

CONSTITUTIONAL GUARANTEES REGIONAL REGULATIONS OF SHARIA IN INDONESIA

Sodikin

Faculty of Law University of Muhammadiyah Jakarta
KH Ahmad Dahlan Street Ciputat Tangerang Selatan
E-mail: sodikin.fh@umj.ac.id; Phone Number: (021) 7492962

Received: 05/04/2020; Reviewed: 20/07/2020; Accepted: 20/03/2021.

DOI: <https://doi.org/10.24815/kanun.v23i1.16384>

ABSTRACT

Regional regulations or Sharia Regional Regulations are the product of legislation under laws that have Islamic teachings. The problem that underlies the existence of a Sharia Regional Regulations is whether it is constitutionally justified and how the constitutional guarantee of the existence of a Sharia Regional Regulations is applicable. This problem is examined using descriptive normative research methods with qualitative analysis. The results of this study indicate the objectives achieved are first, the existence of Sharia Regional Regulations due to the legal awareness of people who are aware as religious citizens so that their lives will be better which is constitutionally justified in the 1945 Constitution and Pancasila. Second, Article 29 of the 1945 Constitution and Pancasila provides constitutional guarantees for the existence of Sharia Regional Regulations. This is because Chapter XI Article 29 of the 1945 Constitution regulates the issue of Religion which is strengthened by the First Precepts of the Pancasila which shows the constitutional rights of citizens, that is, every citizen has the right and obligation to have a religion and practice his religion and beliefs.

Key Words: constitutional; regional regulation; sharia.

INTRODUCTION

Regional Regulations which are later abbreviated to Perda are legal products in the form of statutory regulations at the regional level (both provincial and regency/municipal regions). Regional regulations are the product of secondary legislation which is a form of delegated legislation as legislation implementing laws (Jimly, 2011). Regional Regulations (Perda) are regulations made by the heads of provincial and regency/municipal regions together with the Provincial and Regency/Municipal Regional Representatives Council (DPRD), in the realm of implementing regional autonomy which is the legality of the executive power of the regional government (Indrati,

1998). With the existence of regional autonomy, regions are then competing to regulate all matters relating to their regions into Regional Regulations (Perda) (Alim, 2010).

Regional regulations (Perda) are made as a concrete manifestation of the implementation of regional autonomy owned by regional governments, so that each regional government that is an autonomous region has its own regional regulations to regulate it according to the needs of the region concerned. In addition to the need for regulations that are regulating in the form of regional regulations, they also provide legal certainty and justice for the community. Regional regulations must not deviate from or conflict with higher legislative regulations, because regional regulations are made by the regional government together with the representative council of each region which has the characteristics of each region. Because each regional government is given the authority to make regional regulations characterized by their respective regions, there are regions that make regional regulations with certain religious characteristics. Regional regulations that have a certain religion, because the area has a legal awareness of the community that is closely related to a certain religion (for example Islam). However, there has been a debate over the pro and contra of regional regulations with religious nuances among politicians. There is debate because politicians do not first assess the meaning and purpose of certain religious nuances. The existence of regional regulations with religious nuances always creates misunderstanding among politicians, because politicians only see it that many local governments have regional regulations that have Islamic nuances, compared to regional regulations with nuances of other religions. Regional regulations with Islamic nuances have become known as “Perda Syariah”. Regional regulations, which are actually a form of statutory regulation made jointly between the Governor and the Provincial DPRD, or between the Regent/Mayor and Regency/Municipal DPRD which are regional legal products to regulate their respective regions which are constitutionally valid as a form of laws and regulations governing their respective regions. Thus, the authority to make or stipulate regional regulations is given to local governments. Regional regulations are used to carry out autonomy and co-administration. The 1945

Constitution regulates the authority given to local governments, especially in the provisions of Article 18 paragraph (6) (Permatasari, 2015).

The development of the Indonesian constitution has changed from every period of government in Indonesia. The constitution referred to here is a documented type of constitution, namely the 1945 Constitution (UUD 1945) and the undocumented constitution in the form of basic rules that arise and are maintained in the practice of state administration (Asmar, 2019). This statement shows that the *Perda* is a legal product in the form of laws and regulations made by the regional government together with the DPRD, both at the provincial level and at the regency/municipal level which specifically regulates the scope of their respective regions. Regional regulations are made and enforced in relation to the characteristics of each region, for example the Regional Regulations on DKI Jakarta have regional characteristics as the State Capital, and other regional regulations. The *Perda* is given a number, year and is given a title regarding the scope of its more specific regulations as stipulated in Law Number 12 of 2011 concerning the Formation of Legislative Regulations as amended by Law Number 15 of 2019. This is because Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 15 of 2019 shows the character of the law (law) formed in Indonesia which is characterized by the culture of the Indonesian legal community with Pancasila as the basis of its philosophy (Sodikin, 2020).

The problem then arises, because the regional regulation with certain religious nuances or the Sharia Regional Regulation raises pro and contra among politicians. Some politicians consider that the religious nuance *Perda* or the Sharia *Perda* is a product that is inconsistent with the constitutionally questionable laws and regulations. The author tries to examine the religious nuances *Perda* or the Sharia *Perda* in terms of constitutionality. Seeing the reality of the existence of the Sharia *Perda*, the *Perda* made by the respective regional governments is a legal product that actually legally can be justified, regardless of the name of the *Perda* as long as it is in accordance

with the regulations for the formation of legislation, namely Law Number 12 of 2011 concerning the Formation of Regulations. Legislation as amended by Law Number 15 of 2019.

Therefore, the main problem is whether the Sharia Perda or regional regulations with religious nuances are constitutionally correct and what constitutional guarantees are of the existence of the Sharia Regional Regulations in effect in Indonesia.

RESEARCH METHODS

The problems analyzed are using descriptive normative or normative juridical research methods. According to Philipus M. Hadjon (Hadjon, 2005), normative juridical research or normative legal research is research aimed at finding and formulating legal arguments through analysis of the subject matter. The main problem referred to in this research is the problem of Regional Regulations with religious nuances (Perda Syariah), so that it requires in-depth analysis and study in the legal system of legislation in Indonesia. According to Amiruddin (Amiruddin, 2006) provides an explanation that in the normative legal approach, law is conceptualized as what is written in legislation (law in book) or law is conceptualized as a rule or norm which is a benchmark for proper human behavior. The data source comes from secondary data, namely laws and regulations, articles and books. The data obtained were then analyzed using qualitative analysis, namely by selecting and sorting data in accordance with the subject matter discussed.

DISCUSSIONS AND ANALYSIS OF RESULTS

1) Public Legal Awareness of Islamic Law

Public legal awareness of Islamic law has recently continued to increase, this is evidenced by the increasing awareness of Indonesian Muslims in practicing Islamic teachings, such as marriage, zakat, waqf, inheritance, sharia economics and other fields of muamalah. Islamic law is a continuation of Sharia, while Sharia means the path that Muslims must follow (Ramulyo, 2004).

According to Imam Syafi'i, sharia is the inner and outer rules for Muslims which are derived from Allah's revelations and deductions that can be drawn from Allah's revelations and so on. These birth regulations concern how humans relate to Allah and other creatures besides humans (Ramulyo, 2004).

Basically, Sharia provisions contain legal principles and regulations that are still general in nature so that they require further explanation. Regulations that are basic and general are the provisions of God and the Prophet, thus Sharia can be transformed into positive law (laws that apply in a certain place and era) in accordance with the needs of the law and the times, this is what has become known as Islamic law.

Because Sharia comes from God and the Prophet, it is eternal and universal. Its function is to provide guidance and guidance to formers of state law, (government together with legislative institutions) in formulating positive legal principles. In the context of community life, sharia is reviewed by theologians (ulama) and manifested in the opinions and fatwas of the theologians (ulama) to serve as a code of conduct for society, and these opinions or fatwas are a form of Islamic law that is not yet positive law.

Because the majority of Indonesia's population is Muslim, in Indonesia Sharia can be used as a source of law, namely a reference in the process of forming laws (laws and regulations) both laws and regional regulations. Laws and regional regulations are not specifically named Sharia Law or Sharia Regional Regulation. This means that formally the Sharia Regional Regulation does not exist, but substantially its existence cannot be avoided, namely that it contains Sharia rules. Likewise, when the state is about to form a law, in the sense of formulating the prevailing positive legal norms, the state has no choice, except to pay attention to the conditions of legal awareness that exist among its own people and formulate it into positive law through the legislative process.

The existence of legal awareness of the Islamic community towards its religious teachings, in a broader scope by the government it is manifested in the form of Islamic law which has become

positive law and has received a good response from the Muslim community as part of the nation's components, for example Law Number 7 of 1989 concerning Justice Religion which was later replaced by Law Number 3 of 2006, Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law, Law Number 1 of 1974 concerning Marriage, Law Number 38 of 1999 concerning Management of Zakat which was later replaced by Law Number 23 of 2011, and other laws and regulations in the field of muamalah.

In addition, because Indonesia is a large country and in running its government it is democratic, it is the people's legal awareness that is used as the main reference in formulating positive legal norms. Because the Indonesian state is democratic, the state will not be able to oppose the legal awareness of its own people. Likewise in the scope of local government, so that regional regulations can be applied in the community, are made based on the legal awareness of the community.

This needs to be reaffirmed that awareness of legal obligations is also related to legal obligations towards statutory provisions which means also the obligation to comply with laws, as well as to unwritten laws, such as religious law and community customs. Religious law that has not yet become positive law, which then increases public awareness of religious law, then the religious law becomes positive law which can be in the form of Laws or Regional Regulations. Because the majority of Indonesia's population is Muslim and with legal awareness, it is necessary to apply Islamic values or the community's life has Islamic nuances, so that the norms or rules that apply to the Muslim community decorate every association of his life.

Religious norms provide a benchmark that, *al ibrata fil islaam bil Jauhar zaa bil madzhar* (the standard in fighting for Islam is fighting for substantive values, not symbols), what is built is an Islamic culture of society, not an Islamic state. The meaning of an Islamic community culture is a culture that lives in a society that encourages the community to behave in an Islamic manner without formally declaring themselves as Islam. Such a culture, for example, is a culture of order,

law-abiding, tolerant, polite, honest, trustworthy, peace-loving, and so on (Setiawan, 2018). The same thing is also said by Mauarar Siahaan (Siahaan, 2010), the orderliness of life in society and the state requires the existence of laws that develop from human consciousness itself for an order that guarantees the values that are deemed necessary in achieving the goals of life together and the goals of life individually.

2) The Ideals of Pancasila Law as the Highest Legal Norm for the Establishment of Regional Regulations

Pancasila, which is extracted from the noble values of the Indonesian nation's culture since ancient times, is then rationally formulated into a national philosophy. The nation's philosophy for the Indonesian state which was later called Pancasila. The rational process of the formulation of Pancasila is a thought process that results in the formulation or concept of Pancasila. The process here means the activity of the ratio from the initial determination of the starting point of thought to the result or conclusion that causes Pancasila to exist as a general abstract formula or concept (Suwarno, 1993). Its general abstract nature is a basic state norm or *staatsfundamentálnorm*. Thus, since the birth of the Republic of Indonesia through its proclamation of independence on August 17, 1945 and the 1945 Constitution enacted on August 18, 1945 by PPKI as its constitution, the legal norm system of the Republic of Indonesia has also been formed. It is said that, in the system of legal norms of the Republic of Indonesia, the prevailing legal norms are in a system that is layered and tiered as well as in groups, where a norm is always applicable, sourced and based on higher norms. , and so on until a basic state norm (*staatsfundamentálnorm*) of the Republic of Indonesia, namely Pancasila (MF Indrati, 1998: 38). This means that Pancasila is a source of legal order in Indonesia or it is said that Pancasila is the source of all sources of law that animates all aspects of the life of the nation, state and society or is said to be the life of the state and society.

As stated by A Hamid Attamimi, Pancasila was not only determined by the founders of the Proclamation State as the highest norm in the system of state life of the Indonesian people, as the State Basic Norms (*Staatsgrundnorm*), as the State Fundamental Norms (*Staatsfundamentalnorm*) as well as the ideals of law (Attamimi, 1993). According to Rudolf Stammler (1856-1939), as quoted by Hamid Attamimi, a neo-Kantian legal philosopher, he argues that the ideal of law is a thought construction which is an imperative to direct the law to the ideals desired by society. The ideal of law serves as a "guiding star" for achieving the ideals of society. Although it is an unattainable end point, the ideal of law is beneficial because it contains two sides, with the ideal of law we can test the positive law that applies and towards the ideals of law we can direct positive law as an effort to regulate the order of life with coercive sanctions, towards something the fair one. Therefore, according to Stammler, justice is an effort or action to direct positive law to the ideals of law. Thus, just law (*richtiges recht*) is law directed by the ideals of law to achieve the goals of society (Attamimi, 1993).

Pancasila is the ideal of law (*rechtsidee*) and must underlie every law in Indonesia or every law that is born in Indonesia must be based on Pancasila. The law that is born must be aimed at achieving the goals of the state as stipulated in the Preamble to the 1945 Constitution, namely: protecting the entire nation and all the blood of Indonesia, educating the nation's life, advancing public welfare, and participating in implementing world order. Thus, Pancasila must be the guiding principle of law, so law must aim at building and guaranteeing the integration of the state and nation, aimed at building social justice for all Indonesian people based on civilized and non-discriminatory tolerance.

The continuation of the implementation of Pancasila as a legal ideal (*rechtsidee*) or as a state fundamental norm, then in accordance with the theory of legal norms level (*Stufentheorie*) put forward by Hans Kelsen (MF Indrati, 1998: 25), in accordance with Article 7 paragraph (1) of the Law Number 12 of 2011 concerning the Formation of Legislation that after the highest legal norm

is the 1945 Constitution of the Republic of Indonesia and after it is the Decree of the People's Consultative Assembly, Laws or Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, and Provincial Regulations and Regency/Municipal Regulations. Regional regulations or *Perda* in the order of laws and regulations occupy as implementing regulations and autonomous regulations (*Autonome Satzung*). These implementing regulations and autonomous regulations are regulations that are located under laws that function to organize the provisions in the law, where the implementing regulations originate from the authority of the delegation, while the autonomous regulations originate from the authority of attribution (Indrati, 1998).

In accordance with Law Number 12 of 2011 as amended by Law Number 15 of 2019 which places Pancasila as "the source of all sources of law" in the sense that the principles in Pancasila are the philosophical foundation in formulating legal norms. Formulated legal norms should not be philosophically contradictory and interconnected between the precepts in the Pancasila.

The implementation of the Pancasila principles is then set forth in the main ideas contained in the 1945 Constitution of the Republic of Indonesia. The formulation of Pancasila contained in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia is a legal ideal that controls the basic written and unwritten laws, so that these points of thought are translated into articles in the Constitution of the Republic of Indonesia. 1945. Pancasila, which is the country's fundamental norm, is then implemented in the 1945 Constitution of the Republic of Indonesia as the State's Basic Rules or the State's Basic Rules. According to Hans Nawiasky, a State Basic Regulation can be stated in a state document called *Staatsverfassung* or also contained in several scattered state documents called *Staatsgrundgesetz* (Indrati, 1998). The 1945 Constitution is a basic rule which is also the highest legal norm in a legal order. Kelsen describes the unity of legal order in the process of forming a hierarchical and dynamic law (Saleh, 1979). The formation of statutory regulations as stated in the *stefunbau* theory shows that every formation of statutory regulations is

hierarchical and dynamic by referring to Pancasila and the 1945 Constitution as the highest legal norms.

The main form is based on the idea of a hierarchy of legal norms that places the basic norms as the highest law in the norm system, controls and becomes a source of legitimacy for the regulations underneath which are formed as the concretization of these basic norms. All norms whose validity can be traced to one basic norm and the same basic norm form a system of norms, constitute a normative order. These basic norms are a source of the same validity for all norms that are included in the same norm order and are the reasons for the same validity for the validity of norms (Siahaan, 2010).

Regional regulations are a legal product at a level below the law, so regional regulations must not conflict with higher-level laws in accordance with the hierarchy of statutory regulations. In accordance with the norms of statutory regulations, the norms of the Perda do not contradict the existing legal norms on it, likewise the norms of the Sharia Regional Regulations must not conflict with the existing legal norms, including the philosophical norms of Pancasila. Because Pancasila is explored and crystallized from the noble values of the nation's culture including religious values, these values inspire all laws and regulations including the Sharia Regional Regulation which shows its religious nuances.

3) Constitutionality of Sharia Regional Regulations

The Indonesian state is not a religious state, but Pancasila and the 1945 Constitution also do not separate religion from state affairs. The first precepts are Pancasila "God Almighty" and Chapter XI of the 1945 Constitution entitled "Religion", which are the constitutional juridical basis for the relationship between religion and the state. Chapter XI contains Article 29 of the 1945 Constitution which consists of two paragraphs, that paragraph (1) stipulates, "The State is based on One Godhead", paragraph (2), "The State guarantees the independence of every citizen to embrace

their respective religions and to worship according to his religion and belief ”. Article 29 of the 1945 Constitution is a form of implementation and embodiment of the first principle of Pancasila, namely "God Almighty".

Article 29 of the 1945 Constitution places religion and state as one inseparable unit, because the relationship between religion and the state is very close, even though Indonesia is not a religious state. It is said that, in general, people only see two alternatives in the relationship between religion and state, namely (1) a religious state based on a particular religion; (2) a secular state, which separates religion from the state (Sukardja, 1995). These two opinions are not arguments to justify the Indonesian state based on Pancasila and the 1945 Constitution.

The Indonesian state with Pancasila as its foundation is not a state based on a particular religion, nor is it a secular state, in the sense of separating religion from the state. The Indonesian state is not synonymous with certain religions, but the state cannot separate religion from state affairs. The state is responsible for the existence of religion, religious life and religious harmony (Sukardja, 1995). Religion is the highest way of life that comes from God. God Allah as the creator of the entire universe for the good of mankind in this universe. The provisions of God Allah and His Prophet were later called Sharia, which is the straight path for all human beings in the world.

Indonesia is not a religious state, but religion has constitutional guarantees as stipulated in Article 29 of the 1945 Constitution, which means that the population in Indonesia must have a religion in accordance with the first precepts of Pancasila, namely "God Almighty". For those who do not have a religion, it means they are not allowed to live on Indonesian soil. There are several religions recognized by the state such as Islam, Potestant Christianity, Catholic Christianity, Hinduism, Buddhism, and Confucianism, as well as faiths. Every citizen of Indonesia is obliged to have a religion in accordance with the religions in question and the belief system. They have the same rights as citizens guaranteed in the 1945 Constitution. The state guarantees the freedom of each resident to embrace his own religion and to worship according to his religion and belief. Thus,

adherents of Islam practice Islamic law, adherents of the Protestant religion observe the Sharia of the Protestant religion, adherents of Catholicism practice their Catholicism, adherents of Hinduism practice Hinduism, adherents of Buddhism practice Buddhist law, and adherents of Confucianism practice religious law. Confucianism, as well as adherents of belief.

Adherents of religions other than Islam are also free to carry out their religious teachings and beliefs so that they receive legal protection, including through regional regulations. This is in accordance with Article 29 paragraph (2) of the 1945 Constitution that the state guarantees the independence of each resident to embrace their respective religions and to worship according to their religion and belief. The government can make legal rules to protect every citizen in carrying out his worship according to the beliefs or beliefs of each resident.

Because the majority of Indonesia's population is Muslim, every association of Indonesian life has Islamic nuances. As part of the nation's component, those who are Muslims also receive constitutional guarantees according to the basic laws or basic norms of the Indonesian state. So if there are people who claim that people who practice the majority religion will cause discrimination against followers of other religions, this is not the case. It is said so, because it is impossible for people to practice their religion to cause discrimination and division. God Allah as the Creator of all nature in determining its provisions is unlikely to cause discrimination and division.

Sociologically, the law will apply and will not get rejection from the community, so the law is made in accordance with the legal awareness of the community. Because Indonesian society is plural, legal norms that are basic and general in nature, even have become laws that live in society, are found in a pluralistic society. There are several laws that apply to the plurality of Indonesian society, namely Islamic law, customary law and Dutch colonial government law that have been accepted by people in Indonesia. The Indonesian legal style, in fact, does indeed reflect the three legal systems. Thus, when formulating the norms or rules of law, the norms of Islamic law, customary law and the laws of the Dutch colonial government were both transformed into the

norms of that law. So substantially the norms of the three legal systems seem to be integrated into the Law.

However, because the majority of Indonesia's population is Muslim, there are legal rules that are specifically required to be enforced only for Muslims. For example, Law Number 1 of 1974 concerning Marriage, Law Number 7 of 1989 concerning Religious Courts, Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law, and other statutory regulations. Laws that specifically regulate the legal needs of Muslims are not referred to as Sharia Laws, but are referred to as Laws with the year number and title of the law. During the Dutch colonial rule, there was also the Marriage Ordinance for Indonesian Christians or *Huwelijk Ordonantie Christen Indonesia Stb 1936-247* which was applied to Christian communities. As an Indonesian state with a pluralistic population, in addition to imposing the same type of law for all residents, it can also impose pluralistic laws on its diverse people and population.

As it is explained that religion provides the demands of life for every human being, so that Islam through its teachings as stipulated in the Al-Quran and Al Hadith which is said to be Sharia demands that human life is better. Therefore, what is said by the Sharia Perda is intended to be a regional regulation to impose demands on Muslims so that in their lives according to the demands of their religion. Regional regulations intended to have Sharia nuances include the prohibition of prostitution, prohibition of gambling, restrictions on alcoholic drinks, ways of dressing, the movement of the Islamic community to read the Qur'an, regarding zakat, waqf, alms, dealing with immorality, prohibiting activities in the month of Ramadan and others.

Observing what is meant by the Sharia perda, it is also necessary to explain and be connected with the Pancasila principles. This is because Pancasila provides directions for life that are more perfect in accordance with religious teachings. Ahmad Sukardja (Sukardja, 1995) said that living morally or living morally is the most basic requirement in upholding Pancasila for the safety and

welfare of the nation and state of Indonesia. Pancasila is not only deduced and induced, collects legal norms, but at most is collecting moral norms.

Regional regulations with Sharia nuances are nothing but a legal norm that comes from moral norms from the legal awareness that lives in the community. Therefore, according to Mohammad Hatta (Hatta, 1978) Pancasila consists of two basic layers, namely (1) political fundamentals and (2) moral fundamentals (religious ethics). the Indonesian state that gives soul to the right, fair and good administration efforts (Hatta, 1978). The relevance contained in the precepts of the One and Only Godhead is all the teachings of God Almighty regarding good and bad, namely norms in the field of morals and legal norms contained in the holy books (Hazairin, 1973).

The moral and moral norms contained in regional regulations which are also unified and rooted legal norms can work well. According to Hazairin, the realization of the need for a compound between law and decency, is express and implied in Article 29 of the 1945 Constitution. The first paragraph of this article implies that the state and the Indonesian nation obey God's norms, which include legal norms and moral norms (among others, norms of law/sharia and norms of morality according to Islamic teachings). For this reason, the Republic of Indonesia must not allow laws and morals that contradict the norms determined by God. Adding and developing legal and moral norms that do not contradict God's norms is free (Hazairin, 1973).

In terms of its constitutionality, the main substance of the Sharia Regional Regulation with the conventional Regional Regulation itself is actually the same because the formation of the conventional regional regulation itself includes religious values, morality values, and customs in the substance of the rules, it's just that the addition of the word Sharia in the perda gives the view that the afterlife is more valuable. highlighted than worldly values in conventional perda (Wasisto, 2013).

Regional regulations with Sharia nuances have laid the moral and legal basis for Pancasila, so that the government has a strong foundation that encourages Indonesian citizens to do good, right,

fair and honest. The basis of the Almighty God which is then implemented in Article 29 of the 1945 Constitution is not only a basis for respect for the religion of each people, but becomes the basis that leads to the path of truth, goodness, justice, honesty and brotherhood, thus the state and government have a basis strong (Hatta, 1978).

4) Constitutional Guarantee of the Applicability of Sharia Regional Regulations

The above analysis is actually strong enough to state that the Sharia Perda has constitutional guarantees, and there is no other reason to question the Sharia Perda from a constitutional point of view. Its validity does not need to be questioned anymore, because the formation of Sharia Regional Regulations as well as other regional regulations are in accordance with the formation of statutory regulations in accordance with Law Number 12 of 2011 concerning the Formation of Legislative Regulations as amended by Law Number 15 of 2019.

Political debates put forward by politicians regarding regional regulations (Regional Regulations) with religious nuances (Perda Syari'ah), some state that these regional regulations are made and enacted then cause discrimination against other religious minorities and will lead to divisions between the nation's children, this is not the case. This opinion needs to be realigned with the intention of the existence of regional regulations with religious nuances, because religion is guaranteed in the constitution of the Unitary State of the Republic of Indonesia, namely in Article 29 of the 1945 Constitution. Article 29 of the 1945 Constitution shows that every citizen has the right and obligation to have a religion and practice his religion, because this is in accordance with Pancasila as a legal ideal (*rechtsidee*).

However, in fact, the Sharia Perda in the laws and regulations in Indonesia is not known, as well as Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning the Establishment of Laws and Regulations does not mention and explain the Sharia Perda. However, in Law Number 11 of 2006 concerning the Government of Aceh it is known as Qanun, namely laws

and regulations similar to regional regulations, both at the provincial and district/municipal levels. The qanun is specific to the Nangro Aceh Darussalam region, because in the province of Nangro Aceh Darussalam, the regional regulations (Perda) is called by a special term, namely "qanun". The term "qanun" refers to the Islamic legal tradition, namely the laws and regulations made by the state or government. The existence of a Qanun as a Regional Regulation is also guaranteed constitutionally and has the legality of its validity as a regional regulation in accordance with the laws and regulations at the regional level.

The opinion of some politicians in Indonesia to give the name "Sharia Regional Regulations" to regulate matters relating to the benefit of the ummah is actually a form of error and anxiety about the application of Islamic law. This is as explained above, the word "Sharia Regional Regulations" is not known in statutory regulations. The religious content in the regional regulations (Perda) is substantially inherent in the regional regulations (Perda) in question, for example the regional regulation with a Sharia nuance, namely in South Lampung Regency there is Regional Regulation Number 4 of 2004 concerning the Prohibition of Prostitution, Tuna Susila and Gambling as well as the prevention of immoral acts in the South Lampung Regency. in Bukittinggi there is Perda Number 29 of 2004 concerning the Management of Zakat, Infaq, and Shadaqoh, in Sukabumi there is Regional Regulation Number 11 of 2005 concerning Control of Alcoholic Drinks, and regional regulations in other areas. So, formally the Sharia Perda does not exist, but in substance it is very reasonable, because it is in line with the legal awareness of the Indonesian people in the order of community life which requires legal certainty, justice and benefit for Muslims in the country of Indonesia.

Therefore, by referring to Article 29 of the 1945 Constitution, it is a form of implementation and embodiment of the first principle of Pancasila, namely "God Almighty", and in an orderly system of law in Indonesia, Pancasila is the highest state basic norm which is then implemented in the 1945 Constitution as the Basic Law of the State. Furthermore, under the 1945 Constitution are

Laws and there are Regional Regulations. Regional Regulations are a form of statutory regulation under laws that have norms or rules at a higher legal norm. Therefore, if there are those who think that regional regulations with Sharia nuances are not in line with the constitution, it is not true, because the reasons as explained indicate that regional regulations with Sharia nuances receive constitutional guarantees. Constitutional guarantees are the constitutional rights of every citizen in carrying out his worship according to their respective religions. This is because the constitution of the Republic of Indonesia has provided juridical legitimacy for the formalization of Islamic law to be transformatively integrated in the Indonesian political system and constitutional law (Ummu Salamah & Rianto, 2014). The government has an obligation to guarantee the constitutional rights of every citizen, including in carrying out their worship. Sharia-based regional regulations are a form of law to guarantee the constitutional rights of every citizen.

CONCLUSIONS

There are several things that can be concluded from the results of this analysis, *first*, the Sharia Perda or regional regulations with religious nuances are constitutionally correct. The term Sharia Perda is not found in statutory regulations, so the term Sharia Perda is only a term put forward by politicians who have no legal basis. The reason for this is a regional regulation which in substance regulates religious matters. The existence of religion is the legal awareness of people who are aware as religious citizens so that their lives are better which is constitutionally regulated both in the 1945 Constitution as the constitution and Pancasila as the basis of the state.

Second, a religiously nuanced regional regulation is constitutionally guaranteed, because the 1945 Constitution, especially Article 29 and Pancasila, provide constitutional guarantees for the existence of the Sharia Perda. Chapter XI Article 29 of the 1945 Constitution regulates the issue of Religion which is strengthened by the First Principle of Pancasila which shows the constitutional

rights of citizens, namely that every citizen has the right and obligation to have religion and practice his religion and belief, which is then further regulated in a regional regulation.

As the end of this writing, the author suggests that all parties, including politicians in political parties, have a clearer understanding and depth of regional regulation issues by examining from a scientific perspective the existence of a Sharia Regional Regulation in order not to cause prolonged conflict in society.

REFERENCES

Books

- Amiruddin & Asikin, Z. (2006). *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada.
- Asshiddiqie, J. (2011). *Perihal Undang-Undang*, Jakarta: Rajawali Press.
- Hadjon, P. M. & djamiati, T. S. (2005). *Argumentasi Hukum*, Yogyakarta: Gadjah Mada University Press.
- Hatta, M. (1978). *Pengertian Pancasila*, Jakarta: Inti Idayu Press.
- Hazairin. (1973). *Demokrasi Pancasila*, Jakarta: Tintamas.
- Indrati, M. F. (1998). *Ilmu Perundang-Undangan, Dasar-dasar dan Pembentukannya*, Yogyakarta: Kanisius.
- Ramulyo, M. I. (2004). *Asas-Asas Hukum Islam, Sejarah Timbul dan Berkembangnya Kedudukan Hukum Islam dalam Sistem Hukum di Indonesia*, Jakarta: Sinar Grafika.
- Saleh, R. (1979). *Penjabaran Pancasila dan Undang-Undang Dasar 1945 Dalam Perundang-undangan*, Jakarta: Aksara Baru.
- Sukardja, A. (1995). *Piagam Madinah dan Undang-Undang Dasar 1945 Kajian Perbandingan Tentang Dasar Hidup Bersama Dalam Masyarakat Yang Majemuk*, Jakarta: UI Press.
- Suwarno, P. J. (1993). *Pancasila Budaya Bangsa Indonesia*, Yogyakarta: Kanisius.

Journal Article

- Alim, M. (2010). Perda-Perda Bernuansa Islam dan Hubungannya dengan Konstitusi. *Jurnal Hukum*, 17(1): 119-142.
- Amar, A. R. (2019). Pengaturan Peraturan Daerah (Perda) Syariah dalam Penyelenggaraan Pemerintahan Daerah. *Jurnal El-Iqtishady*, 1(1): 63-73.
- Attamimi, A. H. S. (1993). Hukum Indonesia Hendaknya Tidak Meninggalkan Cita Hukum dan Cita Negara. Orasi Ilmiah Dies Natalis XXXVIII Universitas Muhammadiyah Jakarta.
- Permatasari, I. (2015). Kewenangan Menguji Konstitusionalitas Peraturan Daerah Terhadap UUD 1945. *Jurnal Magister Hukum Udayana*, 4(4): 713-719.
- Salamah, U. & Rianto, R. (2014). Perda Syariah dalam Otonomi Daerah. *Mizan: Jurnal Ilmu Syariah*, 2(2): 245-254.
- Setiawan, D. B. (2018). Keberadaan dan Penerapan Peraturan Daerah Syariah Sebagai Perundang-undangan Pada Tingkat Daerah. *Jurnal Sumatera Law Review*, 1(1): 67-91.
- Siahaan, M. (2010). Uji Konstitusionalitas Peraturan Perundang-undangan Negara Kita: Masalah dan Tantangan. *Jurnal Konstitusi*, 7(4): 9-48.
- Sodikin. (2020). Paradigma Undang-undang dengan Konsep Omnibus Law Berkaitan dengan Norma Hukum yang Berlaku di Indonesia. *Jurnal Rechtsvinding*, 9(1): 143-160.
- Wasisto, R. J. (2013). Permasalahan Implementasi Perda Syariah dalam Otonomi Daerah. *Jurnal Al Manahij*, 7(2): 305-318.

