



Analysis of the Arrangement of Dress for Women in Sharia Regional Regulations from a Human Rights Perspective

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Abstract: This study aims to analyze the regulation of dress for women in the Sharia Regional Regulation from the perspective of Human Rights by looking at the position of the Sharia Regional Regulation in the national legal system and laws and analyzing the Mukomuko Regional Regulation Number 5 of 2016, using a normative juridical research method with a Legislative, Historical, and Conceptual Approach. This research needs to be carried out because of the large number of Sharia Regional Regulations that have emerged at the central government or local government scales that have the opportunity to trigger political, social and legal problems. Sharia Regional Regulations that enter the private space also harm Human Rights that have been guaranteed by the 1945 Constitution, such as in Mukomuko Regional Regulation Number 5 of 2016 which is found to violate Human Rights in principle. The formation of the Regional Regulation should be adjusted to national laws and regulations, namely paying attention to multicultural aspects and prioritizing the principles of Human Rights.

Keywords: Sharia Regional Regulation; Human Rights Perspective.

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1. Introduction

Human Rights (HAM) is a basic trait that has existed since humans were born into the world. According to Law No. 39/1999, human rights are rights given by God Almighty to all human beings that must be respected and protected by all elements in the state for the common good.¹ Everyone has at least 16 rights protected in the Universal Declaration of Human Rights, which was adopted and established by the UN General Assembly on December 10, 1948. These rights include: the right to life; freedom from slavery; freedom from torture and cruelty; equality and legal aid; fair trial; protection of one's personal and family affairs; the right to enter and exit the country; the right to asylum; and the right to citizenship. Freedom to own a family, own property, and express one's beliefs, opinions, associations, and assemblies Taking part in political processes, Social welfare, employment, wages, and adequate housing, and access to education and cultural activities. John Locke established these innate rights, which have been recognized since the Declaration of Human Rights.² Freedom can also be interpreted as that human beings are free to do everything unless there is a prohibition that regulates that freedom like a law. So human beings as individuals have the right to freedom as long as the right to freedom does not collide with existing regulations. Human rights will be limited by law, and vice versa, law is limited by human rights.³

The Constitution adheres to the principle of non-discrimination. This principle of non-discrimination is intended for all circles without exception. It is not intended for the Community, nor the dominating population. This is contained in Article 28I paragraph (2) "Everyone is free from discriminatory treatment on any basis and has the right to be protected from discriminatory treatment".⁴ After the amendment of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), there were substantial and significant changes in the political world. Among them are related to the power relationship between the central government and local governments which have experienced a shift in the power of the central government which was initially centralistic-authoritarian to an autonomous decentralized authority. As stated in article 18 paragraph (2), the local/regional government has broad authority in regulating regional needs after the central government delegated its authority to the regions.⁵ The further regulation of regional autonomy is regulated in Law No. 23 of 2014 related to Regional Government known as the Local Government Law.⁶

¹ Andi Zahidah Husain et al., "The View of Philosophy as a Natural Right Based on John Locke's Theory,"

² *Ibid*

³ "Afdhal Fikri, 2023, Human Rights Perspectives on Muslim Dress Policy in Agam Regency, West Sumatra Province (Juridical Analysis of Regional Regulation Number 6 of 2005), Faculty of Sharia and Law, Jakarta, Syarif Hidayatullah State Islamic University," n.d.

⁴ Vinsensius Luky Asmara and Tuti Widyaningrum, "Regional Regulation of Sawah Lunto Regency 2003 Regarding the Obligation to Dress Muslims and Muslim Women in the Perspective of the Principles of Formation of Laws and Regulations," t.t.

⁵ Erfina Fuadatul Khilmi, "The Formation of Sharia Regional Rules in the Perspective of Post-Reform Law," *Legal Lantern* 5, no. 1 (May 7, 2018): 43, <https://doi.org/10.19184/ejllh.v5i1.7263>.

⁶ *Ibid*

The implementation of regional autonomy in Indonesia as contained in Law Number 32 of 2004 related to Regional Governments applies the principle of regional autonomy without intervention. In Article 10 paragraph 3 letter f of Law Number 32 of 2004, it is explained related to regional autonomy which is carried out in the division of power between the central and regional governments. The powers of the central government include: foreign relations, defense, security, justice, national and fiscal and religious affairs, and the regional authority is independent of the six authorities. Furthermore, related to policies in terms of religion that are the authority of the state, it is to decide on religious holidays in the country, determine the legitimacy of the existence of a religion, determine rules in religious life and certain aspects that are the authority of the central government and are not given to local governments. The local government does not have the authority to make regulations related to the implementation of religious life or make rules related to state life in the national scope.⁷ The local government (Pemda) has the power to exercise its authority, in terms of progress and development of its region. This is regulated in Law Number 12 of 2011 related to the Establishment of Laws and Regulations, which states that the content of regional regulations is intended to carry out activities related to autonomy and support.⁸ When regional autonomy is enforced, regional rules (perda) begin to be formed by each region in the context of the implementation of Regional Government.⁹ Not infrequently, controversial regional rules have emerged due to sectoral egos with the euphoria of implementing autonomy in totality. In a short period of time, the euphoria was manifested by the local elite into legal rules that tended to be elitist. However, nowadays the problem of regional regulations is not only related to the material but also spreads to the realm of ideological choices that are the basis of the sharia rules.¹⁰ The many sharia-nuanced rules that have emerged at the scale of the central government or local governments, have the opportunity to trigger political, social and legal problems. Politically, the number of laws containing Islamic law is feared to re-emerge conflicts between religion and the state, including the elimination of Islamic law in the national constitution. The integrity of the Unitary State of the Republic of Indonesia (NKRI) which is based on the teachings of Pancasila is also considered threatened.¹¹ Regulations related to the regulation of Muslims in accordance with Islamic law through sharia-based regulations are considered to have limited individual rights. For example, the rules in the sharia regional regulations Article 5 paragraph (1) of the Mukomuko Regional Regulation No. 5 of 2016 related to Muslim and Muslim Women for Students are, which reads "Every student who is Muslim is required to dress as Muslim and Muslimah". Broadly speaking, there is a

⁷ Wasisto Raharjo Jati, "Problems of Implementation of Sharia Regional Regulations in Regional Autonomy," *Al-Manahij: Journal of Islamic Law Studies* 7, no. 2 (23 December 2013): 305–18, <https://doi.org/10.24090/mnh.v7i2.571>.

⁸ Achir, and Kamba, Nanang Meiske, "Regional Rules with Sharia Nuances and Their Relationship with the Implementation of Local Government Duties and Obligations," t.t.

⁹ M. Yasin Al Arif and Panggih F. Paramadina, "Constitutionalists of Sharia Regional Regulations in Indonesia in the Study of Regional Autonomy," *As-Siyasi: Journal of Constitutional Law* 1, no. 1 (2 Juni 2021): 49–62, <https://doi.org/10.24042/as-siyasi.v1i1.8953>.

¹⁰ *Ibid*

¹¹ Nur Chanifah Saraswati and Mr. Muhammad Fauzan, "The Constitutionality of Sharia-Based Laws and Regulations in Indonesia" 1 (2019).

statement that contrasts with human rights lies in the word "mandatory", the emphasis on the diction which for some people is forced to comply with the regional regulations.¹² So that the author feels the need to do a deeper analysis related to this, the author will highlight the Sharia Regional Regulation that regulates certain Dress Procedures for Women. As in Human Rights Law No. 39 of 1999 it is regulated related to basic human freedoms without discrimination, and the Sharia Regional Regulation which regulates certain dress procedures is considered to violate basic human rights that have been guaranteed by the Constitution, this rule is also clarified by the Ratification Law on the Eradication of Discrimination against Women (*Cedaw*) namely Law Number 7 of 1984 and Law Number 12 of 2005 on the Ratification of the Convention on Civil and Political Rights article 18 related to belief and religion as well as the protection of these rights, by reviewing the Muko-Muko Regional Regulation 5 of 2016 related to Muslim and Muslim Dress for Students. This will be described in the discussion of How is the Position of Sharia Regional Rules in the legal system and national laws and regulations in Indonesia? How is the analysis of Mukomuko Regional Regulation Number 5 of 2016 related to Muslim and Muslim Dress for Students reviewed from a Human Rights Perspective?

2. Method

This study uses normative research methods. The normative method is a research approach that focuses on norms or legal regulations to understand and analyze legal issues. The normative method, also known as the doctrinal or normative-judicial method, relies on the analysis of applicable legal rules. This method is often used in legal research to find answers to questions about how the law should be applied or developed. According to Peter Mahmud Marzuki, normative legal research is the act of exploring legal doctrines, norms, and principles to overcome various current legal problems. Normative legal research is carried out to produce new theories, concepts, or arguments as solutions to various existing problems. With a *statute approach*, a *historical approach*, and a *conceptual approach*.

3. The Position of Sharia Regional Regulations in the Legal System and National Laws and Regulations in Indonesia

3.1. The Position of the shariah Regional Regulation is seen in the legal system

The legal system is defined as the same juristical philosophy and techniques used by a number of countries that generally have a legal system in common. The legal system in this broad sense describes a parent law family, such as the Civil law, Common Law, Customary Law, Socialist Law and Islamic Law. The state of Indonesia, which asserts itself as a state of law as stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia in 1945, also has a legal system. Interestingly, Indonesia adheres to three legal systems at once that live and develop in the life of society and the state, namely the civil law system, the customary law system, and the Islamic legal system. The civil law system that has the character of "written law" developed in Indonesia during the Dutch colonial period and has survived to this day affecting current legal

¹² *Ibid*

products. Although the colonial period ended 72 years ago, the seeds can still be felt today considering the existence and enforcement of several Dutch colonial civil law products. In the field of criminal law, the *Wetboek van Straftrechts (WvS)* is still valid through Law Number 1 of 1947 as a guidebook in the criminal field (Criminal Code). In the Civil field, *the Burgerlijke Wetboek (BW)* or the Civil Code and *the Wetboek Van Kopenhandel (WvK)* or the Commercial Code are still valid. Meanwhile, in the field of civil proceedings, *the Herzien Inlandsch Reglement (HIR)*, *Rechtsreglement voor de Buitengewesten (RBg)* and *Reglementop de Burgerlijke Rechtsvordering (RR)* are also still in force and there have been no changes. Interestingly, Islamic law also affects the legal landscape in Indonesia because the majority of the population in Indonesia adheres to Islam which allows Islamic law to become an important and influential part of the legal system in Indonesia. The existence of laws and regulations that breathe Islamic Sharia such as in the Hajj Implementation Law, Sharia Banking Law, Waqf Law, Zakat Law, Compilation of Islamic Law (KHI) and Sharia Regional Regulations (Perda Sharia) has proven that the Indonesian state does not relinquish its responsibility for religious affairs with state/government affairs.¹³

Sharia regional regulations are codified rules, and make Islamic law the basis for the formation of these rules. Sharia law is changed to positive law by law. There are no restrictions on using sharia law as a source of law when studying laws and regulations. Customs, international treaties, old Dutch colonial laws that adhere to the principles of the Constitution, and religious laws, such as Islamic law (sharia), can all serve as sources of law for lawmaking.

The birth of Sharia Regional Regulations was triggered by the large number of Indonesian people who embraced Islam. Islamic teachings that have been internalized in each of its adherents then become a standardization and benchmark to measure good and bad behavior in social life. So that the benchmark is used to see many things and is considered deviant if it is not in accordance with existing standards. This internalization process also did not happen just like that, going through a long process to arrive at public acceptance. Islamic values that have been mixed with customs, strengthen the moral foundation that is used as a benchmark to judge the behavior of each individual. It is not uncommon for religious teachings that flourish to tend to be rigid and conservative without further study, so that there are many intolerant and contradictory views on the existing social context.

Islamic teachings have had a significant historical impact on Indonesia's national legal system. The Theory of Existence is one of many hypotheses that explain how Islam influences the formation of rules. H. Ichtijanto S.A., a lecturer at the Faculty of Postgraduate Studies, University of Indonesia, proposed this hypothesis. Regarding Islamic law, he argues that the existence thesis explains why Islamic law exists in national law. According to this idea, Islamic law exists as one of the national laws in the following ways;

- a) There are those that are fundamental components of Indonesian national law.

¹³ Zaka Firma Aditya, "The Romanticism of the Legal System in Indonesia: A Study of the Contribution of Customary Law and Islamic Law to the Development of Law in Indonesia," *Rechts Vinding Journal: National Legal Development Media* 8, no. 1 (May 15, 2019): 37, <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

- b) It exists in the sense that national law recognizes its existence, independence, power, and authority and gives it the status of national law.
- c) It exists in Indonesian national law in the sense that elements of Indonesian national law are filtered through the principles of Islamic law.
- d) It exists as long as it is the main component and substance of Indonesian national law.¹⁴

Law of the Republic of Indonesia Number 1 of 1974 related to Marriage which regulates marriage is one of the manifestations of sharia law in Indonesia. However, during the New Order period, sharia law began to emerge in the financial industry, especially Islamic banking. Although during the New Order period, Islamic financial institutions were banned, the ban was still enforced because Islamic banks operated more fairly using a yield system. Sharia-based rules are increasingly developing and being updated so that their use is becoming more widespread in Indonesia.

The formation of regional regulations with sharia nuances is also influenced by community participation. Based on article 96 paragraph (1) of Law Number 12 of 2011 related to the Formation of Laws and Regulations, "the public has the right to provide input orally and/or in writing in the formation of laws and regulations. The principles of Islamic sharia in the first precept serve as a constitutional basis for the application of law based on Islamic law, and this is one of the efforts to realize the nation's ideals contained in Pancasila.

Indonesia's founding president Sukarno saw the conservative interpretation of so-called Islamic Sharia as a threat to the ideology of Pancasila which became the state's guideline, which made multiculturalism the foundation stone of the country's political system. However, in 1999, President B.J. Habibie, under pressure to end Aceh's long and brutal armed civil conflict, signed the Aceh Special Status Law, which for the first time in Indonesia's post-independence history allowed some countries to implement Sharia. While other regions of the country do not have the legal authority to enforce Sharia, subsequent laws and treaties have had the unintended consequence, which is to make religious conservatives even more emboldened. In 2001, three districts in West Java and West Sumatra began to require hijab in schools. Other districts, mostly on the islands of Java, Sumatra and Sulawesi, began issuing similar rules, requiring female teachers and students to wear hijab.¹⁵

As part of a larger decentralization effort, parliament in 1999 passed the regional autonomy law, amended in 2004, which gives provincial and local governments the authority to regulate the education and civil service sectors. Several Islamic political parties and Muslim politicians, who came from nationalist parties, seized the opportunity to impose Sharia rules and regulations in various provinces and regions. Although religion formally remained the domain of national government and had not been decentralized, over the next decade, a large number of discriminatory rules and regulations inspired by religion and aimed at women were passed across the country,

¹⁴ H A Malthuf Siroj, "The Existence of Islamic Law and Its Prospects in Indonesia," no. 1 (2018).

¹⁵ Human Right Watc, "I want to run way" *Abusive Dress Codes for Women and Girls in Indonesia*, (USA:Human Right Watch, 2021), Hlm. 4.

often in the name of public order. As of 2016, Komnas Perempuan has identified 421 laws and regulations passed between 2009-2016 that discriminate against women and religious minority groups. An academic study found that, as of April 2019, more than 700 Sharia-inspired laws and regulations have been adopted. Women and girls are the most common targets.¹⁶

As a country of law, Indonesia adheres to three legal systems at once, namely the civil law system, the customary law system, and the Islamic legal system, a combination of *European Continental Law*, *Common Law* and Islamic Law system, so that the researcher concludes that the enactment of the Sharia Regional Regulation does not negate the existence of the Sharia Regional Regulation in the Islamic legal system.

3.2. The Position of the Shariah Regional Regulation is seen from the Hierarchy and Laws and Regulations

Regional Regulations are one of the instruments used to implement the idea of the state of law at a lower level, especially at the regional level, in the hierarchy of laws and regulations of Indonesia. The formation of the Regional Regulation is a solution to the demands of regional laws and regulations in accordance with local wisdom, so that the Regional Regulation can serve the needs and interests of the community. The implementation of decentralization, which is the handover of authority from the central government to the regions to manage all regional potentials, is expected to encourage the realization of regional autonomy and empowerment in order to realize equitable development and community welfare in a country. So that it gave birth to an idea related to regional autonomy.

The following is an analysis of the Sharia Regional Regulation in the aspect of legislation.

- a. The birth of regional rules with sharia nuances has a basis contained in laws and regulations. The following is the basis for the enactment of Sharia Regional Regulations in Indonesia;
 - a) The Formulation of Pancasila or in the Preamble to the 1945 Constitution of the Republic of Indonesia".
 - b) Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The President has the right to submit a draft law to the House of Representatives".
 - c) Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, "The President shall set government rules to implement the law as it should".
 - d) Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, "The local governments of provinces, districts, and cities regulate and manage their own government affairs according to the principle of autonomy and assistance duties".
 - e) Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia, "Local governments have the right to establish other rules to carry out autonomy and assistance duties".

¹⁶ *Ibid*

- f) Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The State recognizes and respects special or special local government units regulated by law".
 - g) Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The House of Representatives holds the power to make laws".
 - h) Article 21 of the 1945 Constitution of the Republic of Indonesia, "Members of the House of Representatives have the right to propose bills".
 - i) Article 28E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "Everyone is free to embrace religion and worship according to his religion..."
 - j) Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The right to life, the right not to be tortured, the right to independence, mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on a retroactive basis are human rights that cannot be reduced under any circumstances".
 - k) Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, "The protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government".
 - l) Article 28I paragraph (5) of the 1945 Constitution of the Republic of Indonesia, "In order to uphold and protect human rights in accordance with the principles of the legal and democratic state, the implementation of human rights is guaranteed, regulated, and outlined in laws and regulations".
 - m) Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The State is based on the One Godhead".
 - n) Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, "The State guarantees the freedom of each citizen to embrace his or her own religion and to worship according to his religion and belief".¹⁷
- b. In the 1945 Constitution of the Unitary State of the Republic of Indonesia, Regional Government is regulated in Article 18 that;
- a) "The Unitary State of the Republic of Indonesia is divided into provincial areas and the provincial area is divided into districts and cities, each of which has a Regional Government, which is regulated by law.
 - b) Provincial, Regency, and City Regional Governments regulate and manage their own government affairs according to the principle of autonomy and assistance duties.
 - c) Provincial, Regency, and City Regional Governments have a Regional People's Representative Council whose members are elected through General Elections.
 - d) The Governor, Regent, and Mayor respectively as the head of the Provincial, Regency, and City Regional Governments are democratically elected.
 - e) Local governments exercise the widest possible autonomy, except for government affairs that are determined by law to be the affairs of the Central Government.

¹⁷ Nur Chanifah Saraswati and Mr. Muhammad Fauzan, *"The Constitutionality of Sharia-Based Laws and Regulations in Indonesia"* 1 (2019).

- f) The Regional Government has the right to establish regional rules and other rules to carry out autonomy and assistance duties.
- g) The structure and procedures for the implementation of local government are regulated in the law".

Although there is no regional regulation (Perda) that explicitly mentions itself as a Sharia Regional Regulation, the content of the regulation indirectly reflects the nuances of Islamic law. The term Sharia Regional Regulation is widely used to refer to several Regional Regulations that regulate people's lives based on certain teachings, namely Islamic teachings.

- c. Regional Autonomy is regulated in Article 1 number (6) of Law No. 23 of 2014 related to Regional Government which states that regional autonomy is "the right, authority, and obligation of autonomous regions to regulate and manage their own government affairs and the interests of the local community in the system of the Unitary State of the Republic of Indonesia". The definition provided by the Local Government Law provides room for creativity in terms of managing regional affairs by taking into account local conditions. The position of the Regional Regulation after reform undeniably has significant strength. This is because the institution has the autonomy to form, and the local regulation comes into effect when promulgated in the institution.

Article 250 paragraph (1) states that: "Regional Regulations and Regional Regulations as referred to in Article 249 paragraph (1) and paragraph (3) are prohibited in relation to the provisions of higher laws and regulations, public interest, and/or morality. Paragraph (2) states that: related to the public interest as intended in paragraph (1) includes:

- a) Disruption of harmony between citizens;
- b) Disruption of access to public services;
- c) Disturbance of public order and order;
- d) The disruption of economic activities to improve community welfare; and/or
- e) Discrimination against ethnicity, religion and belief, race, inter-group, and gender.

- d. In Law Number 12 of 2011 which has been updated with Law number 13 of 2022, the Regency/City Regional Regulation norm has been placed as the lowest norm of all laws and regulations. Measuring the hierarchy of norms, namely between provincial autonomous regions and regency/city autonomous regions, is hierarchical, so that the form or type of laws and regulations issued are different. It is seen theoretically, especially in the side of the coherence truth theory. From this point of view, it is true that for norms where the territory of force or the sphere of power (*ruimtegebied, territorial, sphere*) is more broad, it is clearly higher than the norm where the territory of force is narrower. For the above theoretical reasons, it is clear that the position of the provincial regulation that applies is broader than the regency/city regulation must be higher than the regency/city regulation in the province concerned. Although the provincial autonomous region and the regency/city autonomous region are not hierarchical

administratively, but normatively the norm embodied in the norms of the Regional Regulation must be hierarchical (tiered)."¹⁸

The essence of regional regulations as a means of accommodating special conditions in the region is a characteristic of regional regulations that are not possessed by other laws and regulations that only position the laws and regulations in question as written legal tools for the national interest alone. The essence of regional regulations as a means of accommodating special conditions in the regions is the function of regional regulations that are not only a further elaboration of national laws and regulations, but also as a legal means in paying attention to the characteristics of each region. Regional Regulations as a reservoir for the aspirations of diverse communities certainly must not be contrary to the public interest. It is said to be related to the public interest (among others) if the policy results in the disruption of harmony between community members. In addition, it can also be referred to the Explanation of Article 6 paragraph (1) letter f of the Law. No. 12 of 2011 regarding the "principle of diversity tunggal ika", namely: "what is meant by the principle of diversity is that the content material of laws and regulations must pay attention to the diversity of populations, religions, tribes and groups, special conditions of regions, and culture, especially those related to sensitive issues in the life of the community, nation and state".¹⁹

3.3. Analysis of Muko-Muko Regional Regulation Number 5 of 2016 related to the way Muslims and Muslim women dress from the perspective of human rights

3.3.1. Sharia Regional in the Perspective of Human Rights

In the context of the diversity gathered in a unitary state, Indonesia is a religious nation-state, not a one-religion or secular state. The life and diversity of Indonesia's multiethnic, religious, and cultural society, must therefore be guaranteed and protected by the State and its legal system. Policies and rules must not be racist, exclude minorities, or undermine the diversity of society. In practice, however, cultural sensitivities and aspects of local political power sometimes make it difficult to apply laws that are fair and free from social prejudice. One example of various religious manifestations that are constitutionally protected by the state is the wearing or not wearing the hijab. One of the important aspects of religious freedom is the ability to express one's beliefs. Important aspects of religion include beliefs, practices, and the spread of religious doctrine. As a result, the state must protect the freedom of religion and belief of people and groups. Thus, referring to the first precept of Pancasila, "The One Godhead", Indonesia can be considered a godly country because national law stipulates that everyone must adhere to a religion (theism) and not legalize people who do not have a religion (atheism), so that everyone is given the freedom to adhere to whatever religion they want. This is clearly validated by the 1945 Constitution, which protects Human Rights.

¹⁸ Jumadi, (*The Position and Function of Regency/City Regional Rules (Perda) as an Instrument of* in the *Legislative System in Indonesia*), 2018, pp. 35-36

¹⁹ *Ibid*

Constitutionally, the 1945 Constitution provides a direct guarantee of freedom of religion for everyone, with at least two articles guaranteeing freedom of religion and belief, namely Article 28E paragraph (1) and Article 29. Given that the majority of citizens' activities are protected by articles related to freedom of religion, freedom of expression, and political freedom, the urgency of the right to religious freedom in the context of human rights and state configuration is of paramount importance;

- (1) Article 28E paragraph (1) of the 1945 Constitution stipulates that "everyone has the right to embrace religion and worship according to his religion".
- (2) Article 28E paragraph (2) of the 1945 Constitution stipulates that "everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his or her conscience".
- (3) Article 28E paragraph (3) of the 1945 Constitution stipulates that "everyone has the right to freedom of association, assembly, and expression".
- (4) Article 29 paragraph 1 reads, "The State is based on the One Godhead".
- (5) Article 29 paragraph 2 reads, "The State guarantees the freedom of each citizen to embrace his own religion and to worship according to his religion and belief".

Human Rights Law No. 39 of 1999 also regulates freedom of religion and belief, namely in article 22 which reads;

- (1) "Everyone is free to embrace their own religion and worship according to their religion and beliefs.
- (2) The state guarantees the freedom of everyone to embrace their own religion and to worship according to their religion and beliefs.

In fact, Das Sollen and Das Sein were often at odds; In the last ten years, there have been difficulties and setbacks related to religious freedom, especially freedom of speech. Furthermore, further information shows that the State is the entity that violates the most freedom of religion and belief in society. Both non-state actors (community/religious groups) and state actors (law enforcement) are responsible for these violations.²⁰

According to Article 18 paragraph (3) of the ICCPR, restrictions on the freedom to practice and choose religion or belief can only be carried out through legally mandated actions necessary to maintain the safety, order, health, or morals of the community, as well as the human rights and freedoms of others. The author of this page concludes that wearing a hijab is one way to show one's religion, although there

²⁰ Habib Luqman Hakim, "The Right to Freedom of Religious Expression in Legal and Political Dynamics in Indonesia," *Legacy: Journal of Law and Legislation* 1, No. 1 (March 4, 2021): 96–111, <https://doi.org/10.21274/Legacy.2021.1.1.96-111>.

are differences of opinion among academics regarding the law of wearing it. This depends on how the aurat and hijab are interpreted and how in-depth the study is.

Conceptually in the human rights discourse, the restriction of rights by the State in this external forum is allowed. Although in its realization, it should be observed that restrictions on freedom under the pretext of protecting the morals of the people in Indonesia manifest many improper moral issues. For example, the call for non-Muslim women to wear the hijab in public schools to adjust the general morality stems from the teachings of the majority religion in schools and it has happened in several cases of forced hijab wearing to non-Muslim female students. This is what needs to be criticized, under the pretext of maintaining morality but the methods used are immoral, violate the human rights of others, and it is sad that such cases occur in the school environment, which should be the safest and most educated place but is a place that harms human rights and educational values. The restriction of rights by the State (State institutions) on the grounds of upholding public morality is sometimes a pretext for the emergence of a number of regional rules with a religious tone that are intolerable and discriminatory against minority groups. It is inappropriate to mention only one particular religious moral principle while ignoring the principles, customs, and understandings of other religions, because morality is not a unique concept.

The right to freedom of religious expression is closely related to the guarantee of citizens' rights to religion and belief. There are at least two articles in the 1945 Constitution that can be identified as a direct guarantee of freedom of religion for every citizen, namely Article 28E paragraph (1) and Article 29²¹ which regulates freedom of worship and religion. Then it is further regulated by a number of laws and regulations, such as Law Number 1/PNPS/1965 related to the Prevention of Abuse and/or Blasphemy and Law Number 39 of 1999 related to Human Rights. After regional autonomy, problems arise when certain regional rules are considered discriminatory. On the one hand, Law Number 32 of 2004 related to Regional Government gives a lot of flexibility to local governments to develop innovations and inventions which are then bundled into regional laws and regulations.²²

More and more people are thinking about democratization in various aspects of society, nation, and state life, including local governments, and it is clear that democratization is also related to the formation of democratic local legal rules. The function of regional rules as part of laws and regulations and as the implementation of regional autonomy decentralization includes several things. First, they function as policy instruments to carry out the tasks of assistance and regional autonomy; second, they serve as guidelines for the implementation of higher laws and regulations; Third, they maintain the diversity and specificity of the region and meet the aspirations of their communities, even though they are still regulated in higher laws and

²¹ The 1945 Constitution expressly guarantees freedom of religion as stated in article 29 (2): "*The State guarantees the freedom of each citizen to embrace his own religion and to worship according to his religion and belief.*" This is detailed in article 28E: "*everyone has the right to freedom of belief and expression of thoughts and attitudes, in accordance with his or her conscience.*"

²² Agus Budi Setiyono, *The Establishment of Democratic Regional Legal Rules by Local Governments*, , 2008: xiii

regulations, Third, as a reservoir of regional specificity and diversity and a channel of the aspirations of the local community while remaining within the corridor of the Republic of Indonesia. Fourth, as a development tool to improve regional welfare.

However, the application of the principle of freedom in the implementation of regional autonomy actually traps local governments in a counterproductive mindset, which can lead to the birth of legal products in the form of regional regulations that are often discriminatory. Regional autonomy allows each region to interpret its autonomy according to its needs by setting different regional rules.

Local governments now have greater flexibility to enforce regional rules and other regional rules, including regional rules with Islamic nuances, thanks to decentralization. In 1999, there were only four Sharia Regional Regulations in Indonesia, spread across four cities and districts. Over the past ten years, the number has increased significantly. More than 400 Sharia regional regulations have been in force throughout Indonesia in 2013. Although there is no regional policy that specifically identifies itself as a Sharia regulation, Islamic law subtly gives nuances to its provisions. Mukomuko Regency Regional Regulation Number 5 of 2016 related to Muslim and Muslim Women's Clothing for Students (hereinafter referred to as Mukomuko Regency Regional Regulation Number 5 of 2016) is one example of a regional regulation with Islamic nuances.²³

Muko-muko Regency is one of the districts in Bengkulu Province which is located in the northernmost part of Bengkulu Province. The area of Mukomuko Regency reaches about 4,146.52 km².¹² and consists of 15 sub-districts, 148 villages, and three sub-districts. This regency was established on the basis of Law of the Republic of Indonesia Number 3 of 2003 concerning the Establishment of Muko-Muko Regency, Seluma Regency, and Kaur Regency in Bengkulu Province (hereinafter abbreviated as Law Number 3 of 2003). Based on data from the Ministry of Religion at the Bengkulu Regional Office, regarding the number of people based on the religion adhered to throughout Bengkulu Province in 2017, it is known that the population of Mukomuko Regency is 177,003 people who embrace Islam, 2,218 people are Christians, 1,893 Catholics, 91 Hindus, and 15 Confucians. In line with data from the Central Statistics Agency of Mukomuko Regency, measuring the percentage of population and religion practiced in Mukomuko Regency in 2019, it is known that the number of Muslims is 97.584%; Protestants are 1.536%; catholic is 0.760%; Hindu is 0.110%; and buddhism is 0.003%.²⁴ Based on this data, it can be concluded that the majority of the population of Mukomuko are Muslims.

On September 15, 2016, the Mukomuko Regency Regional Regulation Number 5 of 2016 was promulgated regarding Muslim and Muslim women's clothing for students.

²³ Robiatul Adawiyah and Lita Tyesta Addy Listya Wardhani, "Analysis of Mukomuko Regency Regional Regulation Number 5 of 2016 Related to Muslim and Muslim Dress for Students Based on the Theory of Laws and Regulations," *Journal of Justice: Journal of Law, Legislation and Social Institutions* 5, no. 2 (23 December 2020): 37, <https://doi.org/10.22373/justisia.v5i2.8453>.

²⁴ BPS Mukomuko Regency, *Mukomuko Regency in 2020 Figures* (Mukomuko: BPS Mukomuko Regency, 2020), p. 5.

The Regional Regulation in its consideration considers the provisions of Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia where the state guarantees the freedom of each resident to worship according to their respective religion and beliefs and as one of the manifestations of the implementation of religious law, for Muslims are required to wear clothes that cover the awrah which is reflected in their association and daily life. This is why this Regional Regulation is considered necessary to be established. The juridical basis of this Regional Regulation is Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia; Law Number 3 of 2003; PPPU Law; Local Government Law; and Mukomuko Regency Regional Regulation Number 4 of 2009 related to Regional Government Affairs of Mukomuko Regency (hereinafter abbreviated as Mukomuko Regency Regional Regulation Number 4 of 2009).

3.4. Regional Regulation of Muko-Muko Regency No.5 of 2016

Some of the subjects discussed in the Mukomuko Regency Regional Regulation Number 5 of 2016 include:

- (1) First, general provisions that discuss operational definitions.²⁵
- (2) Second, the meaning. It is stated that the purpose of dressing Muslims and Muslim women is to provide a benchmark for norms in dressing Muslims and Muslim women to the community in daily life as a form of faith and devotion to Allah SWT. ²⁶
- (3) Third, it is stated that the purpose of dressing Muslims and Muslim women is: a. Getting used to dressing as Muslims and Muslim women in daily life, both in family life and in community life; and b. Forming a good attitude and personality of Muslims and Muslim women with noble character.²⁷
- (4) The four functions, it is stated that the functions of dressing Muslims and Muslim women are: a. covering the aurat; (b) Avoid slander; c. identity, self-image and religion; d. health, beauty; e. Value of worship.²⁸
- (5) The fifth obligation, it is stated that every Muslim student is required to wear Muslim and Muslim clothes. Meanwhile, for the general public who are Muslims, it is an appeal.²⁹
- (6) Sixth, Muslim and Muslim women dressed in formal and non-formal educational institutions as well as official events and other events. Meanwhile, the general public is urged to dress as Muslims and Muslim women in their daily lives.³⁰

The provisions for wearing Muslim and Muslim clothes for students are as follows: a. men wear long pants and wear long or short sleeved shirts; and b. women wear long-sleeved shirts, wear skirts that cover up to the ankles, and wear a veil that

²⁵ See Article 1

²⁶ See Article 2

²⁷ See Article 3

²⁸ See Article 4

²⁹ See Article 5

³⁰ See Article 6

covers the awrah. The clothes are not translucent and not tight. The provisions regarding clothing models are further regulated by the Regent's Regulation.³¹

- a. The seven sanctions, where every violation of the provisions of the regional regulation are subject to sanctions in stages as follows: 1. verbally reprimanded; and 2. Reprimanded in writing, a copy of which is submitted to parents/guardians. The application of sanctions is further regulated by the Regent's Regulation.³²
- b. Eighth, supervision of the implementation of this regional regulation is carried out by the technical agency in charge and/or other officials appointed by the regional head based on the decision of the regent and all levels of society.³³
- c. Ninth, miscellaneous provisions. This Regional Regulation applies to students who are Muslims and domiciled in the Mukukomuko Regency area. As for students and non-Muslim people, the clothes adjust to the provisions that apply to their respective religions.³⁴
- d. Tenth, regarding the closing provisions.³⁵

3.5. Analysis of Muko-Muko Regional Regulation No.5 of 2016

In Article 18 paragraph (3) of the ICCPR, it states that freedom of religion or belief can be limited by legal provisions. These restrictions can only be enacted to protect the safety, order, health, or morals of the community. The following are the points in Article 18 of the ICCPR:

- a) Everyone has the right to freedom of thought, belief, and religion.
- b) No one should be forced to adhere to or adopt a particular religion or belief.
- c) Freedom of religion can be done individually or together.
- d) Freedom of religion can be done in public or closed places.
- e) The state pledges to respect the freedom of parents and legal guardians in educating children's religion and morals.
- f) Freedom of religion or belief is a universal and fundamental human right.
- g) This right is also enshrined in several other international conventions.

Based on the above point, the author concludes that in his normative analysis, the Mukomuko Regency Regional Regulation Number 5 of 2016 is included in the category of Sharia Regional Regulation which regulates the way Muslims and Muslim women dress for students and the content material in this Regional Regulation contains many problems that are contrary to Human Rights that have been absorbed in the Formation of Laws in Indonesia, Including;

- a) First, it can be seen in the sentence used as the title of the regional regulation which is raised "How to dress Muslims and Muslim women for Students", the choice of model and way of dress is an individual right of every person that cannot be violated, especially in this case clothing is a form of religious

³¹ See Article 7

³² See Article 8

³³ See Article 9

³⁴ See Article 10

³⁵ See Article 11

- expression that has been guaranteed in Human Rights, so that the local government is not authorized to regulate the way of dress by its people.
- b) Second, Regional Regulations are a reservoir for the aspirations and needs of the people in areas that have diversity of ethnicities, races, cultures and religions, so that Regional Regulations that tend to one particular group or religion will deviate from the function of the Regional Regulation itself. As stipulated in Article 6 paragraph (1) letter f of the Law. No. 12 of 2011 concerning the "Principle of Bhineka Tunggal Ika", namely: "what is meant by the Principle of Bhineka Tunggal Ika is that the content of laws and regulations must pay attention to the diversity of population, religion, tribes and groups, special conditions of regions, and culture, especially those related to sensitive issues in the life of the community, nation and state"
 - c) Third, the content of the Regional Regulation that tends to one particular religion is feared to cause jealousy by other religions which leads to the disruption of harmony in social life. As happened in the Monokrawi, Papua, the tendency of the majority of Christians to make Gospel Regional Regulations caused disputes among the community and mutual sensitivity to religious issues.
 - d) Fourth, the Regional Regulation that regulates the way of dressing intended for students, and using the phrase "mandatory" under the pretext of maintaining morality and obeying religious orders is a form of thinking error committed by the government. If studied further, in Islam even a child who has not reached the age of puberty is not charged with the obligation to cover the aurat, the category of students in the regional regulation is not explained in detail whether the obligation referred to in the regional regulation is aimed at all students or is specifically for students who are of puberty only, so that it can be concluded that the regional regulation is disharmonized with the rules above, which in the 1945 Constitution of the Republic of Indonesia has guaranteed freedom of expression. Clothes are not something that represents good or bad morals of a person, if morality is measured by the way of dressing, then people who dress according to the rules of religion are the best, but the reality is not so, not a few cases of immorality occur in the pesantren environment, not a few crimes whose perpetrators are people who are "seen" to be diligent in worship.

The need to conduct a deeper study related to the root causes of society's morality which is getting "worse" day by day, the focus of the study is on handling things that are of a mendacious nature, such as poverty, quality of education, and health, instead of being trapped in problems that should not need to be taken care of by the government.

4. Conclusion

The position of sharia Regional Regulations in the legal system and National Laws and Regulations in Indonesia is regulated in the 1945 Constitution of the Unitary State of the Republic of Indonesia, as a state of law, Indonesia adheres to three legal systems at once, namely the civil law system, the customary law system, and the Islamic legal system, a combination of *European Continental Law*, *Common Law* and the Islamic Law

system, the enactment of Sharia Regional Regulations does not negate the existence of Sharia Regional Regulations in the Islamic legal system, which basically Sharia Regional Regulations are recognized as the authority given by the central government to the Regions to regulate their own household affairs that are adjusted to the needs of the people in the Regions. In Law N0. 23 of 2014 related to Regional Government, the Local Government Law provides space for creativity in terms of managing regional affairs by taking into account existing local conditions. Law Number 12 of 2011 places Regency/City Regulations as the lowest norm of all laws and regulations. Regional Regulations as a repository of the aspirations of diverse communities certainly should not be related to the public interest. It is said to be related to the public interest (among others) if the policy results in the disruption of harmony between community members.

Analysis of Mukomuko Regional Regulation Number 5 of 2016 related to Muslim and Muslim Dress for Students is reviewed from a Human Rights Perspective, that Mukomuko Regional Regulation Number 5 of 2016 related to Muslim and Muslim Women's Dress for Students in principle violates Human Rights. This is based on the use of mandatory phrases aimed at all students in Mukomuko Regency under the pretext of maintaining the morality of their society, while clothing does not determine a person's morality, in the 1945 Constitution of the Republic of Indonesia has also guaranteed freedom of expression for every individual, including freedom of dress.

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