital goods based on the principle of pure lease without choice (ijarah), or with the option of transferring ownership of goods leased from the bank by another party (ijarah wa iqtina). A more concise definition states that the principles of sharia are Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia.

Of the two definitions, explicitly acknowledging the validity of Islamic law in the field of agreements that apply to banking. The diversity of Islamic law in the sense of fiqh in the field of agreement (muamalah special) results in the need for a single reference, so that in Law Number 21 of 2008 concerning Sharia Banking it limits that Islamic law is a fatwa issued by an authorized institution which in practice is the National Sharia Council-Indonesian Ulema Council (DSN-MUI).

The content of the fatwa on sharia contracts was later adopted into technical regulations in the form of Bank Indonesia Regulations (PBI), which was the first to be implemented through Bank Indonesia Regulations Number 7/46/PBI/2005 concerning Contracts for Collection and Distribution of Funds for Banks Conducting Business Activities Based on Sharia Principles.Currently the DSN-MUI fatwa is a reference for the Financial Services Authority (OJK) in drafting regulations and codifying Islamic banking products.

Second, Sharia Non-Bank Financial Industry. The Sharia Non-Bank Financial Industry (IKNBS) consists of non-bank financial institutions in the form of insurance, pension funds, financial institutions, and specialized financial services institutions, and Micro Finance Institutions. The implementation of Islamic law in muamalah activities in this particular meaning is also indicated by the recognition of sharia principles in the relevant laws and regulations, namely:

(1) Law Number 40 of 2014 concerning Insurance provides a definition of sharia principles as principles of Islamic law in

insurance activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia.

(2) Law Number 11 of 1992 concerning Pension Funds does not mention anything related to pension fund management based on sharia principles, but recognition of Islamic principles is contained in the Financial Services Authority Regulation (POJK) Number 33/POJK.05/2016 concerning the Implementation of Pension Programs Based on Sharia Principles, which are defined as provisions of Islamic law based on fatwas and/or sharia conformity statements from the National Sharia Council of the Indonesian Ulema Council.

(3) Presidential Regulation Number 9 of 2009 concerning Financing Institutions, states that Financing Institutions include Financing Companies (Leasing, Factoring, Credit Card Business, and Consumer Financing), Venture Capital Companies, and Infrastructure Financing Companies. There is no definition of sharia principles in the a quo Presidential Regulation, but recognition of Islamic law (in the meaning of sharia principles) can be found in the Financial Services Authority Regulation Number 31/POJK.05/2014 concerning the Implementation of Sharia Financing Businesses, namely the provisions of Islamic law based on fatwas and/or sharia conformity statements from the National Sharia Council of the Indonesian Ulema Council.

(4) Law Number 1 of 2016 concerning Guarantee states that sharia principles are defined as the principles of Islamic law in guarantee activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia.

(5) Law Number 2 of 2009 concerning Indonesian Export Financing Institutions, namely the principles of rules based on Islamic law which are used as the basis for making agreements between Indonesian Export Financing Institutions and other parties in carrying out National Export Financing activities.

(6) Law Number 1 of 2013 concerning Microfinance Institutions does not provide a definition of sharia principles, but acknowledges it by regulating the distribution of loans or financing and the management of Savings by Microfinance Institutions is carried out conventionally or based on sharia principles, where business activities based on sharia principles must be carried out in accordance with sharia fatwas issued by the National Sharia Council, Indonesian Ulema Council.

Based on the definition of sharia principles from various laws and regulations in the Islamic Non-Bank Financial Industry sector, it can be concluded that Islamic law in the meaning of fiqh muamalat is specifically recognized as binding rules for the activities of the Sharia Non-Bank Financial Industry. The fikih muamalat in question is the fatwa of the National Sharia Council-Indonesian Ulama Council. In order to ensure compliance with sharia principles, the institutional structure of

the Sharia Non-Bank Financial Industry is required to have a Sharia Supervisory Board which is lex generalis regulated in Article 109 of Law Number 40 of 2007 concerning Limited Liability Companies, namely:

(1) Companies that carry out business activities based on sharia principles in addition to having a Board of Commissioners are required to have a Sharia Supervisory Board.

(2) The Sharia Supervisory Board as referred to in paragraph (1) consists of one or more sharia experts who are appointed by the General Meeting of Shareholders on the recommendation of the Indonesian Ulema Council.

(3) The Sharia Supervisory Board as referred to in paragraph (1) is tasked with providing advice and suggestions to the Board of Directors as well as supervising the Company's activities in accordance with sharia principles.

The implementation of jurisprudence muamalah in a special meaning, namely in the field of Islamic economics and finance in Indonesia, according to the researcher, has obtained comprehensive arrangements from the level of law to the level of implementing regulations. The fatwa of the National Sharia Council of the Indonesian Ulama Council has also received strict recognition and appointment in the laws and regulations so that it has a formal juridical effect.

Third, Sharia Capital Market. The Capital Market, which is a vehicle for raising funds from the public, currently accommodates muamalah fiqh in a special sense, namely with the terminology of "sharia principles". The recognition of sharia principles is not found in Law Number 8 of 1995 concerning the Capital Market. The current regulation of the Islamic Capital Market is through the Sharia Financial Services Authority Regulation (POJK), including the following:

Table 1. Financial Services Authority Regulations related to the Sharia Capital Market

No.	POJK No.	POJK Title
1	POJK Number 61/POJK.04/2016	Application of Sharia Principles in the Capital Market for Investment Managers
2	POJK Number 15/POJK.04/2015	Application of Sharia Principles in the Capital Market
3	POJK Number 53/POJK.04/2015	Receipt used in the Issuance of Sharia Securities in the Capital Market
4	POJK Number 18/POJK.04/2015	Sharia Bond Issuance and Requirements
5	POJK Number 17/POJK.04/2015	Issuance and Requirements for Sharia Securities in the Form of Shares by Sharia Issuers or Sharia Public Companies
6	POJK Number 16/POJK.04/2015	Capital Market Sharia Expert
7	POJK Number 20/POJK.04/2015	Issuance and Requirements for Sharia Asset-Backed Securities
8	POJK Number 19/POJK.04/2015	Issuing and Requirements for Sharia Mutual Funds
9	Criteria and Issuance of Sharia Securities List	Regulation Number II.K.1: Criteria and Issuance of Sharia Securities List

Source: OJK; Processed by the Author, 2019

Two legal terms that refer to the validity of Islamic law in the meaning of fiqh muamalah, namely Sharia Principles and Sharia Contracts. The two legal terms are contained in the Financial Services Authority Regulation Number 15/POJK.04/2015 concerning the Application of Sharia Principles in the Capital Market. Principles of Sharia in the Capital Market are principles of Islamic law in Sharia Activities in the Capital Market based on the fatwa of the National Sharia Council-Indonesian Ulama Council, as long as the fatwa is not contrary to this Financial Services Authority Regulation and/or other Financial Services Authority Regulations based on the fatwa of the National Sharia Council-Indonesian Ulema Council. Then what is meant by Sharia Covenant is a written agreement or contract between the parties that contains the rights and obligations of each party that does not conflict with the Sharia Principles in the Capital Market.

In contrast to the definition of Sharia Principles in the Banking sector and the Sharia Non-Bank Financial Industry which refers directly to fatwas, the notion of sharia principles in the capital market sector limits the effectiveness of fatwas because new fatwas can be implemented, as long as it does not contradict the Financial Services Authority Regulation made based on the fatwa of the National Sharia Council-Indonesian Ulama Council.

b) Islamic Philanthropic Institute

Arrangements in the context of Islamic philanthropic institutions include: **First**, zakat. Zakat is one of the pillars of Islam which is

positioned after prayer. The verses of the Koran that command prayer are often followed by orders to pay zakat. In contrast to prayer whose legal status is mandatory for all Muslim converts, zakat is compulsory for Muslims who have certain assets that have exceeded the nishab and anniversary. Indonesia issued Law Number 38 of 1999 regarding Zakat Management, which was later revoked and replaced by Law Number 23 of 2011 concerning Zakat Management.

Judging by the legal status of zakat, compulsory zakat (muzaki), recipients of zakat (mustahiq), zakat assets, and zakat management are in principle in line with zakat fiqh with various extensions, especially when examined from a classical zakat fiqh perspective. Following this, the researcher describes various aspects regarding zakat in Law Number 23 of 2011 concerning Zakat Management (UUPZ). Zakat is defined as assets that must be issued by a Muslim or business entity to be given to those entitled to receive it in accordance with Islamic law.

Thus, zakat can be interpreted as an obligation of a Muslim in relation to assets distributed to those entitled to receive it in accordance with Islamic law. The Zakat Management Law provides recognition of Islamic sharia in the field of zakat which is implemented specifically through zakat fiqh. In terms of substance, the Zakat Management Law not only adopts the zakat fiqh, but includes other, more comprehensive provisions, so that zakat can be implemented by Muslims and bring broader public benefit.

Second, waqf. Waqf is a practice that is highly recommended for every Muslim so that when it is related to the law of taklifi it is included in the category of sunnah muakad. The implementation of waqf in national life has actually been initiated with the promulgation of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which mandates further regulation regarding waqf through a Government Regulation (PP). The Government Regulation regarding Waqf first appeared in 1977, namely Government Regulation Number 28 of 1977 concerning Ownership of Land Owned.

At the level of law, the regulation of waqf is manifested in Law Number 41 of 2004 concerning Waqf (UUW) and in more detail it is regulated in Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf, and various technical regulations issued by the Indonesian Waqf Board (BWI), including in the form of BWI Regulation Number 4 of 2010 concerning Guidelines for the Management and Development of Waqf Assets. The adoption of Islamic law into national law in the field of waqf is seen in Waqf Law, which defines Waqf as a legal act of waqf to separate and/or surrender part of his assets to be used forever or for a certain period of time in accordance with his interests for the purpose of worship and/or general welfare according to sharia.

Furthermore, it is emphasized that waqf is valid if it is implemented according to sharia. Confirmation in the form of definitions and validity shows that Waqf Law recognizes the validity of Islamic sharia in the

field of waqf which is concretized through wakaf fiqh. In the perspective of Islamic law, Waqf Law is included in the category of waqf fiqh whose substance is obtained through collective ijtihad.

Third, Hajj fund management. Management of Hajj funds at the level of law, the State has issued: (a) Law Number 13 of 2008 concerning the Implementation of Hajj (UUPIH); and (b) Law Number 34 of 2014 concerning Hajj Financial Management (UUPKH). Hajj is defined as the fifth pillar of Islam which is a once-in-a-lifetime obligation for every Muslim who is able to fulfill it.

The purpose of organizing Hajj and hajj financial management by the State is aimed at providing the best possible guidance, service and protection for Hajj pilgrims so that Hajj pilgrims can perform their worship in accordance with the provisions of Islamic teachings, while the objectives of hajj financial management are to improve: (a) the implementation of the haj pilgrimage; (b) rationality and efficiency in the use of Hajj Operation Costs; and (c) benefits for the benefit of Muslims. Judging from this objective, it shows the role of the State in providing facilities for Muslims who wish to perform the pilgrimage, which is primarily intended for worship to be carried out in accordance with the provisions of Islamic sharia and bring benefits to Muslims in general.

b. Islamic Public Law

Islamic public law as described above, includes:

1) Jinayat

As is well known, regulations regarding crimes in positive law construction can now be found, for example in the Criminal Code and other laws that specifically regulate other types of criminal law that are not regulated in the Criminal Code. However, empirically, Islamic criminal law has also been applied in Indonesia, which is specifically applied in Aceh. This is based on the Aceh Privileges Law and the Aceh Governance Law which enforces the application of Islamic law in Aceh.

Initially, the Aceh Privileges Law provided a dimension of the application of Islamic law to the administration of privileges in the areas of: (a) administering religious life; (b) the administration of customary life; (c) providing education; and (d) the role of ulama in determining regional policies. The application of Islamic law is extended in the Aceh Governance Law to the dimensions of the governance of Aceh which is guided by the principle of Islam as the general principle of governance, and even the implementation of Islamic law in Aceh includes aqidah, syar'iah, and morals. Furthermore, the scope of application of Islamic law includes worship, ahwal alsyakhshiyah (family law), muamalah (civil law), jinayat (criminal law), qadha '(judiciary), tarbiyah (education), preaching, syiar, and defense of Islam.

Based on this scope, it can be seen that jinayat is one of the scopes of implementing Islamic law in Aceh. The application of jinayat in Aceh is carried out through the norming through Qanun Jinayat.

The Islamic criminal law applied in Aceh stipulates that criminal offenders (Jarimah) are subject to punishment ('uqubat) which is

classified into' uqubat hudud and 'uqubat ta'zir. In the Islamic fiqh approach, 'uqubat hudud is a type of punishment that has been determined with certainty by Allah through the Al-Quran and Sunnah.

For example, in the Al Qur'an, 'uqubat hudud is a caning punishment for adultery ghairu muhsan which has been determined 100 times.

As for 'uqubat ta'zir, it is a type of punishment determined based on certain considerations by the government as a policy maker and a judge as a decision maker. Examples of 'uqubat ta'zir are guidance by the state, restitution by parents or guardians, return to parents or guardians, termination of marriage, revocation of permits and rights revocation, confiscation of certain goods, and social work.

2) Al-Ahkam As Sulthaniyah

This field of Islamic law emphasizes matters of state and government as well as legal products and policies of State entities aimed at the people. Some classical Islamic jurists do not provide a specific form of state for Muslims, but rather provide ideal criteria for a state or an ideal leader for the Muslim community. Al Farabi as one of the Islamic thinkers, gave al-Madinah al-Fadhilah, which aims to create a society that knows the truth and enforces it in the form of cooperation with the State to build mutual prosperity, as the concept of an ideal state that can be realized when the country is led by proponents of virtue who are not only material oriented like prophets and philosophers.

The Indonesian thinker who tried to link Islam and the State was Soekarno, namely that the State was ideal when the “fire” and “spirit” of Islam were manifested in wisdom and reflected in the lives of its people. Soekarno further emphasized that Islam did not ask for an official stamp like the Islamic State, especially if the stamp was Islamic, but the substance in it had no Islamic value.

One of the concepts introduced by Ibn Taymiyyah which is perhaps in accordance with the current conditions of Indonesia is the concept of Siyasah Syar'iyah or often referred to as sharia-oriented policies. Siyasah Syar'iyah can be defined as a government that is in accordance with the goals and objectives of sharia and in its broadest sense it applies to all government policies, both in areas where sharia provides explicit guidance or not. The Election Law, the Regional Government Law, and other laws related to government in principle according to the Researcher were also issued in order to obtain leaders or create an ideal government system.

The Republic of Indonesia, Pancasila, and the 1945 Constitution which are concretized with various legal products and policies issued by the State, as at first glance the researcher gave examples in the private and public fields above show that Indonesia at the same time does not use the sharia label generally in line with Islamic sharia. This is because constitutionally the State is obliged to provide guarantees for the implementation of religious teachings in accordance with their respective religions and beliefs.

3) Siyar

This field of Islamic law provides arrangements regarding war and peace affairs or today in general it provides rules regarding relations between countries (international law). Classical Islamic literature divides the state into two categories, namely Darul Islam and Darul Harb. Darul Islam is basically a state that is under the leadership of the Muslims, whatever the name (Khalifah, King, Sultan), in which there is an affirmation that the state is formed based on Islamic laws, while darul harb in principle can be interpreted as a war state (infidel state), namely a state that is not based on Islamic laws. This distinction also departs from the principles underlying Muslim and non-Muslim relations, namely whether it is a peaceful relationship or a war/conflict relationship. Furthermore, the principles that underlie this relationship between Muslims and non-Muslims also have implications for the mandatory mandatory presence/absence of of jihad, whether defensive or offensive.

Currently Indonesia cannot be included in these two categories, but Indonesian ulema or at that time called Nusantara ulama believed that Indonesia/Nusantara was an Islamic State in the meaning of Darussalam as the State of Medina. This was as recorded in the NU congress in 1936. The complete results of the congress are as follows:

In fact, our country, Indonesia, is called the Islamic State because it was once completely controlled by Muslims. Even though it was seized by infidels (the Netherlands), the name of the Islamic State is still

forever, as is explained in the Bughyatul Mustarsyidin book: "Every area where Muslims are able to occupy at a certain time, then that area becomes an Islamic area, which is marked by the enactment of Islamic law at that time. Meanwhile, in the aftermath, even though Islamic rule was cut off by the control of the infidels (the Netherlands) and prohibited them from re-entering and expelling them. If in such a situation, then it is called darul harb, it is only the formal form, but not the law. Thus, it is necessary to know that the Batavia area, even the entire land of Java (Nusantara) is the darul Islam, because it was once controlled by Muslims, before being controlled by the infidels" (decided in Banjarmasin, 19 July 1936).

Relation to inter-State relations, the 1945 Constitution emphasizes that one of the objectives of the State is to participate in implementing world order based on independence, eternal peace and social justice. It is in this context that Indonesia has ratified many international instruments related to humanitarian law, which aim at realizing peace.

4) Mukhasamat

The real manifestation of the positivization of Islamic law in the field of mukhasamat in the national legal system can be seen in the regulation regarding the religious court environment, which was first regulated through Law Number 14 of 1970 concerning the Principles of Judicial Power, and then get a separate arrangement through Law Number 7 of 1989 concerning the Religious Courts (Law on Religious Courts). Unlike the fiqh mukhasamat which as a whole is based on the

Qur'an, Sunnah, and the results of ijtihad fuqaha (ulema), then in the context of the Law on Religious Courts, related to the applicable procedural law is the procedural law in the general court, except as specifically provided for in the Law on Religious Courts. Thus, the Revised Indonesian Regulations or HIR and RBg apply in practice in the Religious Courts, unless specifically provided. The specificity here lies in, among others, the resolution of disputes in the field of family law, more specifically in marriage law.

Religious Courts include specific courts, which are specific in terms of legal subjects of justice seekers and specific in terms of their competence. The specifications regarding legal subjects are contained in the principle of Islamic personality, namely that the courts within the Religious Courts are only to serve the settlement of cases in certain fields of the Indonesian people who are Muslim. In other words, someone's Islam is the basis for the authority of the Court in the Religious Courts. The exception to this principle is through the submission institutions of both legally or voluntarily

Specifications of its competence are only authorized to settle cases of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah, now the authority of religious courts is expanded, including in the field of sharia economics, namely business actions or activities carried out according to sharia principles, including: (a) Islamic banks; (b) Islamic insurance; (C) Islamic reinsurance; (d) Islamic mutual funds; (e) Islamic bonds and Islamic medium-term securities; (f) Islamic

securities; (g) Islamic financing; (h) sharia pawnshops; (i) Islamic financial institution pension funds; (j) sharia business; and (k) Islamic microfinance institutions.

B. Implications of Judicial Review Verdicts by the Constitutional Court on the Dynamics of Development of Islamic Law in the Construction of State and Religious Relations in Indonesia

1. Petition Patterns in Judicial Review with Islamic Law Substance

After the third amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the Constitutional Court has become one of the pinnacles of judicial power besides the Supreme Court. This is confirmed in the provisions of Article 24 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which states that judicial power is exercised by a Supreme Court and subordinate judicial bodies, as well as by a Constitutional Court.

Furthermore, Hans Kelsen also stated that the existence of the Constitutional Court itself is actually a consequence of the principle of constitutional supremacy which is needed to ensure the conformity of lower legal rules with the higher legal rules, as well as a consequence of the existence of a hierarchy of legal norms culminating in the constitution as the Supreme Law of the Land.

In the Indonesian context, the presence of a constitutional court is an important element to ensure that the 1945 Constitution of the Republic of Indonesia as the Indonesian constitution is really upheld in the

implementation of the life of the nation and state. One of these is manifested through the authority of the Constitutional Court to conduct judicial review of the Constitution. As is well known, the Law in principle is the direct implementation of the Basic Law.

Thus, the presence of a judicial institution that has the authority to examine the constitutionality of laws is essential in a rule of law that promotes the rule of law. This is intended to ensure that no constitutional rights of citizens are violated by the enactment of a law as the direct implementer of the constitution. Of course this is inseparable from the function of the Constitutional Court, especially as the guardian of the Constitution, the protector of the citizen's constitutional rights, and also the sole interpreter of the Constitution.

Furthermore, as has been explained above, one of the characteristics of the verdict of judicial review is that it is final, in which the final character also includes binding legal force which immediately gains permanent legal force since it is read. In addition, there is also the nature of erga omnes, namely that the verdict of judicial review is not only binding on the parties, but legally binding all components of the nation. The nature of the erga omnes cannot be separated from the nature of the law which is generally binding. Furthermore, the nature of declaratory and constitutief is also an important characteristic to pay attention to, because in addition to stating what constitutes law from a legal norm, a Constitutional Court decision also negates a legal condition or creates a new legal state.

In relation to the review of laws regarding laws that have the substance of Islamic law, the construction of authority and the nature of the Constitutional Court decisions above will certainly affect the implications of the passing of judicial review decisions on the validity of articles in laws that have Islamic legal substance. In a period of approximately 16 years since the Constitutional Court was founded, there have been at least 1946 provisions of the law that were submitted for review in the Constitutional Court, and 1258 of them have been decided by the Constitutional Court. Of the many laws that were tested, based on the author's investigation, with reference to the category of pouring Islamic law as described in the previous discussion, in the 2003 to 2019 period, there were at least 20 judicial review decisions related to the substance of Islamic law.

First, Verdict Number 12/PUU-V/2007 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage. In his petition, the Petitioner argued that the restrictions and conditions for polygamy in the Marriage Law are against the Islamic Marriage Law, reduce the Petitioner's right to freedom of worship and are discriminatory against Muslims.

Regarding this argument, the Court is of the opinion that the teachings of Islam intend to discipline polygamy gradually, with the aim of, among other things, so that in its implementation there is no abuse of men and in the framework of maintaining the dignity of women. Therefore, according to Islamic teachings, the state has the authority to determine the conditions that must be fulfilled by its citizens who wish to practice polygamy for the sake of the general benefit, especially in achieving the goal of marriage, which is to

form a happy and eternal family (household) based on Almighty God. The existence of the authority to regulate the country, the Court is of the opinion, is because polygamy is included in the category of muamalah which is in accordance with the qaidah fiqh in the field of mu'amalah which states, "basically mu'amalah is permitted unless there is a provision that expressly prohibits it".

Second, Verdict Number 19/PUU-VI/2008 concerning Judicial Review of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts. The Petitioner argues that the applicant's freedom of religion and worship is limited due to the existence of Article 49 paragraph (1) of the Law on Religious Courts. This provision is considered to limit the scope of validity of Islamic law by not including punishment (jinayat). Furthermore, the petitioner argues that the provisions of the article have restricted Muslims to upholding Islamic religious law (syari'at) as a whole (kaffah), as instructed by the Al-Qur'an and Al-Hadith as the main source of Islamic teachings.

Regarding the argument of the petition, the Constitutional Court is of the opinion that the posita and petitum of the petitioner are incompatible where in their posita the petitioner asks for additional authority, while in the petitum the petitioner asks for the cancellation of Article 49 paragraph (1). Furthermore, the Court stated that it was not authorized to increase the absolute competence of the Religious Courts considering that the Court could only act as negative legislators.

Regarding the argument that Islamic law must be enforced kaffah in Indonesia, the Court is of the opinion that Indonesia is not a religious state based solely on one particular religion nor is it a secular state that does not pay attention to religion at all and leaves religious affairs completely to individuals and society. If the problem of the application of Islamic law is related to the source of law, it can be said that Islamic law is indeed the source of national law, but Islamic law is not the only source of national law, where apart from Islamic law, customary law and western law as well as other sources of legal traditions also become sources of national law.

Third, Verdict Number 143/PUU-VII/2009 concerning Review of Law Number 19 Year 2008 concerning State Sharia Securities. In his petition, the Petitioner argues that the use of State Property as the basis (underlying asset) for issuing State Sharia Securities (SBSN) by selling, pledging or leasing which is the Minister of Finance after requesting the approval of the House of Representatives of the Republic of Indonesia for and on behalf of the Government of the Republic of Indonesia it has pledged the state assets as the underlying asset for the issuance of State Sharia Securities by the Government of the Republic of Indonesia. Furthermore, the Petitioner argued that the Government's actions c.q. The Minister of Finance has harmed the Petitioners' constitutional rights as citizens of the Republic of Indonesia and administrators of higher education, as well as harming all citizens of the Republic of Indonesia, because with the enactment of the a quo Article, the State is no longer able to fully guarantee services, especially services in the field of higher education. The pretext that the transfer of State Property

(Assets) is of a special nature, namely, among others: (a) the sale and / or rental is carried out only for the Benefit Rights of State Property; (b) there is no transfer of ownership rights (legal title) to State Property; and (c) physical transfer of State Property is not carried out so that it does not interfere with the implementation of Government tasks. The government considers it has not committed a violation and feels that the assets on which the SBSN is issued are still safe in the hands of the Government and free from threats (confiscation) from other parties.

Regarding the argument for the petition above, the Constitutional Court is of the opinion that the use of Article 28H paragraph (2) of the 1945 Constitution as a touchstone is inappropriate according to law because Article 28H paragraph (2) of the 1945 Constitution is a constitutional guarantee for those who experience marginalization, backwardness, exclusion, restriction, differentiation, inequality in participation in politics and public life which originates from the continuous structural and socio-cultural inequality of society (discrimination), both formal and informal, in the public and private sphere, known as affirmative action.

Then, the Court has an opinion that there is no causal relationship (causal verband) between the argued loss and the article petitioned for review, because the article petitioned for review is only in the form of regulating the use of State Property in the context of issuing State Sharia Securities which is a policy option that is opened legal policy in the framework of managing state finances to increase the carrying capacity of the State Budget by using sharia-based financial instruments, which the

legislators deemed as having a great opportunity that has not been optimally utilized to finance national development. Furthermore, the State Sharia Securities are not detrimental to the state but instead benefit the state, especially in financing the State Revenue and Expenditure Budget, and state-owned goods which are used as underlying assets can still be used by the relevant agency because only the right to benefit is used as the underlying asset, there is no transfer of legal title and no physical transfer of goods is carried out, so that it does not interfere with the function of implementing the Government's duties.

Fourth, Verdict Number 140/PUU-VII/2009 concerning Judicial Review of Law Number 1/PNPS/1965 concerning the Prevention of Religious Abuse and/or Blasphemy. In their petition, the Petitioner argued that Article 1 of the Law on the Prevention of Blasphemy of Religion is discriminatory because it has given the state the right to determine "deviant interpretations" and "deviant religious activities" which are basically not entitled to be carried out by the state. This is because the state has no right to declare a false or deviant belief because the issue of belief is God's domain and the individual's private domain. Then, the petitioner also argued that Article 2 paragraph (1) and paragraph (2) of the Law on the Prevention of Blasphemy of Religion contradicts the principle of equality before the law and the principle of legal certainty. This is due to the existence of norms that can prohibit and dissolve religious activities deemed deviant by the Government. Such norms are a form of restraints from freedom of association, assembly and expression.

Furthermore, the petitioner argues that Article 3 of the Law on the Prevention of Blasphemy is considered discriminatory because it provides a threat of five years in prison for people, adherents and members of illegal organizations/sects and is a form of legal uncertainty. Finally, the petitioner argues that Article 4 letter a of the Law on the Prevention of Blasphemy of Religion which adds one Article 156a to the Criminal Code is deemed contrary to the 1945 Constitution. This is due to the immeasurable offenses of "hostility", "abuse" and "defamation" because it is related to the assessment process regarding the nature, feelings of religion, religious life, and worship which are subjective in nature.

Regarding the petitioner's argument above, the Court is of the opinion that the formulation of Article 1 of the Blasphemy Prevention Law which prohibits everyone from publishing different interpretations of religions in Indonesia is a form of preventive action from the possibility of horizontal conflict among Indonesians. Furthermore, the Court is of the opinion that the right to religion has also become a collective right of the community to be able to safely and safely practice their religious teachings without being disturbed by other parties. Therefore, the Court considers that religion in the context of individual human rights cannot be separated from the right of religion in the context of communal human rights. Then, the Court is of the opinion that the provisions in Article 2 paragraph (1) of the Law on the Prevention of Blasphemy of Religion which order the issuance of the SKB are correct because they were made based on the order of the Blasphemy Prevention Law. The Joint Decree (SKB) as ordered by Article 2 paragraph

(1) of the Law on the Prevention of Blasphemy of Religion, is not a statutory regulation (regeling) but a concrete stipulation (beschikking). But regardless of whether the decree is, the substance of the order of the Law on the Prevention of Blasphemy on this matter does not violate the constitution.

Furthermore, regarding the argument of the Petitioners regarding Article 2 paragraph (2) of the Law on Prevention of Blasphemy of Religion, the Court is of the opinion that the Petitioners have misinterpreted freedom of association, assembly, and expression as an immutable right. According to the Court, for the sake of public order, the rights to associate, assemble and express opinions can also be limited by law and given administrative sanctions.

Then, regarding the Petitioners' argument regarding the failure to fulfill the requirements of criminalization in the Law on Prevention of Blasphemy of Religion because the Law on the Prevention of Blasphemy cannot describe the criminal act referred to in precision (precision principle), the Court is of the opinion that it is not appropriate according to law. This is because Article 3 of the Law on the Prevention of Blasphemy cannot be interpreted separately from other articles which form an integral part of the Law on the Prevention of Blasphemy of Religion. So that interpretation and meaninglessness is possible when the Petitioners do not provide a complete construction of the Law on the Prevention of Blasphemy of Religion and only pay attention to certain norms or articles, bearing in mind that Article 3 of the Law on the Prevention of Blasphemy is an ultimum remedium, when

administrative sanctions as provided for in Article 2 of the Law on the Prevention of Blasphemy of Religion is ineffective.

Finally, the Court is of the opinion that Article 4 of the Blasphemy Prevention Law is a form of amendment to the Criminal Code, namely adding to Article 156a. The norms in Article 156a in letter a are legal norms that determine the sanctions for evil acts, whose evil character is inherent in the prohibited act, while the criminal nature arises because the act is evil. As for the evil nature, it is enmity, abuse and desecration of religion.

Fifth, Verdict Number 30/PUU-IX/2011 concerning Judicial Review of Law Number 7 of 1989 concerning the Religious Courts. In the petition, the Petitioner argued that the limitation of the authority of the Religious Courts in enforcing Islamic Civil Law alone is contrary to the 1945 Constitution because it prevents Muslims from carrying out Islamic religious law (syari'at) as a whole and totally to achieve the perfection of faith and reach the level of piety, and freedom of religion and worship according to the teachings of his religion. With regard to the petition, the Court stated the petition a quo ne bis in idem because the norms petitioned for review in the Petitioners' reasons, the articles of the 1945 Constitution which were used as the test stone, as well as the Petitioner were exactly the same as the petition that had been decided by the Court in Verdict Number 19/PUU-VI/2008, dated August 12, 2008.

Sixth, Verdict Number 46/PUU-VIII/2010 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage. The Petitioner argues that the obligation to register a marriage causes a marriage that is legal and in

accordance with the Islamic religious nuptials (religious norms) to be invalid according to legal norms. This then has an impact on the status of children who are born also illegitimate (children out of wedlock) according to legal norms in the Marriage Law so that they only have a civil relationship with their mother and cause legal uncertainty about the relationship between the child and the father. Apart from causing a psychological burden on the child due to the absence of acknowledgment from the father of his presence in the world, the Petitioner cannot claim the right to the husband's obligation to provide physical and mental support as well as the costs to care for and care for the child.

Regarding the argument of the petition, the Constitutional Court is of the opinion that the registration of marriage according to the statutory regulations is not a factor determining the validity of a marriage. Marriage registration is an administrative obligation that is required based on statutory regulations intended to guarantee protection, promotion, enforcement and fulfillment of human rights so that in this case marriage registration does not conflict with the 1945 Constitution.

Then with regard to children born out of wedlock, the Court is of the opinion that it is inappropriate and unfair when the law stipulates that a child born from a pregnancy due to sexual relations outside of marriage only has a relationship with the woman as the mother. It is neither right nor fair if the law frees a man who engages in sexual relations which causes the pregnancy and birth of the child from his responsibility as a father and at the same time the law negates the rights of the child to that man as the father.

The legal consequence of the birth law incident due to pregnancy, which is preceded by sexual relations between a woman and a man, is a legal relationship in which there are reciprocal rights and obligations, the legal subject of which includes the child, mother and father. Therefore, the relationship between a child and a man as the father is not solely due to a marriage bond, but can also be based on evidence of a blood relationship between the child and the man as the father. Thus, regardless of the procedure/administration of marriage, children born must receive legal protection.

Seventh, Verdict Number 38/PUU-IX/2011 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage. The Petitioner argued that the reason "between husband and wife continually disputes and quarrels" as one of the reasons that can be used as a basis for divorce does not guarantee protection, legal certainty and justice for the wife. The Petitioner further argued that most wives were sacrificed in domestic disputes and quarrels, even when the husband was the person who caused the dispute and quarrel, for example the husband had an affair (backstreet) with another woman and then left the joint residence.

Regarding the argument of the petition, the Court is of the opinion that the explanation of Article 39 paragraph (2) letter f of the Marriage Law along the phrase, "Between husband and wife continually disputes and quarrels [...]" actually provides a solution when a marriage no longer provides benefit, because the marriage is no longer in line with the purpose of marriage as stated in Article 1 of the Marriage Law and does not provide legal certainty

and justice as referred to in Article 28D paragraph (1) of the 1945 Constitution. The Court further argues that the Petitioner's argument is inaccurate and untrue because Article 28H paragraph (2) of the 1945 Constitution is a provision regarding affirmative action, while the position of husband and wife in marriage according to the Marriage Law is balanced vide Article 31 paragraph (1) of the Marriage Law, so it does not require special treatment such as affirmative action.

Eighth, Verdict Number 64/PUU-X/2012 concerning Review of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. The Petitioner argues that the provisions of Article 40 paragraph (1) and (2) of the a quo Law have violated the Petitioner's constitutional right to obtain information regarding joint assets (gono-gini) obtained during a marriage that is deposited in a bank in the event that a divorce suit is filed and shared assets (gono-gini) in a civil court.

Furthermore, the Petitioner argues that the provisions of the a quo Article have provided space for one of the parties whose name is registered as a bank customer to control and or transfer part of and/or fully shared assets acquired during the marriage without the other party knowing, so that it may cause one of the parties to can arbitrarily take the rights of the other party, while the other party may lose part and or all of his rights to joint property (gono-gini) acquired during the marriage.

Furthermore, in their petitum the petitioner requests the Constitutional Court to conditionally decide the article being reviewed.

Regarding this argument, the Court is of the opinion that the exception clause in the protection of customer data must also be opened for the benefit of the civil court related to joint assets, because joint property is joint property of husband and wife, so husband and/or wife must receive protection for their rights and not may be taken arbitrarily by either party. Therefore, in order to guarantee legal certainty, the Court is of the opinion that the provisions of Article 40 paragraph (1) of the Banking Law must be interpreted as "Banks are required to keep information about their depositing customers and their deposits confidential, except in the cases referred to in Article 41, Article 41A, Article 42, Article. 43, Article 44 and Article 44A as well as for the purposes of the judiciary regarding joint assets in divorce cases."

Ninth, Verdict Number 93/PUU-X/2012 concerning Review of Law Number 21 of 2008 concerning Sharia Banking. The Petitioner argues that the provisions of Article 55 paragraph (1) of the a quo Law have created legal uncertainty because between paragraphs (1) and (2) there is a contradiction. Paragraph (1) explicitly regulates that if a dispute occurs in Sharia Banking, it must be carried out within the Religious Courts, whereas paragraph (2) gives the parties bound by a contract an option to choose which court to implement in the event of a dispute in Islamic Banking. So it can be assumed that the parties may choose whether they want to be in the Religious Courts, or in the General Courts, even in other judiciary circles that are given the freedom by paragraph (2), as long as it is stated in the contract. This contradiction then gave rise to concerns in the a quo Law so that it

contained provisions in paragraph (3) which did not need to be published if there was no paragraph (2).

Regarding the arguments for the petition, the Court is of the opinion that the choice of forum to resolve disputes in Islamic banking will ultimately lead to legal uncertainty as a result of overlapping authority to judge because there are two courts that are given the authority to resolve sharia banking disputes. whereas in another Law (Law on Religious Courts) it is explicitly stated that religious courts are given the authority to resolve sharia banking disputes including sharia economic disputes.

Tenth, Verdict Number 86/PUU-X/2012 concerning Judicial Review of Law Number 23 Year 2011 regarding Zakat Management. In his petition, the Petitioner argued that Articles 5, 6 and 7 of the a quo Law had led to the centralization of national zakat management through the National Amil Zakat Agency and had the potential to kill 300 Amil Zakat Institutions in Indonesia. Furthermore, Articles 17, 18 and 19 lead to the subordination of the Amil Zakat Institution under the National Amil Zakat Agency. The requirements for the Amil Zakat Institution must be in the form of an Islamic organization that is discriminatory and can kill most Amil Zakat Institutions which are in the form of a foundation. Article 18 paragraph (2) a quo requires that the establishment of the Amil Zakat Institution must obtain a recommendation from the National Amil Zakat Agency which simultaneously acts as the operator of zakat. The Petitioner also argued that the provisions of Article 38 in conjunction with Article 41 a quo has the potential to criminalize amil zakat who does not have a permit from the authorized official.

Regarding the argument for the centralization of zakat management, the Court is of the opinion that the establishment of a national zakat, infaq and alms management institution by the Government which is integrated (synergized) with existing and/or future amil institutions does not impede citizens' rights to, among other things, build society, nation and state; believe in belief; free in association and assembly; and develop himself as a human being with dignity and must be interpreted in the context of strengthening and/or synergizing zakat, infaq and alms services that have been carried out by zakat management institutions formed by the community and by individual amil.

Regarding the arguments for the subsequent petition, the Court is of the opinion that the word "assist" in Article 17 of the Zakat Management Law which according to the Petitioners resulted in the subordination of the position of the Amil Zakat Institution under the National Amil Zakat Agency is inappropriate if interpreted in the context of discrimination and is a form of opened legal policy from legislators which according to the Court can be justified by the 1945 Constitution. The Court assessed that the Petitioners were not hindered by their rights to continue to carry out the collection, distribution and utilization of zakat as had been implemented by the Petitioners so far. The Court is of the opinion that Article 18 paragraph (2) letters a and b of the Zakat Management Law, which requires that the Amil Zakat Institution be registered as an Islamic social organization or in the form of a legal entity, results in injustice because it denies the existence of institutions or individuals who have acted as amil zakat.

Furthermore, the Court is of the opinion that the requirements in letter a and letter b must be read in one unit which is an option or alternative. Regarding the last argument, the Court is of the opinion that organizing the implementation of zakat by the state is not against the 1945 Constitution, however obstruction of citizens' rights in paying zakat due to the inaccessibility of government services in implementing the provisions of the a quo Law according to the time stipulated in the Law itself, is the result of the formulation of norms in Article 38 and Article 41 of the a quo Law which is sociologically inaccurate, because it does not take into account social realities in the field. Therefore, the Court is of the opinion that the phrase, "Everyone" in Article 38 and Article 41 of Law 23/2011 is contrary to the 1945 Constitution as long as the phrase is not meant to exclude associations of people, individual Muslim leaders (alim ulama), or administrators/takmir of mosques/musholla in a community and area that have not been reached by the Amil Zakat Agency and the Amil Zakat Institution, and have notified the zakat management activities concerned to the authorized official.

Eleventh, Verdict Number 65/PUU-XI/2013 concerning Review of Law Number 17 of 2012 concerning Cooperatives. The Petitioner argued that Article 93 paragraph (5) and Article 120 paragraph (1) letter j of the Cooperative Law contradicts the 1945 Constitution of the Republic of Indonesia because it limits the application of sharia economics by prohibiting the implementation of the mudharabah and musyarakah contracts because both are forms of business to invest in business in real sector. In fact, in

Article 87 paragraph (3) of the Cooperative Law, it is stated that cooperatives can run businesses on the basis of sharia economic principles.

The application loses its object because the article petitioned for review has been considered and decided in Verdict Number 28/PUU-XI/2013. Moreover, through the Verdict Number 28/PUU-XI/2013, the Constitutional Court canceled all of Law Number 17 of 2012 and reimposed Law Number 25 of 1992 concerning Cooperatives.

Twelfth, Verdict Number 68/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage. The Petitioner argues that the provisions of Article 2 paragraph (1) of the a quo Law do not fulfill the right to equality before the law because in its implementation it creates various kinds of interpretations, thus causing differences in treatment between one citizen and another citizen. Furthermore, the provisions of the a quo Article cause uncertainty regarding interfaith and belief marriages at the level of legislation and implementation, where it is found in various judges 'decrees, differences in the judges' attitudes regarding interfaith and belief marriages. The Petitioner in his petitum requests the Constitutional Court to decide conditionally by interpreting the article being reviewed.

With regard to the arguments for the petition, the Court is of the opinion that in exercising its rights and freedoms, including to marry and form a family, every citizen is obliged to comply with the restrictions stipulated by law vide Article 28J paragraph (2) of the 1945 Constitution. In this case, the state has a role in providing guidelines to ensure legal certainty of life together within the ties of marriage.

Thirteenth, Verdict Number 30-74/PUU-XII/2014 concerning Review of Law Number 1 of 1974 concerning Marriage. In his petition, the Petitioner argued that the provisions of Article 7 paragraph (1) and (2) of the Marriage Law create legal uncertainty regarding the age limit of marriage in Indonesia, especially at the age limit of marriage for women who are actually no longer appropriate in its regulation, especially in protecting the rights of girls. The Petitioner requests in his petitum that the Constitutional Court decide unconstitutional on the article being reviewed.

Regarding the argument of the petition, the Court is of the opinion that the minimum age limit for marriage is the domain of the legislators (open legal policy). wherein the Court further stated that if the Court was asked to set a minimum age limit, this would only limit efforts to change policies by the state in the future.

Fourteenth, Verdict Number 12/PUU-XIII/2015 concerning Review of Law Number 34 of 2014 concerning Hajj Financial Management. The Petitioner argues that, with the enactment of the provisions of Article 6 paragraph (1), (2), (3), (4) and (5), Article 8 paragraph (1) and (2), Article 12 paragraph (1), (2) and (3) and Article 50 of the Hajj Financial Management Law has taken the initial deposit for the Hajj Implementation Fee and additional value from the initial deposit to the Hajj Financial Management Agency. This, the Petitioner continued, is a form of violation of the protection of property rights and does not guarantee legal certainty. Furthermore, the Petitioner also argues that the financial management of Hajj using the rupiah has created legal uncertainty given the declining rupiah exchange rate, so

the Petitioner is of the opinion that the deposit of Hajj Pilgrimage Fees must be valued at the US Dollar exchange rate. The Petitioner in his petition asked the Constitutional Court to conditionally decide the articles being reviewed.

Regarding the arguments for the petition, the Court is of the opinion that the payment of an initial deposit or BPIH installments is appropriate because the payment is intended to relieve prospective pilgrims and is not a form of arbitrary expropriation of property rights, but is a form of custody based on a wakalah contract to be managed by sharia management, professional and trustworthy as well as non-profit. Then, the use of the rupiah currency in the management of hajj finance is one form of the mandatory use of the rupiah currency in the territory of the Republic of Indonesia and provides fair legal certainty because the provisions of Article 50 of the a quo Law regulate the administrative, accounting and financial reporting processes for hajj and not regarding the payment of Hajj Pilgrimage Management Costs.

Fifteenth, Verdict Number 13/PUU-XIII/2015 concerning Judicial Review of Law Number 13 Year 2008 concerning the Implementation of Hajj. In his petition, the Petitioner argued that the enactment of Article 4 of the a quo Law could reduce the opportunity for those who "have not yet performed the hajj" to perform the said worship. Furthermore, the Petitioner argues that the enactment of Article 5 of the a quo Law is detrimental to the applicant's constitutional right to guarantee legal certainty and protection of property rights if the phrase “paying the cost of carrying out the Hajj” is not interpreted as paying the cost of organizing Hajj in the current year or is interpreted as meaning that waiting list pilgrims are required to pay the initial deposit for the

Hajj Pilgrimage Implementation Fee. Legal certainty guarantees for waiting list pilgrims are also harmed as a result of the enactment of Article 30 paragraph (1) of the a quo Law. The Petitioner also argued that in practice all Hajj Guidance Groups collect additional fees beyond the Cost of Organizing the Hajj on the pretext that the allocation of funds from Hajj Implementation Costs is insufficient. In his petitum, the petitioner asked the Constitutional Court to conditionally decide which articles to be reviewed.

Regarding the argument of the petition stating that those who are allowed to perform Hajj are people who have not yet performed Haj, the Court is of the opinion that if the Government prohibits Muslims from carrying out their worship, especially those who have already had pilgrimage, it would violate the guarantee of freedom to have a religion and worship according to Article 29 paragraph (2) of the 1945 Constitution. Regarding the applicant's next argument, the Court is of the opinion that the professional and accountable arrangement of the haj pilgrimage which is related to the effectiveness and utility of funds originating from (participation) of the community cannot be said to be an act of arbitrarily expropriating citizens' assets.

The administration of the hajj pilgrimage by the government needs to be managed professionally and accountably (with community participation) for the benefit of the haj pilgrims with an independent supervisory agency that can give consideration to the improvement of the haj pilgrimage. Finally, the Court is of the opinion that public participation in organizing the haj pilgrimage is in accordance with the rights of citizens to develop themselves

through fulfilling their basic needs and to advance themselves in fighting for their rights collectively.

Sixteenth, Verdict Number 69/PUU-XIII/2015 concerning Review of Law Number 5 of 1960 concerning Basic Agrarian Principles and Law Number 1 of 1974 concerning Marriage. The Petitioner argues that the provisions of Article 21 paragraph (1) and (3), Article 36 paragraph (1) of the Basic Agrarian Law and Article 29 paragraph (1), paragraph (3) and (4) and Article 35 paragraph (1) of the Company Law has impaired the applicant's constitutional rights to reside and have a good living environment and not to be treated discriminatively by the state just for marrying a foreign citizen. In his petitum, the petitioner asked the Constitutional Court to conditionally decide the articles being reviewed.

Regarding the argument of the petition, the Court is of the opinion that the principle of nationality in the Basic Agrarian Law is not possible and is intended to prevent foreign citizens from owning private land. This principle concerns the rights of Indonesian citizens to own the earth (land), water and space in the territory of the Republic of Indonesia. In this case, the State has the authority to control for the interests and welfare of the Indonesian people. So if the Petitioner's petition is granted, the Court is of the opinion that it will be detrimental to many parties, which to some extent includes the Petitioner. Then, with regard to the marriage agreement, the Court is of the opinion that the existing provisions only regulate marriage agreements made before or at the time the marriage is taking place, whereas in fact there is a phenomenon of husband and wife who for some reason just felt the need to make a

Marriage Agreement while in the marriage bond which limits the freedom of 2 (two) individuals to do or when to do "agreement".

Seventeenth, Verdict Number 46/PUU-XIV/2016 concerning Judicial Review of Law Number 1 of 1946 concerning Criminal Law Regulations or the Criminal Code in conjunction with Law Number 1958 concerning Declaring the Enactment of Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territories of the Republic of Indonesia. In his petition, the Petitioner argues that the provisions of Article 284 paragraphs (1), (2), (3), (4) and (5), Article 285 and Article 292 of the Criminal Code are unable to reach prosecution for cases of adultery outside of marriage, rape of men, as well as same-sex sexual immorality for adult and child offenders. Furthermore, the petitioner argues that the failure to accommodate these actions in the provisions of the a quo Article creates a legal vacuum and causes moral damage to society and threatens family institutions. The petitioners in their petitum asked the Constitutional Court to conditionally decide which articles to be tested so as to expand those articles.

Regarding the petition, the Court is of the opinion that the norms petitioned for review do not contradict the 1945 Constitution. The Court considers that the a quo petition is against the legality principle which is strictly applied in criminal law and in the context of in concreto cases, the use of analogy is prohibited. In this case, the Court is of the opinion that it is not appropriate to expand the meaning contained in the norms of criminal law. Furthermore, the Court stated that the Court's stance did not mean rejecting the idea of "reform" or stating that the norms in the Criminal Code were

complete. Regarding whether it is necessary or not complete, it is the full authority of the legislators. Therefore, the Petitioners' idea of "renewal" should have been submitted to the legislators.

Eighteenth, Verdict Number 5/PUU-XV/2017 concerning Review of Law Number 33 of 2014 concerning Halal Product Guarantee. The Petitioner argues that the part considering letter b, Article 1 number 2, Article 3 letter a, Article 4 (halal certification obligation) jo. Article 1 point 1 and Article 18 paragraph (2) of the Halal Product Guarantee Law will make it difficult for the Petitioner to obtain and/or consume certain products which according to the Petitioner are needed but according to Islam are categorized as haram. In his petitum, the petitioner pleaded with the Constitutional Court to conditionally decide the articles being tested. Regarding the petition, the Court is of the opinion that the petition is unclear or obscure (obscuur libel) because the petitum formulation in the petition is unusual and confusing and inconsistent with the posita.

Nineteenth, Verdict Number 22/PUU-XV/2017 concerning Review of Law Number 1 of 1974 concerning Marriage. In his petition, the Petitioner argued that age differentiation between men and women was a tangible manifestation of not attaining equality in law and constituting a form of discrimination. The provisions of Article 7 paragraph (1) Halal Product Guarantee have the potential to cause the loss of girls' rights, such as education, and also open up opportunities for child exploitation. Regarding the Court's position regarding open legal policy, the Petitioner is of the opinion that although a provision is an open legal policy, however, if the

provision contradicts the 1945 Constitution, then the Court should decide that this is a violation of constitutional rights. The Petitioner requests in his petitum that the Constitutional Court conditionally decide the article being reviewed.

Regarding the argument of the petition, the Court is of the opinion that even though the determination of the minimum age limit for marriage is an open legal policy, the a quo policy must not treat citizens differently, solely because of differences in sex or gender. The provisions of the a quo Article constitute a discriminatory legal policy, however, the Court cannot automatically determine the minimum age limit for marriage. The Court views the need for a change in the policy on age limits for marriage as a result of the increase in the number of child marriages.

Twentieth, Verdict Number 8/PUU-XVII/2019 concerning Judicial Review of Law Number 33 of 2014 concerning Halal Product Guarantee. In his petition, the Petitioner argued that without any restrictions on the phrase "followers of religion" in the "Considering" section b of the Halal Product Guarantee Law and the word "society" in Article 3 letter a of the Halal Product Guarantee Law becomes "adherents of the Muslim religion" and "Muslim community", causing the Petitioner to be prevented from consuming haram food/drinks or using drugs or other items that contain elements that are prohibited. In addition, the Petitioner argued that the norm for the word "product" in Article 4 of the Law on Halal Product Guarantee which the Petitioner considered had created legal uncertainty because the norm for the

word "Product" according to the Petitioner had expanded the scope of its regulation to include legal professional services (advocate).

The Petitioner also argued that the inclusion of the label "not halal" on products originating from prohibited materials indicates that the product concerned is not allowed or prohibited. If the applicant has to consume or use a product that is not halal is something that is prohibited, then it will violate the applicant's constitutional right to live in prosperity.

Furthermore, the Petitioner argued that there was no legal certainty, whether by the expiration of the 2 (year) period in Article 65, the Government may no longer issue implementing regulations. As an implication of “the failure of the Government to issue implementing regulations” within 2 (two) years, the Halal Product Guarantee Law is no longer valid because it “cannot be enforced”.

In his petitum, the petitioner asked the Constitutional Court to conditionally decide which articles to be reviewed.

Regarding the first argument, the Court has an opinion that the enactment of the a quo Law in no way prevents the non-Muslim community from obtaining goods or products that use elements that are not halal. Moreover, the enactment of the Halal Product Guarantee Law does not prohibit business actors or producers from producing non-halal products as long as these products are marked as “non-halal”.

Then, regarding the argument for the second petition, the Court has an opinion that the word "service" in Article 4 must be linked to food, drink,

medicine, cosmetics, chemical products, biological products, genetically engineered products, as well as any useable goods used, used or utilized by society as a unified understanding. This means that services that are not related to the various products mentioned above do not become part of the meaning of "product" in Article 1 point 1 of the Halal Product Guarantee Law.

Then, regarding the argument for inclusion of the label "not halal", the Court is of the opinion that the inclusion is intended to inform the wider community so that people can choose between halal and non-halal products. Thus, there is no norm in the Halal Product Guarantee Law that prohibits producers from producing and marketing non-halal products as long as they are labeled “non-halal”. Regarding the petitioner's argument regarding Article 65 of the Halal Product Guarantee Law, the Court is of the opinion that this matter is a matter of norm implementation and is not a matter of norm constitutionality, so it is not the Court's authority to judge it.

Finally, with regard to the Petitioner's argument regarding the postponement of Article 67 of the Halal Product Guarantee Law on the grounds that there are no implementing regulations for the a quo law, the Court is of the opinion that this argument is groundless because this is the domain of the authority of the legislators, especially the Government in implementing it appropriately. effective provisions of the Halal Product Guarantee Law.

In summary, the twenty verdicts can be seen in the table below:

Table 2. Judicial Review with the Substance of Islamic Law in 2003-2019

No.	Verdict	Date	Petition Reasons	Petition Character	Court Opinion	Injunction
1	12/PUU-V/2007 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	October 3, 2007	Reviewed Norms: • Article 3 paragraph (1) and (2) • Article 9, • Article 15, and • Article 24 of Marriage Law Touchstone: • Article 28B paragraph (1), • Article 28E paragraph (1), • Article 28I paragraph (1) and (2), and • Article 29 paragraph (1) and (2) of the 1945 Constitution Theorem: The a quo provision contradicts Islamic marriage	Questioning the state intervention in the implementation of Islamic law	Islam intends to gradually curb polygamy in order to maintain the dignity of women. Therefore, the state (ulil amri) has the authority to determine the conditions that must be met by its citizens who wish to practice polygamy for the sake of the public benefit.	Rejected

			law because it reduces the applicant's right to freedom of worship (polygamy) and is discriminatory against Muslims.			
2	19/PUU-VI/2008 concerning Judicial Review of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts	August 12, 2008	Reviewed Norms: • Article 49 paragraph (1) of the Law on Religious Courts Touchstone: • Article 28E paragraph (1), • Article 28I paragraph (1) and (2), and • Article 29 paragraph (1) and (2) of the 1945 Constitution Theorem: • The a quo article limits the scope of validity of Islamic law by not including	Request for the containing of Islamic law into positive law	• The petitioner's posita and petitum are incompatible where in his posita the applicant asks for additional authority, while in his petitum the petitioner asks for cancellation. • The Court stated that it is not authorized to increase the absolute competence of the Religious Courts.	Rejected

			punishment (jinayat) thus restricting Muslims from enforcing Islamic religious law (syari'at) as a whole (kaffah).		Indonesia is neither a religious country nor a secular state, so that Islamic law cannot be enforced kaffah, but later Islamic law becomes a source of national law in addition to other laws.	
3	143/PUU-VII/2009 concerning Judicial Review of Law Number 19 of 2008 concerning State Sharia Securities	May 7, 2010	Reviewed Norms: • Article 10 paragraph (1) and (2), and • Article 11 paragraph (1) of the SBSN Law Touchstone: • Article 28H paragraph (2), and • Article 34 paragraph (3) of the 1945 Constitution	Questioning the administration in the implementation of Islamic law	• The use of Article 28H paragraph (2) of the 1945 Constitution as a touchstone is inappropriate because it relates to affirmative action. • There is no causal verband between the argued loss and the	Rejected

			Theorem: • The use of State Property as the underlying asset for the issuance of State Sharia Securities (SBSN) has pledged the state assets as the underlying asset for the issuance of the Government of the Republic of Indonesia SBSN. • The Government's action has impaired the Petitioner's constitutional rights because with the enactment of the a quo Article, the State is no longer able to fully guarantee services, especially services in the		article petitioned for testing, because the article petitioned for review is only in the form of regulation on the use of State Property in the context of issuing State Sharia Securities which is an opened legal policy. • SBSN does not harm the state but actually benefits the state, especially in financing the state budget, and state-owned goods used as underlying assets can still be used and there is	

			field of higher education.		no transfer of legal title and physical transfer of goods.	
4	140/PUU-VII/2009 concerning Judicial Review of Law Number 1/PNPS/1965 concerning the Prevention of Religious Abuse and/or Blasphemy	April 19, 2010	Reviewed Norms: • Article 1, • Article 2 paragraph (1) and (2), • Article 3 and Article 4 of Law on the Prevention of Religious Blasphemy Touchstone: • Article 1, paragraph 3), • Article 27 paragraph (1), • Article 28D paragraph (1), • Article 28E paragraph (1), (2) and (3), • Article 28I paragraph (1) and (2), and	Questioning the state intervention in the implementation of Islamic law	• Article 1 of the Law on the Prevention of Religious Blasphemy is a form of preventive action for horizontal conflicts in society. • Article 2 paragraph (1) of the Law on the Prevention of Religious Blasphemy which orders the issuance of the SKB is correct because it was made on the order of the Law on the Prevention of Religious Blasphemy	Rejected

			• Article 29 of the 1945 Constitution Theorem: • Article 1 of the Law on the Prevention of Religious Blasphemy of is discriminatory because it gives the state the right to determine “deviant interpretations” and “deviant religious activities”. • Article 2 paragraph (1) and paragraph (2) of the Law on the Prevention of Religious Blasphemy is against the principle of equality before the law and the principle of legal certainty because it		• With regard to Article 2 paragraph (2) of the Law on the Prevention of Religious Blasphemy, the Petitioners have misinterpreted freedom of association, assembly, and issuance of opinions which basically can be limited by law and given administrative sanctions • Article 3 of the Law on the Prevention of Religious Blasphemy must be defined as an integral part of the Law on the Prevention of	

			can prohibit and dissolve religious activities deemed deviant by the Government. • Article 3 of the Law on the Prevention of Blasphemy of Religion is discriminatory because it provides a penalty of five years imprisonment for adherents or followers of a banned organization/sect and is a form of legal uncertainty because it will criminalize the right to freedom of religion. • Article 4 letter a of the Law on the Prevention of Religious Blasphemy which adds one Article 156a to the		Religious Blasphemy. • Article 4 of the Law on the Prevention of Religious Blasphemy is a form of amendment to the Criminal Code, namely adding to Article 156a	

			Criminal Code is considered contrary to the 1945 Constitution because the offenses of “hostility”, “abuse” and “defamation” are difficult to measure because they are subjective in nature.			
5	30/PUU-IX/2011 concerning Judicial Review of Law Number 7 of 1989 concerning Religious Courts	June 27, 2012	Reviewed Norms: • Article 49 paragraph (1) of the Law on the Prevention of Religious Blasphemy Touchstone: • Article 28E paragraph (1), • Article 28I paragraph (1) and paragraph (2), and • Article 29 paragraph (1) and paragraph (2) of the	Request for the containing of Islamic law into positive law	Not Considered (ne bis in idem with verdict 19/PUU-VI/2008)	Unacceptable

			1945 Constitution Theorem: • The limitation of the authority of the Religious Courts on enforcing Islamic Civil Law and not including jinayat alone prevents Muslims from practicing Islamic syari'at in a kaffah manner			
6	46/PUU-VIII/2010 concerning Judicial Review of Law Number 1 of 1974 on Marriage	February 17, 2012	Reviewed Norms: • Article 2 paragraph (2), and • Article 43 paragraph (1) of the Marriage Law Touchstone: • Article 28B paragraph (1) and (2) of the 1945 Constitution Theorem:	Questioning the state intervention in the implementation of Islamic law	• Marriage registration is an administrative obligation and is not a factor in the validity of the marriage. • It is not appropriate and unfair for an out-of-wedlock child to only have a relationship with	Partially Granted

			• The obligation to register a marriage causes a valid marriage according to religious norms to be invalid and affects the status of the child born to be invalid so that it only has a civil relationship with the mother besides causing a psychological burden on the child because there is no recognition from his/her father.		his mother and to free the man who caused the pregnancy and birth of the child from his responsibilities as a father. Therefore, the relationship between the child and the father does not only arise because of marriage, but can also be based on evidence of a blood relationship..	
7	38/PUU-IX/2011 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	March 27, 2012	Reviewed Norms: • Elucidation of Article 39 paragraph (2) letter f of the Marriage Law Touchstone:	Questioning the state intervention in the implementation of Islamic law	• The elucidation of Article 39 paragraph (2) letter f of the UUP as long as the phrase, "Between husband and	Rejected

			• Article 28D paragraph (1), and • Article 28H paragraph (2) of the 1945 Constitution Theorem: • The reason "between husband and wife continually disputes and quarrels" as one of the reasons that can be used as a basis for divorce does not guarantee protection, legal certainty, and justice for the wife does not regulate who caused the dispute and quarrel.		wife continually disputes and quarrels [...]" actually provides a solution when a marriage is no longer beneficial. • The Petitioner's argument is inaccurate as a provision regarding affirmative action, while the position of husband and wife is balanced vide Article 31 paragraph (1) of the Company Law.	
8	64/PUU-X/2012 concerning Judicial	August 29, 2013	Reviewed Norms: • Article 40 paragraph (1)	Questioning the administration in the	The exception clause in the protection of customer data	Partially Granted

	Review of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking		and (2) of the Banking Law Touchstone: • Article 28G paragraph (1), and • Article 28H paragraph (4) of the 1945 Constitution Theorem: • The a quo article violates the right to obtain information regarding joint assets (gono-gini) kept in a bank, in the event that a divorce and sharing of joint assets (gono-gini) is filed. • The a quo article provides space for parties whose names are registered as bank customers to control	implementation of Islamic law	must also be opened for the benefit of civil courts related to joint assets to ensure legal certainty and protection of property rights.	

			and / or transfer joint assets acquired during marriage without the other party knowing.			
9	93/PUU-X/2012 concerning Judicial Review of Law Number 21 of 2008 concerning Islamic Banking	August 29, 2013	Reviewed Norms: • Article 55 paragraph (2) and (3) of the Sharia Banking Law Touchstone: • Article 28D paragraph (1) of the 1945 Constitution Theorem: • Article a quo creates legal uncertainty because between paragraphs (1) and (2) there is a contradiction regarding the forum.	Questioning the administration in the implementation of Islamic law	The choice of forum will cause legal uncertainty as a result of overlapping judicial powers between the two courts, while the Religious Courts Law explicitly states that religious courts are given the authority to resolve sharia banking disputes including sharia economic disputes.	Partially Granted

			• The contradiction gave birth to the provisions of paragraph (3) which do not need to be published if there is no paragraph (2).			
10	86/PUU-X/2012 concerning Judicial Review of Law Number 23 of 2011 concerning Zakat Management	October 31, 2013	Reviewed Norms: • Article 5, • Article 6, • Article 7, • Article 17, • Article 18, • Article 19, • Article 38, and • Article 41 of the Zakat Management Law Touchstone: • Article 28C paragraph (2), • Article 28D paragraph (1),	Questioning the administration in the implementation of Islamic law	• The establishment of BAZNAS does not obstruct the constitutional rights of citizens as requested and must be interpreted in the context of synergizing zakat, infaq and alms services that have been carried out by zakat management institutions formed by the community.	Partially Granted

			• Article 28E paragraph (2) and (3), and • Article 28H of the 1945 Constitution Theorem: • Articles 5, 6 and 7 centralize the management of national zakat through BAZNAS and have the potential to kill 300 LAZ in Indonesia. • Articles 17, 18 and 19 give rise to subordination of LAZ under BAZNAS. • The LAZ requirement must be in the form of a discriminatory Islamic mass organization and can kill		• The word "assist" in Article 17 of the Zakat Management Law is not appropriate if it is interpreted in the context of discrimination and is a form of opened legal policy. • Article 18 paragraph (2) letter a and letter b of the Zakat Management Law which requires that LAZ must be registered as an Islamic social organization or in the form of a legal entity resulting in injustice	

			most LAZ in the form of a foundation. • Article 18 paragraph (2) requires the establishment of LAZ to obtain a recommendation from BAZNAS which also acts as the zakat operator. • Article 38 in conjunction with Article 41 has the potential to lead to the criminalization of amil zakat who does not have a permit from the authorized official.		because it denies the existence of institutions or individuals that have acted as amil zakat. in one unit which is an option or alternative. • The establishment of norms in Article 38 and Article 41 of the Law a quo is sociologically inaccurate, because it does not take into account social realities on the ground. Therefore, the phrase, "Everyone" in Article 38 and Article 41 of Law 23/2011 is contrary to	

					the 1945 Constitution as long as the phrase is not interpreted as excluding associations of people, individual Muslim figures (alim ulama), or administrators/takmir of mosques/musholla. in a community and area that has not been reached by BAZ and LAZ, and has notified the said zakat management activities to the authorized official.	
11	65/PUU-XI/2013	May 28, 2014	Reviewed Norms:	Request for the	Petition for Loss of Objects	Unacceptable

	concerning Judixial Review of Law Number 17 of 2012 concerning Cooperatives		• Article 93 paragraph (5), and • Article 120 paragraph (1) letter j of the Cooperative Law Touchstone: • Article 28D paragraph (1), • Article 28E paragraph (1), • Article 29 paragraph (2), and • Article 28I paragraph (2) of the 1945 Constitution Theorem: • The a quo article restricts the application of sharia economics by prohibiting the implementation of the mudharabah and	containing of Islamic law into positive law		

			musyarakah contracts because both are forms of business to invest in the real sector.			
12	68/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	June 18, 2015	Reviewed Norms: • Article 2 paragraph (1) of the Marriage Law Touchstone: • Article 27 paragraph (1), • Article 28B paragraph (2), • Article 28D paragraph (1), • Article 28E paragraph (1) and (2), • Article 28I paragraph (1) and (2), • Article 28J paragraph (2), and • Article 29H paragraph (2) of	Questioning the state intervention in the implementation of Islamic law	In exercising his rights and freedom to carry out a marriage and form a family, every citizen is obliged to comply with the restrictions set out by law vide Article 28J paragraph (2) of the 1945 Constitution. The state here has a role in providing guidelines to ensure legal certainty in marriage.	Rejected

			the 1945 Constitution Theorem: • The a quo article does not fulfill the right to equality before the law because it creates discrimination. • The a quo article causes uncertainty regarding interfaith marriages.			
13	30-74/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	June 18, 2015	Reviewed Norms: • Article 7 paragraphs (1) and (2) of the Marriage Law Touchstone: • Article 28B paragraph (2), and • Article 28I paragraph (2) of the 1945 Constitution Theorem:	Questioning the state intervention in the implementation of Islamic law	The minimum age limit for marriage is the domain of legislators (open legal policy), and will limit any attempts to change policies by the state in the future if the Court sets a minimum age limit.	Rejected

			• The a quo article creates legal uncertainty regarding the age limit of marriage in Indonesia, especially for women who are no longer suitable to protect the rights of female child.			
14	12/PUU-XIII/2015 concerning Judicial Review of Law Number 34 of 2014 concerning Hajj Financial Management	October 20, 2015	Reviewed Norms: • Article 6 paragraphs (1), (2), (3), (4) and (5), • Article 8 paragraph (1) and (2), • Article 12 paragraphs (1), (2) and (3), and • Article 50 of the Hajj Financial Management Law Touchstone: • Article 28D paragraph (1),	Questioning the administration in the implementation of Islamic law	• The payment of the initial deposit or BPIH installments is appropriate because it is intended to relieve potential pilgrims and is a form of safekeeping based on the wakalah contract. • The use of the rupiah currency in the	Rejected

			• Article 28G paragraph (1), and • Article 28H paragraph (4) of the 1945 Constitution Theorem: • The provisions of Article a quo have taken BPIH initial deposit and additional benefit value from initial deposit to BPKH and constitute a violation of property rights and do not guarantee legal certainty. • Hajj financial management using the rupiah creates legal uncertainty and should be priced at an exchange rate of US Dollar.		management of hajj finance is a form of mandatory use of the rupiah currency in the territory of the Republic of Indonesia and provides fair legal certainty because the provisions of Article 50 of the a quo Law regulate the administration, accounting and financial reporting processes of hajj and not BPIH deposits.	

15	13/PUU-XIII/2015 concerning Judicial Review of Law Number 13 of 2008 concerning the Implementation of Hajj Pilgrimage	October 20, 2015	Reviewed Norms: • Article 4 paragraph (1), • Article 5, • Article 23 paragraph (2), and • Article 30 paragraph (1) of the Law on the Implementation of Hajj Pilgrimage Touchstone: • Article 28D paragraph (1), • Article 28E paragraph (1), • Article 28G paragraph (1), • Article 28H paragraph (4), and • Article 28I paragraph (1) of the 1945 Constitution Theorem:	Questioning the state intervention in the implementation of Islamic law	• If the Government prohibits Muslims from carrying out their worship, especially for those who have already had pilgrimage, it will violate the guarantee of freedom of religion and worship. • The arrangement for organizing the haj pilgrimage cannot be said to be an arbitrary expropriation of property. • Public participation in organizing the haj pilgrimage is in	Rejected

			• Article 4 of the a quo Law can reduce opportunities for those who “have not yet gone to Hajj”. • Article 5 of the a quo Law is detrimental to the applicant's constitutional right to guarantee legal certainty and protection of property rights. • Article 30 paragraph (1) of the a quo law is detrimental to the guarantee of legal certainty for waiting list pilgrims.		accordance with the rights of citizens to develop themselves through fulfilling their basic needs and to advance themselves in fighting for their rights collectively.	
16	69 / PUU-XIII / 2015 concerning Judicial Review of Law	October 27, 2016	Reviewed Norms: • Article 21 paragraph (1) and (3) and	Questioning the administration in the implementation of	• The principle of nationality in the Basic Agrarian Law does not	Partially Granted

	Number 5 of 1960 concerning Basic Agrarian Law and Law Number 1 of 1974 concerning Marriage		• Article 36 paragraph (1) of the Basic Agrarian Law • Article 29 paragraph (1), paragraph (3) and (4), and • Article 35 paragraph (1) of the Marriage Law Touchstone: • Article 28D paragraph (1), • Article 27 paragraph (1), • Article 28E paragraph (1), and • Article 28H paragraph (1) and paragraph (4) of the 1945 Constitution Theorem: • The provisions of the a quo Article prejudice the applicant's right to reside	Islamic law	allow and is intended to prevent foreign ownership of land rights. If the request is granted, it will hurt many parties. • The existing provisions only regulate the marriage agreement made before or at the time of the marriage to limit the freedom of 2 (two) individuals to do or when to enter into an “agreement”.	

			and have a good living environment and not to be discriminated against by the state for marrying a foreign citizen.			
17	46/PUU-XIV/2016 concerning Judicial Review of Law Number 1 of 1946 concerning Criminal Law Regulations or the Criminal Code in conjunction with Law Number 1958 concerning Declaring the Enactment of Law Number 1 of 1946 concerning Criminal	December 14, 2017	Reviewed Norms: • Article 284 paragraphs (1), (2), (3), (4) and (5), • Article 285, and • Article 292 of the Criminal Code Touchstone: • Article 29 paragraph (1), • Article 28D paragraph (1), • Article 28B paragraph (1) and (2), • Article 28C paragraph (2), • Article 28G paragraph (1)	Request for the containing of Islamic law into positive law	The norms petitioned for review do not contradict the 1945 Constitution and the Court's attitude does not mean rejecting the idea of "reform" or stating that the norms in the Criminal Code are complete. Regarding whether it is necessary or not complete, it is the full authority of the legislators.	Rejected

	Law Regulations for the Entire Territories of the Republic of Indonesia		and (2), • Article 28H paragraph (1), • Article 28J paragraph (1) and (2) of the 1945 Constitution Theorem: • The provisions of the a quo Article do not cover cases of adultery out of wedlock, rape of men, or sexual immorality for both adult and child perpetrators, thus creating a legal vacuum.			
18	5/PUU-XV/2017 concerning Judicial Review of Law Number 33 of 2014	February 21, 2018	Reviewed Norms: • Section of considering letter b, • Article 1 figure 2,	Questioning the administration in the implementation of Islamic law	Petition is unclear or obscure (obscuur libel).	Unacceptable

	concerning Guarantee of Halal Products		• Article 3 letter a, • Article 4 in conjunction with Article 1 figure 1, and • Article 18 paragraph (2) of the JPH Law Touchstone: • Article 28D paragraph (1), • Article 28E, • Article 28F, • Article 28G paragraph (1), and • Article 28H of the 1945 Constitution Theorem: • Obligation of halal certification will make it difficult for the Petitioner to obtain and/or consume			

			products that are haram.			
19	22/PUU-XV/2017 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	December 13, 2018	Reviewed Norms: • Article 7 paragraph (1) of the Marriage Law Touchstone: • Article 27 paragraph (1) of the 1945 Constitution Theorem: • Age differentiation between men and women is a form of discrimination. • The a quo article has the potential to lose girls' rights and open up opportunities for exploitation. • Provisions in the form of an open legal policy that contradict the 1945	Questioning the state intervention in the implementation of Islamic law	The provisions of the a quo Article constitute a discriminatory legal policy, however, the Court cannot automatically determine the minimum age limit for marriage. The Court views the need to change the policy on age limits for marriage as a result of the increase in the number of child marriages.	Partially Granted

			Constitution should have been decided as a violation of constitutional rights.			
20	8/PUU-XVII/2019 concerning Judicial Review of Law Number 33 of 2014 concerning Guarantee of Halal Products	March 26, 2019	Reviewed Norms: • the phrase “adherents of religion” in the “Considering” section b, • the word “community” in Article 3 letter a, • the word "product" in Article 4, • the phrase "information is not halal" in Article 26 paragraph (2), as well • the period of issuance of government regulations in Article 65 in relation to	Questioning the administration in the implementation of Islamic law	• The phrase “followers of religion” in the “Considering” section b of the JPH Law and the word “community” in Article 3 letter a of the JPH Law becomes “adherents of the Muslim religion” and “Muslim community” in no way prevents non-Muslim communities from obtaining goods. or products that use	Rejected

			Article 67 of the JPH Law Touchstone: • Article 5 paragraph (2), • Article 28A, • Article 28C, • Article 28D paragraph (1), • Article 28E, • Article 28F, and • Article 28H paragraph (1) of the 1945 Constitution Theorem: • The phrase “followers of religion” in the “Considering” section b of the JPH Law and the word “community” in Article 3 letter a of the JPH Law becomes “adherents of		elements that are not halal and also do not prohibit business actors or producers from producing non-halal products as long as they are marked as “not halal”. • The word “service” in Article 4 must be linked to food, drink, medicine, cosmetics, chemical products, biological products, genetically engineered products, as well as consumer goods that are used, used or utilized by the	

			Islam" and "Muslim community", preventing the Petitioner from consuming haram products. • The word "product" in Article 4 of the JPH Law creates legal uncertainty because it expands the scope of its regulation to include legal professional services (advocates). • Inclusion of the label "not halal" indicates the product concerned is not allowed or prohibited. • Lack of legal certainty because the 2 (year) period in Article 65 has		community as a whole. This means that services that are not related to the products mentioned above are not part of the definition of "product". • The inclusion of the label "not halal" is intended to inform the general public so that people can choose between halal and non-halal products. • Regarding the argument regarding Article 65 of the JPH Law, it is a matter of	

			passed, the Government may no longer issue implementing regulations so that the JPH Law does not apply because it is "unworkable".		norm implementation and is not a matter of norm constitutionality so that it is not the authority of the Court. • The theorem of postponement of the enactment of Article 67 of the JPH Law is groundless because this is the domain of the legislators' authority, especially the Government, in implementing the JPH Law effectively.	

Source: Processed by the author, 2019.

Furthermore, based on the 20 (twenty) judicial review decisions that relate to the substance of Islamic law above, it can also be obtained data regarding which laws were tested and which categories of Islamic law normation were based on the positivation classification as explained in the previous section. The data is presented in the following table:

Table 3. Classification of Laws Related to the Substance of Islamic Law and the Number of Reviews

No.	Name of Law	Norming Category	Positivisation Category	Total Reviews
1	Criminal Code	Public	Jinayat	1
2	Law Number 5 of 1960 concerning Basic Agrarian Regulations	Private	Wirasah	1
3	Law Number 1/PNPS/1965 concerning the Prevention of Religious Abuse and/or Blasphemy	Public	Jinayat	1
4	Law Number 1 of 1974 concerning Marriage	Private	Munakahat, Wirasah	7
5	Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 concerning Religious Courts	Public	Mukhasamat	2
6	Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking.	Private	Muamalat in a special meaining	1
7	Law Number 13 of 2008 concerning the Implementation of Hajj Pilgrimage	Private	Muamalat in a special meaining	1
8	Law Number 19 of 2008 concerning	Private	Muamalat in a	1

	State Sharia Securities		special meaining	
9	Law Number 21 of 2008 concerning Sharia Banking	Private	Muamalat in a special meaining	1
10	Law Number 23 of 2011 concerning Zakat Management	Private	Muamalat in a special meaining	1
11	Law Number 17 of 2012 concerning Cooperatives	Private	Muamalat in a special meaining	1
12	Law Number 33 of 2014 concerning Halal Product Guarantee	Private	Muamalat in a special meaining	2
13	Law Number 34 of 2014 concerning Hajj Financial Management	Private	Muamalat in a special meaining	1
Total		Total Reviews		20
		Reviewed Law		13

Source: Processed by the author, 2019.

Referring to the table above, it can be seen that there are at least 13 (thirteen) laws related to the substance of Islamic law, both those explicitly stated as regulating Islamic law, which substantially contain Islamic legal material, or those linked by the applicant and/or the Court. The constitution with the substance of Islamic law. Based on the verdicts, of the 20 (twenty) decisions, 11 (eleven) decisions declared rejecting the petition, 6 (six) decisions stated partially granted, and 3 (three) decisions declared the application unacceptable.

Furthermore, when viewed based on the classification of the positivization of Islamic law as explained in the previous section, most of the laws tested can be categorized into the realm of private/civil law (Islam) which consists of 17 decisions, with details: (1) decisions regarding munakahat, a total of 7 decisions; (2) decisions regarding wirasah, a total of 1 verdict; and (3) decisions regarding

muamalat in a special meaning, a total of 8 decisions. As for the realm of public law (Islam), there are only 3 decisions, namely 2 decisions regarding jinayat 1 decision regarding mukhasamat. When viewed from the classification of norming, the type of classification most tested by the applicant is related to munakah and muamalat in a special sense. Then, if it is related to the quantity of laws tested, the Marriage Law is the law related to the substance of Islamic law (especially munakah) that has been tested the most compared to other laws.

When viewed from the types of laws tested, most of them are laws that explicitly relate to the substance of Islamic law, or at least clearly intersect with Islam (Marriage Law, Hajj Management Law, Hajj Financial Management Law, Zakat Management Law, Sharia Securities Law, Sharia Banking Law, Religious Court Law, Halal Product Guarantee Law, and Cooperative Law). In addition, there are several laws that do not actually regulate the material of Islamic law or are not shown specifically to Muslims, but are linked by the applicant with the substance of Islamic law, namely the Criminal Code and the Banking Law.

In the context of the Criminal Code review, as narrated above, the petitioners in the review asked the Constitutional Court to conditionally decide on articles related to adultery, rape and same-sex obscenity, so that the meaning of these articles can be expanded. For example, in the context of the article "adultery", the petitioners requested that the article be extended to apply not only to men or women who are married, but also to those who are not married. One of the reasons for this is based on the applicant's Islamic teachings which prohibit adultery, where adultery in Islam is not only committed by those who are married, but also against unmarried men and women.

Furthermore, in relation to the Banking Law, although the applicant does not mention Islamic legal material or quotes certain verses of the Al-Quran or Hadith, the applicant refers to the provisions in the Islamic Law Compilation (KHI), especially regarding the meaning of shared assets (assets in marriage). However, KHI itself is a compilation of various books of Fiqh which are contextualized with existing laws and regulations in Indonesia. Furthermore, the KHI has also been formalized through Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Laws, in which the KHI is intended as a guideline for society (especially Muslims) in solving problems in the fields of marriage, inheritance, and waqf.

The two examples of judicial review that are not related to the substance of Islamic law are quite interesting. As described above, the petitioner in the two trials tries to contextualize articles which do not contain or are intended to have the substance of Islamic law with the provisions in Islamic law. Moreover, in the two petitions for review above, the petitioners also petitioned that the article being tested was conditionally terminated by the Constitutional Court, by expanding the meaning of the articles being tested as described by the petitioner. Apart from the petitions in the two cases, there were at least 8 other cases as mentioned in the table above, in which the petitioner asked the Constitutional Court to decide conditionally, so that the meaning of the articles tested could be expanded. For more details, see the following table:

Table 4. Mapping of the Petition and Injunction in Judicial Review with the Substance of Islamic Law in 2003-2019

No.	Verdict	Petition	Injunction
1	12/PUU-V/2007 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Cancelling the articles being reviewed	Rejected
2	19/PUU-VI/2008 concerning Judicial Review of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts	Cancelling the articles being reviewed	Rejected
3	143/PUU-VII/2009 concerning Judicial Review of Law Number 19 of 2008 concerning State Sharia Securities	Cancelling the articles being reviewed	Rejected
4	140/PUU-VII/2009 concerning Judicial Review of Law Number 1/PNPS/1965 concerning the Prevention of Religious Abuse and/or Blasphemy	Cancelling the articles being reviewed	Rejected
5	30/PUU-IX/2011 concerning Judicial Review of Law Number 7 of 1989 concerning the Religious Courts	Cancelling the articles being reviewed	Unacceptable
6	46/PUU-VIII/2010 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Cancelling the articles being reviewed	Granted
7	38/PUU-IX/2011 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Cancelling the elucidation of the articles being	Rejected

		reviewed	
8	64/PUU-X/2012 concerning Judicial Review of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking	Petitioning to be conditionally decided on the articles being reviewed	Partially Granted
9	93/PUU-X/2012 concerning Judicial Review of Law Number 21 of 2008 concerning Sharia Banking	Cancelling the articles being reviewed	Partially Granted
10	86/PUU-X/2012 concerning Judicial Review of Law Number 23 of 2011 concerning Zakat Management	Cancelling the articles being reviewed	Partially Granted
11	65/PUU-XI/2013 concerning Testing of Law Number 17 of 2012 concerning Cooperatives	Cancelling the articles being reviewed	Unacceptable
12	68/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Petitioning to be conditionally decided on the articles being reviewed	Rejected
13	30-74/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Petitioning to be conditionally decided on the articles being reviewed	Rejected
14	12/PUU-XIII/2015 concerning Judicial Review of Law Number 34 of 2014 concerning Hajj Financial Management	Petitioning to be conditionally decided on the articles being reviewed	Rejected
15	13/PUU-XIII/2015 concerning Judicial Review of Law Number 13 of 2008 concerning the Implementation of Hajj	Petitioning to be conditionally decided on the articles being	Rejected

	Pilgrimage	reviewed	
16	69/PUU-XIII/2015 concerning Judicial Review of Law Number 5 of 1960 concerning Basic Agrarian Regulations and Law Number 1 of 1974 concerning Marriage	Petitioning to be conditionally decided on the articles being reviewed	Partially Granted
17	46/PUU-XIV/2016 concerning Judicial Review of Law Number 1 of 1946 concerning Criminal Law Regulations or the Criminal Code in conjunction with Law Number 1958 concerning Declaring the Enactment of Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territories of the Republic of Indonesia	Petitioning to be conditionally decided on the articles being reviewed	Rejected
18	5/PUU-XV/2017 concerning Judicial Review of Law Number 33 of 2014 concerning Guarantee of Halal Products	Petitioning to be conditionally decided on the articles being reviewed	Unacceptable
19	22/PUU-XV/2017 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Petitioning to be conditionally decided on the articles being reviewed	Partially Granted
20	8/PUU-XVII/2019 concerning Judicial Review of Law Number 33 of 2014 concerning Guarantee of Halal Products	Petitioning to be conditionally decided on the articles being reviewed	Rejected

Source: Processed by the author, 2019.

Based on the table above, it can also be seen that there is an increasing tendency for the petitioner to ask the Constitutional Court to conditionally decide which articles are being reviewed. It can be seen that since 2014 through Case Number 68/PUU-XII/2014 to Case Number 8/PUU-XVII/2019, the petitioners have always asked the Constitutional Court to decide conditionally. If based on the arguments of the petition as described above, and there is an increasing tendency to apply for a verdict conditionally in the petitum, it can be assumed that the petition is the petitioner's hope that the Constitutional Court can "enforce" Islamic law (in the context of Islamic law argued by the petitioner in his petition) through his verdicts. The next sub-discussion will look at whether the imposition of a verdict by the Constitutional Court (whether conditional or not) can strengthen or even weaken the petition of Islamic law in Indonesia.

In addition, based on the tables above, it can be seen that there are at least 3 (three) main patterns in the petition for judicial review which contain the substance of Islamic law, namely: (a) questioning the state intervention in the implementation of Islamic law; (b) questioning the administration in the implementation of Islamic law; and (c) request for the inclusion of Islamic law in positive law.

Table 5. Patterns of Petition for Judicial Review of the Law with the Substance of Islamic Law in 2003-2019

Petition Pattern	Total Verdicts
Questioning the state intervention in the implementation of Islamic law	8
Questioning the administration in the	8

implementation of Islamic law	
Request for containing of the Islamic law into positive law	4
Total Verdicts	20

Source: Processed by the author, 2019.

Based on the table above, it can be seen that the pouring of the substance of Islamic law into positive law has caused various responses by the community as evidenced by the examination of norms regulating the substance of Islamic law.

First Petition Pattern, questioning the state intervention in the implementation of Islamic law. The majority of this petition pattern focuses on adding to the conditions given by the state through the provisions in the law which regulates the substance of Islamic law. At this point, the pouring of Islamic law into positive law faces challenges, because Muslims as parties should comply with the provisions of Islamic law to receive an imposition attached to the norms that contain the substance of Islamic law. For example, in the context of marriage, the UUP imposes an obligation to record marriages that have been passed according to religious law, if they are to be considered valid and protected by the state.

Second Petition Pattern, questioning the administration in the implementation of Islamic law. This petition pattern focuses on the formal aspects of implementing Islamic law, which incidentally is not directly related to the substance of Islamic law. For example, in the context of the application for UUPA and UUP related to joint assets resulting from mixed marriages with different nationalities. In substance, Islamic law does not prohibit mixed marriages with different nationalities, but in the context of national law there are restrictions

related to land ownership by foreigners. Thus, the pattern of testing this model does not question the substance of Islamic law as outlined in positive law, but questions administration, whether directly related to the implementation of Islamic law, or administration indirectly as a result of the implementation of the substance of Islamic law.

Third Petition Pattern, request for the containing of Islamic law into positive law. This pattern is an interesting pattern to observe, that at least there are aspirations from the community to encourage the containing of the substance of Islamic law into the national legal system. The aspiration to contain the substance of Islamic law is manifested, for example, in the examination of the definition in the Criminal Code which is petitioned at the Constitutional Court to be interpreted as including the definition of adultery in Islamic law. This shows that actually the substance of Islamic law still has further opportunities to be translated into the national legal system.

2. The Impact of the Constitutional Court Verdict on the Dynamics of Development of Islamic Law in Indonesia

As explained above, in the context of Indonesian constitutional administration, the Constitutional Court has an important role as the guardian of the Constitution, the protector of the citizen's constitutional rights dan the sole interpreter of the Constitution, one of which is manifested in the authority of judicial review. Furthermore, in order to safeguard and protect the constitutional rights of citizens, the Constitutional Court may interpret the provisions of the 1945 Constitution of the Republic of Indonesia as well as the norms in a tested law, to then assess whether the norms are constitutional or not.

Referring to the previous discussions, it can be seen that there are several laws that do explicitly regulate the substance of Islamic law. This explicit arrangement has a logical consequence that the Constitutional Court can also indirectly assess the constitutionality of "the substance of Islamic law" which is formally stated in the various laws above. This is because although there are provisions which can be classified as the substance of Islamic law, these provisions are an integral part of a law which is positive law in Indonesia.

In fact, in the context of testing, according to Alfitri in his writing, the interpretation of the Constitutional Court regarding the norms of Islamic law in its decisions can be justified as siyasah syar'iyyah. Apart from this opinion, this research does not try to justify the position of the Constitutional Court as an interpreter of Islamic law in Indonesia. However, this research looks more at the true implications of the Constitutional Court's decision regarding the review of laws related to or associated with the substance of Islamic law on the development of Islamic law in Indonesia.

Can these decisions be said to strengthen or even weaken the application of Islamic law in Indonesia?

Starting from the findings regarding the pattern of reviewing various laws related to Islamic law as described in the previous section, this section describes how the Constitutional Court responds and decides on these various petitions. Of the 20 (twenty) decisions of the Constitutional Court as mentioned in the table above, there are 3 (three) decisions whose verdicts cannot be accepted, so that practically the Constitutional Court does not consider the principal of their petition. Thus, it can be said that the three decisions have no substantial implications for

the application of Islamic law in Indonesia. Furthermore, 17 (seventeen) other decisions, either granted or rejected, will be used as stones of analysis to see the significance of the Constitutional Court's decision on the application of Islamic law in Indonesia. The 17 (seventeen) decisions can be seen in the following table:

Table 6. Opinions of the Constitutional Court in Judicial Review Verdicts with the Substance of Islamic Law in 2003-2019

No.	Verdict	Court Opinion	Injunction
1	12/PUU-V/2007 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Islam intends to gradually curb polygamy in order to maintain the dignity of women. Therefore, the state (ulil amri) has the authority to determine the conditions that must be met by its citizens who wish to practice polygamy for the sake of the general benefit.	Rejected
2	19/PUU-VI/2008 concerning Judicial Review of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts	• The posita and petitum of the petitioner are incompatible where in their posita the petitioner asks for additional authority, while in his petitum the petitioner asks for cancellation. • The Court stated that it was not authorized to increase the absolute competence of the Religious Courts.	Rejected

		• Indonesia is neither a religious state nor a secular state so that Islamic law cannot be enforced in kaffah, but later Islamic law becomes a source of national law in addition to other laws.	
3	143/PUU-VII/2009 concerning Judicial Review of Law Number 19 of 2008 concerning State Sharia Securities	• The use of Article 28H paragraph (2) of the 1945 Constitution as a touchstone is inappropriate because it relates to affirmative action. • There is no causal verband between the argued loss and the article petitioned for examination, because the article petitioned for review is only in the form of regulation on the use of State Property in the context of issuing State Sharia Securities which is an opened legal policy. • SBSN is not detrimental to the state but	Rejected

		actually benefits the state, especially in financing the state budget, and state-owned goods used as underlying assets can still be used and there is no transfer of legal title or physical transfer of goods.	
4	140/PUU-VII/ 2009 concerning Judicial Review of Law Number 1/PNPS/Year 1965 concerning the Prevention of Religious Abuse and/or Blasphemy	• Article 1 of the Law on the Prevention of Blasphemy of Religion is a form of preventive action for horizontal conflicts in society. • Article 2 paragraph (1) of the Blasphemy Prevention Law which orders the issuance of the SKB is correct because it was made on the order of the Blasphemy Prevention Law. • Regarding Article 2 paragraph (2) of the Law on the Prevention of Blasphemy of	Rejected

		Religion, the Petitioners have misinterpreted freedom of association, assembly, and expressing opinions which basically can be limited by law and given administrative sanctions. • Article 3 of the Law on the Prevention of Blasphemy of Religion must be defined as an integral part of the Law on the Prevention of Blasphemy of Religion. • Article 4 of the Law on the Prevention of Blasphemy is a form of amendment to the Criminal Code, namely adding to Article 156a.	
5	46/PUU-VIII/2010 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	• Marriage registration is an administrative obligation and is not a factor in the validity of the marriage. • It is not appropriate and unfair for an out-of-wedlock child to only have a	Partially Granted • To grant the Petitioners' petition in part; • Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution as long as it is interpreted as eliminating

		relationship with his mother and to free the man who caused the pregnancy and birth of the child from his responsibilities as a father. Therefore, the relationship between the child and the father does not only arise because of marriage, but can also be based on evidence of a blood relationship.	civil relations with men which can be proven based on science and technology and/or other evidence according to the law which is related by blood as the father; • Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage does not have binding legal force as long as it is interpreted as eliminating civil relations with men which can be proven based on science and technology and/or other evidence according to the law which is related by blood as his father, so that the verse must be read, "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and/or other evidence by law to have blood relations, including relations civil society with his father's family"; • To reject the Petitioners' petition for the rest and

			remainder; • To order the containing of this verdict in the State Gazette of the Republic of Indonesia as appropriate;
6	38/PUU-IX/2011 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	• The elucidation of Article 39 paragraph (2) letter f of the UUP as long as the phrase, "Between husband and wife continually disputes and quarrels ..." actually provides a way out when a marriage no longer provides benefits. • The Petitioner's argument is inaccurate as a provision regarding affirmative action, while the position of husband and wife is balanced vide Article 31 paragraph (1) of the Company Law.	Rejected
7	64/PUU-X/2012 concerning Judicial Review of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking	The exception clause in the protection of customer data must also be opened for the benefit of civil courts related to joint assets to ensure legal certainty and protection of	Partially Granted • Article 40 paragraph (1) of the Banking Law is contrary to the 1945 Constitution of the Republic of Indonesia, as long as it is not interpreted as including

		property rights.	for the interests of the judiciary regarding joint assets in divorce cases; • Article 40 paragraph (1) of the Banking Law does not have binding legal force, as long as it is not interpreted including for judicial interests regarding joint assets in divorce cases; • To reject the Petitioner's petition for the rest and remainder; • To order the containing of this verdict in the State Gazette of the Republic of Indonesia properly.
8	93/PUU-X/2012 concerning Judicial Review of Law Number 21 of 2008 concerning Sharia Banking	The choice of forum will cause legal uncertainty as a result of overlapping judicial powers between the two courts, while the Religious Courts Law explicitly states that religious courts are given the authority to resolve sharia banking disputes including sharia economic disputes.	Partially Granted • Elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking is contrary to the 1945 Constitution of the Republic of Indonesia; • Elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking does not have binding legal force;

			• To order the containing of this verdict in the State Gazette of the Republic of Indonesia properly; • To reject the Petitioner's petition for the rest and remainder.
9	86/PUU-X/2012 concerning Judicial Review of Law Number 23 of 2011 concerning Zakat Management	• The establishment of BAZNAS does not obstruct the constitutional rights of citizens as requested and must be interpreted in the context of synergizing zakat, infaq and alms services that have been carried out by zakat management institutions formed by the community. • The word "assist" in Article 17 of the Zakat Management Law is not appropriate if it is interpreted in the context of discrimination and is a form of opened legal policy. • Article 18 paragraph (2) letter a and	Partially Granted • Article 18 paragraph (2) letters a and b of Law Number 23 of 2011 concerning Zakat Management which states, "a. registered as an Islamic community organization that manages the fields of education, preaching, and social affairs"; "b. in the form of a legal entity "is contrary to the 1945 Constitution of the Republic of Indonesia, as long as it is not interpreted as "registered as an Islamic community organization that manages the fields of education, da'wah, and social affairs, or a legal entity, it must obtain permission from the authorized official, while for associations of people, individual Muslim figures (alim ulama), or administrators/takmirs of

		letter b of the Zakat Management Law which requires that LAZ must be registered as an Islamic social organization or in the form of a legal entity results in injustice because it denies the existence of institutions or individuals that have acted as amil zakat so far, so it must be read in one entity which is an option or alternative. • The formulation of norms in Article 38 and Article 41 of the a quo Law is sociologically inaccurate, because it does not take into account social realities in the field. • Therefore, the phrase, "Everyone" in Article 38 and Article 41 of Law 23/2011 is contrary to the 1945 Constitution as long as the phrase is not interpreted as	mosques/musholla in a community and area that has not been reached by BAZ and LAZ, it is enough to notify the zakat management activities referred to to the authorized official"; • Article 18 paragraph (2) letters a and b of Law Number 23 of 2011 concerning Zakat Management which states, "a. registered as an Islamic community organization that manages the fields of education, preaching, and social affairs"; letter b which states, "in the form of a legal entity" does not have binding legal force, as long as it is not interpreted as "registered as an Islamic social organization that manages the fields of education, da'wah, and social affairs, or an institution with legal status must obtain permission from an authorized official, while for associations of people, individual Muslim figures (alim ulama), or administrators/takmirs of mosques/musholla in a community and area that has

		excluding associations of people, individual Muslim figures (alim ulama), or administrators/takmirs of mosques/musholla in a community and area that has not been reached by BAZ and LAZ, and has notified the said zakat management activities to the authorized official.	not been reached by BAZ and LAZ, it is enough to notify the zakat management activities referred to to the authorized official"; • Article 18 paragraph (2) letter d of Law Number 23 of 2011 concerning Zakat Management which states, "Having a sharia supervisor" is contrary to the 1945 Constitution of the Republic of Indonesia, as long as it is not interpreted, "Sharia supervisors, either internal or external."; • Article 18 paragraph (2) letter d of Law Number 23 of 2011 concerning Zakat Management which states, having a Sharia supervisor "does not have binding legal force as long as it is not interpreted," Sharia supervisor, either internal or external"; • The phrase, "Everyone" in Article 38 and Article 41 of Law Number 23 of 2011 concerning Zakat Management is contrary to the 1945 Constitution of the Republic of Indonesia, as long as it is not

			interpreted as "excluding associations of people, individual Muslim figures (alim ulama), or administrators/takmirs of mosques/musholla in a community and area that has not been reached by BAZ and LAZ, and has notified the said zakat management activities to the authorized official"; • The phrase, "Everyone" in Article 38 and Article 41 of Law Number 23 of 2011 concerning Zakat Management has no binding legal force as long as it is not interpreted as "excluding associations of people, individual Muslim figures (alim ulama), or mosques/musholla administrators/takmirs in a community and area that has not been reached by BAZ and LAZ, and has notified the said zakat management activities to the authorized official"; • To order the containing of this verdict in the State Gazette of the Republic of Indonesia as appropriate; • To reject the Petitioners' petition for the rest and

			remainder.
10	68/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	In exercising his rights and freedom to carry out a marriage and form a family, every citizen is obliged to comply with the restrictions set out by law vide Article 28J paragraph (2) of the 1945 Constitution. The state here has a role in providing guidelines to ensure legal certainty in marriage.	Rejected
11	30-74/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	The minimum age limit for marriage is the domain of legislators (open legal policy) and will limit any attempts to change policies by the state in the future if the Court sets a minimum age limit.	Rejected
12	12/PUU-XIII/2015 concerning Judicial Review of Law Number 34 of 2014 concerning Hajj Financial Management	• The payment of the initial deposit or BPIH installments is appropriate because it is intended to relieve prospective pilgrims and is a form of deposit based on the wakalah receipt.	Rejected

		• The use of the rupiah currency in the management of hajj finance is a form of mandatory use of the rupiah currency in the territory of the Republic of Indonesia and provides fair legal certainty because the provisions of Article 50 of the a quo Law regulate the administration, accounting and financial reporting processes of hajj and not BPIH deposits.	
13	13/PUU-XIII/2015 concerning Judicial Review of Law Number 13 of 2008 concerning the Implementation of Hajj Pilgrimage	• If the government prohibits Muslims from carrying out their worship, especially for people who have already had pilgrimage, it will violate the guarantee of freedom of religion and worship. • The arrangement for organizing the haj pilgrimage cannot be said to be an	Rejected

		arbitrary expropriation of property. • Community participation in organizing the Hajj is in accordance with the rights of citizens to develop themselves through fulfilling their basic needs and to advance themselves in fighting for their rights collectively.	
14	69/PUU-XIII/2015 concerning Judicial Review of Law Number 5 of 1960 concerning Basic Agrarian Regulations and Law Number 1 of 1974 concerning Marriage	• The principle of nationality in the LoGA does not allow and is intended to prevent foreign ownership of land rights. If the request is granted, it will hurt many parties. • The existing provisions only regulate the marriage agreement made before or when the marriage is taking place, limiting the freedom of 2 (two) individuals to do or when to enter into an "agreement".	Partially Granted • Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution of the Republic of Indonesia, as long as it is not interpreted as "At the time, before it takes place or while in the marriage bond, both parties with mutual consent may submit a written agreement legalized by a marriage registrar or notary public, after which the contents also apply to third parties, as long as the third party is involved"; • Article 29 paragraph (1) of Law Number 1 of 1974

			concerning Marriage has no binding legal force, as long as it is not interpreted "At the time, before it takes place or while in the marriage bond, the two parties with mutual consent may submit a written agreement which is legalized by a marriage registrar or notary public, after which the contents also apply to third parties as long as the third party is involved"; • Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution of the Republic of Indonesia, as long as it is not interpreted as "The agreement shall come into force since the marriage took place, unless the Marriage Agreement is stipulated otherwise"; • Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage does not have binding legal force, as long as it is not interpreted as "The agreement comes into force from the time the marriage takes place, unless it is stipulated otherwise

			in the Marriage Agreement"; • Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as "During the marriage takes place, the marriage agreement can be regarding marriage assets or other agreements, it cannot be changed or revoked unless from both parties there is an agreement to change or revoke, and the amendment or revocation is not detrimental to the third party"; • Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage has no binding legal force, as long as it is not interpreted as "During the marriage takes place, the marriage agreement can be regarding marital property or other agreements, it cannot be changed or revoked, unless from both parties. there is an agreement to change or revoke, and the change or revocation is not detrimental to the

			third party"; • To order the containing of this verdict in the State Gazette of the Republic of Indonesia properly; • To reject the Petitioners' petition for the rest and remainder.
15	46/PUU-XIV/2016 concerning Judicial Review of Law Number 1 of 1946 concerning Criminal Law Regulations or the Criminal Code in conjunction with Law Number 1958 concerning Declaring the Enactment of Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territories of the Republic of Indonesia	The norms petitioned for review do not contradict the 1945 Constitution and the Court's attitude does not mean rejecting the idea of "reform" or stating that the norms in the Criminal Code are complete. Regarding whether it is necessary or not complete, it is the full authority of the legislators.	Rejected
16	22/PUU-XV/2017 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	The provisions of the a quo Article constitute a discriminatory legal policy, however, the Court cannot automatically determine the minimum age limit for	Partially Granted • To grant the petitioners' petition in part; • To declare Article 7 paragraph (1), as long as the phrase "age of 16 (sixteen) years old" of Law

		marriage. The Court views the need to change the policy on age limits for marriage as a result of the increase in the number of child marriages.	Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force; • To declare the provisions of Article 7 paragraph (1) insofar as the phrase "16 (sixteen) years of age" Law Number 1 of 1974 concerning Marriage is still in effect until amendments are made in accordance with the grace period as determined in this decision; • To order lawmakers for a maximum period of 3 (three) years to make amendments to Law Number 1 of 1974 concerning Marriage, particularly with regard to the minimum age of marriage for women; • To order the cotaining of this Verdict in the State Gazette of the Republic of Indonesia properly; • To reject the Petitioners' petition for the rest/remainder.
17	8/PUU-XVII/2019 concerning Judicial Review of Law Number 33 of 2014	• The phrase “adherents of religion” in the Preamble section “Considering” of	Rejected

	concerning Guarantee of Halal Products	letter b of the JPH Law and the word "community" in Article 3 letter a of the JPH Law becomes "adherents of the Islam religion" and "Muslim community" in no way prevents non-Muslim people from getting goods or products that use non-halal elements and also do not prohibit business actors or producers from producing non-halal products as long as they are marked as "not halal". • The word "service" in Article 4 must be linked to food, drink, medicine, cosmetics, chemical products, biological products, genetically engineered products, and consumer goods that are used, used or utilized by the community as a whole. This means that services that are not related to the	

		products mentioned above are not part of the definition of "product". • The inclusion of the label "not halal" is intended to inform the general public so that people can choose between products that are halal and non-halal. • Regarding the argument regarding Article 65 of the JPH Law, it is a matter of norm implementation and is not a matter of norm constitutionality so that it is not within the authority of the Court. • The argument for the postponement of the enactment of Article 67 of the JPH Law is groundless because this is the domain of the legislators' authority, especially the Government, in implementing the JPH Law effectively.	

Source: Processed by the author, 2019.

Based on the table above, at least it can be seen that there are differences in the position of the Constitutional Court in interpreting articles related to the substance of Islamic law. Based on the 17 (seventeen) decisions above, there are 12 (twelve) decisions in which the Constitutional Court tends to refrain from issuing decisions, at least 5 (five) decisions in which the Constitutional Court chooses to interpret and decide the case on a condition basis. Furthermore, in the legal considerations in the various decisions above, the Constitutional Court also often uses the substance of Islamic law to consider the constitutionality of the articles being tested.

In Decision Number 12/PUU-V/2007, the Constitutional Court used the Islamic religious approach in its legal considerations. In fact, the Constitutional Court argued as follows:

Islamic teaching aims to gradually curb polygamy, which aims, among other things, so that in its implementation there is no abuse of men, and in order to maintain the dignity of women. [...]. To strengthen this opinion, the Constitutional Court also quoted several verses from the Koran such as Surat Ar-Ruum verse 21, An-Nisa verse 1, An-Nisa verse 3, and An-Nisa verse 129, and based it on the opinions of scholars such as Quraish Shihab and Huzaemah T. Yanggo presented before the trial.

Furthermore, with regard to the state's position to regulate, especially with regard to the terms of polygamy, the Constitutional Court stated in accordance with fiqh principles cited by Expert Humaezah T. Yanggo, namely "The government (state) manages its people according to its benefit" as ulil amri has the authority to determine the conditions that must be met by citizens who wish to

carry out the general benefit, especially to achieve the goal of a sakinah marriage. Apart from that, the Constitutional Court also cited various fiqh principles in its consideration.

In its injunction, the Constitutional Court stated that the petition was completely rejected. Nevertheless, it is an interesting fact where the Constitutional Court in this decision uses the substance of Islamic law to assess the constitutionality of the articles being tested. Although some of the considerations also refer to the opinions of experts who were presented before the trial. Furthermore, in this decision at least the Constitutional Court seems to strengthen the position of the state as ulil amri in the framework of regulating the terms of polygamy.

Then, in Decision Number 19/PUU-VI/2008 where the petitioner argued to expand the authority of the religious court to include Islamic criminal law (jinayat), as previously described, the Court was of the opinion that the Constitutional Court only acted as a negative legislator and did not have the authority to add content. regulations (positive legislators). In addition, the Constitutional Court also provided an explanation of the relationship between the state and religion in Indonesia, which states that Indonesia is not a religious state, but also not a secular state.

Furthermore, the Constitutional Court also stated the following:

> Indonesia is a country with the Almighty God that protects every religion to carry out the teachings of their respective religions. In relation to the basic philosophy of Pancasila, national law must guarantee the integrity of the ideology and integration of the state's territory, as well as build religious

tolerance that is just and civilized. Thus, national law can become a factor of integration which is a means of glueing and unifying the nation.

The Constitutional Court in its decision stated that it rejected the petition in its entirety. When compared with the previous rulings, in this decision not much of the substance of Islamic law was quoted in the legal considerations. The Court more considers the existing positive legal provisions, as well as clarifies the true nature of legal construction in Indonesia. In addition, the Constitutional Court also agrees that Islamic law is a material source as material for formal legislation, together with other sources of law.

Furthermore, in Decision Number 143 / PUU-VII / 2009 related to the examination of the State Sharia Securities Law (SBSN Law), although the concept of transactions in Islamic finance must be in accordance with sharia, in the main case it is not directly related to the substance of Islamic law. , especially with regard to Islamic economics. The problem raised by the Petitioner is more to the transfer of the collateral object (in this case, BMN) to a third party in the event of default. The Constitutional Court is also of the opinion that the use of BMN in the context of issuing SBSN is the opened legal policy of the legislators.194 Thus, although the SBSN Law has the substance of Islamic law, especially in the mualamah classification in a special sense, there is no substance in Islamic law discussed by the Constitutional Court in a quo verdict.

Then, in Decision Number 140/PUU-VII/2009 concerning the judicial review of the Religious Blasphemy Law which the applicant considered to be discriminatory and did not guarantee legal certainty, substantially not much of the substance of Islamic law was discussed by the Constitutional Court. In its

consideration, the Court indirectly emphasizes the relationship between the state and religion, in which the Court affirms that the principle of the Indonesian rule of law places the One and Only Godhead as the main principle, as well as the religious values that underlie the movement of the life of the nation and state, not the state which separating the relationship between religion and state. This is what the Court said to differentiate between a constitutional state in Indonesia and a Western law state, because religious values are also used as the basis for determining the constitutionality of a law. Furthermore, the Constitutional Court uses a human rights approach more than using a religious law approach (especially Islamic law) in making its decisions. However, in this decision the Constitutional Court seems to have provided an explicit affirmation of how the position of Islamic law is in legal construction in Indonesia.

Furthermore, in Decision Number 46/PUU-VIII/2010 regarding the examination of the Marriage Law, the petitioner considered that the requested norms had created legal uncertainty regarding the status of children born from marriages that were legal according to religion but were not recorded. The Court in this case did not even use a religious law approach. In its consideration, the Court emphasizes more on the human rights approach, especially with regard to guaranteeing legal certainty and justice for issues of status and civil relations of children born, not only from marriages that are legal according to religion, but more broadly, namely child born out of wedlock.

Then, in Decision Number 38/PUU-IX/2011 regarding the examination of the Marriage Law, the Petitioner argued that the requested norm, as one of the reasons for divorce, did not regulate who caused the dispute so that it violated the

guarantee of protection, legal certainty and justice for the wife. In its consideration, the Constitutional Court affirms the paradigm of Indonesian marriage which is not solely aimed at fulfilling the life necessity, but also in order to fulfill the teachings of God Almighty that exist in each religion. Whereas later, the Court used a religious law approach to reach its conclusions. This can be seen from how the Court uses an Islamic perspective in explaining the ratio of divorce, such as the purpose of marriage, which is to create a sakinah, mawaddah and rahmah family. However, in contrast to Decision Number 12/PUU-V/2007, the Court does not directly quote Islamic legal sources such as the Al-Qur'an, Hadith or the opinions of scholars in its decisions.

In Decision Number 64/PUU-X/2012 concerning the review of the Banking Law regarding the issue of confidentiality of customer data on joint assets in divorce cases, the Court uses a human rights approach in its legal considerations. This can be seen from how the Constitutional Court uses the argument that the limitations of the clause on the exclusion of confidentiality of customer data in criminal cases and civil cases between banks and their customers are contrary to the sense of justice, legal certainty and guaranteed protection of property rights as regulated in Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. However, the Court also refers to the provisions in the Islamic Law Compilation, although it is limited to explaining the definition of collective assets.

Furthermore, in Decision Number 93/PUU-X/2012 regarding the examination of the Sharia Banking Law regarding the choice of forum which is considered to have created legal uncertainty in the resolution of Islamic banking disputes, the Court did not use a religious law approach to reach its decision. In legal

considerations, the Court has only limitedly explained how the choice of a forum, which causes overlapping judicial powers, has violated the customer's right to obtain a guarantee of fair legal certainty. In this case, it can be said that the Court is of the opinion that the problem of the petitioned norm does not touch on the substance of Islamic law, but only deals with the formal problem of sharia banking dispute resolution, specifically regarding the authority to adjudicate.

In the decision Number 86/PUU-X/2012 regarding the examination of the Zakat Management Law, the Court emphasized that zakat is the realm of religion in the external forum, namely the external realm or the realm of implementing or practicing teachings in everyday life using physical media, either in the form of speech, behavior, or other actions, or by using media assets, so that they have social relations. Furthermore, the Court is of the opinion that zakat coincides with the objectives and basis of the state, namely advancing public welfare and realizing social justice for all Indonesian people, so that in this case the state has a role in realizing the implementation of effective and efficient management of zakat in a managerial and mandate manner in accordance with the teachings. Islam, so that it reaches those who are entitled.

This is because the Constitutional Court also introduces the concept of a religious welfare state which basically states that the state is not only entitled, but also has the obligation to create and/or advance general welfare that is both physical and mental. It is interesting then to look at the argument construction of the Constitutional Court in reaching a decision, which can be said to make the a quo conception one of the benchmarks for norm testing. This can be seen from how the Court assesses the norms of Article 5 paragraphs (1), (2), and (3), Article

6, Article 7 paragraph (1), (2), and (3) of the a quo Law regarding the establishment of a management institution. zakat by the Government, which according to the Court must be interpreted in the context of strengthening and/or synergizing zakat, infaq, and alms services, which are in accordance with this conception.

Then in Decision Number 68/PUU-XII/2014 regarding the examination of the Marriage Law, the Court emphasized that Indonesia is a country based on the one and only Godhead. The Court is of the opinion that marriage is an act that is closely related to religion. Furthermore, the Court explicitly mentions the position of religion as the basis for individual communities in their relationship with God Almighty, including in this case regarding how religion determines the validity of marriage. The a quo decision can be said to have confirmed the position of religion in the national legal system, especially regarding marriage.

In Decision Number 30-74/PUU-XII/2014 regarding the examination of the Marriage Law regarding the minimum age of marriage, the Court in its considerations uses a lot of Islamic legal perspective, although it also cites sources from Hindu Religious Law. This can be seen from how the Court quoted sources of Islamic religious law such as the Al-Qur'an, Hadith and the opinions of scholars. In relation to the minimum age limit for marriage, the Court affirmed this issue as an open legal policy by quoting M. Quraish Shihab's opinion, which basically stated that Islam does not specify a certain age for marriage, because it adapts to the development of society and its needs. Therefore, in reaching its decision, the Court also uses considerations from various aspects, such as social, economic and health.

So in this case it can be said that the a quo decision makes religious law a perspective in emphasizing the issue of age limits for marriage and at the same time affirming the state's position as ulil amri who has the authority to determine the policy according to the development and needs of society.

Then, in Decision Number 12/PUU-XIII/2015 regarding the review of the Hajj Financial Management Act, the Court's consideration in the a quo decision was based on state construction, in this case the government as the person in charge of organizing the haj pilgrimage. Therefore, in its considerations, the Court uses many benchmarks of effectiveness, efficiency and benefit in organizing the haj pilgrimage. In the a quo decision, it can be said that the Court has not used a religious law approach in its considerations, where in addition to using benchmarks in the context of implementation, the Court only assesses whether the requested norm violates the rules and is against the touchstone.

In Decision Number 13/PUU-XIII/2015 concerning the review of the Law on the Implementation of Hajj, the Court in its consideration used a human rights approach to arrive at its decision. This can be seen from how the Court decided the a quo case in the construction of the state's responsibility in guaranteeing freedom of religion and worship as well as the responsibility of the Government in organizing the haj pilgrimage. The Court here only assesses whether the requested norm is contrary to the 1945 Constitution.

Furthermore, in Decision Number 69/PUU-XIII/2015 concerning the Judicial Review of the Marriage Law and Basic Agrarian Law, the Court in its consideration, with regard to marriage, focuses more on sociological considerations regarding the emergence of new needs and legal problems in

society. In this case, the Court does not use a religious law approach at all. Nevertheless, the Court emphasized that even though the marriage agreement is based on the principle of freedom of contract, the contents of the agreement must not be contradicting one of them with religion. So here it can be said that the Court has affirmed the position of religion as a fence from the principle of freedom of contract, specifically in the context of a marriage covenant.

Then, in Decision Number 46/PUU-XIV/2016 concerning the review of Law Number 1 of 1946 concerning Criminal Law Regulations or the Criminal Code jo. Law Number 1958 concerning Enactment of Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territories of the Republic of Indonesia, the Court answered the Petitioners 'petition in the construction of criminal law as the domain of the legislators' authority. In this case the Court has the opinion that it does not have the legitimacy to formulate criminal law norms. However, the Court stated that there is no single religion that justifies adultery and also emphasizes that the regulation of adultery in the Criminal Code is incomplete. So here it can be said that the attitude of the Court on the one hand affirms that the legal vacuum of the limitation of the scope of the criminal act of adultery in the Criminal Code makes it possible to damage the system and social order, while on the other hand the Court is of the opinion that in terms of criminal law the Court is not authorized to formulate new norms.

In Decision Number 22/PUU-XV/2017 concerning the Judicial Review of the Marriage Law, the Constitutional Court uses a human rights approach in its legal considerations. This is certainly different from Decision Number 30-74/PUU-XII/2014 which uses a religious law approach in its considerations. In Decision

Number 22/PUU-XV/2017, the Court, although referring to the previous decision, in its consideration used international legal instruments, such as CEDAW, and even emphasized the need to synchronize the minimum age limit for marriage by legislators with the Child Protection Law in line with CEDAW.

Finally, in Decision Number 8/PUU-XVII/2019 regarding the examination of the Halal Product Guarantee Law, the Court uses the construction that the existence of the a quo Law aims to provide legal protection in the form of guaranteeing the halalness of products consumed or used by Muslims in accordance with the teachings. religion. In this case, the Court did not mention the substance of Islamic law, but rather on how the a quo Law did not violate the constitutional rights of the petitioner. On the other hand, it can be said that the Court has strengthened the implementation of Islamic law, specifically regarding halal guarantees, in the national legal system.

Of the 17 decisions above, the impact of the Constitutional Court decisions on the dynamics of the development of Islamic law can at least be categorized into 2 (two), namely weakening and strengthening. Regarding the impact of a decision, it depends on the perspective used by a person, whether using a literal perspective or a substantive perspective. For example, in Decision Number 46/PUU-VIII/2010 regarding the granting of the civil rights of children outside of marriage with their fathers when viewed from a literal perspective, it can be said that the a quo decision has weakened the development of Islamic law because it makes Islamic law look rigid and cannot adapt to it. development. On the other hand, when viewed from a substantialist perspective (al-maqashid as-sharia), the a quo decision has strengthened the development of Islamic law because it is in

line with one of the main objectives of the existence of Islamic law, namely the protection of descendants.

In more detail, to assess whether the judicial review decision at the Constitutional Court strengthens or weakens the dynamics of the development of Islamic law in Indonesia, two parameters can be used to assess the Constitutional Court decision which is the material object of this research, namely: (1) Islamic legal experts (Fuqaha) mindset; and (2) Maqashid Sharia mindset. The explanation of the two parameters is as follows:

a. Islamic Law Experts (Fuqaha) Mindset

In looking at Islamic law (sharia) in order to get an understanding of the message of the Qur'an and Sunnah, it is generally recognized that there are at least 3 (three) schools that characterize Islamic legal thought, namely: (1) traditionalist; (2) modernist; and (3) secular. The three schools referred to have various variants which in reality cannot be rigidly disaggregated, because they overlap, for example the phenomenon that not all sub-streams in traditionalists use a conservative mindset, and conversely not all sub-streams in modernists use a rational mindset. The existence of such complexity, so in this study only two sub-streams of thought are expected to represent the existence of traditionalists and modernists, while the sub-streams in the secular stream are not used by Researchers as parameters because philosophically they are not in accordance with the spirit of the First Principles of Pancasila and Article 29 of the 1945 Constitution of the Republic of Indonesia.

First, the traditionalist school has a main mindset that is textual or literal (skriptiualis). This means that in general this school puts forward the supremacy of

the text by looking at the grammatical aspects and literal meanings of the text in question, in this case the Qur'an and the Sunnah. Furthermore, this school is strictly adhering to the classification of the qath'i verses/narrations as well as the zhani verses/narrations. Such a mindset tends to be rigid in understanding the sacred message so that its application in the contemporary era becomes more difficult. In the realm of ijtihad, followers of this sect cling to the mainstream sects, so they have a tendency to apply the results of the ijtihad of the mazhab imams to answer actual problems in the midst of society. Taklid is the key word for this traditionalist school.

Second, the modernist school has a main rationalist mindset. This means that in general this school tries to prioritize rationality in understanding holy texts, and has loose ties to mainstream legal schools so that it is selective towards legal opinions from various schools of thought or carries out tarjih to solve actual legal problems in the midst of society.

The main mindset that exists in both schools in reality cannot be rigidly used to assess the flow concerned. This means that legal experts from the modernist school are sometimes more conservative in giving legal opinions than legal experts from the traditionalist school. The puritan spirit that accompanies the modernist school with the main slogan of returning to the Koran and the Sunnah sometimes makes it more conservative, while traditionalist currents that are guided by classical fiqh books, both in terms of the ijtihad method and the established fiqh principles, can actually provide legal opinions in accordance with the current context.

In order to assess the decision of the Constitutional Court as intended, the Researcher uses two criteria that can represent the existence of the two streams, namely: (1) literal; and (2) substantialist. Neither the traditionalist nor the modernist currents are in fact rigid in using this mindset. Literalists are basically a school of thought that adheres to the text, so that it does not give any other meaning when a text is clear (qath'i), while substantialists are basically a school of thought that puts forward the intent and purpose of a text so that it does not fully adhere to the sound of the text. but by looking at the various aspects that surround it (asbabun nuzul and asbabun wurud), space and time, as well as the goals to be achieved by sharia.

b. Islamic Maqashid Mindset

Maqasyid as-syari'ah in the Ushul Fiqh Dictionary consists of two words, namely maqasyid which means deliberate or purposeful and sharia means the way to a water source or a way to the main source of life. Maqasyid sharia thus is for the benefit of humans. Abu Ishaq al-Shatibi is of the view that the main purpose of sharia is to maintain and fight for three categories of law (daruriy, hajiy, and tahsiniy), namely ensuring that the benefit of the Muslims both in the world and in the hereafter is realized in the best way because God does for the good of his servants. If further elaborated according to Abu Ishaq al-Shatibi the objectives of Islamic law are to maintain: (1) religion, (2) soul, (3) intellect, (4) descent, and (5) property. This opinion is shared by other Islamic jurists. These five things in the literature are called al-maqasid al-khamsah or al-maqasid al-shariah.

The maslahah theory distinguishes maslahah into three, namely maslahah supported by text (maslahah muktabarah), maslahah that is contrary to text

(maslahah mulghah), problems that are neutral or there are no supporting arguments and there are no arguments to reject (maslahah mursalah). Maslahah mursalah according to Wahbah Zuhaili is a number of characteristics that are in line with the goal of syara ', but there is no certain argument from syara' that justifies or invalidates, by still stipulating the law on it will achieve benefit and will be denied damage from humans. Another term for maslahah mursalah is istishlah. Istishlah literally means looking for benefit, while in terminology it means drawing legal conclusions on a problem that has no text and no ijma 'which indicates the existence of permissibility or prohibition against it, but based on the consideration of pure benefit.

By using the two mindsets above, research can be carried out on the judicial review decision by the Constitutional Court, which is presented in the following table:

Table 7. Judgment of Judicial Review Verdicts by the Constitutional Court in 2003-2019 against the Dynamics of Development of Islamic Law

No.	Verdict	Petition Character	Court Opinion	Injunction	Islamic Law Experts (Fuqaha) Mindset	Islamic Maqashid Mindset
1	12/PUU-V/2007 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Questioning the state intervention in the implementation of Islamic law	Islam intends to gradually curb polygamy in order to maintain the dignity of women. Therefore, the state (ulil amri) has the authority to determine the conditions that must be met by its citizens who wish to practice polygamy for the sake of the general benefit.	Rejected	From a literalist perspective, the Constitutional Court's rejection of the petition for judicial review in the a quo case tends to be considered to weaken the implementation of polygamy which classical jurists allow legal status, without mentioning the detailed requirements on the criteria of justice as contained in the al-Qur'an. Then, from a	Strengthening, in the framework of providing protection for women and their offspring. Protection of offspring and protection of the honor of women is the goal of sharia and is one of the progressive steps of Islam in enhancing the status of women and children.

					rationalist/substantialist perspective it strengthens, because the criteria for justice in the Qur'an are still very abstract, so the details provided by ulil 'amri are closer to the implementation of Islamic law which fulfills the criteria of justice as the main condition for permissible polygamy.	
2	19/PUU-VI/ 2008 concerning Judicial Review of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989	Request for the containing of Islamic law in the positive law	• The posita and petitum of the petitioner are incompatible where in their posita the petitioner asks for additional authority, while in his petitum the petitioner asks for cancellation. • The Court stated that it was not	Rejected	Seen from a literalist and rationalist/substantialist perspective, the Constitutional Court's decision that rejects the examination of the a quo article tends to weaken the application of Islamic law, especially in the context of	Seen from the maqashid sharia, rejection of judicial review of one of the articles in the a quo law has the potential to minimize (weaken) one of the objectives of the existence of sharia, namely protection of

	concerning Religious Courts		authorized to increase the absolute competence of the Religious Courts. • Indonesia is neither a religious country nor a secular state, so that Islamic law cannot be enforced in kaffah, but later Islamic law becomes a source of national law in addition to other laws.		upholding Islamic law. Both are in line with the belief that the implementation of Islamic law for Muslims should ideally be carried out comprehensively, in which the Religious Court with comprehensive authority as long as it is in line with the principle of Islamic personality can actually provide justice for justice seekers, especially members of the Muslim community.	religion and protection of the soul. Sharia, which provides a legal framework for the settlement of violations of criminal cases and civil cases, will be more appropriate if the settlement is based on religious law.
3	143/PUU-VII/2009 concerning Judicial Review of Law Number 19 of 2008 concerning State Sharia Securities	Questioning the administration in the implementation of Islamic law	• The use of Article 28H paragraph (2) of the 1945 Constitution as a touchstone is inappropriate because it relates to affirmative action.	Rejected	Neutral, meaning that the refusal of testing the a quo law has no impact on the application of Sharia Principles in the issuance	Strengthening, in the framework of providing protection for property.

			• There is no causal verband between the argued loss and the article petitioned for examination, because the article petitioned for review is only in the form of regulation on the use of State Property in the context of issuing State Sharia Securities which is an opened legal policy. • SBSN is not detrimental to the state but actually benefits the state, especially in financing the state budget, and state-owned goods used as underlying assets can still be used and there is no transfer of legal title or physical transfer of goods.		of State Sharia Securities.	
4	140/PUU-VII/2009	Questioning the state	• Article 1 of the Law on the	Rejected	Seeb from a literalist and	Strengthening, in the

	concerning Judicial Review of Law Number 1/PNPS/Year 1965 concerning the Prevention of Religious Abuse and/or Blasphemy	intervention in the implementation of Islamic law	Prevention of Blasphemy of Religion is a form of preventive action for horizontal conflicts in society. • Article 2 paragraph (1) of the Law on the Prevention of Blasphemy of Religion which orders the issuance of the SKB is correct because it was made based on the order of the Blasphemy Prevention Law. • Regarding Article 2 paragraph (2) of the Law on the Prevention of Blasphemy of Religion, the Petitioners have misinterpreted freedom of association, assembly, and expressing opinions which basically can be limited by law and given administrative sanctions.		rationalist/substantialist perspective, State intervention in the prevention of religious abuse and/or blasphemy tends to strengthen the application of Islamic law, so that the rejection of judicial review of the a quo law is in line with the desire of the State to create intra and inter-religious harmony.	framework of providing protection for religion.

			• Article 3 of the Law on the Prevention of Blasphemy of Religion must be defined as an integral part of the Law on the Prevention of Blasphemy of Religion. • Article 4 of the Law on the Prevention of Blasphemy is a form of amendment to the Criminal Code, namely adding to Article 156a.			
5	30/PUU-IX/2011 concerning Judicial Review of Law Number 7 of 1989 concerning the Religious Courts	Request for the containing Islamic law in the positive law	Not Considered (ne bis in same as the verdict 19/PUU-VI/2008)	Unacceptable	Same as Number 2	Same as Number 2
6	46/PUU-VIII/2010 concerning Judicial Review of Law Number 1 of 1974 concerning	Questioning the state intervention in the implementation of Islamic law	• Marriage registration is an administrative obligation and is not a factor in the validity of the marriage.	Partially Granted	From a literalist perspective, granting civil rights to children out of wedlock is weakening the	Strengthening, in the framework of providing protection for offspring.

	Marriage		• It is not appropriate and unfair for an out-of-wedlock child to only have a relationship with the mother and to release the man who caused the pregnancy and birth of the child from his responsibilities as a father. Therefore, the relationship between the child and the father does not only arise because of marriage, but can also be based on evidence of a blood relationship.		application of Islamic law, because it can provide a way for children who have been adultery to get their rights as a legitimate child, which in a religious viewpoint has the potential to crash the concept of lineage which has implications for living, guardianship, and inheritance. However, when viewed from a rationalist/substantialist perspective, decisions that provide civil rights for children whose origins can be proven through science and technology provide more justice for the child whose religion itself affirms	

					that every birth of a child is holy, thus providing child protection by granting civil rights substantially strengthens the validity of Islamic law.	
7	38/PUU-IX/2011 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Questioning the state intervention in the implementation of Islamic law	• The elucidation of Article 39 paragraph (2) letter f of the UUP as long as the phrase, "Between husband and wife continually disputes and quarrels [...]" actually provides a way out when a marriage is no longer beneficial. • The Petitioner's argument is inaccurate as a provision regarding affirmative action, while the position of husband and wife is balanced vide Article 31 paragraph (1) of the	Rejected	From a literal perspective, the rejection of the petition for judicial review of one of the articles of the a quo law is weakening the application of Islamic law, because in fiqh munakahat talak is the right of the husband so that no reason is needed to do so. However, from a rationalist / substantialist perspective this rejection actually strengthens, because by keeping the a quo article in	Strengthening, in the framework of providing protection for religion, soul and honor.

			UUP.		effect, divorce becomes difficult to implement so that it is more in line with Islamic teachings which emphasize that the marriage relationship is a very strong bond (mitsaqaan ghalidan)	
8	64/PUU-X/2012 concerning Judicial Review of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking	Questioning the administration in the implementation of Islamic law	The exception clause in the protection of customer data must also be opened for the benefit of civil courts related to joint assets to ensure legal certainty and protection of property rights.	Partially Granted	From a liberalist and substantialist perspective it is neutral because it does not question the substance of Islamic law.	Strengthening, in the framework of providing protection for property.
9	93/PUU-X/2012 concerning Judicial Review of Law Number 21 of 2008 concerning Sharia Banking	Questioning the administration in the implementation of Islamic law	The choice of forum will lead to legal uncertainty as a result of overlapping judicial powers between the two courts, while the Law on Religious Courts explicitly states that religious courts are	Partially Granted	The removal of elucidation of Article 55 paragraph (2) of the a quo law seen from a literalist and substantialist perspective strengthens the validity of	Strengthening, in the framework of providing protection for property.

			given the authority to resolve sharia banking disputes including sharia economic disputes.		Islamic law in the field of special muamalah, because it strengthens the competence of the Religious Courts as courts that have the authority to accept, examine, decide and adjudicate cases in the field of sharia economics. Religious courts have a deep understanding of the sharia economy so that it is expected to be able to provide justice for justice seekers in the corridor of sharia economic law.	
10	86/PUU-X/2012 concerning Judicial Review of Law Number 23 of 2011 regarding	Questioning the administration in the implementation of Islamic law	• The establishment of BAZNAS does not obstruct the constitutional rights of citizens as requested and must be	Partially Granted	From both a literalist and a substantialist perspective, the a quo decision strengthens the validity of	Strengthening, in the framework of providing protection for property.

	Zakat Management		interpreted in the context of synergizing zakat, infaq and alms services that have been carried out by zakat management institutions formed by the community. • The word "assist" in Article 17 of the Zakat Management Law is not appropriate if it is interpreted in the context of discrimination and is a form of opened legal policy. • Article 18 paragraph (2) letter a and letter b of the Zakat Management Law which requires that LAZ must be registered as an Islamic social organization or in the form of a legal entity results in injustice because it denies the existence of institutions or		Islamic law because it provides flexibility for Muslims to pay zakat better.	

			individuals that have acted as amil zakat so far, so it must be read in one entity which is an option or alternative. • The formulation of norms in Article 38 and Article 41 of the Law a quo is sociologically inaccurate, because it does not take into account social realities on the ground. Therefore, the phrase, "Everyone" in Article 38 and Article 41 of Law 23/2011 is contrary to the 1945 Constitution, as long as the phrase is not meant to be interpreted as excluding associations of people, individual Muslim figures (alim ulama), or administrators/takmir of			

			mosques/musholla in a community and area that has not been reached by BAZ and LAZ, and has notified the zakat management activities concerned.			
11	65/PUU-XI/2013 concerning Judicial Review of Law Number 17 of 2012 concerning Cooperatives	Request for the containing of Islamic law in the positive law	Request for Loss of Objects	Unacceptable	Neutral	Neutral
12	68/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Questioning the state intervention in the implementation of Islamic law	In exercising his rights and freedom to carry out a marriage and form a family, every citizen is obliged to comply with the restrictions set out by law vide Article 28J paragraph (2) of the 1945 Constitution. The state here has a role in providing guidelines to ensure legal certainty in marriage.	Rejected	Laws that do not provide flexibility for inter-priest (different religions) marriages, both from a literalist and substantive perspective, strengthen the applicability of Islamic law. With the rejection of the request for judicial review of the a quo provisions,	Strengthening, in the framework of providing protection for offspring.

					this also strengthens it.	
13	30-74/PUU-XII/2014 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Questioning the state intervention in the implementation of Islamic law	The minimum age limit for marriage is the domain of legislators (open legal policy), and will limit any attempts to change policies by the state in the future if the Court sets a minimum age limit.	Rejected	From a literal perspective it weakens because in the viewpoint of jurisprudence there is no age limit in order to carry out a marriage. However, when viewed from a substantialist perspective it strengthens, because with the age limit of marriage, it will be more able to realize the goal of marriage, namely a happy and eternal family.	Strengthening, in the framework of providing protection for offspring.
14	12/PUU-XIII/2015 concerning Judicial Review of Law Number 34 of 2014 concerning Hajj Financial Management	Questioning the administration in the implementation of Islamic law	• The payment of the initial deposit or BPIH installments is appropriate because it is intended to relieve prospective pilgrims and is a form of deposit	Rejected	Management of hajj finance by the State, both from a literalist as well as a substantialist perspective, can strengthen the application of Islamic law,	Strengthening, in the framework of providing protection for property.

			based on the wakalah receipt. • The use of the rupiah currency in the management of hajj finance is a form of mandatory use of the rupiah currency in the territory of the Republic of Indonesia and provides fair legal certainty because the provisions of Article 50 of the a quo Law regulate the administration, accounting and financial reporting processes of hajj and not BPIH deposits.		because the State as an ulil amri in the framework of ensuring that the implementation of worship must be present to provide regulation and supervision, as well as the best management of Hajj.	
15	13/PUU-XIII/2015 concerning Judicial Review of Law Number 13 of 2008 concerning the Implementation of Hajj	Questioning the state intervention in the implementation of Islamic law	• If the government prohibits Muslims from carrying out their worship, especially for people who have already had pilgrimage, it will violate the guarantee of freedom of religion and worship.	Rejected	From both a literalist and a substantialist perspective this reinforces the enforceability of Islamic law for the same reasons as number 14	Strengthening, in the framework of providing protection for religion.

			• The arrangement for organizing the haj pilgrimage cannot be said to be an arbitrary expropriation of property. • Community participation in organizing the Hajj is in accordance with the rights of citizens to develop themselves through fulfilling their basic needs and to advance themselves in fighting for their rights collectively.			
16	69/PUU-XIII/2015 concerning Judicial Review of Law Number 5 of 1960 concerning Basic Regulations for Agrarian Principles and Law Number 1 of 1974 concerning Marriage	Questioning the administration in the implementation of Islamic law	• The principle of nationality in the Basic Agrarian Law does not allow and is intended to prevent foreign ownership of land rights. If the request is granted, it will hurt many parties. • The existing provisions only	Partially Granted	Neutral, because the State's right to make rules that impose limits for foreigners with regard to land ownership rights.	Strengthening, in the framework of providing protection for property.

			regulate the marriage agreement made before or when the marriage is taking place, limiting the freedom of 2 (two) individuals to do or when to enter into an "agreement".			
17	46/PUU-XIV/2016 concerning Judicial Review of Law Number 1 of 1946 concerning Criminal Law Regulations or the Criminal Code in conjunction with Law Number 1958 concerning Declaring the Enactment of Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territories of the Republic of Indonesia	Request for the containing of Islamic law into positive law	The norms petitioned for review do not contradict the 1945 Constitution and the Court's attitude does not mean rejecting the idea of "reform" or stating that the norms in the Criminal Code are complete. Regarding whether it is necessary or not complete, it is the full authority of the legislators.	Rejected	Neutral	Neutral

18	5/PUU-XV/2017 concerning Judicial Review of Law Number 33 of 2014 concerning Guarantee of Halal Products	Questioning the administration in the implementation of Islamic law	Petition is unclear or obscure (obscuur libel).	Unacceptable	-	-
19	22/PUU-XV/2017 concerning Judicial Review of Law Number 1 of 1974 concerning Marriage	Questioning state intervention in the implementation of Islamic law	The provisions of the a quo Article constitute a discriminatory legal policy, however, the Court cannot automatically determine the minimum age limit for marriage. The Court views the need to change the policy on age limits for marriage as a result of the increase in the number of child marriages.	Partially Granted	The age limitation in marriage according to a literalist perspective is to weaken the application of Islamic law which does not recognize age restrictions. Meanwhile, from a rationalist/substantialist perspective, it is to strengthen in order to achieve the goal of marriage itself. The high rate of early marriage has an impact on the marriage itself, with the high divorce	Strengthening, in the framework of providing protection for offspring.

					of early marriage actors.	
20	8/PUU-XVII/2019 concerning Judicial Review of Law Number 33 of 2014 concerning Guarantee of Halal Products	Questioning the administration in the implementation of Islamic law	• The phrase “followers of religion” in the “Considering” section b of the JPH Law and the word “community” in Article 3 letter a of the JPH Law becomes “adherents of the Muslim religion” and “Muslim community” in no way prevents non-Muslim communities from obtaining goods or products that use elements that are not halal and also do not prohibit business actors or producers from producing non-halal products as long as they are marked as “not halal”. • The word "service" in Article 4 must be linked to food, beverages, medicines,	Rejected	Halal guarantees from both literal and substantialist perspectives strengthen the validity of Islamic law. The rejection of the petition for judicial review thus confirms the validity of halal guarantee for goods and services.	Strengthening, within the framework of providing protection for religion and reason.

			cosmetics, chemical products, biological products, genetically modified products, as well as goods used, used, and or used by the community as a unified understanding. This means that services that are not related to the products mentioned above are not part of the definition of "product". • The inclusion of the label "not halal" is intended to inform the general public so that people can choose between products that are halal and non-halal. Regarding the argument regarding Article 65 of the JPH Law, it is a matter of norm implementation and is not a matter of norm constitutionality so that it is not within the			

			authority of the Court. • The argument for postponing Article 67 of the JPH Law is groundless because this is the domain of the legislators' authority, especially the Government in implementing the JPH Law effectively.			

Source: Processed by the author, 2019

Based on the description in the table above, it can be seen that there is no single assessment in assessing the implications of judicial review decisions by the Constitutional Court in the dynamics of the development of Islamic law. The assessment of whether the judicial review decision strengthens or weakens the enforceability of Islamic law will greatly depend on the frame of mind used to assess, whether it is with the framework of Islamic jurists (fuqaha), both literal and substantist, or using the framework of thinking maqasih sharia. Thus, no single conclusion can be reached in assessing the implications of the ruling by the Constitutional Court on the dynamics of the development of Islamic law in Indonesia.

CHAPTER V

CLOSING

A. Conclusion

Based on the elaboration and analysis above, the conclusions of this research are:

First, the manifestation of the containing of the substance of Islamic law into the national legal system can be identified based on categories in Islamic law, namely:

1. Islamic Private/Civil Law, which includes:

a. munakahat, regulates everything related to marriage, divorce, as well as its consequences, which can be seen as stated in Law Number 1 of 1974 concerning Marriage. In addition, the a quo Law has been further elaborated in a regulation at the level of Government Regulation.

b. wirasah (faraid), regulates all matters relating to inheritance, heirs, inheritance and inheritance distribution, which can be seen in its inclusion in the Compilation of Islamic Law in Presidential Instruction Number 1 of 1991 concerning Dissemination of Islamic Law Compilation Until now, there has been no regulation regarding inheritance which sui generis is regulated at the level of law.

c. muamalat, in a special sense, regulates material matters and rights over objects, the system of human relations in matters of

sale and purchase, leasing, lending and borrowing, associations, and so on, which can be seen in its containing in:

1) Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.
2) Law Number 21 of 2008 concerning Sharia Banking.
3) Law Number 40 of 2014 concerning Insurance.
4) Law Number 1 of 2016 concerning Guarantees.
5) Law Number 2 of 2009 concerning Indonesian Export Financing Institutions.
6) Law Number 1 of 2013 concerning Micro Finance Institutions.
7) Law Number 40 of 2007 concerning Limited Liability Companies.
8) Law Number 23 of 2011 regarding Zakat Management.
9) Law Number 41 of 2004 concerning Waqf.
10) Law Number 13 of 2008 concerning the Implementation of Hajj.
11) Law Number 34 of 2014 concerning Hajj Financial Management.

In addition to regulation at the level of law, the pouring of Islamic law into muamalah in a special sense is also included at the level of law implementation regulations, namely Government

Regulations, Presidential Regulations, Financial Services Authority Regulations and Bank Indonesia Regulations.

2. Islamic Public Law, which includes:

a. jinayat, which contains rules regarding actions that are punishable by punishments of both Jarimah Hudud and Jarimah Ta'zir, which can be seen as stated in the Aceh Qanun Number 6 of 2014 concerning the Law of Jinayat, where the regulation is based on the provisions of the Law. Number 11 of 2006 concerning Aceh Government.

b. al-ahkam as sulthaniyah, namely discussing issues related to the head of state, government, both central and regional governments, which can be seen in the formulation of the Election Law and the Regional Government Law.

c. siyar, namely regulating the affairs of war and peace, the arrangement of relations with adherents of religion and the state, which can be seen in the ratification of international instruments related to humanitarian law, which aims at realizing peace.

d. mukhasamat, regulates matters of justice, judiciary, and procedural law, which can be seen in Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 concerning Religious Courts, which in its absolute competence resolves cases of marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and sharia economics.

Second, the implications of judicial review decisions by the Constitutional Court on the dynamics of the development of Islamic law in the construction of state and religious relations in Indonesia can at least be seen from: (a) the pattern of petitions in judicial review of laws whose substance contains Islamic law; and (b) the impact of the Constitutional Court decisions on the dynamics of the development of Islamic law in Indonesia. The pattern of petition for judicial review which substance contains Islamic law, namely: (a) questioning state intervention in the implementation of Islamic law; (b) question administration in the implementation of Islamic law; and (c) request for the inclusion of Islamic law in positive law. The impact of the Constitutional Court decision on the dynamics of the development of Islamic law in Indonesia can be categorized into 2 (two), namely weakening and strengthening. Furthermore, the impact of the Constitutional Court's verdict whether it can be categorized as weakening or strengthening will greatly depend on the frame of mind used, whether it uses the framework of Islamic jurists (Fuqaha), either with a literalist or substantive perspective, or uses the Maqashid Sharia framework.

B. Suggestion

The suggestions that can be given are as follows:

1. There is a need to re-map the content of Islamic law that needs to be put into positive law in Indonesia.
2. In deciding the substance of Islamic law contained in positive law, the Constitutional Court should use a substantialist approach that adheres to al-maqashid as-sharia.

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