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Incompatibility between liberal democracy and Islamic Law. Indonesia: the province of Aceh

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ABSTRACT

Liberal democracy and Islamic Law. The two more widespread and worshiped lifestyles all over the world have steadily been confronting each other in every sphere of life. This has resulted into an ongoing debate about their (un)likely coexistence. This paper analyzes their potential incompatibility in Indonesia, which is the most relevant country in terms of both Muslim democracy and Muslim population. However, despite being considered a democracy; Indonesia itself has a region in which Islamic Law is being radically construed and implemented: the province of Aceh. That is why this dissertation examines the impact that the influence of Islamic Law in that specific region has in the country as well as in its democratic status for the purpose of establishing the (in)compatibility between liberal democracy and Islamic Law.

KEY WORDS: Islam, liberal democracy, political Islam, Indonesia, Aceh, Islamic Law, *Sharia*.

RESUMEN

Democracia liberal y Ley islámica. Los dos estilos de vida más extendidos y venerados en todo el mundo han estado en un constante enfrentamiento en todos los ámbitos de la vida. Esto ha dado lugar a un debate permanente sobre su (in)probable coexistencia. Este documento analiza su posible incompatibilidad en Indonesia, que es el país más relevante tanto en términos de democracia musulmana como de población musulmana. Sin embargo, a pesar de ser considerada como una democracia, la propia Indonesia cuenta con una región en la que la Ley islámica se está interpretando e implementando de forma radical: la provincia de Aceh. Por ello, esta disertación examina el impacto que la influencia de la Ley islámica en esa región específica tiene en el país, así como en su estatus democrático en aras a la determinación de la (in)compatibilidad entre democracia liberal y Ley islámica.

PALABRAS CLAVE: islam, democracia liberal, islam político, Indonesia, Aceh, Ley islámica, *Sharia*.

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GLOSSARY

Alienation: expression that refers to the detachment of a person's affection from a certain position, object or previous connection. It usually implies a negative feeling of powerlessness or helplessness.

Bay'at: Islamic expression that refers to the process of election of a person to a post of command, and particularly, to the election of the caliph. It requires a certain number of electors to be considered valid, but the specific amount is not determined.

Caliphate: Islamic political-religious structure of state which originates from the years that followed the death of the prophet Muhammad. It comprised the Muslim community as well as the lands and people under its domination, and its policies are based on Islam. This state is ruled by a caliph, which holds both temporal and spiritual power, combining in itself the figures or head of state and head of religious affairs, as it is the successor of the prophet Muhammad, and therefore, leader of the Muslim community.

Confessional state: state in which a specific religion is officially recognized and widely practiced, even encouraged. This situation could be a mere consequence of tradition, customs and practices, or it could also be enshrined in the state's constitution.

Constitution: body of fundamental principles that guide general behavior in a certain state. It constitutes the legal basis of a state, and it usually determines how that entity is to be governed.

Darul Islam: also known as the Islamic Armed Forces of Indonesia, it was an Islamist group whose purpose was the establishment of an Islamic state in Indonesia through the implementation of Islamic Law. This movement resulted into the emergence of an ideological movement, Darul Islamism, that shared the same aspirations.

Direct democracy: form of democratic government in which it is the people that conform the electorate, without any intermediary or representative as proxy, who decide on policy initiatives.

Dogma: any unquestionable belief, that one holds as indisputably true, and it is usually referred to mainly in the context of religions.

Façade democracy: hybrid authoritarian regime that for instrumental purposes embraces different Western political principles characteristic of liberal democracy, such as human rights, public rights and freedoms, etc. However, this regime, which is quite frequent within the Muslim world, lacks other essential features required to be considered a proper democracy, such as law enforcement, civic engagement, power alternation, freedom of the press...

Fatwas: formal advice given by the religious scholars of Islamic Law to a question posed by an individual, a judge or a government. It is not binding for the individual believer, the judge or the government to comply with.

GAM: also known as the Free Aceh Movement, it was a separatist group that adopted the form of a guerrilla. Its main objective consisted in the accomplishment of the independence of the province of Aceh through the belligerent fight against the central government of Indonesia from 1976 to 2005.

***Ijtihad*:** mechanism in Islam consisting of independent reasoning performed by an expert in Islamic Law regarding issues that are not given a particular solution in the two primary sources of Islamic Law: the *Quran* and the *Sunnah*. This technique holds a special relevance within the supporters of the Shafi'i school of Islamic thought.

Imam: Islamic leadership position that leads Muslims in prayer. For *Sunnis*, an Imam is simply the worship leader of a mosque, whereas for *Shia*, it is an irrefutable leader of the Muslim community who descends from the prophet.

Islamic ecumenism: ecumenism stands for the movement that supports the unification of all Christianity, the unity of all Christian religious confessions. However, Islamic ecumenism is related to the unification contained in the dogma of *tawhid*, which includes unity of one God, one faith, one community and one Law.

Istihsan: commonly known as juristic preference, it stands for the mechanism of implementation of a jurist's own judgement to solve a problem that has no clear answer

in sacred religious texts. It is considered by the Hanafi school of Islamic thought as a secondary source of Islamic Law.

Jihad: Muslims' religious obligation to fight non-believers, the enemies of Islam. It literally means "struggle", and this obligation justifies the employment of violence as a legitimate means to ensure the formation of God's kingdom on Earth. There are two types of *Jihad*: the greater *Jihad* consists on the inner struggle to purify one's heart bringing yourself closer to God and away from sinful behavior, and the lesser *Jihad* is an outward belligerent and military struggle against the unbelievers in the name of God, the Holy War.

Jihadist terrorism: radical movement that includes Islamic extremists who, legitimized by the notion of *jihad*, wage war against non-believers through terrorism as part of the Holy War carried out in the name of God, in the name of Allah. It is directed not only against the corrupted unbeliever West, but also versus non-believer Muslims.

Multi-confessional state: state in which there is a power sharing arrangement between people of different faiths, as several confessions are recognized by the state as official religions.

New Order: term that refers to the governmental period of the second Indonesian president, Suharto, which goes from the year 1966 to 1998, year of his resignation.

Othering: process of treating a group of people as intrinsically different to oneself in order to secure one's identity, regarding this other group as an opposing enemy.

Prophet: within the Islamic religion, a prophet is someone sent by God to serve as rode model of perfect human behavior to a certain community, at the same time that he aims to spread God's message on Earth in accordance with Islam.

Qada: Islamic expression that refers to the Islamic judiciary branch of the government.

***Qanun*:** provincial legal provision exclusively implemented in the province of Aceh through which regional legislation is issued. What differentiates these specific legislative instruments from others is that they derive from Islamic principles.

Representative democracy: form of democratic government characterized by the election of several government representatives through a vote by the citizenry. These elected representatives are responsible for the issuing of legislation as well as for the general ruling and policy-making of the state.

Secular state: state which remains completely neutral and independent towards religion, lacking to support and recognize any religious confession. In this state, no legislation favors one religion over another, and the separation between religion and state is granted.

Sharia courts: specific branch of the judiciary consisting of several courts responsible for settling emerging disputes regarding Islamic Law. The matters handled in these courts may vary depending on the state and the particular affected region, as the legitimatizing document that grants them competencies might not attribute the same spheres of jurisdiction to all of these courts, even within the same state. Regarding their personal jurisdiction, it is usually limited to Muslims and even non-Muslims who voluntarily decide to submit to them.

Shura: Islamic equivalent to the modern notion of democracy which gives the people the right to elect their leaders and representatives as well as the freedom of thought, opinion and expression.

Ulama: community within Islam that is composed of scholars who study, construe and transmit religious knowledge in Islam, including Islamic jurisprudence and law. They are theoretically and practically versed in Muslim sciences.

Ummah: it means community, and it refers to the collective of the Muslim community present in a certain state as a group that shares common religious beliefs.

Unitary state: sovereign state that constitutes a single entity, in which most or all of the governing power resides in the centralize government. In this state, the central government is the absolute authority which exerts its power throughout the entire territory of the state.

I. INTRODUCTION

1. MOTIVES AND PURPOSE

Liberal democracy and Islamic Law are two political lifestyles that have opposed each other for quite some time now. As Robinson states, their coexistence generates notable controversy, for they are regarded as completely antagonistic regimes (2021). The clash between both of them finds its greatest exponent in the country of Indonesia, more specifically, in the Indonesian province of Aceh. That is why this dissertation aims to perform an in-depth analysis of both political systems, in order to accomplish clarification to the answer about their potential (in)compatibility.

Nowadays, political regimes are becoming deeply influenced and shaped by cultural identities based on shared values, sentiments and historical heritage. It is appropriate to develop this study at this point, as in the recent years, there has been a revivalism of Islam characterized by both Jihadist terrorism and the rise of fundamentalists, whose main objective lies in the implementation of Islamic Law in their internal wish to return to the basis of Islam (Balta, 1994). It is also in this moment when democratic regimes are being questioned all over the world, experiencing a crisis of liberal democracy, according to the European Center for Populism Studies (n.d.). These recent events within the international community, as well as both my own firm support towards liberal democracy, and my personal academic interest in Islam, contextualize the importance of the introduction of this study. What is more, 20 years have almost already elapsed since peace between the state and the regional government was reached in Indonesia, and therefore, a more stabilized situation exists, which can certainly help us obtain an accurate response to this issue.

Through the development of this analysis, not only will we be able to achieve an in-depth comprehension of such as complex reality as it is the Indonesian state, but we will also be capable of addressing other realities in which the coexistence of liberal democracy and Islamic Law is questioned as well. Even though Indonesia holds utmost relevance, as it constitutes the state with most Muslim population as well as the third biggest democracy (Oficina de Información Diplomática del Ministerio de Asuntos Exteriores, Unión Europea y Cooperación, 2023), under no circumstances does it mean it is the only state in which this struggle between liberal democracy and Islamic Law occurs.

2. STATE OF THE QUESTION

The fundamental issue addresses in this essay consists of the (in)compatibility between liberal democracy and Islamic Law as governing systems. Apart from ideological perspectives that establish the likelihood of compatibility between both regimes, even though many authors discuss about these systems' relationship showing concerns about their potential coexistence or highlighting their main divergences, fewer authors indeed adopt a specific approach within this controversial debate.

On the one hand, some authors argue that Islamic Law, which is based on the implementation of *Sharia*, does not contradict democracy, as its implementation has undergone a democratic process, in this case performed by the state of Indonesia (Rani, Fikri & Mahfud, 2020). They support this statement claiming that the application of Islamic Law in Aceh encourages democratic values, among which we could highlight equality, justice and prosperity. Moreover, Johnson & Sergie establish the basis for a potential compatibility of both regimes, as Islam needs a democratic system, which is already provided for in the *Quran* when it imposes mutual consultation in the conduction of affairs (2014). Other authors defend the potential coexistence of liberal democracy and Islamic Law as long as it has as fundament what they call "substantive *Sharia*", which stands for an interpretation of *Sharia* in accordance with constitutionalism and democracy (Holsen, 2007). They argue that being Islamic Law a construe of *Sharia*, it must include human interpretation, because even though it derives from God's word and revelation, the construction and implementation of the Law is an activity that belongs to human understanding. This interpretation, as Holsen argues, will be carried out through the mechanism of *ijtihad*, commonly resorted to in Islam, in order to better comprehend God's word (2007).

On the other hand, an opposing perspective, contrary to the compatibility of liberal democracy and Islamic Law, is held by other writers. Some authors -as Massad states- argue that Islamic societies are inherently undemocratic due to their centralized burocratic systems (2015). What is more, they firmly believe that as long as Islam draws its legitimacy from religious expertise and doctrine, failing to overcome this lack of separation religion-politics, it will not achieve the pluralism required to be considered a democracy. The same perspective is supported by other authors, for who the

incompatibility between both governance systems resides in the authoritarianism of Islamic political tradition, since even if the leaders were bound by divine law, and Muslims accepted their rule, Islam still remained tyrannical and arbitrary (Massad, 2015). To what traditionalists Muslims -or fundamentalists- concern, as established by Johnson & Sergie, this branch of Muslims will under no circumstance accept the coexistence of liberal democracy and Islamic Law (2014). They despise democracy, in their own understanding that it constitutes an artificial Western concept they wish to impose on Muslim states, a product of Western colonialism, of unbelievers. Another radicalized part of Muslims, the Islamists, reject democracy as a compatible system with Islam as it encompasses everything they oppose (Hilmy, 2010). In this way, democracy includes secularism, which they fiercely criticize due to the lack of interference between state and religion. It also involves liberalism, meaning uncontrolled freedom, which according to them, contradicts the fundamental beliefs of Islam. It supports pluralism as well, value that implies the equal truth of all religions, when for Islamists Islam is the one and only religion, the Truth. Following Hilmy, from a perspective of Islam faith, when comparing liberal democracy and Islamic Law, there cannot be any common ground (2010). In fact, he provides four arguments which explain their irreconcilable discrepancies: while democracy is an artificial product of humans, *Sharia* is the literal word of God; in Islamic Law, religion and state are inexorably linked, whether liberal democracy enshrines the separation between church and state; liberal democracy derives its legitimacy and sovereignty from the people, but in Islamic Law, it is extracted from Allah; Islamic Law allows the application of majority vote in few specific issues due to the necessity of expertise, while in liberal democracy, majority vote is undoubtedly implemented on every occasion (Hilmy, 2010).

However complete this described analysis may seem, it still have its limitations, which this dissertation will attempt to address. The arguments of both supporters and opponents of the compatibility between liberal democracy and Islamic Law do not vary much, but what these authors lack the most is a specific materialized examination of this (in)compatibility focusses on the state of Indonesia, and its province of Aceh. Embracing the fact that now 20 years from the peace between both governments have elapsed, in what is believed to be a more stable environment, this essay will thoroughly pursue an analysis through which this (in)compatibility issue can be accurately responded.

3. OBJECTIVES AND RESEARCH QUESTIONS

The main objectives this dissertation wishes to accomplish are first of all, to determine the democratic character of the state of Indonesia through a thorough study of its political and legal framework based on the constitution of 1945. Then, it wants to obtain an accurate perspective on the implementation of Islamic Law in the province of Aceh, in order to establish the potential erosion it has caused on the democratic foundations of Indonesia. Finally, as the concluding point of this whole analysis, this study aspires to provide a definitive response to the controversy surrounding the (in)compatibility between liberal democracy and Islamic Law.

For this purpose, as guidance for the current dissertation, and looking forward to presenting an accurate answer to the stated objectives, the following research questions are proposed:

- Regarding on the one hand, Indonesia's political and legal framework, and on the other hand, the events occurring in Aceh, could the state of Indonesia be classified as a liberal democracy?
- Does Aceh's rooted religious sentiment make it impossible or extremely difficult for this province to cease on its implementation of Islamic Law?
- Will somehow international concerns about human rights violations and discriminatory patterns impact either the state government of Indonesia or the provincial government of Aceh?

4. HYPOTHESIS

Considering the objectives and the research questions previously examined, this dissertation wishes to address the following hypothesis: the implementation of Islamic Law in the Indonesian province of Aceh has significantly eroded the democratic foundations in Indonesia.

Nowadays, a wide variety of states have experienced a decentralization process, and are therefore, internally divided within different political and territorial distributions. However, the democratic character of a state must be predicated of the state as a whole,

as a complete system, bearing in mind all of its subnational divisions as these subdivisions are not isolated independent compartments completely separated from each other, but intertwined ones within a common statewide framework. That is why the existing relationship between regional or local governments and the national government, if the former does not comply with the requirements that a democratic regime demands, can strongly influence the state's consideration as a democracy.

More specifically, Indonesia did experience a process of decentralization, through which the state was divided in different provinces, attributing a significant amount of autonomy to some of them, in particular to the province of Aceh. Thanks to this autonomy, Aceh is able to a certain extent implement its own legal provisions. However, these stipulations do not only have an impact on this specific province, but they might also have implications in the national level, even affecting Indonesia's democratic nature.

5. METHODOLOGY

With the objective of addressing the explained statement, the present study is structured as a case study, performing an in-depth analysis of the state of Indonesia as well as one of its territorial subdivisions: the province of Aceh. Even though the coexistence of Islamic Law and liberal democracy could also be approach from a merely abstract comparison, its materialization in a specific state and background considerably enriches this study. While other cases could have been selected in order to examine the compatibility of liberal democracy and Islamic Law in reality, the relevance of the chosen study case has now become patent due to the justification provided in previous sections.

Among the research performed, different databases have been consulted for the purpose of gathering several sources of information. Most of the information sources employed in this dissertation constitute secondary sources as they are created afterwards by authors who did not participated directly in the events, although in accordance with this understanding of secondary source, perhaps the *Quran* might indeed be considered a primary source as -following Muslims belief- it could be construed as the embodiment of the literal word of God. These secondary sources of information are qualitative sources consisting of academic books and articles, think tanks publications, articles from different

networks, newspaper articles... However, also some primary sources of information have equally been consulted, such as legislative texts and constitutions.

The analysis performed follows a well-determined structure divided in three main sections. The first one deals with the examination of the democratic character of Indonesia as a state considering the role of religion therein, as well as its political and legal framework. The second part studies the legal and political framework in the province of Aceh, evaluating the implementation of Islamic Law in the region, with a special dedication to its criminal code. Finally, the third one determines the (in)compatibility between liberal democracy and Islamic Law, after which, conclusions of the entire analysis will be drawn.

6. THEORETICAL FRAMEWORK

The theoretical basis of this dissertation emanates from the liberal theory of International Relations. This theory originated after the end of World War II, and according to Slaughter, unlike realism -which establishes nation-states as the leading actors in the international sphere-, it considers individuals and social groups to be the main actors in international relations (1995). Consequently, states' preferences, policies and behaviors will be conditioned by the relationship of these actors with the state, through the pressure governments are put under by the relative power of these individuals and social groups within society. Thus, under the perspective of liberalism, international relations emphasize state interests in lieu of state power. According to Moravcsik, states are regarded as a mere channel to aggregate actors' interests that will later materialize into foreign policies, shaping the world order. Therefore, the underlying essential feature of states are individuals and social groups' preferences. Huntington already predicted liberalism's structure of the world order, when in his theory of clash of civilizations, he argued that future conflicts will arise between groups of different civilizations, as a result of cultural and identity discrepancies (1993).

Liberalism enhances freedoms and rights of individuals, nations and minorities, and it is characterized by its target of achieving freedom and equality (Nejati, 2021). In addition, this theory also advocates for the establishment of democracy in accordance with secular

and rational foundations. In the present analysis, democracy is probably the most important concept that derives from this liberal theory of International Relations due to its recently major expansion in the international arena.

As it has been previously stated, this dissertation aims to examine the accommodation of Indonesia's political and legal configuration to the standards of liberal democracy, as well as its compatibility (if as so, it is indeed considered a democratic regime) with Islamic Law, given the particular circumstances occurring in the province of Aceh. This theoretical background will provide the reader with a profound explanation of the two main concepts which are certainly required in order to obtain a reasoned response of the issue hereinafter addressed.

6.1. Islam: religion, politics, and Islamic Law

Prior to entering into the analysis of Islam, it is necessary to state that nowadays, there is no consensus on what Islam is. Although we may all agree that it originated as a religion, according to Massad, the usage Islam has been given by numerous thinkers throughout the years has transformed its meaning, turning it into a culture, a code of conduct, a civilization, a specific type of governance... (2015). Turning it into a way of life that encompasses almost every sphere of life.

Islam is the second largest world **religion**, and it is configurated around the monotheistic exclusive belief in Allah above all things, which materializes in a complete submission to him. Its birth dates back to the VII century in the actual Saudi Arabia. In order to understand its origins, it is imperative that we examine the role of Muhammad. Muhammad was born in the year 570 and years later, he was announced by the archangel Gabriel that he was the chosen one to be Allah's prophet (Balta, 1994). Throughout his life, the prophet was given God's revelation during a period of 22 years, embodying God's voice on Earth, and consequently, after his death in the year 632, his companions spread the word about his practices, sayings and accomplishments, becoming a true testimony to all believing Muslims, who looked up to him as the role model to follow, for that he was an extraordinary man and prophet. These teachings of the prophet and some of his companions -also known as *hadiths*- were later gathered into one single body which constitutes the *Sunnah*. Similarly, God's words were transmitted from generation to generation of Muslims, and it was not until the reign of the caliph Uthman that the

definitive version of the *Quran* was elaborated (Balta, 1994). It is composed by 114 chapters of 6,000 verses. For Muslims, the *Quran* is a sacred text, and it occupies an essential place in everyday life of Muslims. As it is the very word of God, it became a compulsory code of conduct –"*Believers, fulfill your obligations*", it says (The Quran, 5:1)- that stipulated Muslim's beliefs, their behavior with God as well as with the environment and with others, at the same time that it included provisions regulating many other aspects of their life. It is the spiritual path for all Muslims to follow, or as Esposito refers to it, "*the straight path*" (2005), expression also implemented by the *Quran* when it says in its very beginning "*Guide us to the straight path*" (The Quran, 1:6). What is more, some of these stipulations were attached to a certain punishment or sanction in case of transgression.

Religiously speaking, we find the main guidance and obligation of Islam in its five pillars, all of them of compulsory fulfillment by all Muslims. First of all, there is *shashada*, the profession of faith, under the pure belief that "*He is God: there is no deity other than Him*" (The Quran, 4:87). The second pillar of Islam is *salat*, the prayer, which must comply with the required ritual purification ablutions. Muslims are obliged to pray five times a day: at dawn, at noon, in the afternoon, in the evening and at night. The third one is *sawm*, fasting, which not only includes abstinence from eating during the month of Ramadan, but it also extends to drinking, smoking and having sexual intercourse during this period of time. In fourth place, there is the pillar of *zakat*, alms, which basically consists of a mandatory religious tax assigned to the rich in order to be distributed within the poor. The last pillar is called *hach*, and it imposes the requirement for Muslims to pilgrimage to Mecca at least once in their lifetime, as long as they possess the means and strength to perform it (Balta, 1994).

Apart from these five pillars, Islam possesses several dogmas or tenets, all of which converge at an essential dogma: *tawhid*, meaning, the uniqueness of God. The *Quran* establishes "*He is God: there is no deity other than Him*" (The Quran, 4:87), and it is in fact polytheism, the association of God with other existing deities -*shirk*- the worst sin any Muslim could commit, as established by the *Quran* when it says "*God will not forgive anyone for associating something with Him*" (The Quran, 4:48). God is almighty and omnipotent and it is only the undoubted obedience to God's word, which is regarded as Law, what will grant Muslims the reward of salvation. Moreover, Islam also includes

another tenet based on the believing in Muhammad, as the seal of the Prophets, the last messenger from God on Earth. However, *tawhid* not only encompasses the unity of God, but also unity in all of Islam's fields as an expression of Islamic ecumenism: only one God, one faith, one community and only one Law (Balta, 1994).

When considering all these stipulations Islam introduces for Muslims to strictly obey, the *Quran* itself differentiates between believers and non-believers (Esposito, 2005). On the one hand, believers represent the good obedient Muslim that follows God's path, and therefore, will be rewarded. On the other hand, non-believers symbolize hypocrisy and evil, for they do not comply with God's commandments and so, they are not worthy of reward, but punishment if they do not show resentment, as stated in the *Quran* when it decrees "*The hypocrites shall surely be in the lowest depth of the Fire; and you will find no helper for them. But those who repent and mend their ways, who hold fast to God and are sincere in their worship of God will be joined with the believers; and God will bestow a great reward upon the believers*" (The Quran, 4:145 & 4:146).

There is an unquestionable complexity surrounding Islam, so that it constitutes an extremely complicated system that does not allow a global unification of Islamic religiosity, because according to Ayubi, despite the literality of scriptures, the text is general enough to be opened to diverging interpretations (1996). Within Islam, there is a primary historical division between *Sunni* (who represent around 90% of all Muslims) and *Shia* (symbolizing the remaining 10% of Muslims). According to Esposito, even though they both share their common faith in Allah, the *Quran*, and the teachings of the prophet Muhammad, they differ in both their approach towards governance, and their interpretation of the *Quran* (2005). Regarding governance, the former unite spiritual and political leadership under the institution of the caliphate, which will govern them according to democratic principles and consensus. Therefore, no lineal descent from the prophet is required as long as the leader meets some standards of faith and knowledge. Nevertheless, the latter emphasize the idea of hereditary hierarchy, believing that their leader must be an imam who is a descendant of the prophet. To what the interpretation of the *Quran* concerns, *Sunni* Muslims focus on the apparent meaning of the words, whereas *Shia* Muslims concentrate in the hidden meaning of the *Quran* looking at its spirit (Middle East Institute, 2012).

Sufism is another important branch of Islam located neither within *Sunni* nor *Shia* Islam. As the Middle East Institute establishes, it construes Islam as a mystical, ritual and spiritual religion, focusing its practice in the true love of God aiming to accomplish nearness to Allah. For the followers of this current, Islam is centered in ascetic pietism, in believers' relationship with God, achieving Truth in the end, which can only be found in the love of God (2012).

Unlike other monotheist religions, such as Christianism, where **politics** and religion are two completely separated spheres, in Islam, as Balta clearly states, the figure of the Cesar and God merges in one (1994), being this religion a vivid expression of caesaropapism, which represents the unification between state and religion. As a consequence, the notion of **political Islam** emerged, also as a response to a severe development crisis faced by many Arab societies. Political Islam could be defined as an attempt to unite religion and politics, applying Islamic Laws to all spheres of life, not through a legitimization of the government, but over an exercise of resistance to it (Ayubi, 1996). Nowadays, political Islam has become a mechanism for extremist religious Islamic groups to take ownership of politics as well with the objective of establishing an Islamic State.

Even though it is true that the *Quran* barely contains provisions regarding Muslim's political organization, failing to establish any particular form of government, some authors such as Ayubi, argue that Islam is inseparably linked to the Islamic State (1996). In fact, it is indeed Muslims' mission not only to act as servants of God, but also to spread his rule (Esposito, 2005). This connection between religion and state was based on the fact that the state wanted to ensure ideological hegemony through religion, as it was this divine origin what legitimized the power of the state as a mere means in order to implement and fulfill God's will. So, in this approach, according to authors such as Hosen, sovereignty was vested in God as the source of all power (2007). Indeed, in the *Quran* this power is vested in God as it establishes "*God is all knowing and wise*" (The Quran, 4:24) and "*God is self-sufficient and praiseworthy*" (The Quran, 4:131). This type of government dates back to the prophet Muhammad and his agglutination of politics and religion as one in the figure of the city of Medina, unifying the roles of head of state, religious messenger and commander-in-chief in himself, and therefore, constituting a political-religious community that instituted faith as the principal criteria of belonging (Ayubi, 1996). Balta states that the **Islamic State** rests in the will of the people, as

Muhammad actions in Medina with the constitutional pact that resulted into the pacific and tolerated coexistence of different religious identities within one unique community are set as the exemplary ideal of state establishment (1994). In the beginning, according to authors such as Ayubi, the focus laid on both the authority of the leader and the community as a human basis, but it was later relocated on *Sharia* (1996). This notion of the Islamic State, even though it could be argued to rely on fiction -as the *Quran* and *Sunnah* barely contain information regarding politics and state-, due to reiteration and temporal permanence, it became a common belief of a previously existing reality to all Muslims.

In this conception of the Islamic State, there was a certain equilibrium and balance between three different powers (Ayubi, 1996): the caliph as the political guardian of the community, the religious scholars, in charge of issuing religious-legal advice, and the judges, as intermediators in the disputes that arise from religious laws. In accordance with Ayubi, the political leader must be guided in his role by God's word, and therefore, he must implement *Sharia*, as well as fulfill the standards of a good leader, fair with his people (1996). This power division of the Islamic State resembles the current separation of powers that characterizes most modern states. However, this Islamic State is not consistent with any of the specific governing systems today present in these states. On the contrary, it could be framed as a nomocracy, which is the reign of the word and the Law, in this case, God's word regarded by Muslims as a binding command. In fact, there are no provisions in Islam regarding the functioning and control of the government in this Islamic State that lead us to believe it imposes this type of government.

Islamic Law or ***Sharia*** is a consequence of Islam as a religion, due to the fact that faith is inextricably linked to Law. However, even though these two terms (*Sharia* and Islamic Law) are usually indistinctly referred to, Muslims differentiate between both concepts as they believe *Sharia* to be the eternal, immutable counsel and values determined by God, while Islamic Law or *Sharia* Law encompasses the specific laws based on the interpretation of *Sharia*, its implementation on Earth. *Sharia* literally means "path" in Arabic, and so, Islamic Law could be defined as the divine law that derives from Alla's decree, contained in both the *Quran* and the *Sunnah* (Delta & Pane, 2020), as well as other different sources. As Feldman argues, *Sharia* is seen by Muslims as a materialization of God's words, as a set of unchanging principles and beliefs that guide

life with accurate respect to God's will (2008). Apart from the *Quran* and the *Sunnah* -primary sources of Islamic Law-, according to Balta, another source of Islamic Law is *ichmaa*, which stands for the consensus of the Wiseman of the Muslim community (1994). It is a secondary source of Law that consists in the interpretation of the two main sources (*Quran* and *Sunnah*), in order to determine their correct interpretation, although in practice it is recognized the same authority as these principal sources by the Muslim community. The last source of Islamic Law is *qiyah*, analogical reasoning, also a secondary source through which scenarios that are not given a specific response in the previous three sources, find their own solution in the implementation of analogy with similar situations that are referred to in the previous sources. As stated by Halim, this last source based on analogical reasoning is one of the different mechanisms employed by *fiqh*, -another autonomous corpus of Islamic knowledge- which stands for Islamic jurisprudence obtained from the interpretation of *Sharia* by Islam's scholars through *ijtihad* (2022). It presents itself with a series of both individual and collective actions that are rated on a scale between: mandatory, recommended, indifferent, reprehensible and forbidden; all of them attached to a particular sanction or punishment in case of infringement (Balta, 1994). The secondary character of these two last sources of Islamic Law signifies that they only intervene whenever no solution is found in the primary sources.

Sharia presents itself as a set of commandments to be observed by the good Muslim that guides all aspects of their lives: it includes -according to Johnson & Sergie- religious obligations, daily routines, familiar commitments, inheritance stipulations, worship duties, financial provisions... (2014). Therefore, *Sharia* encompasses practically every sphere of life as religion was considered to be essential to all state, society, and law; and it is believed to be eternal, final, absolute and unalterable (Hosen, 2007). Nevertheless, proof of this deception is the emergence of different schools of Islamic thought or Islamic jurisprudence that differ from each other in the different weight or relevance they attribute to each source of Islamic Law, in its divergent interpretation of Islamic Law. At this point we must highlight that even though *Shia* Islam also enjoys its own minority schools of thought, due to the predominant character of *Sunni* Islam, this study will be focused on this branch and its four schools of thought; each of which is named after the main Muslim scholar who founded it. The Hanafi school -which amounts for 31% of *Sunni* Muslims-, is the most liberal, and despite it prioritizes a textual and literal interpretation of the books,

it also favors the application of *istihsan*, juristic preference or discretion when the solution of *qiyah* is not desirable for public interest (Al-Qazwini, n.d.). The Maliki school -representing 25% of *Sunni* Muslims-, is characterized by its introduction in jurisprudence of the consensus of the people of Medina, as they believe that they preserved better the traditions of the prophet Muhammad (Robinson, 2021). The Shafi'i school -standing for 16% of *Sunni* Muslims-, establishes an order of priority regarding the different sources of Islamic Law, which is the following one: first, the *Quran*, then the *hadiths* that constitute the *Sunnah*, after what comes *qiyah*, and finally *ichmaa*. It is considered by Balta to be "*the most opened rite*" (1994). The Hanbali school -representing 4% of *Sunni* Muslims-, is considered to be by authros such as Al-Qazwini, the most conservative, and it advocates for a return to primary sources, which are the *Quran* and the *Sunnah,* rejecting *ichmaa*, and rarely implementing *qiyah* (n.d.).

A more radicalized and extremist interpretation of Islam is performed by the branch of the fundamentalists. They maintain a blind adherence to the absolute sovereignty of God, and his word, highlighting Western heretic ignorance as a result of their lack of implementation of this principle and *Sharia*. That is why, regarding the sources of Islamic Law, they encourage a return to the primary sources -the *Quran* and the *Sunnah*-, dismissing *fiqh* as a trustworthy source, since it has been contaminated by human and political interests (Ayubi, 1996). In the end, their main aspiration is to establish an Islamic State understood as an ideological state supports by a strict adherence to *Sharia*, to divine Law, abandoning any peek of secularism. For them, Islam is the only solution. Within these fundamentalists, in accordance with Ayubi, a particular group of Muslims firmly supports the use of violence, of *jihad*, as a legitimate means to ensure the formation of the kingdom of God on Earth (1996). Islamists construe this struggle as a literal commandment of God, since the *Quran* itself establishes that "*whoever fights for the cause of God, whether he is slain or is victorious, to him We shall give a great reward*" (The Quran, 4:74)

The above studied ideological discrepancies between Muslims also materialize in what Islamic Law concerns. This way, in traditional fundamentalist states, *Sharia* constitutes the Law of the state, whereas in more modernist moderate states, it holds a social influence with a certain repercussion in secular legislation (Balta, 1994).

Due to the rigidity and imperativeness of its commandments, Islam lacks -according to Balta- the means to reach a sufficient capacity of awareness and adaptation to modernity (1994). Besides, this difficulty of accommodation to contemporary standards is also exacerbated by the revivalism of Islam in its most revolutionary and fundamentalist variant, triggering in Western states a conception of Islam as aggressive and unreasonable. This return to the Islamic Law, to the traditional basis of Islam represents for some, one last resort against the secularized West and the crisis of identity that modernization has posed to most Muslims, creating in them a sentiment of disenchantment. As stated by Ayubi, they tend to regard religion as the answer to all of their problems, construing it as one unique entity with politics, with the word of God as the only legitimated source of Law and ethics, and *jihad* as the means to accomplish this reshaping of the world order in the direction of Islam (1996).

6.2. Liberal democracy

Despite its current worldwide questioning, liberal democracy is still considered to be one of the most widespread political systems in the world, and authors such as Galston even claim its triumph as a political regime within the international community (2018). As it is often witnessed in political science, liberal democracy does not stand as a pacific consensual concept. On the contrary, it has been object of unceasingly enduring debates. However, it could be defined as both "*a liberal political ideology and a form of government in which representative democracy operates under the principles of classical liberalism*" (European Center for Populism Studies, n.d.). Even if -according to this definition-, liberal democracy was originated with an initial ideal of complying with the principles of liberalism, we must bear in mind that the development and deconstruction of this concept has implied a modification of its meaning. In this way, the term "liberal" does not necessarily entail a strict fulfilment of the ideology of liberalism, but perhaps a mere reference to its birth during the Age of Enlightenment thanks to philosophers advocating liberty (European Center for Populism Studies, n.d.). Moreover, as Nwogu clearly states, representative democracy is only one of the many variants democracy can be materialized into, not the only means to accomplish a democratic regime (2015). Thus, perhaps a more suitable definition appears to be the one given by Manent, who describes democracy itself as a "*political regime in which all power derived its legitimacy from the people, and is exercised by the people or their representatives*" (2003).

Even though there surely seems to exist an underlying belief of trustworthiness, fairness, equality and justice behind the idea of liberal democracy -which becomes clear with the emergence of different democracy indexes that rate countries in accordance with their democracy level, such as Freedom House or Democracy Matrix-, it is certain that not all democratic political regimes reach the same degree of democratization (Manent, 2003). Nevertheless, there are several features or requirements that every regime which fits the definition of liberal democracy must meet whether it is constituted as a direct or representative democracy, and regardless of the form of government (parliamentary system, presidential system, or semi-presidential system) and state configuration (constitutional monarchy or republic) it adopts, as established by the European Center for Populism Studies (n.d.).

First of all, as it is stated by Galston, all liberal democracies derive their power's legitimacy solely from the people's will, which is why **popular sovereignty** must be the departure point for these regimes (2018). Then, liberal democracy also requires the government to guarantee all these people the enjoyment and respect of their **public liberties, rights and freedoms** (Manent, 2003) in order to ensure the equality and inclusiveness of all citizenry. In addition, citizens exercising these rights have to be allowed to engage in their aggregation of preferences through political parties that will participate in **regular, fair, free and competitive elections** (Dahl, 2008) per universal suffrage, electing their representatives and deciding state issues by majority vote within a framework of widespread political participation. Moreover, another core idea of liberal democracies resides in **the rule of law**. This principle materializes on the one hand, in a written Constitution which enshrines the entire configuration of the state; and on the other hand, in an equal submission to the law, so that all laws and procedures are equally applied to the citizenry (Nwogu, 2015). Lastly, in order for this whole system to effectively function, according to the European Center for Populism Studies, it is necessary to introduce **limitations on governmental power** through both separation of powers between the executive, legislative and judiciary branches, and a system of check and balances that grants impartial deliberation and accountability when these standards are not fulfilled by their leaders (n.d.). All these imperative conditions generate a specific atmosphere surrounding liberal democracy, which entails a perception of tolerance, pluralism, inclusiveness and fairness. It is the accommodation of a particular regime to these features to a certain extent what will determine its classification (or not) as a liberal

democracy. However, when considering the democratic character of a specific state, democracy is not configurated as a zero-sum game in which a state either is classified as a democracy or not. On the contrary, democracy is intentionally contemplated as an open range of democratic regimes, in which a certain state can resemble to a greater or lesser extent to a democracy.

Although liberal democracy has been previously defined as a type of political government, all the obstacles and hardships it has overcome throughout the years for the sake of success have made liberal democracy surpass the political sphere. Indeed, liberal democracy has exceeded government, and is nowadays considered -by both opponents, and supporters- a particular culture or lifestyle which characteristics are influenced by the above examined features.

Despite being the current predominant political system in the world, liberal democracy now faces countless threats that challenge its prevailing position. These challenges can be classified into external and internal threats. Externally, liberal democracy is at risk due to the irruption of different extremist non-democratic political systems such as ethnonational autocracies, meritocracies, or regimes based on God's word rather than on the people's will (Galston, 2018). Internally, according to the European Center for Populism Studies, the main challenge that questions democracy is populism, which is characterized by its homogenous definition of "the people", as well as its skepticism regarding liberal rights and constitutionalism (n.d.). There is an additional internal threat to liberal democracy consisting in a wrongful implementation of this governmental system resulting into corruption, insecurity, political unrest, provoking popular disaffection within democratic institutions (Nwogu, 2015). All of these hazards subject liberal democracy to insurmountable pressure, weakening this political regime, now in crisis.

II. ANALYSIS AND DISCUSSION: INDONESIA

1. DEMOCRATIC CONFIGURATION OF THE STATE OF INDONESIA: CONSTITUTION OF 1945

1.1. Political and legal framework and its accommodation towards democracy

Indonesia, located in the southeastern end of Asia, is the fourth most populous country in the world, as well as the country with the largest Muslim population. Indeed, according to the Oficina de Información Diplomática del Ministerio de Asuntos Exteriores, Unión Europea y Cooperación, Indonesia enjoys a total of 273.7 million inhabitants, of which 87.18% are Muslims. Territorially, the state of Indonesia is internally organized in 38 sub-divisions called provinces, which are at the same time distributed in regencies and municipalities.

Indonesia's composition as an independent Republic since its independence in 1945 is provided in its Constitution as foundational document. More specifically, the fourth paragraph of the Constitution contains the guiding principles under which the state of Indonesia is built (Hosen, 2007). These pillars, also known as "**Pancasila**" are: the belief in the One and Only God, a just and civilized humanity, the unity of the state of Indonesia, a democratic life guided by the wisdom resulted from deliberation amongst representatives, and the objective of social justice for all the people of Indonesia. According to Hilmy, although the Muslim community in Indonesia continues to practice the Islamic way of life, they have accepted this Pancasila philosophy (2010).

Regarding its political configuration, Indonesia is constituted as a **presidentialist Republic** with the president of the Republic as the highest authority of the state. The president elects the rest of the members of the government, which are the vice-president, the coordinating ministers and the ministers, and the totality of them constitute the executive power (Oficina de Información Diplomática del Ministerio de Asuntos Exteriores, Unión Europea y Cooperación, 2023).

The **legislative power** of the state is composed of a bicameral parliament. On the one hand, there is the People's Representative Council "Dewan Perwakilan Rakyat" composed of 575 members who are directly elected by the citizenry. On the other hand,

there is the Regional Representative Council "Dewan Perwakilan Daerah", an advisory chamber whose 136 members represent the different conforming regions of the state. Both chambers occasionally meet in joint session, constituting then the People's Consultative Assembly "Majelis Permusyawaratan Rakyat", whose tasks include the investiture and termination of the president and vice-president positions (Hosen, 2007).

Members of both the executive and the legislative branches of government are elected through presidential and legislative elections, which are held separately. In the last presidential election, held on the 17th of April 2019, the actual president of Indonesia, Joko Widodo, -from the Indonesian Democratic Party- was re-elected with 55.5% of the votes (Oficina de Información Diplomática del Ministerio de Asuntos Exteriores, Unión Europea y Cooperación, 2023). In fact, generally in Indonesian politics, secular political parties such as the Indonesian Democratic Party have much more success than opposing Islamic-oriented parties. However, the participation of Islamic political parties in Indonesian elections is not forbidden, but encouraged. Although during the 2019 presidential election, some voting irregularities were reported, the election itself was considered to meet fairness and freedom standards (Freedom House, 2023). Indeed, Indonesian elections grant political pluralism and participation, even though some minorities are still underrepresented in electoral politics.

The **judiciary power** of the state of Indonesia, as Johnson & Sergie affirm, constitutes a dual legal system that comprises mixed jurisdiction courts, which means that regarding several issues, Muslims can opt to subject themselves to *Sharia* courts (2014). Indonesia holds a system of uniform *Sharia* courts that were granted territorial jurisdiction compatible with the civil courts. Therefore, Indonesia's national judiciary -as stated in article 24 of its constitution- is composed of four parallel systems of courts, each of which holds its own competencies, having jurisdiction in different matters. On the one hand, there are the state courts, military courts and administrative courts, all of them courts of general jurisdiction; while on the other hand, there are *Sharia* courts. These *Sharia* courts, in accordance to Otto, consider the Compilation of Islamic Law in Indonesia in order to deliver a decision, which is a guideline of *Sharia*-based law that these courts should strictly follow to their greatest extent (2010). All of these four systems of courts have as common hierarchical superior the Supreme Court of Indonesia. The main distinction in people's subjection to one court or another, apart from the matter discussed, is their

Muslim or non-Muslim statute, being the former assigned to the jurisdiction of *Sharia* courts. In addition to these judicial systems, there is also the Constitutional Court, which is responsible for the examination of the constitutional character of legislation (Cammack & Feener, 2012). However well-organized it may appear to be, the Indonesian judiciary system is dominated by corruption and different weaknesses which includes arbitrary during the due process (Freedom House, 2023).

Concerning **Indonesia's legal framework**, *Sharia* is embedded in Indonesian legislation regarding a wide variety of *Sharia*-inspired law that regulates mainly civil issues: marriage, familiar relationships, inheritance, banking, economics, dispute resolution and religious courts among others, which according to Hidayat, could be construed as if Islamic Law regulated all spheres of life within the Indonesian society (2013). Apart from these topics, *Sharia* also influences Indonesia's national criminal code, which even though it is based on the French-Dutch legal tradition, and it does not included crimes that entail corporal punishment, it does incorporate some crimes that are related to Islam and *Sharia*, such as heresy, blasphemy, unmarried cohabitation, etc (Otto, 2010). The commission of these crimes is rigorously considered and their penalties strictly implemented, as it occurred when one of Jakarta's former governors -Basuki Tjahaja Purnama, also known as Ahok- was convicted of blasphemy for insulting Islam through the recitation of a verse from the *Quran* during one of his campaign meetings (BBC, 2017).

The legal system of Indonesia is characterized by a legislation hierarchy that revolves around its Constitution and Pancasila as their fundamental norms. Therefore, its hierarchical scale of laws is established -from most to less relevance- as follows: (i) constitution of the Republic of Indonesia of 1945, (ii) Decisions of the People Consultative Assembly, (iii) Laws or government regulation in lieu of law, (iv) government regulation, (v) presidential decree, (vi) province-level of regional regulation, and (vii) regency level of regional regulation (Rani, Fikri & Mahfud, 2020). Consequently, as there must exist harmony and synchronization between all laws, both vertically and horizontally, it seems reasonable to defend that legislation must never contradict each other. In order to avoid this system contradiction, as Rani, Fikri & Mahfud state, different foundation rules are implemented (2020). *Lex superior derogate legi inferiori*, which means higher regulations are prioritize over lower ones. *Lex posterior*

derogate legi priori, which materializes in a preference of the new legislation over the older one. *Lex specialis derogate leg generali*, therefore excluding a specific law the more general one. As a result, as some authors such as Holsen argue, due to this list that constitute the sources of Indonesian Law, there is little place for Islamic Law to fit into this detailed catalog (2007).

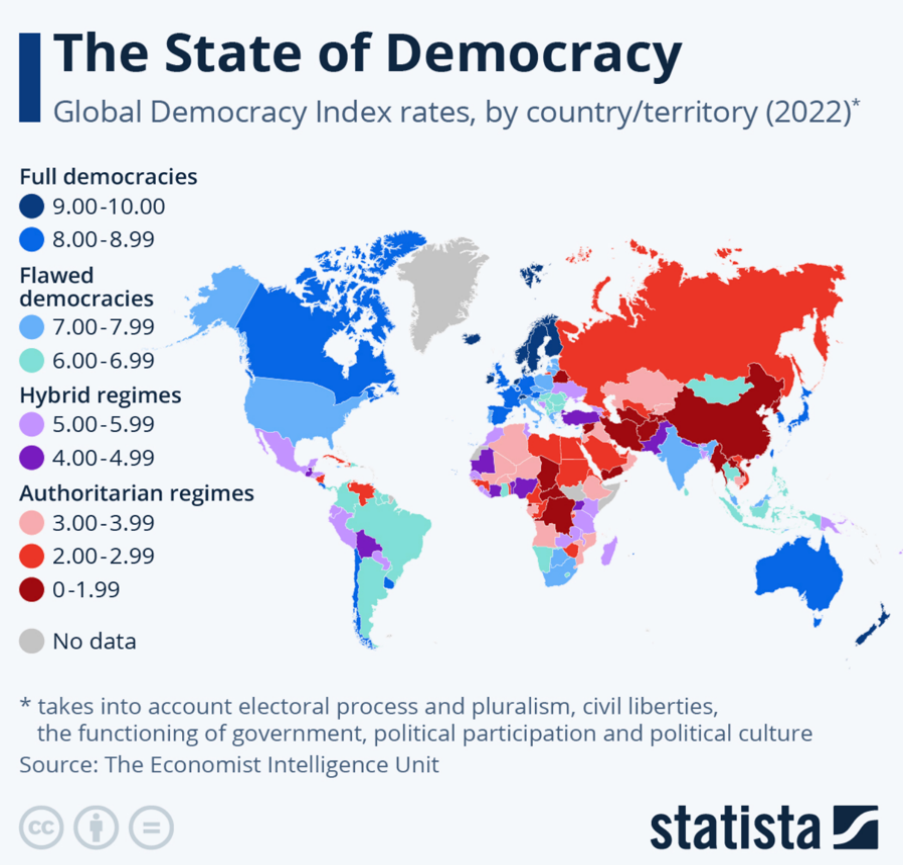
A proper observance of the constitution of 1945 provides a clear notion of the establishment of democratic institutions in Indonesia. What is more, Pancasila also endorses the Indonesian state as a democratic one. Regarding **state sovereignty**, as established in article 1 (2) of the constitution, "*Sovereignty is in the hands of the people*", enshrining popular sovereignty as an essential pillar of the Indonesian state. This same article in its third paragraph grants the principle of the **rule of law**, which entails an equal submission of all citizens to the law and materializes in the elaboration of this written constitution. In addition, articles 7A and 7B of the Indonesian constitution provide the mechanism of impeachment of the president subject to constitutional justification, and therefore reinsuring accountability as an essential feature of Indonesia's political framework. What is more, in this way, the constitution limits both the president and vice-president tenure to two five-year terms, limitation enshrined in article 7 of this document. This accountability mechanism alongside with the established separation of powers between the executive, legislative and judiciary branches institute **limitations on governmental power**. Moreover, the constitution gives to the people the power to change their government peacefully and periodically, through **free, fair, inclusive and competitive elections** with universal suffrage, as it is states in article 22E of the constitution. These elections guarantee power alternation, as it can be seen with the return of Indonesian Democratic Power to office in 2014, after having lost the two previous presidential elections. Regarding the guarantee of protection of **public liberties, rights and freedoms**, the constitution safeguards throughout the entire document different rights and freedoms equally granted to the Indonesian citizenry. For instance, we can highlight the "*right to work and to earn a humane livelihood*" (article 27), the "*right to live*" (article 28A), the "*right to develop him/herself through the fulfillment of his/her basic needs*" (article 28 C), the "*freedom to associate, to assemble and to express opinions*" (article 28E) -although, in relation to sensitive political issue's assemblies, the participants are likely to experience intimidation or violence from security forces-, the "*right to be free from torture or inhumane and degrading treatment*" (article 28G), or the

"*duty to respect the human rights of others*" (article 28J), among other rights and freedoms equally guaranteed in the constitution.

From this previously performed constitutional analysis, it would seem reasonable to argue affirmatively about the democratic character of the Republic of Indonesia, as its political and legal framework fit the required standards of liberal democracy. Indeed, most authors such as Hilmy firmly believe that since the collapse of Soeharto's rule in 1998, Indonesia has been transitioning from an authoritarian rule towards a democratic regime (2010). This transitory stage is indeed reflected by Freedom House, when concerning global freedom scores, it rates Indonesia with a punctuation of 58 out of 100, considering it to be "partly free" (2023). However, the general perspective regarding Indonesia's democratic status is to consider it a **deficient democracy**, as established by Democracy Matrix with a total value index of 0.587 out of 1 (2020).

Figure 1

Global Democracy Index rates, by country/territory



Source: Armstrong (2023)

This categorization of Indonesia as a deficient democracy is also held by Figure 1, to the extent that it classifies Indonesia as a **flawed democracy**. This flawed character of Indonesia's democracy is well represented by a patent regression of its global freedom status. Freedom House shows an undoubted backwards tendency: in 2023, Indonesia's global freedom score was 58, but last year it was 59, in 2020 it was 61 and in 2017 it even reached 65 (2023). This regressive trend manifests that even if we could now preach Indonesia's democratic nature -flawed democratic nature-, perhaps instead of constituting a democracy in progress, it is resuming its original authoritarian character, which is something we certainly must be aware of. Moreover, this concerning progression makes us reconsider an alarming possibility which consists on Indonesia's constitution as a façade democracy. However, in this dissertation it is not believed that the Indonesian state constitutes a façade democracy that lacks some democratic elements. On the contrary, as already analyzed above, it combines all fundamental democratic features. However, as Freedom House establishes, it is undeniable that the state suffers from continuous struggles as it faces several endemic threats such as minorities' discrimination, police violence and brutality, systemic corruption or politization of Islamic laws (2023), which make democracy go backwards.

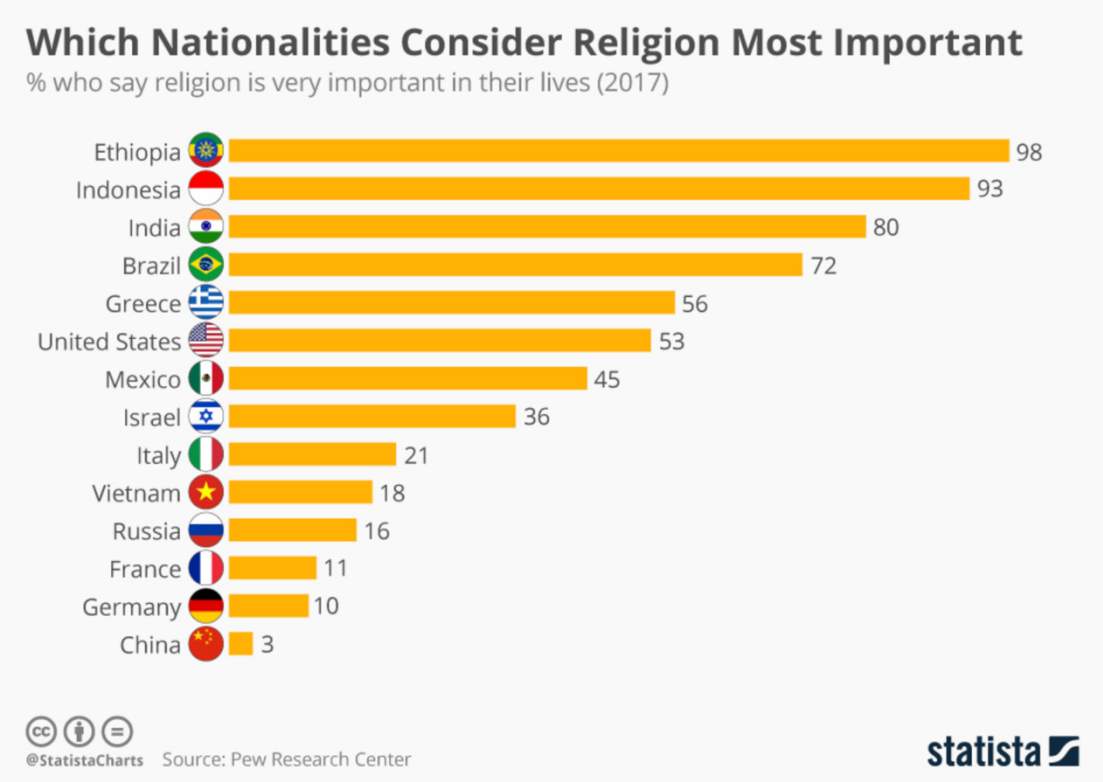
1.2. Role of religion within the state

Religion holds a clear relevance within the state of Indonesia. **Islam** reached the state during the 13th century, and it merged with the established religion, politics, and legal practices, obtaining local adherence and reaching such a degree of prominence that can be nowadays observed in the Muslim majority population of the state, as well as the widespread practice of the religion of Islam throughout Indonesia. Particularly, the *Sunni* branch of Islam and the Shafi'i school of jurisprudence were the specific ones that rooted in the whole Indonesian archipelago (Ramakrishna, 2009). During Indonesia's independence, Islam was considered a driving force in their separatist process against colonialism, becoming an integrative value of the state (Banyu Perwita, 2007). Furthermore, the existence of the special jurisdiction of religious courts, and the Ministry of religion within the governmental structure also highlight the impact Islam as a religion holds in Indonesia. This significance materializes for instance in Indonesia's Official Identification card, which demands people's religious identification within one of the several recognized faiths of the state. Indeed, according to the statistics contained in

Figure 2, it becomes undeniable the prevailing character that religion stands within the Indonesian society, as the vast majority of its population grant religion a unique position and role in the state.

Figure 2

% who say religion is very important in their lives



Source: McCarthy (2019)

Historically, when Indonesia was looking forward to its independence, the Investigating Committee for Preparatory Work for Indonesian Independence was created with the purpose of discussing the future formation of the Indonesian government. Some Muslims leaders proposed the implementation of the Jakarta Charter as the preamble of the constitution (Abbas & Murziqin, 2021). The Jakarta Charter wished to amend Pancasila, including seven additional words, so it would establish that the state is based on a belief in the One and Only God "*with the obligation to carry out Islamic sharia adherents*". It wanted to constitutionally legitimized the formalization of *Sharia* in Indonesia. Nevertheless, as correctly stated by Nagara & Hendiyani, this proposal faced a robust opposition from secular nationalists (2022). In the end, when Indonesia became independent in 1945, the preamble of the constitution did not include these words in an

attempt of nationalists' leaders to establish "*a national state under a strong, unified leadership and with a secular, modernizing orientation*" (Otto, 2010). They firmly believed it was the most effective alternative for the constitution being accepted by the majority of the population, and therefore, the secular Republic of Indonesia emerged. However, the desire for the establishment of *Sharia* among certain sectors implied that during the tenure of Abdurrahman Wahid -the fourth president of the Republic of Indonesia- there were two unsuccessful attempts to implement the Jakarta Charter and therefore legitimize *Sharia* in Indonesia.

The 1945 constitution send us a seemingly contradictory message. On the one hand, article 29 establishes the "*belief in the One and Only God*", which implies there is only one true God, and therefore, one specific protected religion by the state, becoming this belief in one supreme God the state religion. On the other hand, this same article as well as article 28E state that "*the State guarantees all persons the freedom of worship, each according to his/her own religion or belief*", which suggests a complete freedom of religion and worship for all religions present within the state of Indonesia. As it can clearly be observed, the constitution does not mention anywhere the existing relationship between the state of Indonesia and the religion of Islam (Din & Yasa'Abubakar, 2021). It also does not mention the relationship with any other faith, therefore implying certain pluralism and freedom of religion. However, the constitution does not define the state of Indonesia as a secular one either.

What the belief in the One and Only God refers to is the acceptance of the state of Indonesia of any monotheistic religion (Hosen, 2007). Precisely, Presidential Decree Nº1 of 1965 recognizes six religions: Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism, all of which could be construed as **official state religions**. This variety of recognized religions could give Indonesia the category of a multi-confessional state, or perhaps that of what Banyu Perwita describes as a religiously accommodating state, since the state is regulated with regard to national ideology (2007).

Regarding religious affairs, religion -and more specifically, Islam- can be included within a state's framework in one of two principal configurations. In what Johnson & Sergie refer to as Government Under God, Islam would constitute the official religion of the state (2014), and consequently, the state would appear as a confessional one, being an

indivisible unity between religion and state. However, it is also common that states declare themselves as secular states, remaining completely neutral and independent in what religion concerns, determining a mandatory separation of state and religion. Hidayat introduces a third paradigm of state-religion relationship, in which both of them are interrelated and related (2013). This last alternative would seem to be the one that best fits the 1945 constitution's references to religion. According to Hidayat, this constitutional delimitation of religion must be construed within a **positive connotation of freedom of religion** (2013). This way, even though the state of Indonesia is not based on any specific officially recognized religion, it cannot be considered to be a fully secular state. Thus, Indonesia constitutes itself as a religious nation where state and religion are undoubtedly interrelated, with no place for either atheism nor religious coercion. According to Freedom House, not only atheism is not legally accepted, but there are also severe punishments for religious crimes such as blasphemy of the recognized faiths (2023). Ahok's conviction for blasphemy against Islam portrays this positive connotation of freedom of religion, which could easily be construed as religious intolerance. Moreover, this reality of religious disrespect is also observed in violent episodes performed against the Christian minority, such as attacks on churches or beheadings of priests.

Ultimately, as it has been examined, Indonesia's configuration of religion within the state does not fit in a particular category. It does not constitute itself as a confessional state with an official religion, but at the same time, it is not a complete secular state, to the extent that it is not fully detached from the affairs of religious institutions. Most authors indeed, such as Hosen, argue that Indonesia is neither a secular nor an Islamic state (2007). Indonesia's status might fit into the previously studied categories of **multi-confessional state, religiously accommodating state**, both within an understanding of religion and state as related spheres. And even though Islam is not its official religion, it is undeniable the extensive practice of Islamic law and religion throughout the state, resulting inevitable the granting of some special provisions by the Indonesian state to Islam. However unfair this may seem, it appears to be coherent with the utmost importance Islam and Muslims hold in Indonesia.

1.3. Process of decentralization and special autonomy of Aceh

Article 1 (1) of the 1945 constitution proclaims the unitary nature of the state of Indonesia. However, at the same time, article 18 of the constitution enshrines the principle of decentralization when it states the division of the unitary state into provinces, which are at the same time internally split between regencies and municipalities. In fact, the unitary nature of the state does not contradict this decentralized formation of sub-national entities. On the contrary, decentralization is regarded as a common feature of unitary states, as long as these subsidiary entities correctly exercise the power they have been delegated by the central government through devolution. Nevertheless, the underlying cause of the Indonesian process of decentralization and the attribution of exorbitant competencies to certain regions, could be found in the fear of separatism that Indonesia has experienced since the end of the colonization period, which was exacerbated by the specific scenarios of Papua and East Timor. The separatist movements of Free Papua and Great Timor, which aim to achieve the unification of their respective territories (Manglano, 2005), endanger the territorial unity of the state of Indonesia, forcing the government somehow to grant these imperiled regions further competencies.

Indonesia has indeed experienced a **process of decentralization** that has resulted into an empowerment and strengthening of the role of regional and local administrations, which have increasingly acquired more autonomy and decision-making power. As Siregar establishes, when the New Order fell, Indonesia began its transition from a centralized government towards a decentralized system (2008). Decentralization, according to Cammack & Feener, was regarded as a way of promotion of democratic participation as well as a mechanism of prevention of concentration of power exclusively in one person or institution (2012). This process started with the introduction of both Law Nº22 of 1998 that provides local autonomy, Law Nº25 which entails financial authority of the central and local governments, and Law Nº32 of 2004 on regional government. Thus, local entities could freely exercise their power through regional regulation in matters which authority was not specifically reserved by the central government. These six restrained areas retained by the central government are: security, national defense, administration of justice, foreign affairs, monetary and fiscal policy, and religion (Cammack & Feener, 2012). Therefore, sub-national entities could exercise their own autonomy in a variety of issues, not being able under any circumstances to contradict governmental stipulations.

Nevertheless, this decentralization process was not entirely homogeneous, since it steadily differed between regions depending on the degree of danger they pose to the territorial unity of the state through a foreseeable separatism.

Apart from this generic attribution of competencies to regional and local authorities, the 1945 constitution also contemplates a special type of autonomy and delegation for some subsidiary entities because of their extraordinariness and uniqueness: **special autonomy**. Article 18B of the constitution recognizes the special position of some regional authorities due to their particular circumstances. This is the case of the province of Aceh, which occupies a unique position within the Indonesian state as Islam permeates all aspects of Acehnese people's lives (Siregar, 2008). Its special autonomy became effective with the introduction on the one hand, of Law Nº44 of 1999 which implemented privileges for the special district of Aceh, and on the other hand, of Law Nº18 of 2001 that provided for the special autonomy of the province, focusing on *Sharia*. Moreover, in 2003, as Siregar states, the president of Indonesia issued the Presidential Decree Nº11 in which conferred upon the province of Aceh the jurisdiction to operate Islamic courts, *Sharia* courts (2008). In addition, Law Nº11 of 2006 broadened the scope of Islamic Law in Aceh by extending it to the areas of religion, family law, private law, criminal law, education, the judiciary, and the safeguard of Islam (Otto, 2010). This law also establishes in the province of Aceh a special court for the implementation of *Sharia*, a *Sharia* court, which constitutes a sub-system within the national judiciary apparatus of Indonesia.

This implemented special autonomy comprises as main privileges: organizing education, governance, traditions and culture, economics, the role of the Ulama establishing regional policies, security and defense, and the organization of religious life (Manan & Salasiyah, 2021). This last privilege, as Suma, Nurdin & Umam observe, refers mainly to the application of Islamic Law within the province of Aceh (2020). Furthermore, it must be highlighted that Aceh's special autonomy is virtually unlimited -within the Acehnese jurisdiction- as the central government grants this province far more autonomy than other local entities enjoy (Siregar, 2008). In this regard, Law Nº11 of 2006 declares that this privileges of the province of Aceh are granted in conformity with the **principle of autonomy as wide as possible.** However, this local *Sharia*-based legislation must adhere to the foundation rules established by the central government, such as that of *Lex superior derogate legi inferiori,* in such a way that it must comply with national law. For that, as

established by Din & Yasa'Abubakar, to the extent that regional autonomy constitutes a power delegation from the central government with the purpose of ensuring the interests of the government and its citizenry, the exercise of this autonomy must align and respect the unitary state of the Republic of Indonesia (2021).

2. SPECIFIC SCENARIO OF THE PROVINCE OF ACEH

2.1. Historical heritage influence in the shaping of Aceh's autonomous and religious identity

Figure 3

Administrative map of the province of Aceh within the state of Indonesia

Source: Phelps, Bunnell, & Miller (2011)

Within Indonesia, it was Sumatra, the region where the then called Sultanate of Aceh is located, where Islam first appeared. Since the institution of the Sultanate of Aceh, *Sharia*-based law has prevailed in this region (Manan, 2020). In fact, the first Islamic kingdom of the region was the one established in Aceh (Siregar, 2008). Aceh enormously developed as an essential Muslim regional trading center, and its leaders became distinguished for their tenacious Islamic fervor as well as their utmost effort to expand the Islamic faith throughout the region (Ramakrishna, 2009). Thus, it can be observed that Islamic values have been rooted within the Acehnese society and identity for a long time as the common essence of their lives, becoming inherent to their culture and customs.

From 1948 to 1965, there was an armed revolt of the **Darul Islam** movement against the recently independent secular Republic of Indonesia, which ultimately led to the emergence of Darul Islamism as a political ideology (Ramakrishna, 2009). During the years of this insurgency, one of the main affected provinces was the province of Aceh, heavily influenced by this movement. As stated by Ramakrishna, this organization aimed for the establishment of an Islamic state in Indonesia committed to the implementation of *Sharia*-based legislation through *jihad*, if required (2009). Even though in the end, Darul Islam failed to achieve its goal, it inspired Muslims to fight against the central secular government of Indonesia for the inclusion of Islamic values within society, advocating for the application of Islamic Law in Indonesia (Ramakrishna, 2009). Ever since then, Islam has heavily influenced Aceh's politics.

Between 1945 and 1960 many newly born states accomplished their independent status from their previous colonizing powers in Asia and Africa, and therefore, a great number of separatist movements emerged worldwide. That is why since 1976, Aceh enjoyed a solid spirit of independence with the action of the **GAM** independence guerrilla, also known as Free Aceh Movement against the central government of Indonesia (Manglano, 2005). This movement somehow derived from and therefore shared Darul Islam's underlying ideology (Shadiqin & Srimulyani, 2021). The GAM mainly pursued for the province of Aceh what the Indonesian government had granted to the Timorese, an independence referendum in order to proclaim its autonomous status (Manglano, 2005), even though the region had already unilaterally declared its independence through the issuance of its own statement of independence in 1976 (Requena del Río, 2011). As Manglano states, the Indonesian government had since long exploited the region's

abundant natural resources, violated the human rights of its population and did not cover their expected minimum basic services, causing a strong eagerness among the Acehnese towards independence (2005). Moreover, because of this lack of resources, the Acehnese were drowned in poverty, unemployment and scarcity of opportunities (Requena del Río, 2011). All of this explains Aceh's desire of separatism through the creation of the GAM, a deeply feared separatism by the Indonesian central government.

Several rounds of negotiations involving both parties occurred, unfortunately with no success, as the GAM denied the central government its request for the guerrilla's ceasefire and surrender (the Indonesian government wanted the GAM to surrender and become a political party within Indonesian politics) until suddenly in 2004, a tsunami hit the region of Aceh, devastating it. As a result of the natural disaster, the entire state as well as the international community were sympathetic to the Acehnese people providing them with the necessary aid for the reconstruction of the region (Manglano, 2005). Few days after the catastrophe occurred, the GAM announced a unilateral truce due to its lack of capabilities to continue the insurrection, after which, negotiations were resumed, and eventually, in 2005, the Helsinki Memorandum of Understanding was reached between both parties of the conflict, on the basis of the concession of special autonomy to the province of Aceh by the central government in exchange for the demobilization of the GAM independence guerrilla (Requena del Río, 2011). As Halim argues, we could indeed construe this religious understanding consisting in the privilege of special autonomy of Aceh as a governmental strategic concession that aims for the solution of the separatist conflict in Aceh (2022). However, this is only the latest display of Aceh's independence and self-determination aspirations. In accordance with Requena del Río, Aceh had also demonstrated these aims long before, with its confrontation to all Dutch colonial troops, the Japanese army and the own Indonesian government after World War II (2011). Under all of these actors of foreign domination, Islam was what truly sustained the spirit of the Acehnese, inspiring people in the hope of the future implementation of Islamic Law, given that all of these colonizing powers restricted or even prohibited the application of *Sharia*-based law (Siregar, 2008).

Not only did the tsunami trigger the achievement of Aceh's special autonomy (later recognized by Law Nº11 of 2006) as part of the agreement between both parties of the separatist conflict, but it was also interpreted by the Acehnese as a divine intervention, a

punishment of God for the existing war as well as for the Acehnese sins of relaxation towards Islam's religious life and customs, which ultimately led to a closer approach towards the Islamic faith (Feener, 2012).

Consequently, according to Ramakrishna, Aceh experienced a persistent feeling of ethno-religious and separatist unrest due to the conjunction of governmental insensitivity towards local concerns, military repression and regional neglection (2009). In the end, as a result of all these occurrences and the global **revivalism** Islam was experiencing as a political force, the Acehnese society demanded greater participation in policy-making (Banyu Perwita, 2007).

This historical heritage has triggered within the Acehnese people a feeling of resentment towards foreign domination, including that of the Indonesian central government, due to frustrated expectations that were raised (Ayubi, 1996). According to Manglano, the Acehnese experienced a rooted sentiment of alienation from the central government (2005), which has resulted in the characteristic spirit of resilience and self-determination of this population. These events have also provoked an in-depth sympathy of the Acehnese towards religious authenticity through an underlying **robust sentiment of religiosity** that materializes in their desire for the implementation of Islamic Law in order to restore Aceh's past glory. Indeed, since the granting of its special autonomy by the central government of Indonesia, Aceh has always had intensely longed for the establishment of Islamic Law within the province (Delta & Pane, 2020).

2.2. Aceh's legal framework: implementation of Islamic Law. Qanun Jinayat

There are 22 Indonesian regions which implement Islamic Law within distinct spheres of life through regional regulations (Abbas & Murziqin, 2021). Nevertheless, the distinctive autonomy granted by the central government to Aceh acknowledges this province with several privileges, among which there is the managing of religious affairs, which would otherwise constitute an absolute competence of the Indonesian government. This authority materializes in Aceh's implementation of Islamic Law not only in fields in which it is already applied by the central and other governments, but also regarding the matter of criminal law, with the establishment of its own system of *Sharia* courts. And because of its deeply rooted sentiment of religiosity, in Aceh, there is a stricter

interpretation of Islamic Law than in any other place of Indonesia, so Islamic criminal law is implemented in its more traditional way.

In accordance with the Governor of Aceh, a specific provincial legislative provision is employed by the Acehnese government in order to elaborate binding regional regulation on *Sharia* law: **the *Qanun*** (2015). *Qanuns* have become a symbol of *Sharia* implementation within the province of Aceh with regard to the issues of faith and worship (Rani, Fikri, & Mahfud, 2020). Even though in the beginning, they were only mandatory to all resident Muslims, and non-Muslims residents had to respect their application as well, the Acehnese government eventually extended their obedience to non-Muslims as long as they were within the territory of the Acehnese jurisdiction (Nagara & Hendiyani, 2022). As Din & Yasa'Abubakar state, *Qanuns* jointly issued by the Aceh House of Representatives and the Aceh Government (2021).

For this system to effectively function, there are certain **regional institutions** of essential character regarding the implementation of Islamic Law within the Acehnese framework. First, there is the Ulama consultative assembly "Majelis Permusyawaratan Ulama" which is responsible for the establishment of the regional government agenda concerning *Sharia* (Cammack & Feener, 2012). Moreover, this council is thoroughly involved in the drafting of legislation, and it also has the competence of the issuance of *fatwas* (Shadiqin & Srimulyani, 2021). Second, there is the Sharia police "Wilayatul Hisbah" whose officers, even if they lack the capacity to detain or charge offenders, they do have the authority to reprimand and advise people caught in violation of *Sharia* provisions contained in Aceh's *Qanuns*. However, due to their lack of enforcement, they must work overseeing the implementation of Islamic law alongside with the civil police and the public prosecutor's office (Cammack & Feener, 2012). Third, there are Islamic courts "Mahkamah Syariah", which with the implementation of the "single roof" policy, became part of the unitary national judiciary system, under the Supreme Court (Din & Yasa'Abubakar, 2021). These courts are responsible for *Sharia* law enforcement, including those provisions regarding Islamic criminal law, contained in the *Qanun Jinayat*. According to Halim, these courts respect the procedural principles of justice, equality before the law and fair trial (2022). Finally, there is a fourth coordinating institution that collaborates with the previous three, the State *Sharia* Agency (Feener, 2012). The function of this last institution is to manage several administrative works referring to the implementation of *Sharia* law.

Islamic criminal law associates certain penalties or punishments to particular behaviors contrary not only to Islam as a religion, but also to public order and social customs. For that purpose, on the one hand, it contemplates a wide variety of *hudud*, which are crimes that are regarded as mortal sins to the extent that they are considered offenses against religion (Balta, 1994). These crimes are deemed to constitute the most harmful offenses, and therefore, they are severely punished in the *Quran*, with no possibility for the judge of personal assessment. As Siregar establishes, there are several *hudud* crimes: unlawful sexual intercourse, false accusation of unlawful sexual intercourse, alcohol drinking, highway robbery, rebellion, theft and conversion to other religions; for which punishments include exile, amputation, life imprisonment, canning, flogging, and even execution in some occasions (2014). On the other hand, criminal law also enforces *taazir* crimes, which comprise a second category of offenses, recognized as less grievous ones, usually related to the loss of financial, moral or social goods, and consequently, associated with less severe penalties that are left to the judge's discretion (Balta, 1994). Their punishments include fines, prison sentences, or administrative sanctions (Siregar, 2008). However, as the *Quran* itself states concerning God, "*He is the Forgiving One, the Merciful*" (The Quran, 2:37). Thus, according to Balta, sincere repentance for the committed sins cancels the punishment that these crimes imply (1994).

Following the above established, in 2015, Aceh's criminal code, **the *Qanun Jinayat*** was issued, and one year later, it entered into force. It was regarded by the Acehnese as an urgent measure that they longed for with the objective of protection from immoral behaviors that violate Islamic teachings, in order to achieve peace, happiness and safety (Delta & Pane, 2020). Among the contemplated offences there is alcohol consumption, gambling, adultery, rape, sexual harassment, abortions, apostasy, murder, terrorism, etc, and the associated penalties are the previously stated depending on the committed type of crime. So, in the end, Aceh applies three different coinciding legal systems: the *Qanun Jinayat*, Acehnese customary law, and the national criminal code (Halim, 2022). Furthermore, apart from the provisions contained in this legal code, Aceh's government also restricts individual freedoms concerning different issues such as the way of dressing, eating habits, freedom of movement... (Otto, 2010).

However solid this framework seems to be, and even with the Acehnese strongly supporting the implementation of Islamic law in Aceh, including that of the *Qanun*

Jinayat (Siregar, 2008), this system also faces its own difficulties. The main **obstacles** this system meets are the shortage of resources allocated to them, personnel scarcity and the lack of funding necessary in order to pay workers' wages and training (Cammack & Feener, 2012). Moreover, there is also a lack of facilities and infrastructures, as well as a scarcity of synergy and coordination among institutions (Suma, Nurdin, & Umam, 2020). In addition, there is an unclear supervision of these institutions at the state level, which eventually leads in some occasions to an extra limitation of these institutions in the exercise of their functions (Avonius, 2007).

According to the Indonesian legislation hierarchy and the principle of *Lex superior derogate legi inferiori*, Islamic criminal law of Aceh must not contradict national law. Some would allege *Qanun Jinayat* does not comply with national law, as it penalizes certain behaviors that are not punished under the national criminal code and it associates them with severe penalties that directly contradict the national constitution. However, the validity of the principle of *Lex specialis derogate leg generali* allows Aceh, in accordance to Siregar, to elaborate a preferential criminal code, the *Qanun Jinayat*, which applies within its jurisdiction on a priority basis over the national criminal code (2008). And even though regional regulations such as *Qanuns* are beyond the Constitutional Court's review control, the spirit of harmony and synchronization of laws allow the central government -particularly, the Minister of Home Affairs- and the Supreme Court to annul Aceh's *Qanuns* if they contradict public interest or violate higher legislation (Otto, 2010).

2.3. National and international concerns regarding human rights violations and other discriminatory features of this system

Even though the implementation of Islamic Law within Aceh's jurisdiction has for a long time been an indispensable requirement of the Acehnese, and Aceh's citizenry generally supports its usage (Siregar, 2008); its application raises several concerns not only among the population of this province, but also between the national state of Indonesia and the international community as well.

The implementation of *Sharia* law has been deemed as **ineffective** because this awareness to both adhere to Islamic Law and prevent future Islamic-related violations has mainly been focused on a small portion of the Acehnese population (Manan, 2020). Not only because its implementation has targeted women, gender minority groups, and non-

Muslim religious minorities, but also for its focus towards sectors of society with fewer resources, who could not afford to undertake a financial penalty, instead of more demeaning punishments. Moreover, according to Feener, the expected resulting social educational transformation has not occurred, since crimes rates and public confidence in the legal apparatus have not improved (2012) in Aceh. Thus, although Islamic Law remains to constitute the principal hallmark feature of the Acehnese government, there are reasons to believe that it has not delivered the desired tangible results neither in the social nor within the legal spheres; which might conversely seem coherent and to a certain extent expected, due to the relatively newness of its effective implementation. However, perhaps socially speaking, there is still hope for the continued application of Islamic Law as a totalizing system due to the prevailing underlying commitment of most Acehnese to implement *Sharia* law and live in accordance with Islam's teachings (Feener, 2012). Indeed, the offenders prefer to submit to Islamic Law, because they regard this process as efficient and low-cost, and *Sharia* courts as trustworthy institutions less likely to bribery and corruption, existing a high satisfaction towards them (Halim, 2022). If as Manan & Salasiyah establish, Acehnese Islamic Law is currently in a stage of adaptation, there might still be room for adjustments and improvements to occur, and therefore enhance its effectiveness and non-discrimination towards optimal socialization and prevention (2021).

Apart from these efficiency concerns, there are also different disturbing considerations regarding Aceh's implementation of Islamic Law as well. Human rights activists and Non-Governmental Organizations around the world heavily criticize the enactment of these *Sharia* law-based regulations, which they consider to be **discriminatory** towards women, gender minority groups, and non-Muslim religious minorities (Llewellyn, 2022). For instance, as Power states, women's rights face a significant regression since these laws imply a censorship in both contraception information and abortion performing (2019). Regarding gender minority groups, according to Robinson, homosexuality from a traditional Islamic approach -existing in Aceh- is regarded as a sin (2021). As a result of this sinful behavior, homosexuals are publicly punished by lashing. For non-Muslim religious minorities, interreligious marriages are forbidden (Otto, 2010). In addition, as Din & Yasa'Abubakar state, there is a common belief that *Sharia* regulations are exclusively applied to the ordinary lower-class citizenry as they seem to be the collective most targeted in the enforcement of these provisions (2021). This is argued because

specifically, canning could in fact be avoided as a penalty by the payment of fines. Besides, the practice of different dramatic corporal punishment methods as penalties is worldwide considered to constitute a violation of human rights (Din & Yasa'Abubakar, 2021). Canning, for example, constitutes a public disciplinary event which gathers large crowds of people to witness it. Consequently, Islamic Law application in Aceh is widely acknowledged to contradict human rights provisions, appearing to be highly discriminatory towards several collectives.

This is certainly surprising since not only does the 1945 constitution guarantee people's rights and freedoms, but also the state of Indonesia participates in different international organizations within the international cooperation system such as the United Nations or the Asian Bank of Development amongst others. Accordingly, Indonesia is a signatory state of the Universal Declaration of Human Rights, which guarantees people's rights at the same time that it forbids torture and degrading punishments, establishing their equality before the law, as well as other declarations which strongly support and protect human rights such as the Convention Against Torture and the International Covenant on Civil and Political Rights (Otto, 2010). Likewise, the Indonesian constitution bans stoning and other torture-like punishments to the extent that they constitute a violation of human rights, establishing instead imprisonment and fines as due penalties (Nagara & Hendiy, 2022). Moreover, the constitution also includes different freedoms and rights based on the principles of equality before the law and non-discrimination (Otto, 2010). Thus, it would appear that the Acehnese Islamic Law does not comply neither with the national constitution nor with international human rights provisions. Although these discriminatory features are astonishing in conjunction with the national 1945 constitution, if we exclusively regard the strict implementation of Islamic Law in Aceh, these characteristics seem to be in accordance with their traditionalist literal interpretation of *Sharia*. Indeed, it is the *Quran* itself that establishes the superiority of men over women (The Quran, 4:34) or the sinful character of non-believers (The Quran, 4:48).

Furthermore, this whole system of implementation of Islamic Law introduces a worrying concern because due to the distribution of competences, it is the allegedly secular neutral state that enforces these religious laws, as in Islam, only the state can exercise this punitive power, becoming a kind of statewide coercive mechanism (Abbas & Murziqin, 2021). This state involvement in Islamic Law, as Avonius declares, could be regarded as

an interference of the government in religious affairs, as if the state ruled over religious matters (2007). As a result, this issue is incredibly controversial because on the one hand, the 1945 constitution emerges as a secular document supporting a secular state in which governmental powers remain neutral towards religion, granting freedom of worship and legally recognizing several faiths; although on the other hand, religion holds a significant relevance in the state, and Islam in particular occupies a special position within its framework due to the Muslim majority of Indonesia. If anything can be induced from this situation is the ambiguity and contradiction that -as we have observed throughout this dissertation- surrounds the Indonesian state as well as the province of Aceh.

The most important implication of all the previously analyzed is clear. Due to these concerning features of Aceh's Islamic Law, the state of Indonesia as a whole could severely **contradict the already examined basic tenets of liberal democracy**, questioning Indonesia's democratic status.

Figure 4

WJP Rule of Law Index

Government Powers	Absence of Corruption	Open Government	Fundamental Rights	Order and Security	Regulatory Enforcement	Civil Justice	Criminal Justice	OVERALL SCORE
0.66	0.40	0.55	0.50	0.71	0.57	0.47	0.39	0.53

Source: World Justice Project (2022)

The Rule of Law Index measures states' adherence to the rule of law on a scale from 0 up to 1, in which 1 would resemble a completely strict adherence to it and 0 an absolute absence of it. Figure 3 shows the results obtained in 2022 by the state of Indonesia according to this index, through the measurement of eight different variables. Indonesia's overall score is 0.53, which shows that it barely adheres to the rule of law, meaning that citizens and institutions within the state not always equally accountable to the same laws or regulations. This outcome corresponds with the previously analyzed status of Indonesia as a flawed democratic regime. This lack of adherence to the rule of law can be explained if we observe the existing difference between the guarantees granted in the 1945 constitution -which constitute Indonesia theoretically as a liberal democracy-, and the actual materialization and respect of these provisions in practice, which may be due to a wrongful implementation of this democratic governmental system. This distinction

is what Dahl refers to when he establishes democracy as ideal system that no state fully accommodates, introducing the notion of polyarchi as the governmental regime that in practice resembles democracy, but does not completely reach its demands as democracy is merely an unattainable ideal (2008). Likewise, Manent endorses this separation between the formal idea of democracy and its reality, arguing that democracy conceals an underlying unspeakable oligarchic reality (2003).

When assessing the flawed character of Indonesia's democracy, several **endemic challenges** were identified within the state as potentially responsible for this distortion of democracy. These threats include minorities' discrimination, police brutality, systemic corruption and politization of Islamic laws, all of which can also be found in the Acehnese regional government. Specifically, the lowest scores are absence of corruption (0.40) and criminal justice (0.39). Corruption, as it has been examined, constitutes an underlying feature of the Indonesian central government, mainly manifested within the judiciary, but also in the fact that ultimately many official charges are elected by the executive power, and in the politization of Islamic Laws. However, criminal justice is far more present and influential within the regional government of Aceh, due to the introduction of the *Qanun Jinayat* and the degrading practices it entails, as well as other regional regulations that restrict rights and freedoms of its citizenry. Thus, we could affirm that Aceh's implementation of Islamic Law negatively impacts Indonesia's democratic status, although it is not the only factor that shapes Indonesia as a deficient democracy. Dahl installs the possible existence of sub-national institutions that within a competitive national polyarchi constitute oligarchic or hegemonic entities (2008). This is perhaps the scenario that can be found in Indonesia with the province of Aceh, although as it has been observed, it seems difficult that the undemocratic nature of the sub-national entity does not affect the national government, eroding its democratic status.

One last concerning issue of this imperfect system, as already highlighted by Llewellyn, is that Aceh's implementation of Islamic Law could set a **precedent** and be an example for other conservative regions within the country in order to apply Islamic Law without the granted privileges Aceh has been given by the Indonesian state (2022). This potential extension could in fact result into a gradual undesired general Islamization of the state of Indonesia. Indeed, in accordance with Llewellyn, several regions which do not share Aceh's historical heritage, and are not granted special autonomy by the government are

already campaigning to achieve their autonomous status, even introducing their own regulations based on Islamic Law (2022). Nevertheless, it is clearly too soon to be certain of whether Aceh constitutes a precedent for other regions to implement Islamic Law, or the exception of its application within the Indonesian state. Perhaps if this radicalization in the implementation of *Sharia* continues to expand within the state of Indonesia, a potential third attempt to establish the Jakarta Charter might occur, being unclear its likelihood of success this time.

3. COMPATIBILITY BETWEEN ISLAM AND DEMOCRACY IN INDONESIA: A DEMOCRATIC *SHARIA*?

3.1. Abstract likelihood of coexistence

Since its beginnings, Islam has transcended the religious sphere, becoming an ideology, a way of life, and even a governmental form, materialized in the prophet Muhammad's construction of the Islamic state. Therefore, the most accurate comparison to establish the potential compatibility between liberal democracy and Islam would be between the Islamic state and liberal democracy. However, as the *Quran* does not preach the official governmental form of Islam, and due to the complexity of Islam as well as the absence of consensus about what Islam is exactly, there is no unique notion of the Islamic state as such, but instead, it varies depending on the theoretical perspective you constitute it from.

One perspective is that of **fundamentalists Muslims**. The equivalence between religion and politics is one of the main tenet of fundamentalists movements among Islam, as they regard Islam as an all-encompassing religion, and its principles contained in *Sharia* as absolute, eternal and immutable, and therefore, hardly compatible with a constitution, which generally upholds the spirit of democracy as it is an artificial product of human consultation and consensus (Hosen, 2007).

Fundamentalists strongly belief in God's absolute sovereignty, being willing to impose divine Islamic Law (Ayubi, 1996). They consider that the desired Islamic state should adopt the form of a nomocracy, which consists in the reign of God's word and Law which are regarded as divine unquestionable imperatives by Muslims, contained in the *Quran*

and the *Sunnah*, for Islam is the only religion, leaving no place for pluralism (Hilmy, 2010). Consequently, as established by Ayubi, their defended Islamic state would not constitute the reign of any particular group (1996); not the people (democracy), not the elites (aristocracy), and not the clergy (theocracy) either, since God's sovereignty is not compatible with the sovereignty of the people. That is why, from this perspective, an Islamic governmental apparatus would not accept participation, counseling and foreign thoughts. For fundamentalists, according to Ayubi, human existence only makes sense as long as it shows a complete and unwavering submission to God's will (1996). Therefore, a truly Islamic society can only be accomplished through an strict and literal implementation of *Sharia* (Hilmy, 2010).

Not only does this traditionalist perspective contradict liberal democracy, but fundamentalists specifically reject this form of government over a sense of othering towards Western democracy, demonizing it as an artificial product of Western unbelievers to erase Islam and Muslim communities. Fundamentalists deny that the purpose of public deliberation consists on the elaboration of consensuated laws and instead, they argue it only applies to issues which solution is not clearly established in the *Quran* or the *Sunnah* (Hilmy, 2010). Moreover, they also criticize the underlying secularism of democracy, which implies a division between religion and politics, as well as the liberalism behind it, as it is regarded as a questioning of the fundamentals of Islamic belief contained in both the *Quran* and the *Sunnah* (Hilmy, 2010). According to Avonius, for this perspective there is no need to construe Islam in line with democracy, as Islam remains a complete system where no additional instructions apart from God's literal words are necessary (2007).

An alternative perspective held by **average Muslims** considers that the Islamic principle of *shura* corresponds with the modern notion of democracy, as *shura* gives the people the right to elect their rulers and representatives as well as the freedom of thought, opinion and expression (Ayubi, 1996). This signifies that they believe in the potential coexistence of both Islam and liberal democracy. In fact, according to Hilmy, the spirit of Islamic teachings contained in both the *Quran* and the *Sunnah* is compatible with that of liberal democracy (2010).

Even though Islam has also experienced a process of othering and rejection from Western democracies that regard the Islamic political tradition as authoritarian (Massad, 2015), Islam itself incorporates different democratic features. First of all, Islam rejects authoritarian and dictatorial regimes, supporting the majority rule and the principle of equality before the law. Moreover, general elections are regarded as people's testimony in the election of their leaders, leadership that is based in a social contract between rulers and ruled. Furthermore, Islam also entails accountability mechanisms for the leaders' transgression of their duties (Hilmy, 2010). The political leader, as Ayubi states, must be guided in his role by God's word, and therefore, he must implement *Sharia*, but he also must fulfill the standards of a good leader, fair with his people (1996). As stated by Hosen, Muslims have the divine obligation to consult others when deciding their affairs, so there is a need for consultation, avoiding the establishment of a discretionary power (2007). This arbitrariness is also avoided due to the balance of power between the ruler and the scholars, in which the latter limited the executive power ensuring the enforcement of the rule of law (Feldman, 2008). In addition, Muslim jurists in their interpretation of the *Quran* and the *Sunnah* have determined five values or rights of mandatory protection within Islam: religion, life, intellect, honor, and property (Hosen, 2007). *Sharia* forbids bribery at the same time that requires the equal consideration of poor and rich, and protects private property (Feldman, 2008), embodied in the Islamic pillar of *zakat*, alms.

Thus, there are variants of Islam that liberalism deems compatible (Massad, 2015). As Ramakrishna argues, a **tolerant Islam** that can abide by the rules of liberal democracy requires theological containment, so that Islamist agendas can waive some of their most radical objectives, therefore accommodating the tolerance and pluralism characteristics of democratic regimes (2009).

The main feature that differentiates both perspectives lies in their divergent conceptions of Islamic Law. Under the fundamentalist perspective, anything that deviates from scriptural Islam and the interpretation of formally recognized religious authorities is not accepted, while modernists hold other methods as equally valid (Avonius, 2007). Whereas a traditionalist literal notion of *Sharia* would lead towards the establishment of an Islamic state based on God's will potentially contradictory to democracy, in accordance with Hilmy, the modernist application of Islamic Law only in substance promulgates the compatibility between Islam and liberal democracy (2010). Thus,

depending on the approach that each Muslim state decides to implement, Islam and liberal democracy could either remain compatible or contradictory.

3.2. Specific materialized affinity in Indonesia

According to Hosen, the constitutional reform performed in Indonesia was based in this idea of **substantive *Sharia***, which -as observed in the state of Indonesia-, combines both democratic tenets and *Sharia* principles (2007). Substantive *Sharia* entails its need of reinterpretation in accordance with democracy and constitutionalism, understanding *Sharia* as an established path that must be later subject to human interpretation. Even if Sharia constitutes the divine Law, any construction or codification of it requires and implies human reasoning and interpretation (Hosen, 2007). Indeed, as Hosen affirms, "*the issue of whether or not shari'a is compatible with constitutionalism is an issue of ijtihad*", which is widely employed within the Shafi'i school of Islamic thought -school that constitutes the majority in Indonesia- in order to provide an optimal understanding and subsequent practice of God's Law in accordance with the characteristics of human beings (2007). It consists on the human interpretation of Islamic teachings with the purpose of contextualizing them historically in everyday practical situations (Avonius, 2007). In practice, this substantive *Sharia* would imply to a certain extent a practical secularization of *Sharia* through human interference in enactment of religious commitments with non-divine character (Otto, 2010). This way, *Sharia* will only hold a social influence with a certain repercussion in secular legislation.

Due to its **peaceful introduction** in the state not as a colonizing political force, but as a cultural one, Indonesian Islam is known for its tolerance and pluralism. That is why this tolerant variant of Islam configures itself as compatible with different characteristic features of liberal democracy, such as equality, pluralism, human rights or civil society (Hilmy, 2010). In fact, *Sunni* Muslims -which amount for the majority of the population in Indonesia- unite spiritual and political leadership under the institution of the caliphate, which will govern them according to democratic principles and consensus. Consequently, the basis for a potential compatibility between Islam and liberal democracy already exists in the state of Indonesia. Under this outlook, the experienced Indonesian process of democratization, with the inclusion of Islamic principles could result in what Feldman refers to as democratic *Sharia* (2008).

In order to asses this (in)compatibility, we must highlight some **Islamic principles** which are present within the state of Indonesia, and that can be construed as **compatible with liberal democracy**, ascertaining as a result the effective coexistence of both forms of government. In Indonesia, sovereignty belongs to the people, and it is exercised in line with its 1945 constitution. Even though this clearly contradicts the divine sovereignty of the traditional Islamic state, which is vested in God, it is at the same time coherent with the role of the *ummah*, which became according to Hosen "*the collective agent of the Divine Sovereign*" in Islam (2007). Indonesia holds periodic, fair, competitive and free elections in order to elect their candidates under universal suffrage. In Islam, although nothing is specified in the *Quran* or the *Sunnah*, apart from *shura*, the notion of *bay'at* encourages the possibility of popular election as it stands for the appointment of a person to hold an official position (Hosen, 2007). The Indonesian constitution establishes a limited presidential tenure, consisting in two five-year terms, whereas in Islam, the office of the caliph had no limitation (Hosen, 2007). However, Islam provided some accountability mechanisms for the leaders and in conjunction with the need for consultation, they somehow restrict governmental power preventing corruption and arbitrariness. In Islam, if the ruler showed disobedience to God, there was no compulsory submission to his mandate (Hosen, 2007). There is an equivalent accountability mechanism under the Indonesian constitution consisting in the possibility of impeachment of the president of the Republic due to justified reasons and supported by a certain majority of votes from the parliament. This entails a subordination of the executive power to the rule of law. Regarding the legislative power, in Indonesia there is a bicameral parliament with a series of functions and capabilities, which finds its equivalent institution in the Islamic *shura* council, a consultative assembly which decisions were legally binding (Hosen, 2007). According to Feldman, *Sharia* is democratized when its custody is given to a popular elected legislature (2008), as it occurs in the state of Indonesia. The Indonesian judiciary is surrounded by a character of independence and impartiality, independency that is considered in Islam as well an essential feature of the *qada*, the judiciary branch, not allowing any special treatment (Hosen, 2007).

In addition, the existing separation of powers that Ayubi establishes in the conception of the Islamic state between the executive power vested in the caliph, the religious scholars whose binding legal advice could resemble that of the parliament, and the judges (1996), simulates the division of powers that presides liberal democracies, and that is present in

the state of Indonesia as well. This accommodation of substantive *Sharia* to democratic and constitutional principles also explains the Indonesian separation between religion and state, even though the secular character of the state in practice remains uncertain.

Many of these statements regarding Islamic Law are established through *ijtihad*, as both the *Quran* and the *Sunnah* barely contain provisions regarding politics. Since the implementation of *ijtihad* within the notion of substantive *Sharia* is widely applied by the Shafi'i school of Islamic thought, and it provides arrangements from which we could preach the compatibility between Islamic Law and liberal democracy, this likely relationship of coexistence could then be affirmed, at least as far as the state of Indonesia is concerned. In fact, some authors such as Rani, Fikri & Mahfud assert that the implementation of *Sharia* within the state has experienced a democratic process performed by the Republic of Indonesia (2020). This way, many Muslims regard national unity and democracy as the optimal pathway towards development (Otto, 2010). However, even though Indonesia's democratic status seems to be compatible with this notion of substantive *Sharia*, the strict implementation of Islamic Law in Aceh severely endangers and erodes its democratic condition increasing the skepticism about the existing compatibility between Islam and liberal democracy.

III. CONCLUSIONS

This dissertation aimed to provide an accurate response to the concerning issue that is the (in)compatibility between Islamic Law and liberal democracy on the basis of the following hypothesis: the implementation of Islamic Law in the Indonesian province of Aceh has significantly eroded the democratic foundations in Indonesia. In order to test the veracity of this hypothesis, several research questions were proposed, and as a consequence of the performed analysis throughout this paper, different findings were made.

Regarding the democratic status of the state of Indonesia, the 1945 constitution enshrines all of the fundamental democratic principles, and therefore accommodates to the notion of liberal democracy with the guarantees of popular sovereignty, public liberties, rights and freedoms, regular fair, free and competitive elections, rule of law and limitations on governmental power. Nevertheless, in practice, there is a lack of fulfilment of these principles due to different endemic challenges from which the Indonesian state suffers, such as minorities' discrimination, police violence and brutality, systemic corruption or politization of Islamic laws, leading to a wrongful implementation of this governmental system. This absence of correspondence between theoretical democracy and its effective materialization explains the classification of the Indonesian state as a flawed or deficient democratic regime. Besides, the meticulous implementation of Islamic Law within the jurisdiction of the province of Aceh has also exacerbated the flawed democratic status of Indonesia. However, despite the fact that Indonesia does not rigorously meet all standards to be considered a fully democratized state, it does constitute a liberal democracy, even though it is a deficient one.

During its transition from an authoritarian regime towards a democratic one, Indonesia experienced a decentralization process, through which among other concessions, the central government granted special autonomy to the province of Aceh. This region had for a long time suffered from separatist conflicts first against the foreign colonizing powers, and then against the national government of Indonesia. This persistent animosity resulted into a feeling of resentment towards foreign authority, and in conjunction with the uniqueness position Islam within the province, the relentless craving of the Acehnese for the implementation of Islamic Law became a reality. The main innovation was the

competence of the Acehnese regional government to implement Islamic criminal law, which they applied from a scriptural literal traditionalist approach characteristic of fundamentalist Muslims. The Acehnese still defend and strongly endorse the application of Islamic Law even though it has been deemed to not deliver the expected results, perhaps because it is still in an adaptation phase despite the fact that it has been 20 years since the peace was reached between the central and the regional governments. Moreover, this implementation also entails discriminatory provisions towards women, gender and religious minorities, and the establishment of degrading corporal punishments raises concerns among the international community considering the potential violation of human rights they imply. However, despite the negative impact this implementation of Islamic Law portrays to Indonesia's democratic regime, the Acehnese are not likely to cease in its application due to both their deeply rooted sentiment of religiosity and their firm conviction of the satisfactory character of this system.

Regardless of the detrimental influence Acehnese politics have in Indonesia's democratic status, Islamic Law and liberal democracy coexist within the state of Indonesia, although their compatible relationship hangs by a thread. This compatibility is based on the one hand, on the idea of substantive *Sharia* with its reinterpretation in accordance with democracy and constitutionalism through *ijtihad*, and on the other hand, on the peaceful introduction of Islam in the state as well as its construction as a cultural feature rather than a political one. Thus, we can affirm the compatibility between Islamic Law and liberal democracy in the state of Indonesia, although the specific circumstances surrounding the province of Aceh, to the extent that they might worsen Indonesia's democracy and constitute a precedent for other sub-national entities to adopt and implement Islamic Law, could endanger this existing consonant relationship.

Despite the results obtained through this dissertation, there will always be further questions and new developments regarding the (in)compatibility of Islamic Law and liberal democracy in the state of Indonesia. Perhaps the passage of time and further studies will provide a definitive response to this issue either with the absolute erosion of democratic fundamental tenets in Indonesia due to the relentless implementation of Islamic Law in Aceh, or with a peaceful coexistence of both governmental forms thanks to a moderate approach of theological containment and substantive *Sharia*.

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